VOLUME TWO

Appendix to the Journal of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA
1967 REGULAR SESSION

REPORTS

January 2, 1967–September 8, 1967

HON JESSE M UNRUH
Speaker

HON. CARLOS BEE
Speaker pro Tempore

HON GEORGE ZENOVICH
Majority Floor Leader

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VOLUME TWO

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Management Survey of the State Teachers' Retirement System

CALIFORNIA LEGISLATURE

Volume 12 Number 12

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ON GOVERNMENT ORGANIZATION

ORGANIZATION OF THE EXECUTIVE BRANCH

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LETTER OF TRANSMITTAL

Honorable Jesse M. Unruh
Speaker of the Assembly
and Members of the Assembly

Gentlemen:

Your Interim Committee on Government Organization, in accordance with your instructions, herewith submits a report on the organization of the executive branch of California state government pursuant to House Resolution No. 710 of the 1965 Regular Session of the Legislature.

It has been said of the efforts of the last 50 years to reorganize the basic structure of the executive branch of government in the various states that "the problem of executive organization in state government across the nation is as pressing and difficult now as at any time in the past half-century of reorganization activity."[1]

It can further be said that similar observations concerning the "pressing and difficult" state of state executive organization have been consistently repeated with unfailing regularity by each new task force, commission or committee of reorganizers from the earliest to the most recent

The recurring theme which has dominated these studies is (1) consolidation of all administrative agencies into a small number of departments organized by function, (2) establishment of clear lines of authority running from the Governor at the top of the hierarchy through the entire organization accomplished by both a shortening of the ballot through elimination of most elective administrative officials and giving the Governor powers of appointment and removal over all department heads, and (3) development of appropriate staff agencies with direct responsibility to the Governor.

The obvious conclusion that can be drawn from such repetition of objectives over the years is that state reorganization efforts have either been uniformly unsuccessful or proponents of reform have consistently overstated both the extent of the reorganization "crisis" and the urgent necessity for change.

Perhaps both conclusions are in large part true Few observers of reorganization activity would take exception to Professor James Bell's statement that "those who labor in the administrative reorganization vineyard generally receive a meager harvest"[2] Yet, there have been some important reorganizations of the actual structure of our state governments.

Perhaps more significant, however, have been accomplishments in executive management such as improvements in budgeting procedures, accounting and auditing, personnel administration, long-range planning and the introduction of data processing as a management tool, and

[1] James R Bell and Earl L Darrah, *State Executive Reorganization*, Bureau of Public Administration Legislative Problems series (1961 Legislative Problems No 3), University of California (Berkeley, California February 1961), 1
[2] *Ibid.*, 98.

these changes have not been predicated on fundamental alterations of the actual structure of the executive branch And yet, it is these improvements in administration which have been the major reason for California's enviable reputation as a leader among the states.

This conclusion does not diminish the importance of changes in the actual structure of the executive branch In the first place, great satisfaction should not necessarily be drawn from comparison of California's state government administration with the standard of the other states; and secondly, strong arguments for specific reorganizations can be made.

This report is not an attempt at a comprehensive survey of all of the needed reorganizations of the executive branch.[3] It does not address itself to the fundamental policy questions of the growth of services provided by state government Nor is it intended as a directive to the executive outlining specific reorganizations which must be undertaken.

A fundamental premise of our American governmental system is that administrative organization is the mutual responsibility and concern of both the legislative and executive branches The committee firmly believes that it is imperative that reorganization be viewed as a matter of maximum cooperation among the two branches The greatest service to the people can be rendered by enabling both the Legislature and the Executive to more effectively perform their constitutional responsibilities

The overwhelming approval by the voters on November 8, 1966, of the revision of the California Constitution presented as Proposition 1A, has given new emphasis to these objectives. With this in mind, and at this particular time of changeover from one administration to another, this committee feels compelled to set forth for consideration several issues bearing on the organization of the executive branch. These include an analysis of the advisability of vesting in the Governor the authority to propose executive reorganization plans (Part I); an evaluation of the top-level administrative structure of the executive branch as embodied in the "agency concept" of the 1961 reorganization (Part II); a reaffirmation of the often repeated recommendation on the need for a central revenue department (Part III); and a review of the central staff functions performed by the Department of General Services since its creation in 1963

All of these studies were conducted under the able chairmanship of the Honorable Milton Marks, who resigned as a Member of the Assembly on October 25, 1966, to assume the duties of Judge of the San Francisco Municipal Court Your committee wishes to acknowledge the longstanding efforts of Milton Marks in behalf of a more efficient and economical state government and to express its gratitude for the able and energetic leadership he contributed to the work of this committee during his tenure as chairman

The committee also wishes to acknowledge and express its appreciation for the excellent work done by the committee staff in the conduct of this study and the preparation of this report. In particular, Joe Shafer, of the Assembly Legislative Reference Service, who assisted in

[3] For an excellent and comprehensive survey of the development of state reorganization in the 50 states as well as an account of California's organizational history see Bell and Darrah, 1–54

all phases of this study and prepared the excellent background papers on the federal experience with executive initiated reorganization and the organization of, and development of the executive office of the President, is to be commended.

Legislative Analyst A Alan Post provided the committee with a report on the development of the "agency plan" of organization together with his comments The committee also received a report from the office of Auditor General William H. Merrifield on the feasibility of combining the tax-revenue auditing of the principal tax administrative agencies of state government.

The committee also wishes to commend the work of the Commission on California State Government Organization and Economy, particularly for their continuing review of the programs administered by the Department of General Services

Respectfully submitted,

EUGENE A. CHAPPIE *
Vice Chairman

WILLIAM T. BAGLEY	BOB MORETTI
TOM CARRELL	DON MULFORD
JACK T. CASEY	ALAN G. PATTEE
HARVEY JOHNSON	WALTER W. POWERS
LESTER A. MCMILLAN	W. BYRON RUMFORD

* While all of the recommendations included in the report received the support of a majority of the members of the committee, the listing of names on the letter of transmittal is not intended to infer support of each recommendation by every member of the committee

I. EXECUTIVE INITIATED REORGANIZATION PLANS

FINDINGS

1. Organization of the administrative structure of the executive branch is a shared responsibility of the Executive and the Legislature.

2. The administrative structure of California state government has not kept pace with the rapid changes in social and economic conditions so as to most efficiently and economically meet the needs of its citizens for government services

3. Since 1933, Congress has delegated to the President authority to initiate executive reorganization plans which become effective unless specifically disapproved by either house of Congress

4. That authority has been used extensively by each of the chief executives since President Hoover and has been found to be an effective method for making the machinery of the federal government more adaptable to the ever-changing requirements of administration

5. In November 1966 California voters approved a revision of the Constitution, submitted as Proposition 1A, permitting the Legislature to vest authority in the Governor to initiate plans for reorganization of the executive branch.

6. Executive-initiated reorganization, if properly structured, can afford a method to facilitate the Governor's performance of his responsibilities with the full cooperation and assistance of the Legislature in a more efficient and flexible manner that will significantly promote sound organization and management of the executive branch.

RECOMMENDATIONS

1. The committee recommends the enactment of an enabling statute in accordance with Section 6 of Article V of the Constitution to permit the Governor to initiate reorganizations of the executive branch which would become effective unless disapproved by resolution of either house of the Legislature

2. The committee supports the inclusion of a two-year limitation in any enabling statute granting the Governor reorganization authority so that the delegation would not be binding on future Legislatures and the decision to continue or terminate that authority may be freely exercised.

3. The concept of executive-initiated reorganization as a cooperative approach rests upon the essential element of a subsequent legislative determination that the Governor is exercising his delegated authority in conformity with the legislative purpose. The committee supports the method of disapproval by resolution adopted by simple majority vote of either the Senate or Assembly.

4. The committee also recommends that before the Governor submits proposed reorganizations to the Legislature that he first submit them to the Commission on California State Government Organization and Economy to provide the Governor and the Legislature with a separate and independent review.

In November 1966 the voters approved a revision of the California Constitution, submitted as Proposition 1A, thereby giving the Legislature authority to adopt an entirely new procedure for the enactment of executive reorganization plans.[1] The new section added to the Constitution specifies that

> Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by elective officers.[2]

This new constitutional language grants express authority to the Legislature to permit executive initiated reorganization of all agencies of state government other than agencies administered by elective officers. The argument for including such a provision in the Constitution was debated by the Constitution Revision Commission at the insistence of several commission members.[3] Although unsuccessful in obtaining a majority vote on its inclusion, those members speaking for it filed a minority report supporting their position as part of the commission's report to the Legislature:

> We believe the Legislature should have the authority to enact legislation which would give the Governor the right to initiate executive reorganization subject to subsequent legislative veto. Such

[1] Proposition 1A was approved by 4,129,553 in favor to 1,475,680 opposed. The revision resulted from a study and report by the Constitution Revision Commission and was approved by the Legislature for submission to the electorate as Assembly Constitutional Amendment No. 13 (1966).
[2] Article V, Section 6, *California Constitution*.
[3] Minutes of Constitution Revision Commission, December 16, 1965.

authority is contained in the model state constitution, in the constitutions of other states and is substantially the same as that exercised by the President of the United States.[4]

A 1959 opinion of the Legislative Counsel was also cited in the minority report to demonstrate the need for an amendment to the Constitution.[5] In the opinion, Legislative Counsel contended that certain provisions of the California Constitution specify strict requirements for the passage of legislation and permitting the Governor to propose reorganization plans subject only to legislative disapproval "runs afoul" of these constitutional provisions.

As introduced, Assembly Constitutional Amendment No. 13, which provided for submission of the revision of the Constitution to the electorate, was in accord with the majority recommendation of the commission and did not contain the language which appears as Article V, Section 6, in the version finally approved by the Legislature. Assembly Constitutional Amendment No 13 was amended in the Assembly on April 11, 1966, to authorize the enactment of a statute permitting the Governor to initiate executive reorganization.[6]

SEPARATION OF POWERS DOCTRINE

One of the basic tenets of American constitutional law is the doctrine of separation of powers. In Article III of the California Constitution it is phrased as follows

> The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise any of the others except as permitted by this constitution.

Clearly, the authority for permitting the Governor to "assign and reorganize functions among offices and agencies and their employees" in conflict with existing statutes has now been incorporated as part of the Constitution. As a result, even if such a procedure were deemed to be in substantial conflict with the doctrine of separation of powers it would stand as a permitted exception.[7]

Nevertheless, in assessing the advisability of enacting the enabling statute giving the Governor the authority to initiate reorganizations which would have the effect of law unless disapproved by the Legislature, the question whether the proposal is violative of the principle

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[4] Constitution Revision Commission, *Proposed Revision of the California Constitution* (Sacramento February 1966), 201. Richard Carpenter, John A. Busterud, Arthur F. Corey, Richard J. Dolwig, Mrs. William Irvine, William R. McDougall, George W. Rochester, Mrs. Lawrence Spear and John A. Vieg signed the minority report. The language suggested by these commission members was more specific than that finally included in Assembly Constitutional Amendment No. 13 and would have read as follows

"Authority may be vested in the Governor by statute to reallocate existing functions among and within state executive and administrative agencies and offices if any reallocation affects existing law, it shall be set forth in an executive order submitted to the Legislature within 30 days of the opening of a general session and, subject to referendum, shall become law on the 91st day after adjournment unless disapproved by resolution of either house."

[5] Ops. Legislative Counsel No. 17220, June 2, 1959, to Senator Hugh P. Donnelly (see Appendix C for the complete text of the opinion)

[6] *Assembly Journal*, 1966, 665–667

[7] In an opinion issued to Hon. Milton Marks (Ops. Legislative Counsel No. 8225, October 25, 1966) Legislative Counsel noted that although the new Section 6 of Article V is "not explicit in authorizing actions by the Governor in conflict with existing statutes . . . neither does it express anything to the contrary." Since no new constitutional authority would have been necessary to authorize the Governor to reorganize within the framework of existing statutes, Legislative Counsel concluded, 'the contrary is authorized." (See Appendix D for the complete text of the opinion.)

that "persons charged with the exercise of one power may not exercise any of the others" remains an important factor to be weighed by the Legislature.

The device of executive initiated reorganization was first tried experimentally at the federal level in 1933 and has been extended for specified periods of time by Congress at regular intervals.[8] During this time challenges to the constitutionality of the federal organization acts have been thoroughly and vigorously debated. One of the major issues has been whether the reorganization procedures provided for in the law constitute a valid delegation of the legislative powers of the Congress to the President. A minority in the House of Representatives arguing against the first Reorganization Act of 1939 saw the proposed delegation as a threat·

> Does Congress propose at this time to surrender the American form of government and the constitutional method of legislating, not for the promoting of efficiency and economy, but for the promotion of riotous waste and extravagance . . . and the delegation of more power to the President [9]

During the First Session of the 89th Congress, hearings were conducted by the Subcommittee on Executive Reorganization of the Committee on Government Operations on the question of amending the Reorganization Act of 1949 to either extend the President's authority under the act for an additional limited period of time (two or four years) or to grant the reorganization authority on a permanent basis. Senator Abraham Ribicoff, chairman of the subcommittee, commenting on the advisability of giving the President permanent authority to submit executive reorganization plans to Congress subject only to congressional veto, indicated his support for the current authority but objected to permanently surrendering authority over such important matters:

> I think the separation of powers of this Government is one of the geniuses of the American Constitution. And I think it would be tragic for the legislative branch to abdicate its legislative authority in violation of the Constitution [10]

The concern expressed by Senator Ribicoff did not relate to the central issue of giving the President the authority to propose reorganization plans, which is now commonly accepted by members of Congress, but only to the grant of that authority on a permanent basis. The subcommittee did consider and affirm its position that the Reorganization Act of 1949, as it has been extended for periods of limited duration, does not constitute an unlawful delegation of legislative authority.

Tracing a long line of Supreme Court cases dating back to 1813, a staff memorandum (incorporated as part of the record of the proceed-

[8] The Federal Reorganization Act of 1949 (5 U S C A Secs. 133z-133z-15) which succeeded earlier acts of the same type has been regularly extended for limited periods of time by Congress Efforts to give the President permanent authority under the act have thus far failed For a detailed discussion of the federal law see Appendix A

[9] U S Congress, House, Select Committee on Government Organization, *Report to Accompany H R 4425, Reorganization Bill of 1939*, 76th Con , 1st Sess , 10

[10] U S Congress, Senate, *Hearing before the Subcommittee on Executive Reorganization of the Committee on Government Operations*, "To Amend the Reorganization Act of 1949," 89th Cong , 2nd Sess , March 29, 1965, 20, cited hereafter

ings of the subcommittee) pointed out that a delegation of legislative power was valid if it met the following requirements:

(1) Congress must itself have jurisdiction over the subject matter;
(2) The delegation must be made to a public official or agency;
(3) The statute must contain a definite statement of congressional policy, clearly defining the subject and extent of the delegation;
(4) If the legislation is to take effect in the future, there must be a statement of the facts which must be found to exist before the delegation can become operative.[11]

The Reorganization Act of 1949 has been carefully and precisely drafted with these requirements in mind and the authority of Congress to delegate reorganization authority to the President has never been successfully challenged in a court test. Similarly, there does not appear to be any serious impairment to the ability of this Legislature to enact a statute consistent with the concepts embodied in the separation of powers doctrine, yet providing the Governor complete authority for reorganization

Great care should be exercised, however, in drafting this legislation so that the scope and duration of the authority is precisely defined and limited As has already been noted, there is no constitutional issue because virtually any procedure for executive-initiated reorganization, no matter how broad in scope it might be, could withstand attack as a constitutionally permitted exception to the doctrine of separation of powers. Nevertheless, the Legislature should not readily depart from well-established constitutional principles when delegating authority to the Governor.

REORGANIZATION OBJECTIVES

What are the arguments for adopting a statute to permit the Governor to propose reorganization plans which would have the effect of law unless specifically disapproved by the Legislature, thus substantially departing from the traditional method of enacting reorganizations by statute so that they take effect by legislative act?

There are several that have been advanced by proponents of executive-initiated reorganization The one most frequently and persistently stated is that the organizational structure of the executive branch is primarily the responsibility of the Governor and, therefore, the initiative for proposing and effecting necessary reorganizations should be clearly and unequivocally focused upon the chief executive.

If that were the sole argument, the case for executive-initiated reorganization would not be a convincing one either in theory or practice. From a practical standpoint, it is an easy matter for a Governor to take upon himself the initiative for promoting reorganization of the executive branch and he would have no difficulty finding a legislator willing to sponsor the necessary bills Similarly, the Legislature would have little difficulty in placing the responsibility more directly and specifically on the Governor by calling upon him to propose certain reorganization bills.

[11] *Ibid*, 16–17

This committee cannot accept the view that thrusting the burden of reorganization upon the Governor is an appropriate posture for the Legislature to assume To do so would be to ignore the fact that the Legislature itself has both an inherent obligation and a positive responsibility to assist the executive in matters of reorganization

While it is true that the actual structure of administration relates more closely to the execution of the law than it does to the determination of policy, execution and policy formulation are inevitably so interwoven that it is either impossible or impracticable to separate one from the other.

A more realistic approach is to accept the premise that reorganization is a shared responsibility of the executive and legislative branches and to support or reject the concept of executive-initiated reorganization on the basis that it either promotes or impedes this process

A second argument for departing from the current procedure of enacting reorganizations by legislation is the substantial difficulty found in mustering sufficient support for reforms of the structure of administration, not because of any concerted opposition, but merely because the bills introduced for that purpose must compete for legislative attention with a myriad of other proposals with major policy implications that are inevitably of more immediate interest to the Legislature as well as the public Reversing the procedure by giving reorganizations the effect of law, unless specific action is taken by the Legislature to disapprove them, requires that immediate attention be given to these measures.

A third and closely related point is the argument that changes in the structure of government which do not alter basic policy should be accomplished in a more flexible manner than is afforded by the process of enacting statutes so that they can take effect as early as possible.

In support of this position, it is contended that the administrative structure of the executive branch of California state government has not kept pace with the rapid changes in social and economic conditions so as to most efficiently and economically meet the needs of its citizens for government services The committee feels that executive-initiated reorganization can provide a more responsive and effective means for undertaking needed changes in the organization of the executive branch

THE FEDERAL PRECEDENT

Since the close of the Hoover administration, our federal chief executives have operated under some form of reorganization authority The observation has been made that since the Reorganization Act of 1939 became law, "virtually the entire structure of the executive branch has been reshaped by changes made under the cooperative presidential-congressional approach embodied in the Reorganization Act." [12]

The current Reorganization Act, which has been revised and extended continuously since its adoption in 1949, was enacted by the Congress following the strong recommendation of the first Hoover Commission on Organization of the Executive Branch [13] Five years later, that recom-

[11] Senate Subcommittee on Executive Reorganization, *Hearing*, March 28, 1965 (Statement of Harold Seidman, Assistant Director, Bureau of the Budget), 8

[12] U S Commission on Organization of the Executive Branch of the Government, Letter from Chairman (Herbert Hoover) to President pro Tempore of the Senate and to the Speaker of the House of Representatives, January 13, 1949, published in Commission's report, *General Management of the Executive Branch* (Washington U S Government Printing Office, February, 1949), VII–XII

mendation was reiterated by the second Hoover commission which called for the extension of the expiration date on the reorganization authority which had been granted to President Eisenhower.[14]

Congress has responded sympathetically to arguments that a more expedient process for effecting reorganization is needed. The Senate Committee on Government Operations in its report recommending enactment of the Reorganization Act of 1949 concluded:

> . . . experience has demonstrated that substantial progress in reorganizing the executive branch can come about only under general authorizing legislation enacted by the Congress. The Congress, of course, has made and will make selected changes in the organization of the executive branch; but as many Members of the Congress have stated, it is not feasible to enact far-reaching changes in the organization-permeating widely through the executive branch by means of direct legislation affecting specific agencies.[15]

The support of Congress for the "cooperative executive-legislative approach" exemplified by the reorganization acts was reached after "long experience had demonstrated that improvements in organization were difficult to achieve when the sole way of correcting defects was to rely upon the passage of specific legislation Improvements were long delayed and often overdue when a reorganization contained in a bill had to pursue its course through the legislative machinery and compete for attention with urgent substantive legislation The Reorganization Act permits an alternative, or supplemental way of approaching this problem, and it does so by clearly placing the responsibility for initiating improvements upon the President "[16]

President Johnson, in his letter to Congress requesting reorganization authority, phrased it another way:

> The people expect and deserve a government that is lean and fit, organized to take up new challenges and able to surmount them.
>
> Reorganization can mean a streamlined leadership, ready to do more in less time for the best interest of all the people.
>
> Reorganization authority is not a whim or a fancy. It is the modern approach to the hard, sticky problems of the present and the future. Government has a responsibility to its citizens to administer their business with dispatch, enthusiasm, and effectiveness.[17]

AN ENABLING STATUTE

The California Constitution vests responsibility for seeing that the law is "faithfully executed" in the Governor [18] Implementation of that objective rests on the ability of the Governor to exert his influence on

[14] U S Commission on Organization of the Executive Branch of the Government, *Progress Report* (Washington U S Government Printing Office, December 31, 1954), 22

[15] U S Congress, Senate Committee on Government Operations, *Report to Accompany H R 5496. Extending the Reorganization Act of 1949*, 88th Cong , 2nd Sess , 5

[16] Senate Subcommittee on Executive Reorganization, *Hearing*, March 29, 1965, 6

[17] Letter from President Johnson to Vice President Humphrey and Speaker McCormack, February 8, 1965, published in Senate Subcommittee on Executive Reorganization, *Hearing*, March 29, 1965, 2 f

[18] Article V, Section 1, *California Constitution* The entire section reads as follows
The supreme executive power of this state is vested in the Governor He shall see that the law is faithfully executed
Under existing law the Legislature has provided for limited reorganizations within the framework of statutory provisions (*Government Code Section 11152*).

administration of the executive branch Responsiveness of the structure of administration to changing conditions and needs is, therefore, an essential ingredient to the Governor's ability to perform his constitutional duties

It is the committee's view that executive-initiated reorganization, if properly structured, can afford a method to facilitate the Governor's performance of his responsibilities with the full cooperation and assistance of the Legislature in a way that will significantly promote sound organization and management of the executive branch.

Legislation permitting the Governor to formulate reorganization plans has been introduced several times in the California Legislature In 1965, Chairman Milton Marks of this committee introduced Assembly Bill No 2848 and an accompanying constitutional amendment to accomplish this purpose [19]

The prior bills, with some significant exceptions, have adhered to the existing federal legislation The legislation requires the chief executive to examine from time to time the organization of all agencies to determine what changes are necessary to implement the specific objectives enumerated in the bill These objectives are

(a) To promote the better execution of the laws, the more effective management of the executive and administrative branch of the state government and of its agencies and its functions and the expeditious administration of the public business,
(b) To reduce expenditures and promote economy to the fullest extent practicable consistent with the efficient operation of the state government;
(c) To increase the efficiency of the operation of the state government to the fullest extent practicable,
(d) To group, consolidate and coordinate agencies and functions thereof as nearly as possible according to major purposes;
(e) To reduce the number of agencies by consolidating those having similar functions under a single head and to abolish such agencies or functions thereof as may not be necessary for the efficient operation of the state government,
(f) To eliminate overlapping and duplication of effort [20]

When the Governor decides that a change is necessary in the organization structure of the executive branch in order to promote one or more of the objectives listed above, then he would be permitted to submit reorganization plans to the Legislature

What constitutes "reorganization" has generally been defined in broad terms It includes the transfer in whole or part of any agency to the jurisdiction and control of any other agency; or the consolidation in whole or part of one agency with another, or the abolition of the whole or any part of an agency when the functions of that agency are transferred to another

In addition, reorganization plans should make provision for the transfer of employees, the disposition of any records or property affected, and the use of any unexpended appropriations A further requirement

[19] As has been noted, passage of Proposition 1A revising the California Constitution makes an amendment to the Constitution unnecessary
[20] Public Law 109, 81st Cong., 1st Sess., Chapter 226, Title I, Section 2 (a) (the Reorganization Act of 1949).

is that reorganization plans which conflict with existing statutes must list all of the acts which would be suspended if the reorganization plan became effective

LIMITATIONS ON REORGANIZATION AUTHORITY

The essence of executive-initiated reorganization is that it is to be utilized to effect changes in the actual structure of the organization of the executive branch Therefore, there are severe limitations on the use of the reorganization procedure to accomplish changes in policy functions vested in the executive branch by the Legislature. For example, a reorganization plan may not have the effect of continuing any agency or function beyond the period authorized by law for its existence Neither can the procedure be used to create new functions not performed by any agency of the executive branch at the time the plan is submitted to the Legislature, nor may they extend a term of office beyond that prescribed by law.

Since 1939, 80 plans have been submitted to Congress by the President and 59 have been approved Phrased in another way—one out of every four has been rejected. Where approval has been withheld, there frequently are indications that the House of Representatives or the Senate held that "they were not in accord with the basic purposes of the act, going beyond reorganizations into areas of policy, which was *in conflict with intent of Congress in approving the act in 1949.*"[21]

One of the most notable instances was the reaction to President Kennedy's attempt in 1962 to create by reorganization plan, a Department of Urban Affairs and Housing—a move that was defeated by a resolution of disapproval in the House of Representatives.

In 1964, Congress provided a further limitation by specifying that no reorganization under the act shall have the effect of creating any new executive department, or abolishing or transferring an executive department or all of its functions, or consolidating any two or more executive departments Apparently Congress felt that the reorganization authority was intended primarily as a device for making changes within existing agencies and that any reorganization creating or abolishing an executive department had inherent policy implications so that effecting such changes by reorganization plan was improper and inconsistent with the purpose of the Reorganization Acts.

Another important feature of the federal Reorganization Act which has been jealously protected by Congress is the limitation on the duration of authority vested in the President After a short-lived grant of permanent power to the President in 1932, Congress has provided limitations of one to four years for the termination of the President's authority.

This committee supports the inclusion of a two-year limitation in any enabling statute granting the Governor reorganization authority so that the statute would not be binding on future Legislatures and the decision to continue or terminate that authority may be freely exercised

A further limitation is embodied in the California Constitution which specifies that the Governor cannot be given authority to assign and reorganize functions among elective officers and agencies admin-

[21] Senate Committee on Government Operation, *Report*, 88th Cong., 2nd Sess., 4

istered by elective officers [22] The enabling statute should also specifically exclude any agency whose primary function is service to the legislative or judicial branches.

A CONDITIONAL DELEGATION

Under the federal Reorganization Act, a plan is submitted simultaneously to the Senate and the House of Representatives by the President and takes effect upon the expiration of 60 calendar days of continuous session of the Congress from the date of transmittal unless either of the two houses passes a resolution stating that the house does not favor the reorganization plan

Several methods of congressional disapproval have been utilized Under the original act of 1933, Congress could prevent presidential orders from taking effect only by enacting specific legislation The 1939 act provided for disapproval by concurrent resolution and in 1949 this was changed to permit a resolution adopted by a majority of the authorized membership of either house of the Congress to defeat a proposed reorganization. Since 1959, a simple majority of either house has been able to defeat a reorganization plan [23]

This committee supports the method of disapproval by resolution adopted by a simple majority vote of either the Senate or Assembly Any enabling statute should be drafted to specifically set forth the procedure for disapproval.

The procedure for disapproval, frequently referred to as the "congressional veto," has been challenged on the basis that Congress, in disapproving a reorganization plan, is exercising a legislative function in a manner not authorized by the Constitution

The constitutionality of the "congressional veto" has been thoroughly and repeatedly defended by the Congress and remains unimpaired despite several court tests.

Attorney General Tom C Clark was asked by Senator John L McClellan, chairman of the Committee on Government Operations, to advise his committee on this question, and in a memorandum to the committee, the Attorney General pointed out that the Congress was not exercising a legislative function when approving or disapproving a reorganization plan:

> . . . the Congress exercises its full legislative power when it passes a statute authorizing the President to reorganize the executive branch of the government by means of reorganization plans at that point the Congress decides what the policy shall be and lays down the statutory standards and limitations which shall be the framework of Executive action under the reorganization act If the legislation stops there without future reference to the Congress, the President's authority to reorganize is complete [24]

Attorney General Clark informed the committee that the reservation by the Congress of the right to disapprove action taken by the Presi-

[22] Article V, Section 6, *California Constitution*
[23] Senate Subcommittee on Executive Reorganization, *Hearing*, March 29, 1965, 7.
[24] U S Congress, Senate, Committee on Government Operations, *Report Accompanying S. 526*, 81st Cong, 1st Sess, 15

dent under the statutory grant of authority is not a legislative act or encroachment upon executive functions delegated by Congress:

> In this procedure there is no question involved of the Congress taking legislative action beyond its initial passage of the reorganization act. Nor is there any question involved of abdication by the Executive of his executive functions to the Congress. It is merely a case where the Executive and the Congress act in cooperation for the benefit of the entire Government and the Nation.[25]

An opinion requested of the Legislative Counsel by Chairman Milton Marks as part of this study addressed itself to the question of the Legislature's right to require the submission of reorganization plans to the Legislature for possible disapproval The Legislative Counsel arrived at a conclusion contrary to that reached by Attorney General Clark that the right to disapprove does not involve a legislative act.

The Counsel based this opinion on the assumption that effecting a reorganization in conflict with existing statutes is "legislation" and

> taking into account the constitutional requirement for legislation (e g enactment by bill), making the effectiveness of the plan contingent on adoption or nonadoption of a . . . resolution by the Legislature would go beyond the authorization of new Section 6 of Article V and be legislation not meeting constitutional requirements.[26]

Viewing the Legislature's enactment of reorganization authority as a conditional delegation is, of course, essential to the whole concept of executive-initiated reorganization as a cooperative approach. To prevent a subsequent legislative determination that the Governor is exercising his delegated authority in conformity with the legislative purpose is to eliminate a basic ingredient.

This committee would not favor adopting enabling legislation under authority vested in the Legislature by Section 6 of Article V of the revised Constitution to permit the Governor to initiate reorganization of the executive branch unless the requirement that the proposed reorganization be submitted to the Legislature for possible disapproval remained unimpaired.[27]

AN INDEPENDENT REVIEW

Another step in the process of developing reorganizations of the executive branch by the executive reorganization plan method was contemplated by the Legislature.

In 1961, legislation authored by Chairman Milton Marks which created the Commission on California State Government Organization and Economy (popularly referred to as "California's Little Hoover Commission") as a permanent, independent reviewing agency to advise the Governor and the Legislature on reorganization, anticipated the

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[25] *Ibid*, 16

[26] Ops Legislative Counsel No 8225, October 25, 1966, to Hon Milton Marks (see Appendix D for the complete text of the opinion)

[27] Any possible uncertainty as to the constitutionality of the reserved right to disapprove a reorganization plan could be resolved to the satisfaction of the Legislature in granting the authority by including a section in the enabling act that would have the effect of making the entire act invalid (as well as any reorganization submitted pursuant to it) if the section setting forth the legislative approval or disapproval were found to be unconstitutional

enactment of an executive-initiated reorganization statute. The legislation provided that:

> Before the Governor submits any reorganization plan to the Legislature . . . he shall first submit such plan to the commission for its consideration and recommendation The commission shall submit to the Governor and to the Legislature a report on its recommendations concerning such plan on or before the 10th legislative day of the first succeeding regular session of the Legislature after transmission of the plan to the commission [28]

However, since the executive reorganization act requested by the Governor was not enacted, the provision for submitting reorganization plans to the commission was deleted from the Government Code.[29]

This committee supports the contemplated method of submitting proposed reorganizations to the "Little Hoover Commission." Such a procedure is totally consistent with the commission's responsibilities in "promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government." [30] The advantage of a separate review would be highly beneficial to both the Governor and the Legislature.

It is the view of this committee that the commission has made a significant contribution to economy and efficiency in state government in its nearly five years of existence, and that an affirmative reply can be made to the commission's request that

> The commission should itself be independently evaluated after sufficient time has elapsed for appraisal, to determine whether its contributions are significant and whether its continuance is justified.[31]

This committee feels that the "Little Hoover Commission" can bring the same independent review to assist the Governor and the Legislature in evaluating proposed reorganization plans, and recommends only that the commission's independence of the executive branch be clarified.

It was the intent of the sponsors of the statute creating the commission that an essential element to the commission's effectiveness was its independence of the officers and agencies of the executive branch so that review of possible reorganization could be accomplished impartially. For housekeeping purposes the commission was placed in the Department of Finance with the provision that "the commission shall not be subject to the control or direction of the director . . ." [32] When the Department of General Services was created in 1963, the commission was transferred to that agency for housekeeping purposes with the result that the statutory independence of the commission from the Director of Finance was brought into question.

This could easily be resolved by clarifying the statutory placement of the commission within the executive branch Some further changes

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[28] *Statutes of 1961*, Chapter 2038 (Assembly Bill No 1510, authored by Assemblyman Milton Marks, approved by unanimous vote of the Legislature)
[29] *Statutes of 1965*, Chapter 159, repealed Government Code Section 8522.
[30] Government Code Section 8521
[31] Commission on California State Government Organization and Economy, *Findings and Recommendations Concerning Reorganization of the Executive Branch of California State Government*, December 31, 1962, 9
[32] Government Code Section 8526.

in its composition would improve the commission's independent role and could be undertaken at the same time that the duty of reviewing reorganization plans was imposed upon the commission.[33]

SUMMARY

In summary, this committee feels that the process of executive-initiated reorganization can be properly defined and specifically limited in a manner that will be consistent with the proper exercise of executive and legislative responsibilities by the respective branches so that a more efficient and flexible method of reorganizing the executive branch can be initiated.

[33] Appointment of citizen members to the commission are made on the following basis: five by the Governor, one by the Senate Rules Committee and one by the Speaker of the Assembly. Since the contribution of its citizen members is so important to the work of the commission, the executive-legislative relationship might be improved by the addition of one more appointee of the Senate and Assembly. In this same connection, it would seem more appropriate for the commission to select its own chairman and vice chairman, rather than to have the Governor appoint them.

APPENDICES

APPENDIX A

FEDERAL REORGANIZATION PROPOSALS

While the United States Constitution vests in the President the responsibility to oversee the operation of the executive department (Article II, Section 1), it has only been since the end of the Hoover administration that the chief executive has had the statutory authority to initiate and submit to Congress proposals for the reorganization of the executive branch All Presidents since that time have operated with similar grants of power.

The first reorganization authority was given to the President by the Executive Reorganization Act of 1932.[1] In its original form, while it enabled the President to consolidate, redistribute, and transfer various agencies and functions by executive order, it did not permit him to abolish a department or agency which had been created by statute or to either transfer or eliminate its functions Congressional rejection of a reorganization plan under this act could be accomplished by a negative vote in either house, and required only a simple majority of those present and voting. This power to initiate executive reorganization was, under the original act, a permanent authority. This was the only reorganization act which granted this power on a permanent basis, although Presidents Truman and Johnson have requested it, and Presidents Eisenhower and Kennedy stated that it should be granted.[2]

This permanent authority was short lived. On March 3, 1933, the authority was limited to a two-year period.[3] At the same time, however, the 1933 act broadened the scope of the presidential power and, in addition, made no provision for congressional disapproval:[4] it was necessary to enact legislation in order to prevent a reorganization proposal from going into effect

Subsequent Reorganization Acts of 1939[5] and 1945,[6] plus the War Powers Act of 1941,[7] developed reorganization laws along the lines that exist today. All of these acts contained specific time limits on the grant of authority (generally two years) and all provided for congressional rejection of any plan submitted by a concurrent resolution In addition, they all prohibited the abolishment or transfer of executive departments or their functions and they tended to exempt specific agencies from the operation of the acts; 21 agencies were exempted under the 1939 act and 11 agencies were exempted under the 1945 act.

REORGANIZATION ACT OF 1949

Currently, the President's authority to initiate executive reorganization stems from the Reorganization Act of 1949, as amended,[8] and this power has been used extensively since its inception.

The Reorganization Act of 1949 both enables and requires the President to "from time to time reexamine the organization of all agencies

[1] *47 Stat 413*
[2] *U S Code Congressional and Administrative News*, 1965, 88th Cong., 2nd Sess., 1634.
[3] *47 Stat 1517*
[4] *U S Code Congressional and Administrative News*, 1965, 1636
[5] *53 Stat 561*
[6] *59 Stat 613*
[7] *55 Stat 838*
[8] *63 Stat. 203, 5 U S C A Sec. 113z–133z–15*

of the government" in order to further stated objectives. The objectives, as enumerated in the act are as follows:

1. Promote the better execution of laws, the more effective management of the executive branch and its functions, and the expeditious administration of public business.
2. To reduce expenditures and promote economy in the operation of the government.
3. To increase the efficiency of the government to the fullest extent practicable.
4. To group, coordinate, and consolidate agencies and functions of the government, as nearly as may be, according to major purposes.
5. To reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies and functions thereof as may not be necessary for the efficient conduct of the government.
6. To eliminate overlapping and duplication of effort.

Obviously these objectives are ambiguous enough to lay the basis for wide discretionary power on the part of the chief executive. This grant of authority, moreover, is extended by the inclusive nature of the definition given to the term "agency."

> Section 7. When used in this act, the term "agency" means any executive department, commission, council, independent establishment, government corporation, board, bureau, division, service, office, officer, authority, administration, or other establishment, in the executive branch of the government, and means also any and all parts of the municipal government of the District of Columbia except the courts thereof.

Excluded from his definition are the Comptroller General of the United States and the General Accounting Officer, both of which are part of the legislative branch of the government

Whenever the President finds that the economy and efficiency of the executive branch may be promoted by restructuring the agencies within the branch, he may draw up a reorganization plan to that effect and submit it to the Congress, stating his findings and his justifications for the reorganization.

The delivery of the reorganization plan must be made to both the Senate and the House of Representatives on the same day. In addition, the President:

> . . . shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of such function, and shall specify the reduction of expenditures (itemized as far as practicable) which it is probable will be brought about by the taking effect of the reorganizations included in the plan.

Despite the fact that the total grant of authority is quite permissive and the discretionary power of the President is greatly enhanced, there are, even so, several specific limitations contained in the Reorganization Act which hedge the power of the President.

The proposed reorganization plan may *not* provide for any of the following:

1. It may not create, abolish or transfer an executive department or all of its functions, or consolidate any two or more executive departments or their functions.
2. It may not continue any agency beyond the period authorized by law for its existence or beyond the time it would have terminated if the reorganization had not been made.
3. It may not continue any function beyond the period authorized by law for its exercise, or beyond the time it would have terminated if the reorganization had not been made.
4. It may not authorize any agency to exercise any function which is not expressly authorized by law at the time the plan is submitted to Congress
5. It may not increase the term of any office beyond the time which is authorized by law
6. It may not transfer to or consolidate with any other agency the municipal government of the District of Columbia or all of its functions, or abolish this government or its functions.

Unless the reorganization proposal provides for a later date, the plan goes into effect 60 days after it is presented to the Congress, but only if, during the 60-day period, neither the House of Representatives nor the Senate has passed a resolution stating that the body does not favor the reorganization plan Such a resolution, in order to pass, must receive the affirmative vote of a simple majority of those present and voting.

The Reorganization Act of 1949 has since its enactment, been used extensively while at the same time undergoing continuous modification The excerpt reproduced below from the *U S Code Congressional and Administrative News, 1965*, outlines the major changes and amendments to the act In addition, it charts the use which successive presidents have made of this authority and the fate of the many reorganization proposals which have been put forward

> The Reorganization Act of 1949 (Public Law 109, 81st Cong) was originally enacted as a means of expediting reorganizations in the executive branch, following submission of its reports and recommendations by the first Commission on Organization of the executive branch of the government (Hoover commission) Since it was designed primarily as a means of enabling the implementation of these recommendations, it gave the President much greater latitude than the 1939 or 1945 acts by eliminating exemptions of specified agencies and authorizing him to submit reorganization plans providing for the creation of new departments at the cabinet level Rejecting the two-year time limit of the 1939 and 1945 acts and the President's request for permanent authority, the committee approved a four-year period terminating on April 1, 1953. This was based on the ground that a two-year period would not allow the President sufficient time to prepare and submit reorganization plans to the Congress, in view of the very extensive work of the Hoover commission. The method of congressional rejection was also modified by providing for such action by the adoption of a

resolution of disapproval by a majority of the authorized membership of either house of the Congress, rather than by the earlier requirement of a concurrent resolution which necessitated action by both Houses. Under the original 1949 act, the President submitted 41 plans, of which 30 became effective and 11 were rejected.

The Reorganization Act of 1949 was subsequently extended for two-year periods in 1953, 1955, 1957, and 1961 In 1959, this committee reported a bill extending its provisions for two additional years, or to June 1, 1961 The House of Representatives approved an identical bill but both measures died on the Senate Calendar at the end of the 86th Congress. The 1949 Reorganization Act was extended again for one year in 1964 Reorganization authority thus lapsed from June 1, 1959, to April 7, 1961, and from June 1, 1963, to July 2, 1964.

In the 1957 extension, the method of congressional rejection was again amended to provide disapproval of reorganization plans by either house of the Congress by a simple majority of those present and voting, and the 1964 extension eliminated the authority of the President to submit plans proposing the creation of new cabinet departments.

As previously noted, during the four-year period of the original Reorganization Act of 1949, 41 reorganization plans were submitted, of which 30 became effective and 11 were rejected Under the subsequent extensions, a total of 27 plans were submitted, of which 20 became effective and seven were rejected Thus, between the effective date of the 1949 act and June 1, 1963, the termination date of the President's reorganization authority under the 1961 extension, a total of 68 plans were submitted, of which 50 became effective and 18 were rejected Between the effective date of the Reorganization Act of 1939 and June 1, 1963, a total of 80 plans were submitted, of which 59 became effective and 21 were rejected No reorganization plans were transmitted in 1964 and plan No. 1 of 1965, submitted under the 1964 extension, is not included in this compilation.

From the foregoing, it appears that during the entire history of executive reorganization, covering a period of more than 30 years, with the exception of the initial act, the act of June 30, 1932, every subsequent act has granted reorganization authority to the President for a limited period of time, varying from one to four years, despite the fact that three Presidents have either requested or recommended the granting of permanent authority. Although the 1932 act granted permanent authority, nine months later it was amended and superseded by a rider to an appropriation act which limited the President's authority to a period of two years[9]

The following tables provide an analysis of the various reorganization statutes (Table I), a summary of the action taken by Congress (Table II), and the use of the reorganization authority by the various Presidents who have operated under it (Table III).

[9] U S Code Congressional and Administrative News, 1965, 1625–1638.

TABLE I

Statutes providing reorganization authority

Duration of authority and termination date	Reorganization authority	Method of disapproval
Permanent	Reorganization Act of 1932, Title IV of the Legislative Appropriations Act for fiscal year 1933, Public Law 212, 72nd Congress	Simple resolution of either house
Two years (March 20, 1935)	Acts of March 3 and March 20, 1933 Amending and superseding the act of June 20, 1932	No provision (enactment of law required)
Two years (Jan 21, 1941)	Reorganization Act of 1939 Public Law 19, 76th Congress (act of April 3, 1939)	Concurrent resolution
Duration of war, plus six months, or such earlier time as designated by Congress	Title I of War Powers Act of 1941 (act of Dec 18, 1941)	No provision
Two years and three months (April 1, 1948)	Reorganization Act of 1945 Public Law 263, 79th Congress (act of Dec 20, 1945)	Concurrent resolution
Four years (April 1, 1953)	Reorganization Act of 1949 Public Law 109, 81st Congress (act of June 20, 1949)	Majority of authorized membership of either house Senate, 49, house, 218
Two years (April 1, 1955)	1953 amendment Public Law 3, 83rd Congress (act of Feb 11, 1953)	Same as 1949 act
Two Years (June 1, 1957)	1955 amendment Public Law 16, 84th Congress (act of March 25, 1955)	Do
Two years (June 1, 1959)	1957 amendment Public Law 86-286 (act of Sept 4, 1957)	Simple resolution of either house
Two years (June 1, 1963)	1961 amendment Public Law 87-18 (act of April 7, 1961).	Do
One year (June 1, 1965)	1964 amendment Public Law 88-351 (act of July 2, 1964) (no authority to create new executive departments)	Simple resolution

SOURCE *U.S Code Congressional and Administrative News, 1965,* 88th Cong, 2nd Sess, 1638

TABLE II

Summary of action on reorganization plans submitted between 1939 and 1963

The following table shows the actions under the Reorganization Acts of 1939, 1945, and 1949 The actions under the 1949 act are indicated by dates of extensions and amendments:

Reorganization acts extensions and amendments	*Plan submitted*	*Became effective*	*Rejected*
1939	5	5	0
1945	7	4	3
1949	41	30	11
1953	12	12	0
1955	2	0	2
1957	3	2	1
1961	10	6	4
Total	80	59	21

TABLE III

Number of reorganization plans submitted by each President and duration of reorganization authority

The following table shows the number of reorganization plans which were submitted by each of the Presidents who have been granted reorganization authority since 1939 and the period of time during which they had such authority:

Roosevelt ---------- 5 plans in 7 years
Truman ---------- 48 plans in 8 years
Eisenhower ---------- 17 plans in 8 years
Kennedy ---------- 10 plans in 3 years

SOURCE· *U S. Code Congressional and Administrative News, 1965,* 88th Cong, 2nd Sess, 1638.

APPENDIX B

REORGANIZATION IN THE STATES

Despite a high level of enthusiasm, among academicians and administrators, for the concept of executive initiated reorganization, only a handful of states have seen fit to follow the lead of the federal government in allowing their chief executives wide discretionary powers to reorganize the executive branch of government.

Where this power does exist, the impetus for its creation has come largely from students of public administration and "Little Hoover Commissions." The recommendations of these groups generally mirror those contained in the sixth edition of the *Model State Constitution,* prepared by the National Municipal League. Section 5.06 of Article V of the model constitution states in part:

> . . . the legislature shall by law prescribe the functions, powers and duties of the principal departments and of all other agencies of the state and may from time to time reallocate offices, agencies and instrumentalities among the principal departments . . . ; but the governor may make such changes in the allocation of such functions, powers and duties, as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature while it is in session, and shall become effective, and shall have the force of law, 60 days after submission, or at the close of the session, whichever is sooner, unless specifically modified or disapproved by a resolution concurred in by a majority of all the members of each house.

The Alaska Constitution provides for executive initiated reorganization in the following words:

> The Governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The Legislature shall have 60 days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the Governor.[1]

Both of these represent fairly wide grants of power with no necessary time limitations on the grant of authority. Both the State of New Hampshire and the Commonwealth of Puerto Rico adopted similar plans in 1949, but for limited period of time. In 1955, the Governor of Pennsylvania was granted this power also. According to the Pennsylvania act, the chief executive may initiate reorganization plans affecting only units of bureau size or smaller. If neither house of the

[1] *Alaska Constitution,* Art. III, Sec 23

State Legislature exercises a veto over the proposal within 30 days, the proposals become effective [2]

Units below the department level can be consolidated, abolished or transferred to other departments, but no changes can be made which alter the departmental function According to one source, this type of plan combines the merits of executive reorganization flexibility with the adequate protection of the overall administrative departmental pattern established by the Legislature:

> While this program restricts the Governor's actions to shifts of bureaus or smaller units, even within these limitations much can be done to improve the state's administrative structure.[3]

The State of Michigan in 1958, and the State of Oregon in 1959, also adopted broad reorganization acts patterned after the federal model. In the case of Oregon, the grant of power was limited to a short period while in Michigan the idea was to establish a permanent reorganizing procedure.[4]

[2] Bell, James R, and Earl L Darrah, *State Executive Reorganization* (Berkeley University of California, 1961), 26–27
[3] *Ibid*, 27.
[4] *Ibid*

APPENDIX C

CONSTITUTION REVISION COMMISSION

MINORITY REPORT RE: LEGISLATIVE AUTHORIZATION OF EXECUTIVE REORGANIZATION

The undersigned members of the California Constitution Revision Commission believe that the Legislature should be granted express authority to provide for executive reorganization of all agencies of state government other than agencies created by the Constitution which the Legislature itself cannot change In an opinion dated June 2, 1959, the Legislative Counsel (Ralph Kleps) declared that the Legislature could not enact a bill which would authorize the Governor to prepare reorganization plans to achieve greater efficiency by transferring all or part of an agency or its functions to another agency, by abolishing the functions of an agency or by consolidating agencies The bill referred to required the plan would have gone into effect unless disapproved by concurrent resolution Effecting a reorganization plan in such manner runs afoul of several provisions of the Constitution according to the Legislative Counsel

The 1959 opinion of the Legislative Counsel is attached We believe it demonstrates both the need for such a constitutional provision as well as the nature of the proposal supported by the undersigned members of this report.

We believe the Legislature should have authority to enact legislation which would give the Governor the right to initiate executive reorganization subject to subsequent legislative veto Such authority is contained in the model state constitution, in the constitutions of other states and is substantially the same as that exercised by the President of the United States The present provisions of the California Constitution prevent the Legislature from delegating this power to the chief executive even though the plan as submitted to the Legislature cannot become effective if disapproved by either house of the Legislature.

Our proposal which can be added either to Article IV or Article V would read as follows.

> Authority may be vested in the Governor by statute to reallocate existing functions among and within state executive and administrative agencies and offices If any reallocation affects existing law, it shall be set forth in an executive order submitted to the Legislature within 30 days of the opening of a general session and, subject to referendum, shall become law on the 91st day after adjournment unless disapproved by resolution of either house.

We, respectfully, disagree with a majority of the members of the commission who rejected giving the Legislature this power and urge its inclusion in any revision of the Constitution submitted to the voters.

RICHARD CARPENTER	MRS WILLIAM IRVINE
JOHN A BUSTERUD	WILLIAM R MACDOUGALL
ARTHUR F COREY	GEORGE W ROCHESTER
RICHARD J. DOLWIG	MRS LAWRENCE SPEAR

JOHN A. VIEG

State of California
OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
June 2, 1959

Hon. Hugh P. Donnelly
Senate Chamber

Government Reorganization—#17220

Dear Senator Donnelly

You have asked that we consider the constitutionality of a bill relating to reorganization of the state government, which provides, in essence, as follows The bill declares a state policy that state agencies shall be so organized as (1) to reduce expenditures to the fullest extent consistent with efficiency, (2) to group, coordinate, and consolidate agencies and functions according to major purposes, (3) to reduce the number of agencies by consolidating those having similar functions under a single head and to abolish such agencies and functions as are not necessary for the efficient conduct of government, and (4) to eliminate overlapping and duplication of effort

The Governor is authorized to prepare reorganization plans to effectuate these purposes by transferring all or part of an agency or its functions to another agency, by abolishing the functions of an agency, and by consolidating agencies The plan may not change the functions of agencies created by the Constitution or extend the life of an agency beyond any previously prescribed termination date, or continue a function beyond any such termination date

A reorganization plan is required to be submitted to both houses of the Legislature simultaneously and the plan goes into effect 30 days after submission, or at such later date as is specified in the plan, unless the Legislature by concurrent resolution adopted within the 30-day period, disapproves it

We note, at the outset, that the suggested bill is very similar to the Federal Reorganization Act of 1949 (5 U S C A Secs 133z–133z–15), which succeeded earlier acts of the same type dating back to 1933 (see 1945 U.S. Code Cong Serv , p 918, and 1949 U S Code Cong Serv , Vol 2, p 1381). Many reorganization plans have been placed in effect under that legislation and its predecessors

Insofar as such legislation merely authorizes executive reorganization within the framework of existing statutes we see no problem * The constitutional difficulty arises in connection with reorganizations which are in conflict with statutes previously enacted by the Legislature On this point, so far as we have been able to determine in the time allowed, the constitutionality of the federal reorganization legislation has not

* It should be noted that there are, at present, provisions in California law authorizing limited reorganizations by the executive branch of the state government Section 11152 of the Government Code provides as follows

> Subject to the approval of the Governor, the head of each department may arrange and classify the work of the department and consolidate, abolish, or create divisions thereof So far as consistent with law the head of each department may adopt such rules and regulations as are necessary to govern the activities of the department and may assign to its officers and employees such duties as he sees fit For the betterment of the public service, he may reassign to any employees under the chief of any division such duties as he sees fit

See also, Sec 13005, Gov C , making the same provision with respect to the Department of Finance

been passed upon specifically. The Supreme Court of the United States, however, in dealing with this question has chosen to solve the problem by relying upon the fact that Congress has ratified the particular reorganization by later legislation, including appropriation acts. (*Swayne and Hoyt v. U S.*, 300 U S 297, 301–302, 81 L Ed 659, 663; *Isbrandtsen-Moller Co. v U S*, 300 U.S 139, 148, 81 L Ed 562, 569 (1948); 40 Cal L. Rev 1211, 1222) We note, also, that Congress has taken the precaution in several instances of enacting statutes which placed certain of the reorganization plans into effect (5 U S.C. 133s, 133u, 133v).

Assuming the constitutionality of the federal precedent, under the United States Constitution, it does not follow, of course, that such a procedure would satisfy the requirements of the California Constitution which contains detailed provisions as to the enactment of laws (Calif. Const., existing Art IV). We have found no California cases in which the courts have had to consider such a sweeping authorization to the executive branch as is involved here.

There is, however, authority which can fairly be said to be "on all fours" In *Opinion of the Justices*, 83 Atl. 2nd 738, the Supreme Court of New Hampshire held legislation almost identical to the bill in question here to be unconstitutional The majority of that court evidently had no doubt that placing such a reorganization plan in effect amounted to legislating, and, this being the case, it was necessary that the requirements of the New Hampshire Constitution for enactment of legislation be complied with. The procedure in question did not meet those requirements, specifically, because concurrence of both houses in the approval of the plan was not necessary, i.e., the plan would go into effect though one house had expressly indicated its disapproval.

If it be assumed that effecting a reorganization plan pursuant to the provisions of this bill is legislating, the bill runs afoul of several provisions of the Constitution. Section 15 of Article IV provides that no law shall be passed except by bill, that any bill may be rejected by either house, and that no bill shall become law without concurrence of a majority of the members elected to each house. We further note that, in general, no act passed by the Legislature shall go into effect until 90 days after final adjournment of a session of the Legislature, with exceptions for urgency measures and with certain other exceptions not relevant here. However, measures creating or abolishing an office or changing the salary, term, or duties of an officer cannot be urgency measures (Art IV, existing Sec. 1, Calif. Const). The bill contemplates reorganizations making changes of this nature, yet provides that the plan shall go into effect 30 days after submission to the Legislature, absent prior disapproval

It is basic, of course, that the power to legislate reposes in the Legislature and cannot be delegated (Art. III, existing Sec. 1; Art. IV, existing Sec 1, Calif Const) If the power to abolish statutory agencies and functions is involved, it is difficult, if not impossible, to escape the conclusion that the contemplated reorganization is legislation and must meet constitutional requirements for legislation (see *Re Opinion of the Justices* (Mass), 52 NE 2nd 974, 150 A L R 1432). Under these circumstances, we think that the only safe procedure is one in which the Legislature, by statute adopts any reorganization plan submitted to it by the Governor so that is takes effect by a legislative act.

It is true that the Legislature can, without divesting itself of the legislative power, delegate to an executive agency the power to "fill in the details" under sufficiently definite standards Thus, if the Legislature should repeal the existing statutory provisions which set the structure of state government, we have no doubt that it could delegate authority to the Governor under appropriate standards to create a new, and more efficient, framework of government Any bill setting the stage for such an exercise of power by the Governor would have to meet the specific requirements of the California Constitution, of course, including the provision that amended or revised laws must be set forth at length and must deal with a single subject (Const, Art IV, existing Sec. 24). We have serious doubts, however, that the bill which you have suggested would meet these requirements.

Very truly yours,

RALPH N. KLEPS
Legislative Counsel

By TERRY L. BAUM
Deputy Legislative Counsel

APPENDIX D

State of California

OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
October 25, 1966

Honorable Milton Marks
Russ Building
San Francisco, California 94104

Reorganization of Executive Branch
of State Government—#8225

Dear Mr. Marks.

You have pointed out that in an opinion of the Legislative Counsel, dated June 2, 1959, prepared under Request No 17220, printed on pages 201–203 of the February 1966 Report of the Constitution Revision Commission, we expressed serious doubts about the constitutionality of a bill described as follows, insofar as it authorized reorganization in conflict with existing statutes·

. The bill declares a state policy that state agencies shall be so organized as (1) to reduce expenditures to the fullest extent consistent with efficiency, (2) to group, coordinate, and consolidate agencies and functions according to major purposes, (3) to reduce the number of agencies by consolidating those having similar functions under a single head and to abolish such agencies and functions as are not necessary for the efficient conduct of government, and (4) to eliminate overlapping and duplication of effort

The Governor is authorized to prepare reorganization plans to effectuate these purposes by transferring all or part of an agency or its functions to another agency, by abolishing the functions of an agency, and by consolidating agencies The plan may not change the functions of agencies created by the Constitution or extend the life of an agency beyond any previously prescribed termination date, or continue a function beyond any such termination date.

A reorganization plan is required to be submitted to both houses of the Legislature simultaneously and the plan goes into effect thirty days after submission, or at such later date as is specified in the plan, unless the Legislature by concurrent resolution adopted within the 30-day period, disapproves it.

The opinion noted that the constitutionality of similar federal legislation had not been determined by the courts and that a decision of the New Hampshire Supreme Court had held a similar bill unconstitutional on the ground that it purported to authorize what amounted to legislation without compliance with constitutional requirements for legislation, and concluded that, assuming that this was legislation, various requirements of the California Constitution for enactment of legislation would not be met, e.g., the plan would go into effect although one house did not approve it.

You ask whether such a bill would be constitutional if Proposition 1A on the November 1966 ballot is adopted by the people

Section 6 of Article V in the revision contained in Proposition 1A reads as follows:

> SEC. 6. Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by elective officers

Comparing this provision with the bill considered in our earlier opinion, we observe first that this provision is not explicit in authorizing actions by the Governor in conflict with existing statutes. However, neither does it express anything to the contrary This provision is one not found in the present Constitution No new authority would have been necessary to authorize the Governor to reorganize within the framework of existing statutes, as, indeed, he is now authorized, to a considerable extent, to do (see Gov C. Sec 11152). In our opinion it would be held that under this new provision the Governor could be authorized to effect reorganization differing from the organization then provided by statute.

The bill described in our prior opinion would have authorized reorganization plans "transferring all or part of an agency or its functions to another agency . . abolishing the functions of an agency, and . . . consolidating agencies" The proposed new constitutional provision speaks of authorizing the Governor "to assign and reorganize functions among the executive officers and agencies and employees." We note, at this point, that we do not understand the bill considered in our opinion, in providing for "abolishing the functions of an agency," to mean that the reorganization could provide that a service that the Legislature has required to be performed shall not be performed (as contrasted with providing that such a service shall be performed under a new scheme of organization). Neither do we understand the constitutional provision to empower the Legislature to authorize the Governor to make such changes With this understanding it is our opinion that Section 6 is broad enough to encompass all of the types of changes in organization of the executive branch authorized by the bill.

The bill discussed in our prior opinion required submission of a plan to the Legislature for possible disapproval by concurrent resolution. Under the new constitutional provision the Legislature could authorize the Governor to make such changes without any requirement of submission of the plan to the Legislature for possible disapproval. The provision makes no reference to such submission to the Legislature, and we think that it is doubtful that this feature of the bill would, if Proposition 1A is adopted, be constitutional That is, assuming that effecting a reorganization in conflict with existing statutes is "legislation," and taking into account the constitutional requirements for legislation (e g. enactment by bill), making the effectiveness of the plan contingent on adoption or nonadoption of a concurrent resolution by the Legislature would go beyond the authorization of new Section 6 of Article V and be legislation not meeting constitutional requirements.

We thus conclude that if Proposition 1A is adopted, the bill, as we understand it, discussed in our prior opinion, would be constitutional,

except that insofar as the bill requires submission of a plan to the Legislature for possible disapproval by concurrent resolution we would have serious doubts as to its constitutionality.

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel

By TERRY L. BAUM
Principal Deputy

II. THE 1961 REORGANIZATION

The Development of the Agency Concept and the Executive Office Proposal

FINDINGS

1 The 1961 Legislature approved the last major reorganization of the administrative structure for top-level management of the executive branch That reorganization was popularly referred to as the "Agency Plan "

2 The Agency Plan was to place most of the departments, boards and commissions of state government under one of eight agencies according to function under the supervision of an agency administrator who was to serve in the dual capacity of advisor to the Governor and coordinator of programs within the agency.

3 From its inception the Agency Plan did not develop uniformly. The original recommendation was that eight agencies be created; only four were given statutory status and the remaining four were created by executive order of the Governor In addition, specific changes have taken place, both by legislative directive as well as informal means, which have had the effect of creating even greater variances in the operations of the different agencies

4. One of the direct results of these changes in the Agency Plan has been to give the administrator greater direction and control over the functions of the departments within the agency in direct contradiction of the original concept of the 1961 reorganization as submitted to the Legislature

5. Another feature of the Agency Plan was the creation of an executive department and reassignment of the functions of the Department of Finance to an integrated executive office of the Governor and a new Department of General Services Only the portion of this recommendation pertaining to the creation of a Department of General Services has been implemented

6. No serious study has subsequently been undertaken to determine the feasibility of a formal reorganization of the executive office of the Governor. It is possible that an integrated Governor's office would permit a fuller realization of those objectives of the Agency Plan which were associated with improved communication of the Governor's policies to the departments.

RECOMMENDATIONS

1 The Agency Concept deserves reevaluation to determine whether those changes which have occurred, by statutory enactment and informal means, demonstrate the need for formal reorganization of certain of the agencies into "full-blown" departments

2 This committee also supports a full exploration of the potential improvement which might result from the establishment of an executive office in California Such a review should give serious consideration to the fixing of responsibility for the fiscal and policy-management functions now vested by law in the Director of Finance.

In 1961, Governor Edmund G Brown submitted to the Legislature a proposal for reorganizing the administrative structure of the executive branch of California State Government That proposal, referred to as the "Agency Plan," culminated a study which had begun two years earlier with the creation by executive order of the "Governor's Committee on Reorganization of California State Government"

A tentative reorganization proposal was drafted by the Governor's committee calling for a regrouping of various departments, boards and commissions and a strong executive office This proposal was the subject of a special two-day conference of selected state and local government officials meeting at the Davis campus of the University of California in September of 1959 Following this conference, the Governor assigned the reorganization proposal to nine task forces and an executive committee representative of the affected units of government

In December of the same year, the Governor's Committee on Organization of State Government[1] issued its final report entitled "The Agency Plan for California." The committee identified five glaring defects inherent in the existing structure:

(a) The Governorship in California had been weakened by diffusion of authority.

(b) Department directors and boards and commissions were unable to communicate directly with the Governor.

[1] The Governor's Committee on Reorganization of State Government was composed of all of the members, except one, of the original committee which had submitted the tentative reorganization proposal two months earlier

(c) Departments, boards, and commissions did not have adequate communication with each other.
(d) The Governor lacked an effective means for the formulation and execution of unified, coordinated policies.
(e) There was not enough high-level attention to program planning and evaluation.[2]

THE AGENCY CONCEPT

In order to overcome these deficiencies, the committee proposed the "Agency Plan," a structure that would place most of the departments, boards, and committees under one of eight agencies to provide the basic framework for the over-all organization. As nearly as possible, units were to be grouped logically according to function At the head of each agency was an agency administrator who was to serve in the dual capacity of advisor to the Governor and administrator of one of the major functions of state government In addition, the committee recommended that an executive department be created which would provide the Governor with highly qualified technical assistance in planning, budgeting and management

Such an organization, according to the report, would serve the following purposes:

1. Reduce the excessive array of separate organization units reporting to the Governor
2. Give the Governor an improved organization structure for carrying out his general management responsibilities, particularly for executive planning and coordination
3. Improve management by establishing cohesive groups of activities with strong staff and technical services
4. Retain the advantages of citizen participation in state government through the use of advisory boards and quasi-legislative and quasi-judicial bodies where appropriate, but minimize the administrative functions of such boards and commissions and locate them organizationally within the basic structure of the executive branch
5. Decentralize administrative service and control activities to executive agencies insofar as possible to permit flexible and efficient performance under broad over-all policies established by the Governor and his principal officers
6. Bring all agencies into a closer relationship with the Governor so that he could more effectively exercise his executive power for which he is politically and legally responsible [3]

Taken in its entirety, the proposed organization represented a traditional approach to the solution of the problem of executive department structure.[4] While recognizing the necessity for the separation of governmental powers, it emphasized a strong and unified executive branch in which administrative authority and responsibility are focused in the chief executive The grouping of government activities into departments based on function, the removal of administrative duties from the vari-

[2] Governor's Committee on Organization of State Government, *The Agency Plan for California*, December 1959, 2–6
[3] *Ibid.*, 7–8
[4] Bell, James R., and Earl L. Dariah, *State Executive Reorganization* Bureau of Public Administration, University of California, Berkeley, February 1961, 61

ous boards and commissions, and the coordination of administrative staff services,[5] were all designed to emphasize the authority of the Governor:

> . . . grouping, taken in this way, means that the individual departments retain their separate identities and functions, but are brought together under an over-all agency for various purposes . . . Unless the agency is given by law the functions of the subordinate organizations, it does not have the usual responsibilities of a governmental operating unit It does not build roads, license vehicles or run prisons These functions remain those of the constituent departments."[6]

THE GOVERNOR'S 1961 MESSAGE

Governor Brown called for the adoption of the agency plan in his message to the 1961 Legislature The Governor's reorganization was based on the creation of eight agency groups, each responsible for its own internal coordination under one head who could report directly to the Governor:

> There is no intention of upsetting the internal structures of the departments in these initial steps It may well be that such changes should come in some departments boards or commissions, but only after the new agency groupings have been tested by experience.
>
> Our first task is to modernize and streamline administration so as to define lines of responsibility more clearly and to obtain better executive control over segments of the executive branch of government which now receive little direction
>
> We can then proceed to better employment of the modern tools of administration such as performance and program budgeting, work standards, the optimum employment of electronic data processing equipment and more effective, more efficient record keeping[7]

The Governor suggested that a gradual, rather than a drastic, approach be adopted toward reorganization, arguing that pioneering should be done in "less sensitive areas "[8] Consequently, the Governor suggested that only four agencies be created at that time:

(1) Youth and Adult Corrections Agency
(2) Health and Welfare Agency
(3) Agriculture and Resources Agency
(4) Transportation Agency

A small staff was suggested for each agency administrator until such time as experience developed a clearer idea of the agency's exact role.

1961 LEGISLATURE

Two bills were passed by the 1961 Legislature creating four agencies,[9] two of these agencies had been proposed in the original "Agency

[5] *Ibid*
[6] *Ibid*, 63
[7] Statement of Governor Edmund G Brown on "Reorganization of the State Government," transmitted to the California Legislature, February 13, 1961
[8] *Ibid*
[9] AB 1541 (Winton), creating the Health and Welfare Agency, Youth and Adult Corrections Agency, and the Resources Agency, and SB 909 (Collier), creating the Highway Transportation Agency

Plan" report; one, the existing Transportation Agency, had been included as a result of legislative initiative; and the Resources Agency, as finally created, failed to include a Department of Agriculture due to opposition, which had developed within the agricultural industry, on the basis that the industry would be downgraded by such a combination.[10]

Subsequently, Governor Brown set up four additional, nonstatutory agencies by executive order:

1. Public Safety Agency
2. Employment Relations Agency
3. Business and Commerce Agency
4. Revenue and Management Agency

In April 1962 the legal issue of the Governor's power to carry out these actions was raised by Insurance Commissioner F. Brinton McConnell, based on a contention that the "shadow" administrators had no official status or powers because the Governor had not acted officially, and that the Governor had neither the legislative authority nor the inherent power to take such action.[11]

In response, an Attorney General's Opinion of October 3, 1962, declared that the Governor does have such inherent authority, but that it extends only to ministerial functions, not to the delegation of the Governor's discretionary powers·

> . . . the basic functions, duties, and responsibilities of departments, boards, and commissions are unchanged as a result of the reorganization whether such department, board or commission is assigned to a particular agency by statute . . . or by executive action. Where the department, board or commission is assigned to an agency by statute, . . . the agency administrator is not only the coordinator, but is also the liaison man between each such department, board or commission and the Governor; and he also is charged with the duty of reporting to the Governor on over-all policy . . . and also has general supervision over and is directly responsible to the Governor for the operations of the departments, boards and commissions within the agency . . . It is impossible to delineate the scope of the term general supervision, but it is believed to embrace only that authority to supervise those activities of a department, board or commission which are purely administrative in scope and not specifically conferred upon such department, board or commission by constitution or statute . . .[12]

According to the Attorney General, this is in contrast to the situation "where a department, board, or commission is assigned to an agency by executive action, the agency administrator is merely a coordinator for all such departments, boards, and commissions" However, the agency administrator does not have the authority

> to annul, amend, revise, or modify any legal action of a department, board or commission any more so than the Governor himself

[10] Office of the Legislative Analyst, *Some Observations on the Agency Concept in California State Government*, September 6, 1966, 6
[11] Brief of F Brinton McConnell in opposition to the actions of the Governor April 5, 1962
[12] *40 Ops Atty. Gen*, 148.

> does Any supervisory powers the Governor possessed with respect to the various state department heads prior to the reorganization, whether by statute or executive action, were neither increased nor diminished by the reorganization An executive reorganization which requires various department heads to coordinate the activities of their departments through a coordinator, as in the instant case, does not constitute a delegation of the Governor's supervisory power [13]

Commenting on this, the Legislative Analyst wondered how a position can be created by executive order and not be an official position.[14] In addition, he noted that it was

> . . . interesting . . . that a degree of institutionalization has since transpired within the structure of the nonstatutory agencies which is evidenced by such things as letterhead stationery, identification in the state telephone directory, identification in the State Administrative Manual, official use of the title "administrator," and, in at least one instance, by a state official being additionally designated as "Deputy Administrator, Revenue and Management Agency" . . .[15]

"LITTLE HOOVER COMMISSION" EVALUATION

The only formal evaluation of the "Agency Plan" in operation was undertaken by the Commission on California State Government Organization and Economy (the "Little Hoover Commission") which was also established by the 1961 Legislature. The first report of the commission, based on an evaluation of testimony from over 90 expert witnesses includes

> the commission's observations on the "agency" concept of organizational structure, implemented in part by the Governor and the Legislature in 1961, together with recommendations for executive and legislative considerations in 1963 [16]

Much of the commission's evidence on the workings of the plan was derived from responses to a letter sent by its chairman, Eugene Lee, to all agency administrators [17]

In presenting its findings, the commission stated the difficulty of evaluating the reorganization so soon after it was put into effect:

> The state reorganization program commenced in 1961 is in midstream, and an evaluation of progress in such a case is both speculative and subjective Nevertheless, judgments must be made and decisions reached as to whether to turn back, to modify or to continue as originally proposed The commission does not pretend that it has found the answers [18]

The commission concluded that the initial action taken by the Governor and the Legislature had met a pressing need for reorganization;

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[13] *Ibid*
[14] Legislative Analyst, September 6, 1966, 9
[15] *Ibid*
[16] *Commission on California State Government Organization and Economy, Findings and Recommendations Concerning Reorganization of the Executive Branch of California State Government,* December 31, 1962 Also, *Findings, and Recommendations Concerning Organization for Central Staff Services,* March 11, 1963, 5
[17] *Ibid*, 22–25
[18] *Ibid*, 9

it summarized the major accomplishments of the reorganization after one year of operation·

(1) Made the Governor's responsibility as chief executive more manageable and more effective;
(2) Filled a needed, but previously missing, level of political-administrative leadership created by the size and complexity of California state government;
(3) Provided a potentially greater opportunity for more effective legislative review and improved communication with the executive branch;
(4) Produced specific and tangible benefits of program coordination among related departments, the elimination of overlapping services, and more effective utilization of manpower, space, and financial resources [19]

Finally, the commission recommended that steps be taken by the Governor and the Legislature in 1963 to strengthen and carry forward this reorganization program

(1) Extension of statutory status to the Business and Commerce Agency;
(2) Establishment of statutory agency administrators on a full-time basis without concurrent responsibility for serving as departmental directors;
(3) Provision of a minimal staff (four–six professional positions) to assist each statutory administrator;
(4) Decentralization of such management and staff controls as can be exercised more effectively at the agency and departmental level;
(5) Continuation of studies evaluating the inclusion within the agency concept of all operating functions of state administration responsible to the Governor As a general rule, all such executive departments should be integrated in some fashion within the agency framework [20]

THE GOVERNOR'S 1963 MESSAGE

In his message to the 1963 Legislature, the Governor continued to stress reorganization as a series of gradual steps He indicated that the partial plan in operation thus far was fulfilling the high hopes held for it, and that a large saving had been derived from the existence of the agency administrators The Governor submitted reorganization proposals·

(1) Creation of Department of General Services, including the Division of Architecture,
(2) Remove the office of State Fire Marshal from the Public Safety Agency and place it in the General Services Department;
(3) Statutory status for the Business and Commerce Agency;
(4) Consolidate gains already made in existing statutory agencies

[19] *Ibid*, 13
[20] *Ibid*, 7

(a) Establish new Department of Rehabilitation (consisting of a number of units then in the Department of Education) in the Health and Welfare Agency;
(b) Place the Citizens' Advisory Committee on Aging in the same agency;
(c) Place the Office of Coordinator of Atomic Energy Development and Radiation Protection in the Department of Public Health;
(d) Legislation for Highway Transportation Agency, to (1) rename it Highways and Transportation; (2) change name of Department of Public Works to Department of Highways; (3) place the State Aeronautics Board and the Division of Aeronautics as integral parts of the agency rather than as a part of Public Works,
(e) Give the Board of Corrections separate status within the Youth and Adult Corrections Agency

(5) Give the Governor authority to develop reorganization plans along the following lines
(a) Transfer of any unit of government, or its functions, to the jurisdiction and control of another;
(b) Consolidation or integration of the functions within a unit;
(c) Consolidation or integration of the functions of various units;
(d) Abolition of part or all of the functions of any jurisdiction;
(e) Abolition of any unit whose functions have been found obsolete;
(f) Authorization for an officer to delegate any of his functions.[21]

THE ROLE OF THE AGENCY ADMINISTRATOR

The function of the agency administrator, as described by the 1959 report of the Governor's Committee on Organization of State Government, was to act as an extension of the Governor's personality:

> Each agency is headed by an administrator who serves as an outpost of the Governor in the broad area of state government, functioning as both his policy and managerial representative and advisor. He is responsible to the Governor for the performance of the departments within the agency. He is concerned primarily with major policy and program matters and does not impair his own usefulness or that of department directors by taking over activities that can be done as well or better at the department level. General administration of the agency's budget is one of his basic responsibilities.[22]

As the committee noted, the general administration of the agency's budget was to be one of the administrator's chief duties. In this con-

[21] "Message to the California Legislature" by Governor Edmund G. Brown, January , 1963. Recommendations one and two were adopted along with portions of four, but the extension of the agency concept to include a statutory Business and Commerce Agency was rejected as was the executive initiated reorganization proposal.

[22] *The Agency Plan for California*, 11

text, the submission to the Legislature of the 1966–67 Budget raised some further questions about the agency administrator's role. One of the pertinent items involves the housing of federally funded programs (with their staff or board) in the agency administrator's office, without their attachment to any other unit in the agency.[23]

It is quite likely that because of the nature of the agencies, they may assimilate more and more responsibility for administering programs, notwithstanding the statutory definition of purpose adopted in 1961. This could well lead to the eventual conversion of the "agency" into large, integrated "departments" Due to this development during the five years of operation under the agency plan, it appears quite appropriate at this time to reevaluate the organizational needs of the state and whether they are being met through the agency concept.

In fact, the Legislature has already taken some actions which have specifically modified the statutory authority of the agency administrators. In 1963, the Administrator of Highway Transportation was given the authority to "issue such orders as he deems appropriate to exercise any power or jurisdiction, or to assume or discharge any responsibility to carry out or effect any of the purposes vested by law in a department in the agency "[24] While this authority may be tempered in practice by the exercise of a general accepted pattern of operation by the agency administrator, it is clear that this is a statutory authorization for the exercise of those powers of a department head which were specifically denied to the office of the agency administrator under the original statute.

During the 1965 Second Extraordinary Session, another departure was made when the Legislature delegated to the Health and Welfare

[23] *Analysis of the Budget Bill*, 1966–1967, 1966 Regular Session, Report of the Legislative Analyst to the Joint Legislative Budget Committee, 494ff and 712ff, outlining two of the specific instances noted by the Legislative Analyst

(a) In the Health and Welfare Agency Medicare

Chapter 4, Statutes of 1965, Second Extraordinary Session, also made the administrator responsible for the administration of the state's new health care program, effecting a basic change in the statutory agency administrator concept Details concerning the administrative staff for this function are not available at the present time, but will be submitted to the Legislature in a separate addendum to the budget requesting one additional position to assist in handling the increasing *administrative responsibilities* in the agency

This budget does not include $546,000 appropriated to this agency for the purpose of developing and administering the state's new health care program

Approximately six positions are located in this agency at the present time for this purpose There are also approximately 95 positions temporarily located in mental hospitals, paid for out of this appropriation, for the purpose of qualifying mental patients for welfare assistance under this new legislation There will be permanent staff located in the agency for the purpose of *implementing* this new medical program and that staff alone with the $546,000 appropriated for administration should be accounted for in this budget in the future regardless of the final decision with regard to budgeting for the medical care program itself

(b) In the Resources Agency A bevy of grants with related staffs, and a commission

When the Resources Agency was established, the Legislature *did* not contemplate a new office to administer action programs Thus, Government Code Section 12550 states "The administrator of each agency has the power of general supervision over, and is directly responsible to the Governor for, the operations of each department, office, and unit within the agency" Section 12851 states "Each administrator shall develop and report to the Governor on legislative, budgetary, and administrative programs to accomplish comprehensive, long-range, coordinated planning and policy formulation in matters of public interest related to his agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work"

[24] *63 Stat 1864*

Agency Administrator the powers and duties conferred by law upon the Director of the Department of Social Welfare to administer the health care programs [25]

In a report submitted to this committee by Legislative Analyst A Alan Post, these changes in the role of the agency administrator are noted and the following conclusion is drawn:

> . . it is evident that the original concept of the statutory agency administrators as instruments of communication between the Governor and the departments is being changed both by statutory authorization and by informal means There is a growing tendency for agency administrators to concern themselves with detailed programming and budgeting and, to the extent that such integrated planning is implemented, it raises questions as to statutory authority of individual departments over functions which overlap department lines under the coordinated planning of the agency administrator
>
> It seems inevitable, therefore, and necessary that modifications in departmental authority will be made to implement more fully the agency concept of coordinated planning and operations It likewise seems desirable that because of the complexities requiring coordination and planning, any modifications in the statutory structure of the agencies should be based on organization studies in depth [26]

SUMMARY

With sufficient foresight the changes which have taken place in the agency concept during its six years of operation should have been apparent to the proponents of the 1961 reorganization They should have been foreseen as the logical result of inserting the agency administrator at a level in the administrative structure which requires him to perform two greatly different and often competing roles.

The agency administrator is placed in a position to serve as coordinator of related programs among departments within his agency on the one hand, with every likelihood that line authority will develop as problems which exceed the bounds of the existing department structure demand the kind of administrative coordination that is normally exercised by department heads

At the same time the administrator is supposed to serve as the Governor's source of communication to the departments to assist the Governor in performing the broad policy responsibilities of chief executive. To the extent that the administrator becomes immersed in the day-to-day administrative responsibilities and becomes an advocate of department programs, his ability to serve as the Governor's "outpost" to the departments is substantially diminished.

It is possible to agree with the "Little Hoover Commission's" evaluation that agency administrators are not providing "just another level of government but rather a missing level," [27] but to that conclusion must be added the observation that the conflicting nature of the responsibilities suggests that the "missing level" of administration that the

[25] 1965 2nd Ex Sess, Chapter 4
[26] Legislative Analyst, *Some Observations on the Agency Concept in California State Government* (September 6, 1966), 13
[27] *Findings and Recommendations Concerning Reorganization of the Executive Branch of California State Government*, 13

statutory agency administrator has been asked to fill may, in fact, consist of two separate and incompatible roles

The conclusion drawn by this committee is that the agency concept deserves reevaluation to determine whether those changes which have occurred, by statutory enactment and informal means, demonstrate the need for formal reorganization of certain of the agencies into "full blown" departments Where there is a demonstrated need for coordination of programs which overlap existing departments by an administrator exercising line authority, this should be undertaken to avoid duplication and inefficiency resulting from similar administrative staffing at both the department and agency level.

THE EXECUTIVE OFFICE PROPOSAL

The second major function of the agency administrator as an "outpost" of the Governor to the departments perhaps suggests deficiencies in the structure of the office of the Governor itself, which deserve serious attention In this connection, it is noteworthy that proponents of the "agency plan" also called for substantial changes in the Governor's office to pattern it after the executive office of the President. While discussion of this proposal paralleled establishment of the agency plan, no concrete legislative proposals were advanced

No man, no matter how energetic or brilliant, can perform the administrative role of the chief executive if he relies purely on his own faculties In order to insure that the administration of the government is performed adequately, the chief executive must have the necessary staff assistance Moreover, in order to insure that the integrity and the unity of the executive office are maintained, this staff must be personally loyal and under his direct supervision.

The natural growth of the federal government plus the impact of the depression upon the governmental machinery, forced the issue of administrative reform of the office of the President in the 1930's.

The 1937 report of the President's Committee on Administrative Management called particular attention to the need to reform the presidential staffing.

> The President needs help. His immediate staff is entirely inadequate. He should be given a small number of executive assistants who would be his direct aides in dealing with the managerial agencies and administrative departments of government. These assistants would be in addition to his present aides who deal with the public, with the Congress, and with the press and radio . . . They would remain in the background, issue no orders, make no decisions, emit no public statements. Men for these positions should be carefully chosen by the President from within and without the government . They should be possessed of high competence, great physical vigor, and a passion for anonymity. They should be installed in the White House itself, directly accessible to the President.[28]

This was the genesis of the Executive Office of the President. Congress acted almost immediately to implement the organizational recommendations of the committee, and President Franklin D. Roosevelt, acting

[28] *Report of the President's Committee on Administrative Management*, 1937, 5

under his reorganization powers, for the first time gave official countenance to the Executive Office of the President [29]

THE 1961 REORGANIZATION

The Governor's Committee on Organization of State Government recommended a similar proposal for California when they called for the creation of an executive department "directly under the Governor." [30] Referring to the federal model, the committee observed:

> It is well to recall that this report is concerned with reorganization of the unique California state government There are few precedents on which to rely; no other state has so large a budget; California has long had and effectively used organizational devices which smaller, less experienced states are now only trying It may well be asked, "Is our state government at that stage of development which characterized the federal government in 1937?" That year was the threshold for changes which have . . improved the operation of the federal executive branch and in no small measure lightened the potential burden of the President.[31]

The development of the Governor's office in California has been influenced by three significant developments·

1921—The formal creation of the Department of Finance
1934—The establishment of the State Personnel Board and present civil service system
1943—The first steps in the formal organization of the Governor's personal staff under Governor Earl Warren [32]

The Governor's committee proposed a strengthening of the Governor's office by the creation of an executive department headed by an executive officer This new department, directly responsible to the Governor, was to be staffed by career specialists in management, budgeting and planning and would provide for

> . . . continuity in the management of state government and give the Governor the help he needs to do the planning, budgeting, organizing, evaluating and coordinating that are all part of the complex job of managing state government.[33]

In addition, recognizing the nonadministrative functions of the Governor (his ceremonial and political duties), the committee proposed to retain his immediate staff of secretaries under the over-all supervision of an executive secretary [34]

The following units were to be established within the executive department:

1. Budget Unit
2. Management and Organization Unit
3. Program Unit
4. Physical Planning Unit

[29] Reorganization Plan No I of April 25, 1939
[30] *The Agency Plan for California,* 13
[31] *Bell and Darrah,* 93
[32] *Ibid*, 94
[33] *The Agency Plan for California,* 13.
[34] *Ibid*

5. Economic Development Unit
6. Consumer Counsel
7. Atomic Coordinator

The intended effect was to more sharply define the role of the Governor's office as the focal point for the management of state government.[35] As far as the Governor's office was concerned, the emphasis was to be on the coordinative and advisory functions of the staff: "It is concerned with improving the management of state government, but it does not itself do the managing."[36]

The principal objections raised to the committee's proposed reorganization of the Governor's office centered on the fact that acceptance of the recommendations would result in the abolition of the Department of Finance. It was over this issue that Bert W. Levit, chairman of the Governor's committee and a former director of the Department of Finance, dissented from the committee report:

> At present, while the Director of Finance is directly responsible to the Governor, is appointed by him, and is subject to removal at any time, the director and finance department staff are effectively insulated from constant political pressures and manifestations by members of the personal staff of the Governor.[37]

The other members of the committee responded to the criticism and reasserted their position that the functions performed by the Department of Finance should be reassigned in the following manner:

(a) Top policy-management to the executive department of the Governor;
(b) Housekeeping to the new Department of General Services; and
(c) Continue budget and fiscal controls decentralized to agencies.[38]

This approach was needed in the committee's view to insure maintenance of executive control:

> Top policy decisions should be made in the Governor's office. Through the executive department the Governor will have adequate control of fiscal policies and the execution of programs, and in all ways will provide fiscal and management leadership. He will have . . . the top personnel of the existing Department of Finance to help him develop budget expenditure guide lines and to judge administrative performance in the departments and agencies.[39]

The Governor's 1961 Reorganization Message did not include a dissolution of the Department of Finance or reassignment of functions. The following year a further postponement was suggested by the "Lit-

[35] *Ibid.*
[36] In this connection, the committee recommended that the executive department should not include functions that are "operational or ministerial." With specific reference to the Economic Development Unit, the Consumer Counsel, and the Atomic Energy Coordinator, the committee suggested these functions should remain in the executive department only so long as they are essentially developmental and coordinative in nature.
[37] Letter from Bert W. Levit to Hon. Edmund G. Brown, December 9, 1959, published in *The Agency Plan for California*, 63, 64.
[38] Letter from the majority of the members of the Committee on Organization of State Government (excluding Bert W. Levit) to Hon. Edmund G. Brown, December 15, 1959, published in the *Agency Plan for California*, 65, 66.
[39] *Ibid.*

tle Hoover Commission," and accepted by the Governor, that action on the executive office proposal await an evaluation of the effectiveness of the proposed Department of General Services—a commission-endorsed reorganization which was favorably received by the 1963 Legislature [40] The establishment of the Department of General Services, and the transfer to the new department of the housekeeping duties formerly the responsibility of the Director of Finance means that the establishment of an integrated executive office, as it has been proposed, could be undertaken with fewer reassignments of finance department functions

No serious dialogue has taken place since the 1963 reorganization made this change in the operations of the Department of Finance and no additional impediment to the executive office proposal has been advanced to suggest the necessity for further delays.

SUMMARY

This committee review of the background of proposed reorganizations of the Governor's office has not been undertaken to bolster a recommendation to the Legislature Rather, it is intended to call attention to the fact that it has been supported in the recent past as a means of improving the Governor's ability to coordinate programs administered by agencies over which he has direct responsibility It is possible that an integrated Governor's office would permit a fuller realization of those objectives of the Agency Plan which were associated with improved communication of the Governor's policies to the departments

This committee supports a full exploration of the potential improvement which might result from the establishment of an executive office in California None of the previous studies have reviewed in any depth the specific statutory functions performed by the Director of Finance and the anticipated result of the transfer of these functions One of the advantages which accrues to the existing structure in the way in which it fixes responsibility for fiscal and policy management in one individual and the potential diffusion of this responsibility could well have a detrimental effect on administration At the other extreme, the disollution of the Department of Finance in favor of an Executive Office could mean little more than a name change of questionable value

While it would seem to matter little whether that name change is made, if, in fact, all of the functions continue to be performed by an executive officer rather than a director of finance, the ramifications associated with this proposed reorganization could well have far-reaching effects depending not only on the manner in which the executive office is formally structured by law but also the informal means which may be utilized to exercise authority. The committee would, therefore, strongly urge a critical examination of the operation of the Governor's office and the desirability of implementing by legislative action any such reorganization which would serve to assist the Governor in the performance of his constitutional duties.

[40] Commission on California State Government Organization and Economy, *Findings and Recommendations Concerning Organization for Central Staff Services,* March 11, 1963, 2

APPENDICES

APPENDIX A

THE EXECUTIVE OFFICE OF THE PRESIDENT

The concept of an executive office originated, as did the idea of executive initiated reorganization, in the desire to give the chief executive an administrative structure which would enable him to fulfill his constitutional responsibilities

The executive office was conceived of as the central organ for the provision of staff services to the President. The units which comprise the office have undergone a number of changes since 1939, reflecting the growth of the administrative structure. Currently, the Executive Office of the President is composed of the following units:

1. The White House Office (1939)
2. The Bureau of the Budget (1921)
3 The National Security Council (1947)
4. The Council of Economic Advisors (1946)
5. The Office of Emergency Planning (1962)
6 The National Aeronautics and Space Council (1958)
7 The Office of Science and Technology (1962)

Obviously, all these units are of critical importance in the determination of policy The first two, however, the White House Office and the Bureau of the Budget, represent probably the two most decisive voices in overall policy formulation

The White House Office was a direct response to the recommendations of the 1937 report of the President's Committee on Administrative Management, and, in the executive order which created it, was described as an office "in general, to serve the President in an intimate capacity in the performance of the many detailed activities incident to his immediate office "[41] The chief staff assistance is performed, currently, by a special counsel to the President, a press secretary, a number of special assistants to the President for designated areas of concern, and aides which represent the various branches of the military These represent the inner core of the presidential "family "

The Bureau of the Budget is the largest single unit in the executive office Its role within that structure is defined by Executive Order 8248 of 1939:

—(a) To assist the President in the preparation of the budget and the formation of the fiscal program of the government.

(b) To supervise and control administration of the budget.

(c) To conduct research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the government with respect to improved administrative organization and practice

(d) To aid the President to bring about more efficient and economical conduct of government service.

(e) To assist the President by clearing and coordinating departmental advice on proposed legislation and by making recommenda-

[41] Executive Order 8248 of 1939

tions as to presidential action on legislative enactments, in accordance with past practice.

(f) To assist in the consideration and clearance and, where necessary, in the preparation of proposed executive orders and proclamations, in accordance with the provisions of Executive Order No. 7298 of February 18, 1936.

(g) To plan and promote the improvement, development, and coordination of federal and other statistical services

(h) To keep the President informed of the progress of activities by agencies of the government with respect to work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the government; all to the end that the work programs of the several agencies of the executive branch of the government may be coordinated and that the moneys appropriated by the Congress may be expended in the most economical manner possible with the least possible overlapping and duplication of effort . . .[42]

The objectives which gave rise to the creation of the executive office, plus the necessity of maintaining a unified executive office, made it imperative that the office be developed along the lines that it has:

> While the number of staff assistants and agencies in the executive office was increasing, their functions were also evolving—from handling records, to supplying information, to reviewing and analyzing documents (and situations), to advising, to negotiating, and to following up decisions or actions. A full-blown staff has developed[43]

The effect "is to cause the office of chief executive in its actual operations to reflect the functioning of many minds."[44]

[42] *Ibid*

[43] The Brookings Institution, "The Formulation and Administration of United States Foreign Policy," *United States Foreign Policy Compilation of Studies*, Number 9, Senate Committee on Foreign Relations 86th Cong, 2nd Sess (Washington, D C, Government Printing Office, 1960), Vol 2, 844

[44] *Kallenbach*, 444.

APPENDIX B

THE OFFICE OF GOVERNOR IN CALIFORNIA

The same considerations which gave rise to the creation of the executive office of the President are relevant to an examination of the structure of California's chief executive

While there is currently not an integrated executive office, the office has developed over the years Its present structure reflects changes proposed during the last effort to reorganize the executive branch, an attempt which took place in 1961.

At that time, it had been 30 years since the last reorganization of the executive branch and the contention was made that the problems which confronted the California Governor were analogous to those faced by the President during the 1930's Consequently, in 1959, Governor Brown appointed a Committee on the Organization of State Government

The committee proposed to strengthen the Governor's office by the creation, directly under the Governor, of an executive department headed by an executive officer. Within the executive department were established the following units:

1. Budget unit
2. Management and organization unit
3 Program unit
4. Physical planning unit
5. Economic development unit
6 Consumer Counsel
7. Atomic Coordinator

The functions of the units, according to the committee, are outlined in the excerpt reproduced below from the committee report.

Budget Unit

The key to successful application of the agency concept and to best use of the executive department is placement of management responsibility, and the necessary controls, more clearly in the Governor and his key program officials, the administrators One of the most important and difficult areas is that of budgetary control. The best way to explain the administration of this control is to describe briefly the committee's thinking with respect to budgeting.

General budget policy is determined by the Governor with consultation and advice from his cabinet, one member of which is the executive officer. The budget unit will be of considerable assistance by preparing revenue estimates, policy objectives, and procedural instructions When these have been considered by the cabinet, and the Governor has made the necessary decisions, the budget unit issues instructions reflecting these decisions. Each administrator then prepares the program budget for his agency, not a detailed budget but one based on a broad definition of functions and activities. It is the administrator's proposal as to what should happen

to those programs for which he is responsible The budget unit conducts hearings to review these proposals, with major decisions referred to the Governor When these decisions have been made and overall dollar limits assigned, the agency administrator is responsible for preparing his detailed budget within these decisions and limits. This detailed budget focuses attention on the purposes for which money is appropriated These detailed budgets are reviewed in the executive department to see that they are within previous understandings and then collated into a single Governor's Budget While the executive department makes a general presentation of the Governor's Budget to the Legislature, each agency is responsible for explaining its program After the budget bill has been enacted into law, administration of the budget is a basic responsibility of the administrator; however, major modifications require approval of the budget unit.

Management and Organization Unit

The purpose of this unit is to perform the necessary research upon which to base sound policies and practices for the management and organization of state government It serves as a management consultant to the Governor and to agency administrators In so doing it conducts studies of major management problems and recommends solutions and provides leadership and coordination for similar units in the agencies As a major part of its function, the management and organization unit develops standards and guides in such important management areas as organization, accounting systems, internal auditing, and records management, and provides personnel management liaison with the State Personnel Board. It guides and encourages the development of workload standards, work measurement practices, improved procedures, and staffing ratios.

This unit also has responsibility for establishment of rules and regulations for the reimbursement of claims against the state, and for the administration of the employee suggestion system and work improvement programs It provides leadership in the development of improved administrative techniques and operational procedures.

In all of its areas of responsibility it tries to have the management research work done at agency or department level, performing itself only those tasks which are of a statewide nature or involve more than one agency or, for other reasons, cannot be adequately performed at operating levels.

Program Unit

This unit assures the development, coordination, and evaluation of operational programs It has responsibility for continuous review of current programs and for the assessment of new or proposed programs in terms of social and economic effect It is at this point that a balance will be maintained among such diversified programs as the conservation of natural resources, treatment of the mentally ill, and the construction of major public works

The work of the unit will require close coordination with program agencies and with fiscal, management, and physical planning units. In common with other units in the executive department,

the program unit will provide leadership and coordination of program planning at the agency level.

Physical Planing Unit

This office acts as the principal staff agency in matters concerning the physical growth and development of the state and its resources and is responsible for accepting and allocating or expending grants and gifts for the financing of state, regional, and local planning.

Two primary features of this broad program are local planning assistance and the preparation and maintenance of a comprehensive, long-range, general plan for the physical growth and development of the state. The latter is accomplished in cooperation with state, local, regional, and federal agencies and utilizes the physical development plans prepared by such agencies.

This office assists the budget division in the preparation of the capital improvement sections of the annual budget. It is a central repository for state, federal, regional, and local research studies, plans, and project proposals relating to existing and future physical growth and development of the state and to the conservation, use, and development of its resources.

Economic Development Unit

The function of this unit, as defined by the Legislature, is to provide the leadership and coordination of public and private effort necessary to the full realization of the economic potential of the state. In discharge of this function the unit serves as a central clearinghouse for economic information compiled or developed by other public and private agencies, makes such information available to local organizations and industrialists, assists local communities and organizations in assessing their economic potential, and actively promotes the development and expansion of business and industry within the state.

The chief of the unit serves as the Governor's principal staff advisor on economic matters and as an ex officio member of the Governor's Business Advisory Council.

Consumer Counsel

The Consumer Counsel is responsible for advising the Governor on all matters affecting the people of the state as consumers and for recommending to the Governor and the Legislature the enactment of legislation necessary to protect and promote the interests of the people as consumers In carrying out his functions, the Consumer Counsel may appear before government commissions, departments, and agencies on behalf of consumers' interests, make such studies and investigations as appear appropriate, and issue reports to the people

Atomic Coordinator

The Atomic Coordinator is responsible for advising the Governor with respect to atomic development within the state and coordinates the activities of the state relating to atomic energy and other

forms of radiation. This involves cooperation with other states and with the federal government.

The Atomic Coordinator also serves as the principal member of the Governor's Committee on Atomic Activities.[45]

The overall effect was to more sharply define the role of the Governor's office as the focal point for the management of state government.[46]

This is one approach to organization of the executive office. It is to be contrasted with the existing structure under which many of the responsibilities which are to be vested directly in the Governor's office, other than the personal staff, have been assigned by law to the Department of Finance.

ACTIVITIES OF THE DEPARTMENT OF FINANCE

The Department of Finance has statutory responsibility for all matters concerning the financial and business policies of the state (Section 13070, Government Code). Under this authority, the director is responsible for:

Financial planning and economic forecasting.

Formulation through the executive budget of the state's annual operating program.

Development of an adequate revenue structure and necessary use of bonded debt to meet the expenditure obligations of state government.

Control of fiscal operations through program review, budgetary restraints, and internal audits to conserve the fiscal integrity of the state.

Coordinating and stimulating the development of new programs and operational systems to meet public needs within the fiscal ability of the state, and encouraging more efficient and economical government operations and the obsolescing of unproductive programs to conserve state funds.

Coordinating of physical and economic planning at all levels of government in California.

Managing and developing the public lands of the state.

In the administration of his fiscal and management responsibilities, the director is necessarily an active member of 28 boards and commissions.

To accomplish its primary role of seeing that the Governor's programs and policies are put into effect in the most efficient and economical manner, the Department of Finance is organized into eight separate units:

1. The budget division prepares the annual budget for presentation to the Legislature After budget enactment, this division maintains continuous surveillance over the operations of state agencies to assure that programs are conducted in accordance with legislative and executive intent.

[45] Governor's Committee on Organization of State Government, *The Agency Plan for California*, December 1959, 15–17.
[46] *Ibid.*, 14.

2. The audits division conducts a postaudit of all state agencies to discover and report unauthorized, illegal or irregular expenditures, or unsound financial practices, and make sure state agencies are faithfully discharging their responsibilities
3. The program and policy evaluates state programs and policies in order to eliminate obsolete programs and develop new programs to meet emerging public needs This office also assists the Governor's legislative secretary in the preparation of the Governor's legislative program and serves as a special consultant staff to the Governor's office, the Director of Finance, the cabinet, and the agency administrators.
4. The special assistant to the director for systems and ADP · Advises the director on the status of systems studies proposed and under contract; develops policy guidance on requirements for management information and control systems; represents the Director of Finance in formulation of policies and plans involving other states, federal, and local jurisdictions; and serves as executive secretary to the Governor's Automatic Data Processing Advisory Committee.
5. The Office of Planning is responsible for preparation and maintenance of a comprehensive state development plan, and the coordination of public works programs undertaken by the state with federal and local agencies. This office also provides planning assistance to local and other public agencies.
6. The Economic Development Agency provides leadership and coordination of public and private efforts to promote industrial and commercial expansion in California To this end, the agency studies business conditions and provides an information service to prospective businesses and industries which may be considering locations within the state.
7. The State Lands Division administers approximately 3,500,000 acres of public lands in accordance with policies established by the State Lands Commission. This activity includes leasing these lands for oil, gas, and mineral exploitation, which provides a major source of state revenue.
8. The department also maintains an office in Washington, D.C., to represent the state's interests before the federal government.[47]

[47] The above material on the Department of Finance is derived from a memorandum dated December 21, 1965, prepared by the department's program and policy office at the request of the committee

III. DEPARTMENT OF REVENUE

Two years ago this committee reported to the 1965 Legislature on the need for a Department of Revenue with responsibility for tax collection functions currently divided among the State Controller, the Board of Equalization and the Franchise Tax Board.[48]

This proposal did not originate with the committee. "For more than 35 years legislative committees and special commissions have consistently recommended unification of revenue collection"[49] and legislation to effect those recommendations has been unsuccessfully placed before the Legislature with unfailing regularity

The Revenue Department which was envisioned by the committee in the 1965 report did not include all tax collection functions. No change was recommended in the constitutional responsibility of the Board of Equalization for equalizing county assessment levels and valuation of public utility property for local tax purposes. There was also no change recommended in the Controller's responsibility for supervision of delinquent and tax-deeded properties.[50]

Also excluded were the tax collecting functions of the Department of Motor Vehicles, the Department of Employment and the Horse Racing Board in the proposed department. The administration of some taxes, the committee stated, was so "closely integrated with other administrative functions as to make their consolidation of questionable value."

[48] Assembly Committee on Government Organization, *California's Tax Administration. The Need for a Central Revenue Department*, January 1965 The committee report contains a brief review of the history and development of California's tax administration, a summary of the organization of the existing structure, a survey of developments in other states, a review of the findings of previous studies and the committee's arguments in support of revenue consolidation

[49] *Ibid*, 9

[50] *Ibid*, 45.

Included in this category, along with the three units mentioned above, was the "revenue collected by virtually every agency through issuing licenses or charging fees."[51]

The distribution of revenue-collecting functions among several agencies reflects the product of an administrative structure that developed in response to specific fiscal crises. The 1965 committee report concluded that significant economies would result from consolidation because the present structure "has perpetrated inefficient and uneconomical use of personnel and facilities"[52]

Without exception, every state official with major responsibilities for tax administration testified that substantial savings would be realized through unification of most tax collection functions.

Even Board of Equalization member John W. Lynch, who favors consolidation under the board rather than a director appointed by the Governor, agreed that consolidation would save money:

> It would save a great deal of money. It would be more efficient and more economical. No one on the board quarrels with that . . . Any consolidation would be more efficient, more economical.[53]

The only disagreement expressed by those testifying before the committee on the potential economies which could be anticipated from consolidation of revenue-collecting functions, related to the amount of savings involved and whether it was likely that administrative reorganization could advance beyond the consolidation of different taxes within a central agency to include integration of tax-collecting activities common to more than one tax.

The potential for savings from an integrated approach to administration has been the subject of some differences of opinion, particularly as it applies to specific functions of administration, such as auditing. During the interim period prior to the 1967 Legislature, the committee requested, through the auspices of the Joint Legislative Audit Committee, a report of the office of the Auditor General on the feasibility of combining the work of tax auditors.

Auditor General William H Merrifield's conclusion was that it would be beneficial to integrate the field auditing activities of the Franchise Tax Board, the Board of Equalization and the State Controller.[54] The conclusion was based on the following findings:

1. The existing separate tax administrative agencies each have a history of field auditing integration.
2. The audit selection process could be coordinated and improved upon through the use of a combined management information system.
3. A more economical use of personnel could be developed under a combined management.
4. The same administration that is responsible for the collection of the revenue should also be responsible for the audit of that

[51] *Ibid.*
[52] *Ibid*, 10
[53] *Ibid*, 32
[54] Letter report from the office of the Auditor General to members of the Joint Legislative Audit Committee, December 2, 1966. For a complete copy of the report, see Appendix.

revenue; therefore a department of revenue would provide a means for the integration of the field auditing activities.[55]

Auditor General Merrifield also pointed out that "combined management must exist before the field auditing activities of the Franchise Tax Board, the Board of Equalization and the Controller's office can be integrated."[56]

In the view of this committee, the conclusion that combined management is necessary before certain of the functions of tax administration can be successfully integrated is well justified. In many areas, and perhaps auditing is one, the full integration of these activities may not be achieved until after long experience and extensive planning. But it is equally valid to note that the experience and planning which are necessary won't be begun until a Department of Revenue is adopted.

Even before a Department of Revenue begins to function, detailed management planning is necessary to insure an orderly transaction and development of a plan for organization of the department, appropriate staffing, budget and many other considerations For this reason, there should be a transition period provided in the statute creating the new department.

In addition to the potential economies which will result from consolidation, the committee support of the Department of Revenue proposal was based on the taxpayer convenience which would result from being able to deal with one agency rather than the confusing situation of having to deal with as many as four separate agencies in the payment of taxes A Department of Revenue would also concentrate responsibility for administration in the chief executive through his Director of Revenue and an administrative appeals procedure could be established independently from other administrative functions of tax collection.

In recognition of these arguments, the committee continues to endorse the recommendations contained in the 1965 report·

(1) That a Department of Revenue be established with responsibility for the statutory state tax collection functions presently exercised by the State Controller, the Board of Equalization, and the Franchise Tax Board.

(2) That the Department of Revenue be administered by a Director of Revenue appointed by the Governor with Senate confirmation and removable by the Legislature for cause.

For many years one of the most sensitive and controversial areas of tax administration has been the appraisal procedures involved in the administration of the inheritance and gift taxes Since the committee recommendation included the transfer of the administration of these taxes from the State Controller to the Department of Revenue, consideration has been given to alternatives to the existing method of assessment and collection of these taxes. The 1965 report favored moving toward a system of self assessment. The committee position was based on the fact that certain assets have a fairly exact and easily ascertainable market value. The consequences of this approach present a number of alternatives in the administration of the Inheritance and Gift Tax Law. While the committee supports reform of the existing

[55] *Ibid.*
[56] *Ibid.*

system, it is recognized that various alternatives might be pursued as improvements It is also clear that none of the changes need await the establishment of a Department of Revenue.

In conclusion, there is little which can be added to the findings and conclusions of past studies The committee agrees with the observation of the Commission on California State Government Organization and Economy·

> It is clear that further documentation of the conclusive evidence on record would be repetitious—the logic of a . . . Department of Revenue for California has been well established . . . Clearly, the time has come to set aside those considerations that have blocked constructive action in the past.[57]

[57] Commission on California State Government Organization and Economy, Letter report to Hon Edmund G Brown, Hon Hugh M Burns and Hon Jesse M Unruh, December 28, 1964

APPENDIX

December 6, 1966

Honorable Milton Marks, *Chairman*
Assembly Committee on Government Organization
State Capitol
Sacramento, California

Dear Milton:

Please find enclosed a letter report from the office of the Auditor General covering the feasibility of combining the work of government tax auditors. This report is furnished at your request.

Our report states its conclusion that if a Department of Revenue were created, it would be beneficial to integrate the auditing activities of the major tax collection agencies which are the Board of Equalization, the Franchise Tax Board and the State Controller.

We are pleased to provide this information for your committee and I trust you will not hesitate to call upon us again whenever we can be of service

With my warm best wishes,

Sincerely

VINCENT THOMAS

December 2, 1966

Members of the Joint Legislative Audit Committee
State Capitol
Sacramento, California

Gentlemen:

We have reviewed the organization, scope, and procedures of tax revenue auditing in the State of California's principal tax administrative agencies, consisting of the Board of Equalization, the Franchise Tax Board, and the State Controller.

The purpose of our review was to determine the feasibility of combining the tax auditing in such a way as to reduce the number of separate audits being made by the state of a taxpayer's records.

This review was undertaken in accordance with a request made of you by the Assembly Committee on Government Organization.

CONCLUSION

It is our conclusion that if a Department of Revenue were created, it would be beneficial to integrate the field auditing activities of the Franchise Tax Board, the Board of Equalization and the State Controller.

Our conclusion is based on the following findings.

FINDINGS

1. The existing separate tax administrative agencies each have a history of field auditing integration.

2. The audit selection process could be coordinated and improved upon through the use of a combined management information system.
3. A more economical use of personnel could be developed under a combined management.
4. The same administration that is responsible for the collection of the revenue should also be responsible for the audit of that revenue; therefore a department of revenue would provide a means for the integration of the field auditing activities.

COMMENTS

HISTORY

The Franchise Tax Board, the Board of Equalization, and the State Controller have made substantial organizational changes in their own auditing activities over a period of years.

For example, at one time the Franchise Tax Board had two divisions, the personal income tax division and the corporation tax division, which operated independently of each other. The two divisions now have been fully integrated

Likewise, a similar change has been made by the Board of Equalization in the sales tax, the transportation tax and the use fuel tax audits. Those taxes are now audited concurrently The excise taxes that the Board of Equalization administers such as the motor vehicle fuel tax, the beverage taxes, and the cigarette tax are audited independently of the sales and use taxes However, excise taxpayers, while few in number, do pay other state taxes such as income taxes; therefore, excise taxes should be included in any further consideration of integrating tax audits

The Controller's office also has made organizational changes in both the inheritance and gift tax division and the tax collection and refund division

Even though each agency has successfully taken steps to upgrade its own auditing activities, no attempts have been made to integrate the auditing activities of the respective agencies

In 1964 an interdepartmental tax committee was organized with the main purpose being to review and increase the cooperation among the participating agencies (Agencies involved are the Franchise Tax Board, the Board of Equalization, the Department of Employment, and the State Controller Because of the federal participation, the Department of Employment has been purposely excluded from this report.) However, that committee has not considered any integration of the auditing activities.

AUDIT SELECTION

The audit selection process could be improved upon through the use of a combined management information system Such a system could be developed if the tax collecting agencies were combined into a department of revenue

Regardless of the classification of a taxpayer, having all of the different types of tax returns filed available in a central location would give an auditor a better insight into the taxpayers' operations. In some cases it may not be economically feasible to audit a taxpayer for all of the

taxes paid, but having a complete tax history readily available would be helpful in determining the audit scope of any particular tax under review.

A combined management information system could provide for both an office and a field determination as to which taxes should be audited. Also a field determination could be made as to what other types of tax returns should have been filed by the taxpayer

The collection and the compliance activities could be coordinated and improved upon through this combined management information system Collection and compliance activities are directly related to auditing; the compliance unit is responsible for informing the taxpayers of the various provisions of the tax laws, and the collection unit is responsible for following up the audit findings

PERSONNEL

In order to make the determinations previously mentioned, all personnel involved would have to have at least a general knowledge of all applicable tax statutes.

Management of a department of revenue, by the use of pilot studies, in both the rural and metropolitan areas, could develop the most economical methods of auditing the different taxes When two or more of a taxpayers' taxes are selected for audit the number of auditors and the number of visits to a taxpayer's office necessary to complete the assignment would be contingent upon, but not necessarily restricted to, the complexities of the taxes involved, previous experience with the taxpayer, and the location of the records to be audited.

Furthermore, in order to develop an effective supervisory level in a combined tax agency, staff men should gain proficiency in the application of all pertinent tax statutes.

ADMINISTRATION

The same management that is responsible for the revenue collection activities should be responsible for the audit of that revenue. This is essential in any operation so that the audit selection, the audit scope, and the audit findings can effectively be coordinated and controlled This, in essence, describes the present organizational arrangement We believe that a combined management must exist before the field auditing activities of the Franchise Tax Board, the Board of Equalization and the Controller's office can be integrated

Sincerely yours,

WILLIAM H. MERRIFIELD
Auditor General

IV. DEPARTMENT OF GENERAL SERVICES

On October 1, 1963, the Department of General Services officially began functioning as a separate entity within the executive branch of California state government. The legislative authorization for the establishment of a separate department with responsibility for the central staff or "housekeeping" functions of government followed many years of studies suggesting the need for such an agency.

Since the creation of the department by the 1963 Legislature, a number of legislators have expressed concern over the manner in which the department has carried out its responsibilities Legislation was even placed before the 1965 session which questioned the necessity of the Department of General Services as a separate entity and proposed that these functions be placed back under the supervision of the Director of Finance.

As a result of this concern, this committee was authorized to proceed with a comprehensive review of the programs administered by the Department of General Services This study is in accord with the major responsibility of the Legislature to undertake periodic review of the reorganizations it enacts to determine whether further improvements in organization are possible and to evaluate the extent of accomplishments

The first issue before this committee is whether the concept of a central staff services department performing the so-called "housekeeping" functions for the various state agencies was administratively and organizationally sound

A Department of Finance intradepartmental communication dated October 3, 1962, from Robert L. Harkness to Director of Finance Hale

Champion outlined the proposal for creation of the Department of General Services and set forth the advantages and objectives which could reasonably be expected to result from centralizing the staff services:

1. Permit application of uniform standards and policies in administrative matters common to state government.
2. Promote economy through large-scale buying of materials and supplies.
3. Provide the highly qualified specialists that individual agencies cannot justify on their own staffs.
4. Enable management personnel responsible for major program areas to devote their time to the principal mission of their units rather than to housekeeping services.
5. Provide the economies of mechanized mass handling.

On December 30, 1965, the Department of General Services published a report ("Progress Report: First Two Years of Operation") which was designed to indicate the accomplishments made by the agency in achieving its objectives.[58] "Progress," the report indicated, "has been made in a number of different ways, such as handling increased workload without adding staff, raising the quality level of services rendered, introducing improvements resulting in a substantial savings to other departments and to the state as a whole, and improvements in management and internal administration." During three days of hearings of the committee,[59] representatives of the department appeared before the committee to present detailed information on the action taken by the department to improve central staff services.

In the course of the committee inquiry, selected areas of department activity were given specific attention.[60] The first of these reviewed was property acquisition and leasing procedures of the Department of General Services as outlined in a report of the office of Auditor General to the Joint Legislative Audit Committee. While the report found property acquisition procedures and controls to be "generally satisfactory," many specific deficiencies were noted.

One of the specific leases cited which resulted in a law suit against the State of California for breach of contract was the lease for the Criminal Identification and Investigation Building in Sacramento. The low bidder on October 10, 1960, was J. Keith Kenworthy at $16,000 per month. Charles E. Brown was the second lowest bidder at $18,000. The leasing unit experienced considerable trouble with Kenworthy and at the end of March, 1961, Kenworthy still had not started construction and was asking for a two-month extension. The leasing unit refused to grant the extension and requested new proposals from various Sacramento realtors for construction of the C I. & I. building. Charles E. Brown submitted a proposal of $17,000 per month, but a lower proposal of $16,500 was also received.

The Auditor General's report indicates that the records do not show what further negotiations took place but that Charles E. Brown was

[58] Department of General Services, *Progress Report: First Two Years of Operation* (Sacramento), December 30, 1965.

[59] February 16, 17 and March 2, 1966, in Sacramento. For a review of the department's presentation, see the *Progress Report* and the transcripts of the committee hearings.

[60] An excellent series of newspaper articles by Lou Cannon, which were published by the *San Jose Mercury*, are included as Appendix C.

awarded the lease at $16,000 per month. The comments of the Auditor General on the Criminal Identification and Investigation Building lease are as follows:

1. The financial ability of Kenworthy should have been more thoroughly reviewed and a performance bond obtained.
2. The files are inadequate with regard to the soliciting procedures of the second lease proposals in March 1961. Apparently, the proposals were requested orally, no deadline was mentioned, no correspondence requesting proposals was written, and no newspaper advertisements were used.
3. The files do not indicate whether the March, 1961 bidders were all given the same treatment Charles E. Brown submitted a proposal of $17,000 per month but signed a lease for $16,000 per month.

The files do not show whether any negotiations were made with the persons submitting the proposal of $16,500 per month. Any departure from the acceptance of the lowest proposal should be thoroughly justified in the files [61]

In a letter to Assemblyman Vincent Thomas, chairman of the Joint Legislative Audit Committee, dated December 31, 1965, from Robert L. Harkness, Director of the Department of General Services, he indicated that the department was taking "positive steps" to implement the recommendations of the Auditor General. Director Harkness also responded that the seven leases that were cited by the Auditor General to illustrate poor procedures were negotiated prior to the creation of the Department of General Services With respect to the specific lease for the Criminal Identification and Investigation building, the response was simply that "the appellate court made an award in favor of the state and that therefore the actions of state officials have been found proper by the courts."

The Auditor General also criticized the lease for the Mental Health Building which was also awarded to Charles E Brown. The principal objection was that "there was inadequate competition" for the lease. The director's reply to this criticism was that "there was adequate competition which is borne out by the excellent rate obtained. Offers submitted by the successful lessor . . . were voluntary offers and were considerably higher than the final bid The area of search was, in our opinion, limited only as necessary to assure efficient operations of the tenant agency The minor changes in the specifications were made necessary by recent experience in another locality and it was certainly not desirable to go ahead with construction which had proven unsatisfactory elsewhere."

A second area of criticism of departmental activity has focused on the Office of Procurement's purchasing of new automobiles. The department's *Progress Report* indicates that following through on a recommendation made by the Commission on California State Government Organization and Economy, sizeable cost reductions were made in the purchase of new automobiles by changing the time for bid submission to more closely match the time when new vehicles are actually delivered

[61] Office of the Auditor General *Report on Review of Property Acquisition and Leasing Procedures*, 5.

and placed in service. The report cites a reduction in the unit cost of 1965 models of $197 per car as compared to the low bid for the previous year for a total saving of $123,125 for the cars purchased.

A further investigation by the "Little Hoover Commission" revealed that specifications for California Highway Patrol cars favored Chrysler Corporation. All of the cars furnished the California Highway Patrol since 1958 (except 1962) were supplied by a single Dodge dealer, John Drew of Sacramento.

The commission study produced revisions in the 1967 specifications. The recent purchase of highway patrol vehicles under the new specifications resulted in savings of nearly $600,000 for the current fiscal year and even the bid submitted by John Drew was lower than his bids of previous years.

A further criticism of departmental policies has resulted from the difficulty of obtaining adequate information on past leasing and procurement records Under the department's records management procedures, records relating to leasing and purchases are being removed as early as two years after they are filed. This policy make adequate inquiry into department procedures most difficult and conflicts with the generally prevailing practice in private industry where such records must be kept for tax purposes.

The committee also reviewed the facts surrounding the storage of vehicles seized by the state under the narcotics seizure program. The department, following the suggestions that such confiscated cars be stored under the freeway to release valuable undercover auto parking area in downtown Los Angeles contracted with a private individual (Viertel's Automotive Service) who leased the space under the freeway from the Division of Highways for $350 per month with a rebate for improvements of $110 per month The Department of General Services then paid storage costs to the lessee of approximately $2.500 per month.

The committee evaluation of Department of General Services accomplishments as set forth in their *Progress Report,* along with a survey of criticisms leveled at departmental operations by such independent observers as the Auditor General and the "Little Hoover Commission," was supplemented by responses from each agency administrator to a letter from committee chairman Milton Marks [62] The purpose of the committee letters was to elicit responses from the agencies relying on the department for performance of central staff services to assist the committee in evaluating the level of service offered by the department by "comparisons to the operational levels which had previously existed" and to call attention to any problem areas where there had been difficulties in the "transition to the present central staff services system." [63]

One of the recurring problem areas evident in the responses to the committee letter involved the approval of contracts by General Services. Director Harkness indicated that the Governor's cabinet was aware of the problem and was undertaking a reevaluation of the legal processes involved in contract approval He also indicated that the statutory Gen-

[62] Letter from Hon Milton Marks to each administrator of an operating agency, October 19, 1965 (the letter and the responses are included as Appendix A).
[63] *Ibid.*

eral Services advisory council, composed of members nominated by agency administrators, was involved in a similar study [64]

With respect to most of the other agency comments, Director Harkness indicated that "they seem to revolve around level of staffing and inability to render all of the services desired," which he indicated was "a budget problem and as we are able to anticipate workload increases and adequately present them in the budget, improvements in service will result." [65]

SUMMARY

This survey of the performance of the Department of General Services is not intended as a comprehensive analysis of the adequacy of all of the central staff services for which the department has a responsibility. In this connection, continued review of specific programs by the Assembly Ways and Means and Senate Finance Committees and the Legislative Analyst as part of the analysis of the Budget Bill, as well as special studies of certain programs by the Auditor General or the "Little Hoover Commission," should be a significant factor in providing a continuing evaluation of those programs.

The principal issue before the committee was whether the existing structure of a separate department for central staff services as enacted by the Legislature in 1963 is organizationally sound. To the extent that criticisms of department activity have shown the need for improving procedures, the committee encourages such improvements. The illustrations of specific examples included in this report relate almost entirely to management and demonstrate both the need for reforms in such areas of responsibility as property acquisition and leasing, purchasing and contract approval, as well as an acknowledgment by the department of the need to undertake those reforms.

With respect to the main issue of the appropriateness of the organizational structure itself, it is essential to note that many of the criticized activities took place prior to the creation of the Department of General Services and that since 1963, these programs have been handled by many of the same people who had similar responsibilities when they were administered within the Department of Finance

The committee concludes that the premises upon which the creation of the Department of General Services was established are valid objectives and are results which can be expected from the current organizational structure.

The positive result has been the fact that the Director of Finance has been relieved of many administrative responsibilities which were not related to his primary budgeting and program and policy functions.

The committee further concludes that the criticism of specific operations of the department relate almost entirely to management rather than the organizational structure itself. In this respect, placing these responsibilities under a single director appointed by the Governor encourages greater responsibility to both the Governor and the Legislature. When these services were provided as a part of the Department of Finance, they were not receiving the attention which the Legislature has focused upon them since the department was created. This alone has been a significant result of the reorganization.

[64] Letter from Hon Robert L Harkness, Director of General Services, to Hon Milton Marks, March 1, 1966 (see Appendix B for full text of letter).
[65] *Ibid.*

It is the conclusion of the committee that the establishment of a department with responsibility for administration of the many "housekeeping" functions of state government has made it possible for the Legislature to more closely fix responsibility for these functions The fact that many of the activities complained of had their origins within the Department of Finance and prior to the creation of the new Department of General Services went unnoticed, supports this conclusion.

The conclusion that the action of the Legislature creating a Department of General Services was based on sound organizational principles which should provide a more efficient and economical administration of central staff functions cannot be taken as an unqualified endorsement of the administration of the department. It is clear that inefficiencies in administration can exist despite the soundness of the organizational structure Continued vigilance by the Governor and the Legislature are necessary to insure improvements in the management of the Department of General Services.

The greatest difficulty encountered by the committee in this evaluation was determining specific cost comparisons on programs as they were administered both prior to and following the establishment of the department. The committee has been unable to develop any reliable data to afford such comparisons For the most part, this results from the method of funding General Services programs In most cases a program is funded in part by a charge to other agencies which are appropriated from that agency's budget, and the cost of the remainder of the program is accounted for by a direct appropriation to the Department of General Services Examples of this method of funding to a greater or lesser degree are Building Maintenance and Protection, Communication Maintenance and Service, Transportation Services, Office of Procurement, Property Acquisition Service, Office of Local Assistance, Office of Administrative Procedure, Administrative Services, Central Office Services, Facilities Planning Service and Legal Services. The funds for Systems Analysis, Management Planning, the Building Standards Commission, Insurance Office and Merit Award Board are completely funded from direct appropriations to General Services and two programs—the Office of State Printing and the Office of Architecture and Construction—are funded entirely from appropriations to the user agencies.

This shared approach of funding makes comparisons much more complicated because fluctuations in the charges to the user agencies may not accurately reflect the cost of the program The committee suggests serious study be given to completely funding General Services programs from appropriations to the user agencies.

APPENDICES

APPENDIX A

LETTER ADDRESSED TO EACH ADMINISTRATOR OF AN OPERATING AGENCY

October 19, 1965

Dear Agency Administrator:

The Assembly Committee on Government Organization has been authorized by the Assembly Rules Committee to proceed with a comprehensive review of the programs administered by the Department of General Services. As you know, the department was created as a result of legislation enacted by the 1963 Legislature following many years of study and recommendations supporting the creation of a single agency with the responsibility for central staff services

It is our intention to review the reorganizational changes enacted in 1963 to determine whether further improvements are possible and to evaluate the extent of present accomplishments In order to facilitate our study we would appreciate it if you would provide the committee with your comments on the central staff services provided by the department to the agencies under your supervision With this in mind, enclosed is a copy of a memorandum prepared by Robert L Harkness titled "Proposal for Creation of a General Services Department" (October 3, 1962), which was presented as a justification for the 1963 reorganization and the report of the Department of General Services which was submitted to a subcommittee of Ways and Means (April 6, 1965) in response to the committee's request for specific material to provide a basis for evaluating the activities of the department

Obviously the committee is anxious to evaluate specific improvements measured by comparison to the operational levels which had previously existed and examples from the experience of your agency would be most helpful. In addition, the committee would appreciate your suggestions as to any improvements which are necessary or areas where you have experienced problems in transition to the present central staff services system. Your comments and suggestions will be useful to the committee in outlining a specific course for study.

If you have any questions or wish additional information, Mr Judson Clark, the committee consultant, will be available to discuss them with you.

Sincerely,

MILTON MARKS

BUSINESS AND COMMERCE AGENCY
EDMUND G. BROWN
Governor

Department of Banking
Division of Corporations
Department of Insurance
Division of Real Estate
Division of Savings and Loan

State of California
BOARD OF INVESTMENT

January 24, 1966

Assembly Committee on Government Organization
State Capitol
Sacramento, California

Attention: Judson Clark

Dear Mr. Clark:

Attached is the Business and Commerce Agency report on the subject of Government Organization—Department of General Services.

The departments within the Business and Commerce Agency were asked to provide comments on the central staff services provided by the Department of General Services They were also asked to submit suggestions as to any improvements which are necessary or areas where problems have been experienced in the transition to the present central staff services system.

If we can be of any further assistance, please let us know.

Sincerely,

MILTON G. GORDON, Administrator
Business and Commerce Agency

By: JOHN E. HEMPEL
Chief Assistant Real Estate Commissioner

State of California — Department of Alcoholic Beverage Control

Memorandum

To: Hon. Milton G. Gordon
Administrator
Business and Commerce Agency
111 Capitol Mall
Sacramento, California

Date: November 8, 1965
File No.:

From: James O. Reimel

Subject: *Department of General Services.*

The principal divisions of the Department of General Services with which the Department of Alcoholic Beverage Control has dealings are:

1. Office of Administrative Procedure
2. Transportation Service
3. Fiscal—Accounting Office
4. Facilities Planning
5. Office of State Printing
6. Property Reutilization, Office of Procurement
7. Office of Procurement (purchasing)
8. Legal Services
9. Property Management and Services

1. *Office of Administrative Procedure*

The Legislature transferred our hearing officers and hearing reporters to the Office of Administrative Procedure in 1961. At the time of the transfer, this department had four hearing officers and four reporters in southern California. The Office of Administrative Procedure had three hearing officers there They now have 13 hearing officers and 11 hearing reporters in southern California. Our caseload has remained fairly static for several years We are not aware of the number of hearings conducted for other agencies.

2. *Transportation Service*

This Division of General Services has been quite cooperative and helpful. It appears to be curtailed in its operations by budget limitations in 1965–1966. This department is turning its undercover cars over to General Services by legislative request. The freezing of funds for replacement cars prevents Transportation Service from making cars available to outlying offices on a permanent assignment. This results in some expenses carried by Transportation Service previously passed on to operating agencies.

3. *Fiscal—Accounting*

This office does not, in our opinion, operate as well as it did under the Department of Finance. It appears there may be a lack of communication between operating units and accounting office.

4. *Facilities Planning*

Service received from both Leasing and Long Range Planning and Current Space Planning have generally been good both before and after the Department of General Services was formed. Their difficulty in maintaining a full staff of lease agents has been detrimental in certain instances

5. *Office of State Printing*

Service is good but sometimes slow. This is undoubtedly because of certain work peaks.

6. *Property Reutilization, Office of Procurement*

This organization is cooperative and helpful, but, apparently, has no trucks of its own Property it desires to obtain frequently remains in our offices for extended periods of time.

7. *Office of Procurement (Purchasing)*

The service from this office is generally excellent. This office has saved us considerable money by combining our orders with like ones from other departments.

8. *Legal Services*

Service continues about the same as when in the Department of Finance.

9. *Property Management and Services*

Service at headquarters level has been good. There are sometimes indications of lack of communication between building managers and headquarters.

JAMES REIMEL
Director

State of California

Memorandum

To: Mr. Milton G Gordon, Administrator
Business and Commerce Agency
111 Capitol Mall
Sacramento, California 95814

Date: November 8, 1965
File No.:

From: California Districts Securities Commission

Subject: *Committee on Government Organization*

This will acknowledge receipt of your memorandum dated November 1, 1965, in which you requested comments and/or suggestions on the central staff services provided by the Department of General Services.

This agency has experienced no problems in connection with the present central staff services system, and so far as we are concerned, find the system satisfactory.

T. P. STIVERS
Executive Secretary

STATE OF CALIFORNIA
Los Angeles 12

INTERDEPARTMENTAL COMMUNICATION

To: Mr. Milton G. Gordon, Administrator — November 5, 1965
Business and Commerce Agency
Board of Investment
Division of Real Estate
111 Capitol Mall
Sacramento, Calif.

From: California Horse Racing Board
State Building 908
Charles L. Harman, Secretary

Subject: *Assembly Committee on Government Organization*

This is in reference to your letter dated November 1, 1965, regarding the central staff services now being provided by the Dept. of General Services.

To date, the California Horse Racing Board has not experienced any problems generally in the transition of the present central staff services. The purchasing function in our department appears to be efficient, and we are receiving good service. Therefore, our current experience indicates a very satisfactory working relationship with this system.

We will continue to evaluate the present accomplishments and, if further improvements are possible, we will advise.

VINCENT SANTOPIETRO
Assistant Secretary

State of California

Memorandum

Date: November 16, 1965

To: The Honorable Milton G. Gordon
Administrator
Business and Commerce Agency
1015 "L" Street
Sacramento, California 95814

From: Department of Insurance—Chatham F Odum
1407 Market St, San Francisco 94103

Subject: *Committee on Government Organization*

Reference is made to your November 1, 1965, letter concerning a comprehensive review by the Assembly Rules Committee of the programs administered by the Department of General Services

Our San Francisco and Sacramento offices are located in leased buildings, and our Los Angeles and San Diego offices occupy space in state-owned buildings The only recurring central staff services provided in leased quarters is custodial and we have not noticed any appreciable change since activation of the Department of General Services. In both Los Angeles and San Diego, central staff services provide both custodial and telephone switchboard support We have not experienced any appreciable change in custodial services; however, reduction in the level of telephone service in our Los Angeles office has seriously hampered our operation and we plan to request authority to reestablish our own switchboard in the near future

For your added information, we now make limited use of the central records storage area in San Francisco and plans are underway to take advantage of the storage area in the basement of the state building in Los Angeles.

CHATHAM F. ODUM
Administrative Service Officer

4—L-418

JOHN A. O'KANE
Superintendent of Banks
JAMES AHLF
Chief Deputy

EDMUND G. BROWN
Governor

111 SUTTER STREET
Suite 2125
San Francisco 94104
YUkon 1-8530
107 SOUTH BROADWAY
Suite 6105
Los Angeles 90012
MAdison 0-4760

State of California
STATE BANKING DEPARTMENT

San Francisco 4, California
November 5, 1965

Mr Milton G Gordon, Administrator
Business and Commerce Agency
111 Capitol Mall
Sacramento, California 95714

Re: Committee on Government Organization

Dear Mr. Gordon:

This is in reply to your letter of November 1, 1965, requesting general comments on the programs administered by the Department of General Services since it was created by the 1963 Legislature.

Our principal contact with General Services has been in management planning. We have found General Services in this area to be cooperative and helpful

As a general comment, it is our feeling that a considerable amount of unnecessary work and expense in various agencies can be eliminated by limiting General Services' approval and supervision to *major* matters.

Yours very truly,

JOHN A. O'KANE
Superintendent of Banks

ALBERT L. CRYOR
Chief Bank Examiner

STATE OF CALIFORNIA—BUSINESS AND COMMERCE AGENCY EDMUND G BROWN, Governor

DEPARTMENT OF INVESTMENT
DIVISION OF CORPORATIONS

CHARLES E RICKERSHAUSER, JR
Commissioner

SACRAMENTO 95814—PRINCIPAL OFFICE
1020 N STREET

SAN FRANCISCO 94103
1460 MISSION STREET

LOS ANGELES 90012
107 S BROADWAY

SAN DIEGO 92101
5068 STATE OFFICE BLDG

Los Angeles, California
November 9, 1965

Honorable Milton G. Gordon
Administrator
Business and Commerce Agency
111 Capitol Mall
Sacramento, California 95814

Re: Committee on Government Organization

Dear Milton:

This is in reply to your memorandum of November 1, 1965, requesting material for submission to the Assembly Interim Committee on Government Organization.

Our division traditionally deals with the Department of General Services only in the areas of automobile assignments, physical facilities for division offices, procurement of office supplies and procurement of office equipment. I am advised by our staff that we have not encountered any substantial changes in these areas as a result of the reorganization of the Department of General Services by the 1963 Legislature. Those on our staff who deal more directly with these problems have advised me, however, that they have found more clear-cut definitions as to which offices should be contacted in order to accomplish certain objectives, and I have been given to understand that this is the result of the 1963 legislation.

We have found two areas recently where our relationships with the Department of General Services indicate a need for improvement, but these areas are not such as may be compared with how they might have been handled under the pre-1963 organizational structure. The two areas to which I refer are as follows:

1. We have attempted to project, for budget purposes and otherwise, the space needs of the division in its various offices for the next few years. In doing so we find that the coordination has not been entirely satisfactory even among the members of the Board of Investment and the Department of Finance was not able to indicate with any certainty the coordinated plans for the movement or enlarging of offices in the immediate future. This is a problem which may bear dis-

cussion among the Division of Real Estate, the Department of Insurance and the Division of Corporations, with respect to our Los Angeles facilities, and where it would appear that the Department of General Services might give more direction

2. The Division of Corporations is presently involved in a program for the modification of the facilities which house its Los Angeles office. This program has consumed a period of approximately nine months so far, and we are not yet ready to request bids. Although the cooperation which we have received during the past month has been most helpful, an inordinate amount of time was required during the early development of this program In addition, the Department of General Services was unable to make preliminary estimates of the costs which might be encountered so as to give the necessary guidance to the division in making its budget arrangements. Preliminary estimates of the modification were made, but the final estimates showed an increase of approximately 144%, rendering the initial estimates useless and complicating the division's budgeting for the current year This may represent an isolated instance not worthy of note, but discussions with the Department of General Services indicated that the problem may be more widespread.

In view of your request for only general comments at the present time, the foregoing specific recommendations may be premature. They are included here as the only contribution which the division has to offer in response to your memorandum of November 1. If we may furnish additional information, please do not hesitate to call upon us.

Sincerely,

JERALD S SCHUTZBANK
Chief Deputy Commissioner

State of California

Division of Real Estate
R/E Form 703

Memorandum

To: Milton G. Gordon
Commissioner

January 25, 1966

From. John E. Hempel
Chief Assistant Commissioner

Committee on Government Organization

This is in response to the letter regarding the central staff services provided by the Department of General Services

The key members of the Division of Real Estate's staff in regulatory operations, licensing and accounting agree the separation of General Services from the Department of Finance has generally been good. The new procedures adopted regularly show they are alert to improving services For example, pool cars are kept in good shape, they are now available at airports and there are better controls over possible areas of abuse.

The Office of Administrative Procedure under the Department of General Services is well-organized and gives better overall service.

The billing methods followed by the O A P., for their hearing service, could be modified so that the total bill is not submitted to the agency at the end of the fiscal year If billed quarterly, we could plan better within our hearing budget allotment

The methods used for arranging leases for quarters should be reviewed

JOHN E. HEMPEL
Chief Assistant Commissioner

State of California

Memorandum

To: Milton Gordon
Department of Real Estate
111 Capitol Mall
Sacramento, California

Date: November 10, 1965
File No.:

From: Division of Savings and Loan
540 Van Ness Avenue, San Francisco 94102

Subject: *General Comments Re Operations of General Services*

At the operational levels, the Division of Savings and Loan has been generally dealing with the codification officer of Administrative Procedure, Insurance Officer, Facilities Planning, Legal Services, Office of Procurement, Systems Analysis, Printing Office and Transportation Services.

From the division's viewpoint, the common characteristic of performance shared by many of these agencies is the slowness in getting things done For items of special interest, the division almost always has to keep a check with the agency concerned so that the action requested will be performed within time limits This characteristic predates the establishment of the Department of General Services, but still is in evidence. The outstanding exceptions are the codification officer and the insurance officer who provide timely and thorough advice and assistance when called upon

Very truly yours,

GARETH W. SADLER
Savings and Loan Commissioner

FREDERICK M. RAMMLER
Administrative Assistant

Henry W. Simonsen
President
E. L. Gartland, Jr
David N. Lillevand

EDMUND G BROWN
Governor

Virginia Danielson, Secretary
EX brook 7-2253

OFFICE OF
State Board of Pilot Commissioners
World Trade Center, Room 321
SAN FRANCISCO 11, CALIFORNIA

November 4, 1965

Mr. Milton G Gordon, Administrator
Business and Commerce Agency
1015 L Street
Sacramento, California 95814

Dear Mr. Gordon:

We have received your memorandum of November 1st concerning the projected study by the Assembly Committee for Government Organization of services provided by the Department of General Services.

Our board maintains a contractual arrangement with the Department of Professional and Vocational Standards for fiscal and personnel services, including assistance in transactions with the Department of General Services. We therefore cannot make comments or recommendations as requested.

We have brought this matter to the attention of our fiscal officer, Mr. Donald O. Otten, and believe he will incorporate our board's answer with his department's reply to the Assembly Committee.

Very truly yours,

BOARD OF PILOT COMMISSIONERS

By VIRGINIA DANIELSON
Secretary to the Board

State of California — Department of Professional and Vocational Standards

Memorandum

To: Hon. Milton G Gordon — Date: November 10, 1965
Agency Administrator
Business and Commerce Agency
111 Capitol Mall, Room 324

From: Division of Administration

Subject: *Committee on Government Organization—General Services*

To provide the Committee on Government Organization with the information requested by your memo of Nov. 1, 1965. I contacted various members of our staff who have knowledge of the subject matter. Areas where improvement would be helpful are:

Leasing Services
Property Management Services
Printing Plant Services
Management Consultant and Data Processing Services
Automotive Management Services

Additionally, improvements should be made in communications, Architectural and Office Machine Services Examples of the kind of improvements we feel would be helpful are:

Leasing Services

We suggest guidelines be established to permit state agencies within perimeters, authority to procure sites for leased quarters, with final lease approval to be reserved to the Department of General Services.

Communication Services

A review should be made of communications equipment required to be registered with the Communication Service Unit In short, certain items now registered should be eliminated and charges made only on the basis of services rendered rather than upon items registered.

Property Management Services

Review the cost accounting involved in making charges against special fund agencies, particularly the overhead factor and portal-to-portal charging. By having tradesmen report directly to and leave directly from the actual jobsite, from one-half to one hour a day could be gained in productive labor whereas this labor is currently being charged for while the time is consumed in traveling to and from the job and the headquarters office

Services in providing maintenance for leased quarters have deteriorated due, we are told, to budget restrictions This has lead to our being informed that General Services will no longer perform or provide alterations and maintenance to these quarters; however, they still reserve the right to approve the services we must secure for ourselves. This leads to inefficiencies and delays in providing such necessary services.

We suggest some blanket means of approval be had whereby we would be authorized to secure and perform services with such advance authorization.

Architectural Services

Provisions are made for contingencies in new construction and in major alterations; however, minor change orders require elaborate approval procedures; these tend to hold up such construction and alterations and result in costs which in many cases more than offset the slight additional cost entailed by the change order. We suggest that within limits, change orders be permitted to be initiated by preapproval so that work may proceed in a more efficient manner.

Office Machine Services

Billings made for these services are in accordance with the number of machines rather than on the maintenance services performed. We suggest the billing procedure used be re-examined.

Automotive Management Services

These services were being steadily improved until the recent budgetary cutback forced restrictions on the use of vehicles and facilities. This action has resulted in some operational handicaps Charges made for parking should be re-examined as they often exceed what other garaging facilities would cost. We suggest that some maximum be established for parking charges for any one vehicle for any one month or some other equally acceptable alternate

Management Services

In the past it was possible to obtain management services for special projects and for supplementing departmental staffs from manpower available within the Division of Organization and Cost Control. The change in concept coupled with budget restrictions, no longer makes it possible for us to obtain this type of service. We feel a need for a central pool of management specialists who would be available for use for special assignments, where due to the "crash nature" of some projects, it is not feasible nor practical to try to augment a department's own staff. This would especially apply to those smaller units of government who have no staff of their own.

Data Processing Services

Until the augmentation of staff takes place in the Department of General Services, there are not enough persons to assist departments in making "in-depth" studies of data processing needs.

We feel improvements in meeting both data processing and management consultant needs could be had by permitting approval of the use of outside qualified consultants within the framework of a blanket appropriation for General Fund agencies and authorization for special fund agencies (where surpluses exist).

Printing Plant

We suggest a return to former or some improvement in present budget procedures which would permit more flexibility in staffing the printing plant. Present budgeting procedures (we are informed) have resulted in backlogs and delays detrimental to good service. Quality of product is excellent—delivery of average jobs too slow.

We can furnish specific problems for the committee's consideration if they desire them. We are appending some illustrations which may serve to point up some of the reasons behind our general comments concerning improvements.

If we can be of any further help to the committee in any of these areas, we will be happy to do so upon request

HAROLD J. POWERS
Director

...E OF CALIFORNIA
...LOYMENT RELATIONS AGENCY
...RAMENTO 14

EDMUND G. BROWN, Governor

January 10, 1966

HONORABLE MILTON MARKS, Chairman
Committee on Government Organization
California State Legislature
State Capitol
Sacramento, California 95814

Dear Milt:

Your letter of October 19 states that you are making a comprehensive review of the programs administered by the Department of General Services You ask for comments and suggestions regarding the nature of service which has resulted from the reorganization which established the Department of General Services and for any suggestions for future improvements Staff members of the Department of Employment and Industrial Relations who deal with General Services have been consulted for comments and ideas, as requested in your letter.

1. *State Administrative Manual*
   In the opinion of the fiscal staff. this manual seems to be more up to date and responsive to our needs than was true prior to the organization of General Services

2. *Insurance*
   We feel that there has been an improvement in relations with the insurance adviser's office. Information seems to be ready and available more expeditiously than in previous years.

3. *Property Acquisition*
   It is our opinion that the work of this group has improved. Appraisals have been speeded up and other acquisition activities handled more efficiently.

4. *Budget*
   Since the Department of General Services was split out from the Department of Finance it has been reported by our staff that the budget process works more smoothly. Budget analysts of the Department of Finauce seem to have more time available for review and assistance on budget problems.

5. *Overhead*
   The cost of services provided seems to be trending upward. We have particular reference here to overhead costs that are added to services. For example, general overhead costs have increased from 3 percent to 12 percent over the past several years. In addition, certain services include a shop overhead of 18 percent. We know

and appreciate that salary and wage costs show an upward trend, as do rents, supplies, etc. It may be that these elements of overhead justify increases. However, some review and study of overhead rates would seem to us to be warranted.

6. *Leases*

The Department of Employment has a large number of local offices located in many communities throughout the state. While a number of our buildings are state-owned, there are many of our premises that are leased. Therefore, leasing arrangement and clearance with the Department of Finance and the Department of General Services are important items to us. With the budget function in Finance and the lease function in General Services, clearance with two departments is necessary. It is suggested that some improvement might be possible in coordinating clearances required with these two departments. Some review of the clearance procedures might reveal methods of expediting this operation.

7. *Printing*

Our relations with the printing plant have improved. Service is good and at the same time unusual job requirements are handled more expeditiously. The printing plant staff seems to be more understanding of our needs and problems.

8. *Pool Cars*

The Department of Employment has had relatively small need for use of cars from the automotive pool. However, in those instances where we have had a need, the service has been excellent. The help and advice of automotive management people regarding cars permanently owned or assigned to the Department of Employment have been very good.

9. *Repairs, Alterations, and Building Maintenance*

We have found the maintenance staff in San Francisco and Los Angeles to be very helpful on small alterations and repair jobs. It is much better to be able to use this service than to have to make contracts with outside contractors for jobs of very limited scope. While our overall experience has been very good, we have noted instances of inconvenience to ourselves when the mechanics or building tradesmen have been called off of our job to work on some other building problem with an apparently higher priority. This may be unavoidable, but it is nevertheless inconvenient and disrupting.

We have some concern over cost accounting and billing methods on these jobs It would be our suggestion that a study be made to see whether streamlining and improvement of the cost accounting procedures related to this work would be possible.

10 *Office Machine Repair*

We are very pleased with this service The work is good and the expansion to new machine types has improved the service. Our procurement group feels that where this service is provided, the quality of the repair work is better and it is available at lower

cost than is generally true where contracts are made with office equipment concerns. Further, the availability of this service eliminates the preparation and negotiation of numerous small contracts for maintenance and repair. The negotiation and preparation of the contracts are probably quite costly in comparison to total cost of maintenance and repair work when provided by office machine companies.

11. *Contracts*

Quite a number of procurement and service contracts are negotiated each year with outside vendors Such contracts are cleared with the legal staff of the Department of General Services Our experience reflects that this clearance works quite expeditiously, and in our opinion, has improved since it has been under the direction of the Department of General Services

12. *Facilities Planning*

The Facilities Planning Section has, within the limited funds and personnel available, performed in a most responsible manner. This section has provided more services for the Department of Industrial Relations than it has for the Department of Employment. It is their opinion that more personnel and funds are required by the Facilities Planning Section to perform a completely satisfactory job. It would appear that the present personnel are most capable, but the extremely heavy workload causes delays which are incompatible with an efficient operation.

If we can be of further assistance, please feel free to call on us.
Sincerely,

ALBERT B. TIEBURG
Administrator

STATE OF CALIFORNIA
EDMUND G. BROWN, Governor

Health and Welfare Agency

PAUL D. WARD, Administrator
State Capitol, Room 1020, Sacramento 95814

Honorable Milton Marks
California State Legislature
State Capitol Building
Sacramento, California 95814

February 8, 1966

Dear Milt:

This is in reply to your letter of October 19 asking for our comments regarding the Department of General Services I am sorry that we have delayed so long in replying but we had some question about how we should handle this and this resulted in a delay in getting adequate information for our reply.

In general, we believe the new Department of General Services has made substantial progress in improving services to our departments. We have found that an attitude of cooperation and consideration is prevalent in a genuine effort to meet special requests and special requirements resulting from new programs or emergency situations

One area where we continue to have some problems is around the approval of contracts This is not to suggest that there has been no improvement in service If measured by earlier experience, this service also has improved However, the expansion of programs that require a variety of contracts appears to have created a substantial additional workload and as I am sure you are aware of the number of approvals that must be obtained for each contract (Finance, General Services and the Personnel Board) make it difficult to gain quick approval except on a one-time crisis type of situation. In this type of instance where the issue is sufficiently important, exceptional service is the rule. However, I am sure you can recognize this cannot happen in too many cases or the total process will be bogged down by rushes Our concern is that any speedup in the process of executing contracts can result in a savings to the state in that the date of execution frequently determines the date in which federal participation in the cost of the contract may become available.

May I suggest two areas for your consideration that might improve this seemingly cumbersome process First, that the legal requirements for approval of contracts be examined with the view of simplifying them with respect to some of the more routine types of contracts. Second, that serious consideration be given to whether adequate legal staff is provided the Department of General Services in the light of a volume of contracts that appears to be growing more rapidly than some other aspects of governmental operations

Thank you for giving us an opportunity to express our views on the effectiveness of this new department. As you can see, in general, we are well satisfied with the results of your legislative efforts in establishing this agency.

Sincerely,

PAUL D. WARD
Administrator

December 2, 1965

The Honorable Milton Marks
California Assembly
State Capitol
Sacramento, California 95814

Dear Milton:

In reply to your letter of October 19, 1965, I am enclosing herewith the comments of the four departments in the Public Safety Agency in regard to the staff services provided by the Department of General Services.

Cordially,

BRADFORD M. CRITTENDEN
Administrator

State of California

Memorandum

Date: November 16, 1965

To: The Honorable Bradford M. Crittenden
Administrator, Public Safety Agency
2490 First Avenue, Sacramento

From: California Disaster Office

Subject: Review of Department of General Services Programs

In response to your memorandum of October 27, 1965, the following comments are offered:

This agency is assisted by the Department of General Services in four principal areas:

1. Executive and Administrative Services (Personnel Office)
2. Physical Facilities Planning and Development (Office of Architecture and Construction)
3. Property Management (Communications Service and Transportation Service)
4. Technical Services (Office of Procurement)

The level of service provided, as compared to that received from other agencies before the Department of General Services was created, appears to be much the same, with certain exceptions noted below:

1 Executive and Administrative Services:

This agency originally entered into contractual arrangements with the Department of Finance to provide civil service employees to this agency, as mutually agreed upon between the agencies. There has been no significant change in services rendered since this function was transferred to the Department of General Services.

2. Physical Facilities Planning and Development:

This agency receives engineering reports reflecting damage incurred by local political jurisdictions as a result of natural disasters and also receives services in connection with construction projects There has been no apparent change in service since these functions were transferred from the Department of Public Works to the Department of General Services.

3. Property Management·

a Vehicles:

The agency has had difficulty in obtaining sufficient assigned vehicles from the state vehicle pool for agency operations. This shortage of supply of vehicles has occurred since the Department of General Services was established.

b. Communications·
This agency has noted two major areas involving services rendered with which we have had difficulty:
(1) The costs of service have been steadily increasing, whereas the services rendered have not increased at the same pace
(2) It appears that the Communications Service tends to control the agency's communications programs, rather than perform services. Since the function of the Department of General Services in this field is that of service, we believe that the control function should be eliminated

4. Technical Services:
The level of service has remained at the same level as that we received prior to the transfer of functions to the Department of General Services.

JOHN W. GAFFNEY,
Director

State of California — Public Safety

Memorandum

Date: November 16, 1965

To: Honorable Bradford M. Crittenden
Administrator, Public Safety Agency
2490 First Avenue
Sacramento, California

From: Department of Veterans Affairs

Subject: Legislative Review of Department of General Services Program

You have asked for this department's comments and suggestions concerning improvements or areas in which we have experienced problems in the recent transition of the Department of General Services to the present central staff services system

As we understand it, the Department of General Services was established in October 1963 for the purpose of centralizing to a greater degree service and supply activities separate from program and budget planning and fiscal control functions of the state government When the new department provides services on a centralized basis more effectively and efficiently than the many operating units can provide such services for themselves, the basic objective of making maximum contribution possible toward the operating efficiency and economy of all agencies, departments, and other segments of our state government will have been achieved

Although individual departments, such as ours, will, of course, not be directly involved with all the services and activities of the Department of General Services, its influence will indirectly manifest itself in diversified areas, such as employee parking facilities, contract purchased items, economies and increased efficiency in communications, and master rental contracts to mention a few Of course, there is no way for us to determine whether any of the improvements that have taken place since the new department became operational would or would not have occurred even without the change If some method could be devised whereby billings to individual agencies for services such as building maintenance, telephone charges, pool car usage, and special work order charges could be accelerated to a more current basis, a tangible service will have been performed

JOHN HANDSAKER
Administrative Deputy Director

Date · November 16, 1965
File No.

To. Honorable Bradford M Crittenden
Administrator, Public Safety Agency
P.O. Box 898
Sacramento, California

Attention Mr. H. A Rosa Assistant to the Administrator

Subject: Legislative Review of Department of General Services Programs

From: State Fire Marshal—Sacramento

Pursuant to your request, we are submitting a preliminary report incorporating comments relating to the present central staff services system of the Department of General Services

At the outset, it is difficult to properly comment upon problems, differences in services, if any, and areas of needed improvement, since a relatively short period of time has ensued since inception of the organization In general, and with one exception, there has been no noticeable change in services rendered to the State Fire Marshal

The single exception is in connection with the functional aspects of the Building Standards Commission The concept of this commission is excellent. It is the means by which conflict, duplication, and overlap of building regulations within the Administrative Code are eliminated. There is little doubt as to the need for the process

Due to the framework of the commission, however, state agencies, required by statutory provisions to adopt and enforce building regulations, are finding increasing difficulty in processing proposed regulations through the commission within reasonable time limitations. This is particularly true in cases where the enforcing agency, after making a finding of an emergency in accordance with the Administrative Procedure Act, is subject to the determination of a commission committee whether or not an emergency does in fact exist

The net effect of this kind of delay can, in many instances, cause a tremendous dollar loss and an unnecessary burden to designers, builders, and owners affected by the regulation or lack of regulation.

It is our opinion that the same degree of control over building regulations can be effected by the commission without maintaining the present "red tape" burden We believe the commission should favorably consider permissive adoption, repeal, or amendment of any administrative building regulation by a state agency after that agency makes a finding of an emergency (in accordance with the Administrative Procedure Act) without being subject to a prior determination by the commission of whether or not an emergency does in fact exist. Such emergency adoption, repeal, or amendment would then be made subject to the commission's findings relating to conflict, duplication, or overlap.

I hope the above comments will serve to assist in the further improvement of the Building Standards Commission's functions.

GLENN B. VANCE
State Fire Marshal

State of California

Memorandum

Public Safety

Date: 16 November 1965
File No.:

To: The Honorable Bradford M. Crittenden
Administrator
Public Safety Agency
P.O. Box 898
Sacramento, California

From: Military Department—Office of the Adjutant General
P.O. Box 214334—Sacramento, Calif. 95821

Subject: Legislative Review of Department of General Services Programs

The Military Department has not been subjected to any appreciable increase or decrease in services nor have any problem areas been encountered by the transition of the Department of General Services to the present central staff services system

CLARENCE D. SMITH, JR.
Brigadier General
Assistant Adjutant General

HUGO FISHER
ADMINISTRATOR

EDMUND G. BROWN
GOVERNOR OF
CALIFORNIA

OFFICE OF THE ADMINISTRATOR
RESOURCES BUILDING
NINTH AND O STREETS

... of Conservation
... of Fish and Game
... of Parks and Recreation
... of Water Resources
... Reclamation Board
... Water Quality Control Board
... Water Rights Board
... Water Pollution
Control Boards

THE RESOURCES AGENCY OF CALIFORNIA

Sacramento, California
January 10, 1966

Honorable Milton Marks, Assemblyman
Twenty-First Assembly District
Chairman, Committee on Government Organization
504 Russ Building
235 Montgomery Street
San Francisco, California

Attention. Mr. Judson Clark
Committee Consultant

Dear Mr. Marks:

In response to your request I am submitting comments concerning programs administered by the Department of General Services.

In order to prepare an answer in the most meaningful way I consulted with major units of the Resources Agency and the views expressed in this letter are an interpretation of the views held by departments, boards, and commissions in the agency. As a general comment, I should like to say that the Department of General Services has, in many instances, improved on services as they were rendered when organizationally attached to the Department of Finance. The improvement stems from the increased attentions such functions have received as part of the Department of General Services. When these same functions were carried on in the Department of Finance they were secondary to the fiscal and budget activities and quite naturally did not receive the type of management and supervisory attention that more pressing responsibilities of the Department of Finance received.

Increased management attention to general services has improved such services This is not to say that there have not been problems. A mistake often made in large organizations is staffing a general service function for a minimum rather than a maximum workload. While this may seem to be fiscally prudent, actually, minimum staffing has the opposite effect. Large backlogs of work build up and operating departments, frustrated in their attempts to get work done through central services, find other ways of performing their required functions. Further, great amounts of employee time is wasted.

Now let me move to the specific Functions of General Services as provided to the Resources Agency are discussed in the following paragraphs The assessment of these services is made in the light of relationship of performance to the needs of operating departments in the Resources Agency.

Airplane service—Airplane services provided by the Department of General Services are excellent but should be expanded. Many hours of valuable employee time could be saved by further development of this economical type of air transportation

Architectural services—Architectural services continue to improve under the leadership of the new State Architect. The office is performing in a timely way and the work is both imaginative and practical.

Automotive management—Typically all central motor pools are criticized by users. The efficiency of such pools cannot be assessed on the basis of such criticism For the most part, the transportation needs of Resources Agency employees seem to be met by transportation management, but at least two of the departments in the Resources Agency feel that a much better job could be done if employees in automotive management could develop a greater attitude of service and an interest in program accomplishment. I tend to believe that the automotive services remain at about the same level of effectiveness as in the past.

Building maintenance—In the Resources Building we have had excellent building maintenance We were moved from previous locations with great efficiency and had excellent cooperation from the Department of General Services and all others involved We have had minor complaints but experience seems to indicate that the Resources Building is better maintained than other buildings in which the present occupants have worked and that the service is effectively and efficiently executed.

Central duplicating—There has been a central duplicating unit in the state for many years. The quality of work done by this unit has been very satisfactory but the backlog has been so great that only materials which have no specific deadline are entrusted to central duplicating. This unit is a good example of a unit that is managed in a "pennywise and pound foolish" manner. The unit should be equipped with the most efficient machinery and be staffed with a maximum staff in order to provide service in a timely manner. There will always be a need for small duplicating services close to the office requiring the work. Central duplicating services can be successful, but only if they are performed promptly.

Communication services—Departments in the Resources Agency requiring large and widespread communication services find this to be the greatest area of weakness in the new Department of General Services We recognize the need for a central communcation service. This service should be geared to assisting and improving the communications operations, particularly for departments with emergency operations such as the Division of Forestry during the fire seasons and the Department of Water Resources during the flood seasons Communication services should develop standards and be in a position to consult and advise operating agencies in the same manner that purchasing now

does Operating departments should not have to deal with the Department of General Services insofar as budgeting for communications requirements are concerned This is an area that is of great concern because of the potential hazard to life and property caused by operations geared to the past rather than to the present A new look at this function is in order.

Data processing—Recently, great improvement has been evidenced by General Services in the field of automatic data processing. The direction now being taken seems to be the right one. Presently, this function is woefully understaffed The ADP area is one in which the state can effect large savings if competent staff and proper equipment judicially located can be provided. In the last legislative session moves were made to improve the staffing and the services of the ADP function. In view of the magnitude of the job that faces the state, continuing attention should be given to improving automatic data processing, particularly in the area of staffing In the staffing area attention should be given to both improved quality and increased quantity of personnel.

Employee parking—The Resources Agency moved to its new building more than a year ago, bringing a large population to an area of town that did not have adequate parking facilities Many difficulties were experienced but in my opinion the Department of General Services did an outstanding job in quickly and efficiently solving major parking problems faced by occupants of the building

Legal services—We have great respect for the chief counsel and the majority of staff in the legal section of the Department of General Services. Having said this, we must point out that departments, boards, and commissions unanimously agree that as presently organized the legal section is required to be all things to all people and is one of the greatest bottlenecks to action remaining in state service. It should be profitable to reexamine the functions of this office. In cases where review of contracts, major service agreements, and other legal documents is necessary, such review might very well be better performed in the Attorney General's office. Greater delegation should be given to organizations having their own legal advisers. The placement of the function in General Services seems historical rather than logical. The Department of General Services has need for a legal staff to assist the State Architect and other service units within the department The Director of Finance also has a need for "in house" legal assistance but the legal services in the department might very well apply only to General Services and the Department of Finance.

Management planning—In the reorganization of the Departments of Finance and General Services the organization and cost control unit underwent a change. Departments have missed some of the services of the old organization and cost control unit We understand that General Services now has plans to move in the direction of increased services to departments by competent management analysis and we would encourage them to do so.

Merit Award Board—The Merit Award Board has developed an award system that has been helpful in improving state service. One improvement that might be made would be developing authorization

for individual agencies and departments to develop their own nonmonetary recognition systems which would contribute to and enlarge the statewide program.

Office of Administrative Procedure—In general, the contact we have had with the Office of Administrative Procedure has been most satisfactory. The office is quite service oriented and, insofar as their services are used by the various departments of the agency, have been quite satisfactory.

Printing—A very noticeable improvement has been made in the printing services received by our departments Not long ago a tremendous backlog existed in publications required by departments, the Legislature and the general public Today the printing plant is meeting reasonable schedules and great credit should go to persons responsible for this improvement.

Property acquisition—The property acquisition activities in General Services has been expanded by incorporation of other small acquisition units from operating departments. There appear to be some problems which are not being met by this unit, although in fairness we must say that it is too early to make a judgment. It is hoped that the property acquisition unit can be staffed with a sufficient number of qualified people to render adequate service to the organizations they serve.

Purchasing—The purchasing division in General Services has been doing a very outstanding job. For example, the purchasing division was most helpful in assisting the Department of Water Resources in working out most difficult problems connected with the purchase of heavy equipment and machinery for the huge generating plants and pumps needed in the State Water Project. The purchasing division has kept within reasonable lead times on their purchases and has been able to provide the departments with a timely and useful service.

Records management—The statewide records management program is now well underway and seems to be contributing to efficiency and economy of operation.

Telephone book—The latest edition of the state telephone book shows great improvement and General Services should be commended and be encouraged for efforts in this direction.

Xerox master contract—The master contract for renting xerographic equipment seems to be working well.

Summary—The Department of General Services has been in existence for only a short while. Even during its shakedown period a number of services have improved appreciably. Careful attention to central services provided by the department can certainly lead to greater efficiency in state government In all large organizations, public or private, central services have been used and have contributed to efficiency of operation when they have been equipped and staffed to carry on these services effectively, efficiently and with dispatch.

Successful central services have the need for good management continually working under an orientation of serving well segments of the organization utilizing such services. Central service units have been

unsuccessful and have not contributed to savings in those cases where they have not been service oriented, and where adequate equipment and staff have not been available. A look at improving the Department of General Services with the above in mind would appreciably add to the efficiency and economy already contributed by that department.

I appreciate the opportunity to comment on this matter. I hope the remarks from this agency will prove helpful to you.

Sincerely yours,

HUGO FISHER
Administrator of Resources

TRANSPORTATION AGENCY

The Honorable Milton Marks
State Assemblyman
235 Montgomery Street
San Francisco 4, California

December 30, 1965

Dear Mr. Marks:

I am sorry to have delayed so long in responding to your letter requesting our comments and suggestions concerning the central staff services provided by the Department of General Services.

In general, the services provided by the Department of General Services to the Transportation Agency are considerably more limited in scope than those provided by General Services to most state agencies For example, because of the volume and special nature of its work, the Department of Public Works itself performs many of the housekeeping and operational functions supplied by General Services to some other state agencies. For this reason, we are not in a position to advise you fully concerning the level of centralized services now being performed by General Services in most of the vital areas of activity that would tend to be most productive of increased efficiency as a result of centralization (e g , real estate acquisition, real property management, data processing, etc.). No doubt the comments of the other state agencies would provide you with more information concerning the level of such centralized services now being provided by the Department of General Services

In those limited areas of activity with which the Transportation Agency does come into regular contact with the Department of General Services (e g , purchasing, communications, printing services, the Office of Architecture and Construction), it appears that such services are better coordinated than previously as they affect assistance to client agencies, and that certain improvements in procedure and service have been made. The progress during the first year or so of organization appears to follow very closely the progress made by the U.S. General Services Administration, which was, incidentally, the first new agency recommended by the federal Commission on Government Reorganization (the Hoover Commission) which was put into operation by the federal government In the 15 years that the U.S. General Services Administration has been operative a long list of improvements has been made, and at the same time the agencies served have been freed up to concentrate more on their own programs and less on housekeeping.

We look forward to the adoption of many additional improvements in the general services field as these improvements can be studied and applied.

It should be noted that in one special respect, the establishment of the Department of General Services has been of considerable organizational and operational advantage to the Transportation Agency. By

its assuming responsibility for the operations of the Office of Architecture and Construction it has made it possible for all departments of the Transportation Agency to concentrate all of their effort in carrying out the transportation-oriented functions of government that are properly the responsibility of the Transportation Agency.

If we may be of any further assistance to you concerning this matter, please advise.

Respectfully,

ROBERT B. BRADFORD
Administrator of Transportation

EDMUND G. BROWN
Governor

RICHARD A. McGEE
Administrator

Corrections
Youth Authority
Adult Authority
Board of Trustees,
California Institution for

STATE OF CALIFORNIA
Youth and Adult Corrections Agency
State Office Building No 1
SACRAMENTO 14

Hon. Milton Marks, Chairman
Assembly Committee on Government Organization
State Capitol
Sacramento, California

January 10, 1966

Dear Mr. Marks:

This is in reply to your letter of October 19 which asked for our comments and suggestions on the operating results of the reorganization which established the Department of General Services in 1963.

In summary, we have found that services have, generally speaking, either maintained the satisfactory level at which they operated prior to creation of the new department or, in cases where the services were less than satisfactory before, have tended to improve under the departmental organization.

Specific comments as to particular services follow. Services which are not mentioned are in our opinion being performed at a satisfactory level.

1. *Office of Architecture and Construction.* The operations of this activity are being improved and certain innovations such as the establishment of workshops on good design are commendable. There is a need for further definition of the functions of the division internally and as they relate to the space utilization unit of the facilities planning service and the building standards unit of the administrative services division of the Department of General Services. Thought might be given to a client-centered rather than function-centered form of organization.

   We understand that some organizational changes are now under way and hope that they will alleviate the problem

2. *Legal services.* The quality of legal services provided is excellent although at times we encounter delays which may be the result of insufficient staff in relation to workload. The problems of our particular agency are complicated by the fact that we are one of the few large agencies in state government which do not have one or more administrative advisers within its own organization.

   Some further delegation of authority for contract approval may be considered based on development of guidelines and further training of staff in the agencies.

3. *Facilities planning.* This service has not been established for a sufficient period of time to make possible a definitive evaluation of its services but we have found the attitude of the personnel to be cooperative and we feel that the idea of improving coordination between leasing and space planning is basically sound. As mentioned above, we feel that the definition of functions performed by the space utilization unit should be reevaluated.

4. *Data processing* The Department of General Services has improved tremendously in this area and insofar as we can see is closely in step with the statewide effort toward improved automated data processing. Much yet remains to be done but the department has the necessary leadership and we are confident that we will receive increasingly better service as we work toward improved utilization of the concepts of modern information systems

5. *Communications service* The leased line (ATSS) service has improved substantially and is now to the point where there appear to be sufficient leased lines to handle most calls without undue delay In addition to the toll saving, I am sure that the availability of leased lines has encouraged executives to use the telephone in many cases where a letter would customarily be required, and that this has been both efficient and economical It is suggested that the current approach to strictly monetary evaluations of identifiable costs and savings in ATSS additions be modified by recognition of these hidden savings

6 *Transportation service* Is it doubtful in my mind if a state pool car operation which must be performed within strict budgetary limitations can ever provide service which is entirely satisfactory to its clientele I wonder, therefore, if a fresh approach which would strongly encourage utilization of private cars might not make it possible to substantially reduce the size of the state pool Perhaps some intermediate plan where the state would furnish a car to an individual on a shared expense basis might be worth investigation This is sometimes done by private firms and the employee pays for that portion of the mileage which is for his own convenience while the firm pays for that portion which is company business Obviously under these conditions existing insignia identifying the car for official use only would have to be changed, and the car could not be licensed on an exempt plate basis

Another alternative which we would recommend for consideration is to make much more use of the practice of leasing non-state-owned cars for individual trip use It might be interesting to compare the unit cost of a master contract with one of the large national car rental services with the unit cost based on the entire expenditure for operating the state pool, including overhead, amortization of buildings, and all factors

One general point which I would like to discuss is what appears to be an increasing tendency to decentralize functions to the using agencies. Examples are consideration of decentralizing lease contracts and current decentralization of allocation of parking spaces and permitting

subpurchase orders directly to vendors under blanket contract. In theory we are in favor of decentralization but the problem is that we do not thereby qualify for additional staff to handle the additional work. I would recommend that before there is further decentralization a careful evaluation be made of the added responsibilties in terms of staff time requirements, and that wherever appropriate the decentralization be accompanied by an increase in staff as required to accomplish the objectives of the decentralized program.

Sincerely yours,

RICHARD A. MCGEE
Administrator
Youth and Adult Corrections Agency

APPENDIX B

LETTER FROM DIRECTOR OF GENERAL SERVICES RESPONDING TO AGENCY ADMINISTRATORS' LETTERS

HONORABLE MILTON MARKS
Chairman, Assembly Committee on
Government Organization
State Capitol
Sacramento, California

Dear Mr. Marks:

From an analysis of the agency administrators' letters to your committee in response to your questions regarding the activities of the Department of General Services for the past two years, I would like to report to you the status of our approach to the major areas mentioned in their letters

In the area of legal services, the substance of their comments is the time it takes for final contract approval. In effect, they ask that there be a reexamination of the legal processes.

In response to their request, the following steps have been taken. The Governor's cabinet through its cabinet secretary, Jim Alexander, has asked that the present contract review team, which was working on methods for greater delegation, be expanded to include broader representation from the state agencies and expanded in scope to cover such reexamination.

The statutory General Services advisory council composed of members nominated by agency administrators together with members appointed from industry has implemented the cabinet's request, and there has been created a special seven-member advisory committee to:

—review adequacy of published standards and guidelines used to instruct all agencies in how to prepare sound contracts.
—consider delegation of routine and minor contract approval to operating departments to the maximum extent possible but provide for post audit by General Services
—consider the extent of jurisdiction and review by General Services. Under what circumstances do we have concern for other than "legal" matters
—consider the specific suggestions on attachment A.

Their findings and recommendations will serve as the basis for improving and expediting contract approval.

In the area of space planning and leasing, the substance of the [illegible]rators' concern was leasing coordination, clearance procedure, [illegible], cost estimates, delays and delegation.

In this regard the entire facilities planning which includes space [illegible] leasing has been reorganized with a new chief appointed, training [illegible] implemented, and a complete new manual of procedures has been prepared, adopted and issued by the director with the approval

of the Director of Finance Increased staffing has been included in the Governor's Budget and is presently being discussed with the legislative committees reviewing the budget.

Basically, the recommendations and procedures will:

—accomplish better coordination and simplification of activities concerning more than one unit of the Department of General Services
—make a clear statement of basic principles and procedures to be followed by the staff of facilties planning and by other agencies in acquiring leased facilities.
—make a greater delegation to certain larger agencies for negotiating their own leases in accordance with approved standards.
—improve competition among prospective lessors where premises must be built to suit state requirements.
—make for better coordination between the Departments of General Services and Finance with respect to authorizations for obtaining additional space required. In the future this will be cleared by Finance on an annual basis after the final budget has been approved by the Legislature.
—improve advance planning for space requirements of the various state agencies

Attached is a copy of the new manual instructions to all state agencies on leasing policies and procedures and a copy of the findings and recommendations of the "task force" which was the basis of the instructions.

In the area of transportation services, the agencies express concern with shortage of available cars in our central pool This may or may not be a temporary situation brought about by the necessity for to reduce the total annual miles driven We approached this by requesting agencies to implement a closer review of the use of state cars We required a supervisor's approval for automobile use. This was to accomplish an elimination of low-priority mileage in order to the legislative 5 percent cut in the transportation services budget. We anticipated the mileage reduction and disposed of 250 overage obsolete vehicles. The situation may be only temporary and full adjusted by the year's end. Attached is our management memo to agencies on this subject

Most of the other comments by the administrators seem to reveal around level of staffing and inability to render all the services desired This, of course, is mostly a budget problem and as we are able anticipate workload increases and adequately present them in the budget, improvements in service will result.

Thank you for the opportunity to present this information, and will be present with staff at your committee meetings for further discussion.

Sincerely yours,

ROBERT L. HARKNESS
Director

SUGGESTED COMMITTEE CONSIDERATIONS

1. What transactions are subject to undue waits and delays.
2. Where the delays occur—in legal services, elsewhere in General Services, in the Department of Finance, or due to clearance with Attorney General, State Personnel Board, etc
3. Determine cause of delay
   a. Are the contractors poorly prepared and therefore require much revision
      (1) Are the purposes of the contract unclear
      (2) Is the state left exposed to contingencies
   b. Are backlogs accumulating around certain types of transactions, around certain members of the staff, or for transactions of certain agencies
4. What transactions should be entirely exempt from General Services review
5. What transactions can be handled by operating departments subject to review on a post audit basis
6. For what types of transactions can standards be developed so that agencies can do a better job of contract preparation subject to General Services review or even make it possible to delegate approval of contracts prepared within the standards
7. How can legal services teach agencies how to prepare good contracts —through periodic skull sessions, General Services sponsored training programs for agency personnel, etc
8. What is the legal responsibility of the Department of General Services in the approval of contracts?

State of California — Revenue and Management

Memorandum

To: Robert L Harkness, Director of General Services — Date: December 21, 1965 — File No:

From: Department of General Services

Subject: Task Force Progress Report on Leasing

This report is in response to your request that an analysis be made of the Department of General Services leasing activities The report has been organized as follows

I Proposed policies to be contained in the State Administrative Manual

II Organization

III. Procedures

IV Internal Operations Under this broad heading are subsections on management information and production control, communications and file management, and in-service training

To accomplish this review, personnel were interviewed in the leasing and space utilization units and the legal section We also interviewed persons in the Departments of Motor Vehicles, Highway Patrol, Employment, and Finance who are directly concerned with leasing practices, policies, and procedures For additional background we contacted and obtained literature from the Safeway Stores, Inc., Post Office Department, federal General Services Administration, Los Angeles County, New York State, and Pacific Telephone and Telegraph Company

All of the personnel contacted in the course of this study have been most cooperative and helpful Many of the recommendations are, in fact, based in large part upon ideas contributed initially by the chief and the staff of facilities planning service

ARTHUR W COLLINS, Chairman
Task Force on Leasing

I. *Proposed policies to be contained in the State Administrative Manual*

Based on our review of leasing activities statewide, we have concluded that existing lease policies are inadequate for either facilities planning or other state agencies The State Administrative Manual (SAM) has a section on property which is inadequate as a general guide on leasing In addition, the Facilities Planning Leasing Manual is in need of revision and should be consolidated with the Master and Space Planning Manual We are therefore in the process of preparing policies to be contained in a subchapter on leasing in the State Administrative Manual Major features to be contained are

1 A statement clarifying that the Department of General Services is the final authority on leasing and that all requests will be sub-

mitted to the department for execution or approval unless specifically exempted, prior to committing the state

2 A general policy statement indicating when leasing of real property will be authorized

3 A section outlining general responsibility and procedures for lease negotiation This section will indicate in general terms which leases will be negotiated by Facilities Planning and which by other agencies

4 Several sections will be devoted to explaining the procedure for requesting space This will indicate the forms to be used, the steps to be taken, and the approvals required

5 A section indicating when new construction under leasing is authorized and a listing, in order of preference, of the acceptable methods to be used The preferable method will be the assignable option technique This technique will allow all proposers to make proposals on the same site, which will be selected by the State, and removes land cost as a competitive factor This method should greatly increase the number of proposals and provide better leases for the state

6 A section providing detailed instructions on the use of the above methods

7 A section outlining the method for soliciting sealed proposals This section will require sufficient notice, a specific deadline, and ample time for preparation of proposals The agency soliciting proposals will be required to develop a fair market rental figure to compare proposals against Should no satisfactory proposal be received within acceptable range of the estimated fair market rental, all proposers will be given the same opportunity to amend their proposals Proposers will be required to submit proof of their ability to perform Successful and unsuccessful proposers will be so notified in writing When an agency solicits proposals, it will be required to submit to facilities planning a list of all persons notified, a copy of any advertising, and copies of all proposals received

8 A requirement that the successful proposer obtain the services of a licensed architect to design any building constructed for prime occupancy by the state under a lease agreement.

9 Several sections outlining policy on options, lease terms, lease provisions, and services, to be included in any lease.

10 Statements on state policy on rental overlap, alterations, terminations, and renewals

11 Statements on state policy on inspections and disqualification of proposers

II. Organization

Consolidate the space utilization unit with the leasing unit to create a current planning section

This change will require a major reorientation of the present role of both the lease agent and the space utilization analyst The operation, after being consolidated, will lend itself to the use of a common

class which will be best suited for the specialized functions facilities planning service performs, and will assure a better qualified and more flexible staff We recommend that a single class of facilities planning analyst be established

To assist the chief of facilities planning in managing the facilities planning service, the organization should have two senior facilities planning analyst positions The seniors occupying these positions would share responsibility for all technical and administrative functions and management of all activities which relate to the facilities planning service Assignment of work to the seniors would be on a geographical basis Assignment of work to the facilities planning analyst under a senior's supervision would be based on a further breakdown of the broad geographical area This would help develop an improved knowledge of the real estate market over the entire state and help establish definite responsibility for state-owned and leased premises

In addition to the primary assignment by geographical area, each facilities planning analyst would be assigned responsibility for liaison for one or more operating departments This assignment will include working with the department involved to prepare space standards for the space needs peculiar to that department This double assignment will result in specialists for geographical areas, while at the same time retaining a contact person to interpret the needs of the various departments

To assist the chief of facilities planning in carrying out his responsibilities, we also recommend that a new position at the journeyman level be established with the working title of staff facilities planning analyst This position will be assigned to plan for further improvements within facilities planning service, develop and revise internal working procedures, develop statewide space standards, coordinate budget preparation, coordinate paperwork and forms management, maintain the Department of General Services Facilities Planning Manual, and prepare recommended revisions to the State Administrative Manual (See Exhibit I for detailed position responsibility statement for senior, staff and journeyman facilities planning analyst)

It is probable that a full-time position cannot be devoted to this work from the present limited staff However, if the new positions for the 1966-67 fiscal year are authorized, one of these positions should be used for that purpose as soon as possible

III. Procedures.

Revise the system by which space is requested and approved

To determine how space request documents are processed in the present system, a detailed flow chart was prepared showing the specific steps required to process the "Advance Space Requirement Report," Form 9, the "Space Request to Department of General Services," Form 6, and the "Standard Lease Agreement," Form 1 In addition, a time sample was taken to find out how long it takes

between each step in the procedure As a result of these flow charts and the time sample, we concluded·

- Too much time is required between each step in the procedural flow of documents
- There is duplication in review between the Department of Finance, space utilization, leasing, and legal services
- The present policy for approval of lease documents is inconsistent with the general principle of placing administrative responsibility at the lowest level qualified to accept it

We, therefore, recommend that the present system be revised as shown in the flow chart in Exhibit II The major changes from the present system are as follows.

A *The advance space requirement report, Form 9, will be retitled "Space Requirements Report" and forwarded to the Department of General Services senior facilities planning analyst prior to being forwarded to the Department of Finance budget division*

Under the present procedure, the Department of Finance reviews the Form 9 prior to General Services

The purpose for this change is to insure that information contained in the Form 9 is adequate for the Budget Division to make a logical decision This review will include a determination by the Senior Facilities Planning Analyst of the full implications involved on the space request, being certain that he knows what the agency is planning to do and why, seeing that the space request conforms with this plan and the over-all program of the agency, and relating the request for the facility to the State Building Program This change will

- Establish General Services as the focal point for controlling all documents in the lease process
- Provide the Department of Finance with more complete information as to the proposed transaction to permit them to review the financial and program implications
- Require the requesting agency to document its program requirements more carefully To accomplish this, it is proposed to require agencies to submit a freehand sketch of the space layout required.

Greater emphasis will be placed on preparing a complete annual program for space requirements In this connection, it is proposed that facilities planning service initiate the process by preparing for each state agency a detailed listing of all rental obligations currently of record This will require a data processing system discussed later in this report *When completely established, this should permit annual approval by the Budget Division of the proposed program* in a manner similar to that in effect for budgeting of equipment Thereafter, budget division will not need to review individual proposals unless they are a change from the approved annual program

B *The senior facilities planning analyst will be assigned responsibility for making the decision as to whether the agency or General Services should handle a proposed lease transaction*

The decision is now made by a lease agent This decision level is too low in the organization structure and cannot properly reflect all factors which need to be considered in making such a decision.

C *The requesting agency will be required to accept or reject the proposed lease conditions prior to the actual preparation of the lease document.*

The present procedure is to have the agency approve the lease document after the lessor has signed the lease This is undesirable both from a procedural and timing standpoint The agency should approve the conditions of the proposed lease at the time the negotiations are completed and the lessor has verbally approved the terms. This approval should be at a sufficiently high level in the agency to avoid the necessity for further approvals after the lessor has signed the lease

D *The responsibility for approval of all leases will be assigned to the Department of General Services' assistant director*

The assistant director is now responsible for approval of Form 6 which is the authorization to the leasing section to prepare the lease document The final approval of the lease rests with legal services for leases under $10,000 and three-year term The deputy director approves all leases exceeding these amounts Since the establishment of the chief of facilities planning position, there is no justification for the assistant director to retain this line control over preparation of lease documents It is the responsibility of the chief of facilities planning to make this decision and to ultimately recommend to the assistant director consummation of the lease.

To facilitate the final review of the lease agreement, a transmittal and signoff sheet has been prepared (See Exhibit III) The form will provide the assistant director information concerning who has officially prepared and reviewed the agreement

E. *The space request to Department of General Services, Form 6, will be retitled "Lease Negotiations Summary Report" and should describe the terms of the lease.*

It is our intent to require the negotiator to certify that the precontract negotiation conditions fully satisfy the Department of General Services' policies, procedures and space standards requirements, and the lessor is agreeable to the terms set forth in the Form 6 Based upon the information contained in the Form 6 concerning the proposed lease and the certificate by the negotiator, the agency will then approve or reject the conditions of the lease by signing or rejecting the Form 6

Since the Form 6 will contain all the information about the proposed facility to be leased including acceptance by the les-

sor, agency, and negotiator, it will expedite preparation of the actual lease document

IV. *Internal Operations.*

Management Information and Production Control

A management information and production control system has been designed to furnish the director's office, the chief and staff of facilities planning, and the agencies concerned, sufficient information to properly direct the facilities planning program When in full effect, this system will·

1. Provide the basic data necessary for each state agency to prepare an annual program for space requirements
2. Provide a means of recording and expediting requests for space changes.
3. Furnish management reports, including sufficient detailed information to determine workload, staffing, and production factors
4. Facilitate the preparation of special reports concerning existing leases, space assignments, and requests for changes as required for current and long-range planning (See Exhibit IV for a description of proposed reports to be prepared)

This system will be accomplished by assigning a transaction number for each request which is pending as of December 31, 1965, and received subsequently, and recording necessary information required to classify the type of request, location of the proposed premises, and finally the major factors of the approved lease or space assignment The system will consist basically of tabulating cards (which will later be converted to electronic data tape), the periodic reports produced by the tabulating cards, and a visible board to record daily progress on the assigned projects.

It has been generally established that the data processing section of the Department of General Services does not have available capacity for this additional tabulating system However, the Office of Architecture and Construction presently employs a programmer whom we believe is capable of absorbing this additional work without any additional out-of-pocket cost It is our recommendation that the architecture programmer be assigned to install this tabulating system and to have the necessary work accomplished by the Division of Highways or other state facilities having sufficient capacity.

It is anticipated that the major advantage of this proposed system, that of providing basic information for an annual program, will be available before July 1966 when the Department of Finance calls for preparation of the 1967–68 Support Budget

Reimbursements for Expenditures

At the present time the facilities planning service is supported by a General Fund appropriation with approximately $20,000 in reimbursements received on work orders of the space utilization section These reimbursements consist of an hourly rate charged for the architect's time and charges for services of the Office of Architecture and Construction in reviewing mechanical and electrical

drawings and specifications In addition the remaining costs, particularly of the leasing section, are charged to special fund agencies as a part of the annual pro rata fiscal charges. This is based upon an arbitrary weighting of the number of leases by agency There have been complaints from some agencies that they are double charged under this method

Under the recommended procedure each analyst working on a particular transaction would keep track of the time expended on that transaction regardless of what phase he was doing It would thus be practical to establish a system similar to that used by the property acquisition service to obtain reimbursements for all work accomplished by the facilities planning service other than that of general planning such as long-range plans which could not logically be charged to any particular agency or any particular construction work order Since the ability to accomplish this will in effect be a byproduct of the rest of the recommended system, a decision will not have to be made until preparation of the next support budget request as to the method of reimbursement to be used

Communications and File Management

1 *Establish a formal means of issuing policy and instructions to the facilities planning staff*

There is no formal means by which the chief of facilities planning can communicate policies, procedures, and instructions to the facilities planning staff

A formal notice series should be created and called facilities planning notice Each facilities planning notice would be assigned a consecutive number, which consists of the last two digits of the calendar year, plus a consecutive number which starts over each calendar year (e g , 65-01, 65-02, etc) The notice would be signed by the chief of facilities planning The facilities planning notice series would serve as an interim system for issuing and amending facilities planning policies, procedures, and instructions These notices would later be issued as revisions to the Facilities Planning Manual

2 *Establish definite control concerning use of form letters*
Form letters which affect basic policies and procedures must be under control at all times There are a number of informal form letters in facilities planning service These, in many cases, were prepared and issued without the purpose, intent, or use being clearly understood All form letters should be approved by the chief of facilities planning.

3 *A dictionary of standard leasing terminology needs to be prepared and included in the State Administrative Manual*
Leasing is a relatively complex operation and common terminology is desirable to eliminate misunderstanding on what is meant by the various technical terms used in the profession

4. *In-service training program for all facilities planning service and agency personnel handling space planning matters should be initiated in the following areas:*

   a. Objectives and responsibilities of facilities planning service

   b. Public relations.

   c. Leasing policies and procedures.

   Continuing attention should be given to the improvement of employees' skills and job knowledge Assistance from the departmental training officer should be obtained to implement this recommendation.

EXHIBIT I (Part 1)

SENIOR FACILITIES PLANNING ANALYST

Function

The senior facilities planning analyst under general administrative direction of the chief of facilities planning shares responsibility for, and participates in, a coordinate capacity in all technical and administrative functions and in management of all activities which relate to facilities planning service This includes development of program and policies, maintenance of good public relations, and making of independent decisions within approved program and policies of General Services as they relate to state space requirements.

Responsibilities and Authority

Within the limits of the approved program and policies of facilities planning, Department of General Services, the senior facilities planning analyst is responsible for, and has commensurate authority to accomplish fulfillment of the duties listed in this statement. The senior facilities planning analyst may delegate portions of his duties to employees under his supervision, but may not delegate his overall responsibility for the satisfactory completion of work assigned to him.

- Provides supervision for the planning, direction and coordination of all work activities assigned to facilities planning which relate to the senior facilities planning analyst sphere of responsibility.
- Prepares and recommends to the chief of facilities planning statewide leasing policies or changes in existing policies.
- Determines whether requests for space from the state departments and agencies to General Services contain sufficient information to prepare a lease or an assignment of space. This includes a determination of the full implication involved in the space request, being certain that he understands what the agency is planning to do and why, seeing if the space request conforms with this plan and the overall program of the agency, and relating the request for the facility to the state building program.
- Assigns work to the facilities planning analysts under his supervision, establishes work schedules and priorities and insures the completion of the work within the schedule.
- Provides direction for preparation of leases, including assignment of lease transaction codes.
- Reviews and approves facilities planning analysts' recommendations to the chief of facilities planning to prepare lease documents for approval by the Director of General Services.
- Keeps informed of availability of space, financing rental rate levels, and leasing conditions in all locations of the state.
- Keeps informed of leasing problems experienced by agencies and assists in developing appropriate policies to obviate such problems.

EXHIBIT I (Part 2)

FACILITIES PLANNING ANALYST

Function

The facilities planning analyst, under general administrative direction of the senior facilities planning analyst, is responsible for the complete review and analysis of space requests for facilities either state or privately owned, and when required the negotiation of any leases necessary to obtain such facilities.

Responsibility and Authority

Within the limits of the approved program and policies of facilities planning, Department of General Services, the facilities analyst is responsible for, and has commensurate authority to accomplish, the fulfillment of the duties listed in this statement.

- Performs all work required for handling all lease transactions for the geographical area assigned. This includes negotiating leases, preparing leases and all related documents, and reviewing and making recommendations concerning proposed leases and documents.
- Obtains all approvals required to consummate a lease including lessor, agency and legal approval.
- When required, authorizes preparation of plans and specifications by Office of Architecture and Construction to be used for developing preliminary plans and specifications in securing lease quarters.
- Assists other state agencies in a consulting capacity wherever professional advice is needed concerning leasing policy, procedures, and activities.
- Reviews leases negotiated by other agencies and recommends leasing policies and procedures to be followed.
- Determines availability of space, financing rental rate levels, and leasing conditions in all locations of the state.
- Keeps senior facilities planning analyst informed of leasing problems experienced by agencies and assists in developing appropriate policies to obviate such problems.

EXHIBIT I (Part 3)

STAFF FACILITIES PLANNING ANALYST

Function

The purpose of the staff facilities planning analyst is to assist the chief of facilities planning in discharging his responsibilities by assisting him in planning for improvements, developing and revising internal working procedures, development of statewide standards concerning housing of noninstitutional state employees, coordination of budget preparation, paperwork and forms management, maintenance of the Department of General Services Facilities Planning Manual, and preparing recommended revisions to the State Administrative Manual. The staff facilities planning analyst reports to and is under the direction of the chief of facilities planning

Relationship and Duties

- Implement and coordinate the task force's instructions on facilities planning service.
- Develop all necessary policies and procedures to provide the facilities planning services staff information about work methods and procedures, time reporting, and administrative policies of facilities planning service.
- Responsible for revision and maintenance of the Facilities Planning Manual and the issuance of revision whenever required.
- Responsible for development of statewide space utilization and art layout standards.
- Responsible for administering the facilities planning services release system. This includes preparation of internal directives on policies and procedures and general information for the chief of facilities planning, maintenance of the Department of General Services administrative order system, and the State Administrative Manual.
- Preparation of special reports and studies concerning facilities planning activities as required.
- Responsible for maintenance of paperwork and forms management and merit award program

EXHIBIT III

Department of General Services **Facilities Planning**

LEASE TRANSMITTAL

Lease Transactions Number_____
Lease for · Department _____ Division_____

This lease transmittal form is to be dated, initialed, and forwarded after the indicated action is completed

FROM LEASE NEGOTIATOR_____ DATE_____
The attached proposed lease conditions have been approved by the tenant agency (ies) on _____ (date) and the lessor on _____ (date), and the funds encumbered. The lease conditions agree with previously approved Form 6 and comply with state leasing policies and procedures (except as noted on the reverse side of this form) and approval is recommended.

TO: (Route in order listed)	*Date Forwarded*	*Initials*
——1 SIGNATURE OF AGENCY AUTHORIZING OFFICIAL (if negotiated by agency personnel) _____	_____	_____
——2 SENIOR FACILITIES ANALYST a Lease documents reviewed and approved	_____	_____
——3 DEPARTMENT OF GENERAL SERVICES LEGAL SERVICES a. Lease is approved for legality and may be consummated upon approval of the director's office _____	_____	_____
——4 CHIEF, FACILITIES PLANNING a. Lease documents comply with state leasing policies and procedures and approval is recommended _____	_____	_____
——5. ASSISTANT DIRECTOR a. Lease agreement approved and signed. b Lease file returned to Facilities Planning	_____	_____
——6 FACILITIES PLANNING RECORD CLERK a Signed copies distributed b. All documents filed _____	_____	_____

EXHIBIT IV

The following reports will be published by facilities planning on a continuing basis.

Report No. 1

Report No 1 will be prepared monthly for all transactions and will contain the following items

a Transaction number
b. Transaction code
c. Agency
d. City
e. Agent assigned

This information will be arrayed in the following manner:

I. Transactions received during the reporting month
II. Transactions completed during that month
III Transactions on hand prior to that month in 30-60-90-etc.-day increments
IV. Cumulative listing of transactions completed from beginning of fiscal year

Reports Nos. 2 and 3

Reports Nos 2 and 3 in addition to the above information will also contain for each lease:

f. Term of lease
g Number of square feet assigned or leased
h Price per square foot
i Monthly rental
j Annual rental
k. Building number
l Type of space assigned or leased
m. Estimated occupancy of space
n Any options to renew lease and number of days of notice required
o. Any cancellation privileges and number of days notice required
p Building information (misc.)
q Name and address of lessor
r. Address and number of spaces of any parking which is available

Report No 2 will contain the above information for transactions completed during the prior month and will also have a cumulative listing with this information for all transactions completed since the beginning of the fiscal year

Report No. 3 will contain the master list of all space assignments and leases in effect as of end of fiscal year. Report No 2 will be a monthly supplement to update the annually prepared Report No 3.

.RTMENT OF GENERAL SERVICES
"ENTO

December 30, 1965

Management Memo 65-42

TO · All State Agencies

SUBJECT: Leasing of Real Property, Policies and Procedures

Effective immediately, the State Administrative Manual is revised to contain the attached subchapter outlining the state's policies on leasing of real property and the procedures to be followed in requesting and obtaining space Sections 8617, 8617 1, 8617 2, 8617.3, and 8617 4 of the State Administrative Manual are hereby repealed

To insure that changes in the leasing policies and procedures are called to the attention of those concerned, the State Administrative Manual sections attached to this memorandum should be reviewed by all key personnel concerned with leasing

All agencies should revise their existing procedures to comply with these new policies and procedures.

ROBERT L HARKNESS
Director of General Services

I concur:
HALE CHAMPION
Director of Finance.

STATE ADMINISTRATIVE MANUAL
PROCUREMENT OF PHYSICAL FACILITIES

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GENERAL 1370

Purpose 1370 1

The purpose of facilities planning service of the Department of General Services is to plan and provide adequate space for all client state agencies as requested and approved.

Services Provided to State Agencies 1370.2

To fulfill this responsibility, facilities planning provides to its clients the following services:

1. Forecasts future space needs and assists in determining whether these needs will be met by state construction or leasing from private owners
2. Maintains an inventory of existing state-controlled office space
3. Develops policies, procedures, regulations and methods governing the assignment, reassignment, and utilization of space.
4. Develops basic state leasing policies, procedures and standards to obtain maximum utilization of space.
5. Negotiates leases of real property for state use and approves leases negotiated by other state agencies not exempted by law.
6. Assigns and reassigns space in state-owned and leased buildings.

Space Procurement Policies and Procedures 1380

Adherence to Policies and Procedures 1381

The policies and procedures on leasing of real property as contained in this subchapter are to be followed in all instances Any proposed deviation from these policies and procedures must be immediately submitted in writing to the Department of General Services and approval obtained before proceeding.

Legal Authority for Leasing 1382

Government Code Section 14669 authorizes the Director of General Services to hire or lease any real or personal property for the use of any agency, including the Department of General Services, if he deems it to be in the best interests of the state

All requests for the leasing of real property or personal property such as prefabricated structures, except as exempted by law or in writing by the Department of General Services, will be submitted to the Department of General Services for approval prior to committing the state.

GENERAL LEASING POLICY 1383

The policy of the Department of General Services is to adequately house the activities of state government in state-owned or leased quarters. Additional leases of privately owned space will be authorized when it is determined by the Department of General Services that:

a. Needs cannot be met satisfactorily in space presently owned or leased by the state.

b. The terms of the proposed lease are most favorable to the state, with due consideration to agency program needs, and at rental rates not in excess of those prevailing in the community for comparable facilities.

RESPONSIBILITY FOR LEASING 1384

Department of General Services

The Department of General Services will

1. Review all leases negotiated by other agencies for compliance with established policies and procedures and for reasonableness of rate
2. Negotiate all major leases—a major lease is any lease with an annual rental of $10,000 or more
3. Negotiate metropolitan area leases regardless of rental amounts except as exempted below.

Other Agencies

The following agencies are authorized to negotiate all their own leases subject to the approval of the Department of General Services:

1. Department of Motor Vehicles
2. Department of California Highway Patrol
3. Department of Employment

Specific authority for other agencies to negotiate their own leases will be made at the time the space requirement report, Form 9, is received. This determination will be based upon the availability of qualified agency leasing staff and the estimated annual rental of the lease

See Section 1291 for other specific exemptions.

LEASE REQUIREMENTS AND CONDITIONS 1385

Lease Term 1385.1

Lease term is the period of occupancy of the premises from the initial date to the last day of agreed occupancy

When a lessor agrees to construct a building according to state plans and specifications or perform major renovations in an existing building, state policy permits a lease term of 10 years, cancellable by the state any time after the fifth year Leases which require new construction so located that the building cannot be used for usual commercial purposes may be written for 15 year term, cancellable by the state any time after the 10th year

Where minor alterations are proposed on any property or where adequate facilities to meet the needs of an agency are at a premium, a noncancellable lease term for as long as five years is permissible.

When agency needs indicate probable additional space requirements before five years and the lease contains an option to hire such additional space it is permissible to negotiate these leases for firm terms not exceeding five years

Terms in excess of the above must be fully justified to the Department of General Services

Options for Additional Term or Space 1385.2

In lieu of including options to extend the term, state policy is to provide for a longer term and include a right to cancel the lease after a specified term (See Section 1385.1.)

A longer term with cancellation rights offers the following benefits

1. Allows continued occupancy when expected expansion does not materialize.
2. Facilitates cancelling leases after other lease arrangements have been made.
3. Provides flexibility in cancelling or renegotiating after the firm term if the market has decreased below the rental provided in the lease.
4. Enables lessors to obtain better financing although the lease is cancellable at the end of a specified period.

Options for additional space for agencies with a history of predictable expansion of space requirements are encouraged. This is also applicable to master leases.

Janitorial Services 1385.3

Leases will require the lessor to furnish janitorial services.

Utilities 1385.4

Leases will normally require the lessor to pay all utilities except telephone Any provision which requires the state to pay utilities in a privately owned building, unless separate meters are used for the state, must be fully justified on the Form 9 An estimation of cost must be included.

Fair Employment Practices Clause 1385 5

A fair employment practices clause is included in all state leases where the state is the tenant

Hold Harmless Clause 1385 6

A "hold harmless" clause in favor of the lessor in any state lease or agreement is not permitted

Prevailing Wage Clause 1385 7

An approved prevailing wage clause will be included in all leases where the lessor constructs a new building or performs alterations, estimated to cost $10,000 or more, in an existing building

Escalation Clause 1385.8

The policy of the Department of General Services is not to permit escalation clauses in leases during the firm term of the lease. In guaranteeing reimbursement for taxes or services and utilities, the state is relieving property owners of increased costs which are part of the normal operation of business and should be anticipated in establishing rental levels.

Subsequent Expenses for Alterations 1385 9

After a lease has been executed or approved by the Department of General Services and initial alterations and improvements have been provided for, no additional expenses for alterations or improvements to the premises will be allowed unless justified on the basis of absolute and urgent necessity

Overlap in Rental 1385 10

In determining the effective date of leases for facilities which will replace existing leased facilities, sufficient overlap will be provided between the termination date of the existing lease and the effective date of the new lease to allow time for moving No additional overlaps will be permitted

Terminations 1385 11

Agencies will notify facilities planning, Department of General Services, at least 60 days prior to the expiration of a lease or time specified for exercising an option as to their intention to vacate the premises or to continue the occupancy on a month-to-month or other basis

Unless it is otherwise provided in the lease, the lessor legally is entitled to receive notice of termination at least 30 days prior to the date when such termination shall become effective in order to terminate a month-to-month tenancy. The Department of General Services will serve notice of termination, upon request of agencies, to lessors of premises leased by the Department of General Services.

Renewal 1385.12

An officer designated by the agency occupying premises under leases containing renewal options shall notify Facilities Planning, Department of General Services, of intention to exercise the option at least 60 days prior to the date the option must be exercised Failure to notify the Department of General Services may result either in losing the option or in unnecessary extra cost to the state if the rental is increased

NEW CONSTRUCTION UNDER LEASING AUTHORITY 1386

A lease involving new construction by the lessor will be authorized only when adequate space cannot be obtained in existing facilities at a reasonable cost to the state When new construction is approved, one of the following methods will be used for site selection:

a. *First choice*—Assignable option—Secure an assignable option on an acceptable site on a form approved by General Services This technique allows all proposers to make proposals on one site and removes land cost as a competitive factor.

b *Second choice*—Site proposal—Prospective developers are invited to submit specific sites for consideration Each of these sites is inspected for acceptability Persons in control of the accepted sites are then invited to submit lease proposals

c *Third choice*—Lease proposal—Prospective lessors are invited to submit lease proposals on any sites within a defined geographical area

The agency must submit reasons for using any technique other than the assignable option

Procedures—Assignable Option Method 1386 1

Any agency negotiating a lease under the Assignable Option method will follow the procedures outlined below:

1. Define acceptable geographic area and determine minimum site requirements
2. Select the desired site considering relative cost and location
3. Appraise the selected site to determine that the asking price is reasonable. This appraisal may be brief, but must be supported by some indication of market value such as comparable sales in the area The appraisal can show a "range of market value"

   If the asking price exceeds the "range of market value" and the seller refuses to lower the price, the site must be rejected
4. Make an economic analysis of probable rent to determine if the project is feasible.
5. Obtain signed assignable option from owner using the Department of General Services' standard option form A payment of $10 for an assignable option is the current policy The option period should be sufficient to give the successful proposer 30 days to exercise the option after award
6. Obtain preliminary title reports and analyze to make sure there are no encumbrances which might hinder the state's use of the property
7. Prepare "proposer's package" to include:
   a. Preliminary plans and specifications.
   b Proposal form
   c Sample lease
   d Transmittal letter outlining project terms and indicating assignable option conditions.
8. Advertise for lease proposals in local newspapers. Where project size warrants, advertisements should be placed in large metropolitan papers and newspapers of statewide circulation, such as the *Wall Street Journal*. "Proposer's packages" should be sent to all who show interest and to any parties who have previously indicated an interest. All requests for lease proposals shall specify a deadline, after which no further proposals will be accepted Ample time should be allowed for prospective proposers to prepare well-considered proposals.
9. Offers should be opened at a previously announced time and place so that all interested parties may attend
10. Offers should be analyzed and compared with the previously prepared economic analysis If the low offer is within the "acceptable rental range" and acceptable in other respects the agency should recommend that the Department of General Services accept the proposal and notify the proposer of this recommendation. See Section 1387 for general sealed proposal instructions
11. Prepare lease documents and have successful proposer sign lease Forward lease to General Services for approval or execution

Procedures—Site Proposal Method 1386 2

Any agency negotiating a lease under the site proposal method shall follow the procedures outlined below

1 Define acceptable geographic area and determine minimum site requirements

2 Advertise for site proposals in local newspapers. Mail brochure to all who show interest and to any parties who have previously indicated an interest Brochure should contain all requirements and should specify a deadline after which no further proposals will be accepted Ample time should be given to allow as many proposers as possible to submit site proposals

3 Inspect and evaluate all proposed sites Select acceptable sites. Notify all parties who submitted sites of approval or rejection.

4 Make an economic analysis of probable rent to determine if the project is feasible.
5. Send "proposer's package" to include:
   a. Preliminary plans and specifications
   b. Proposal form
   c. Sample lease
   d Transmittal letter outlining project terms
6 Follow procedure for assignable option method, Section 1386 1 beginning at Step 9.

Procedures—Lease Proposal Method 1386.3

Any agency negotiating a lease under the lease proposal method shall follow the procedures outlined below.

1 Define acceptable geographic area and determine minimum site requirements
2 Prepare plans and specifications
3. Make an economic analysis of probable rent to determine if the project is feasible
4. Prepare "proposer's package" to include:
   a. Plans and specifications
   b. Proposal form
   c. Sample lease
   d. Transmittal letter outlining project terms.
5. Follow procedure for assignable option method, Section 1386 1, beginning at Step 8

SOLICITATION OF SEALED PROPOSALS 1387

To assure maximum response by prospective lessors on space needs requiring new construction, newspaper advertising and other notices to interested individuals and groups shall be made requesting sealed proposals All notifications shall specify a deadline, after which no further proposals will be accepted Ample time should be allowed for prospective proposers to prepare well-considered proposals

All details, terms, and specifications should be carefully considered before proposals are solicited A fair market rental figure for the proposed construction shall be developed prior to proposal opening.

If there are material changes in the terms or specifications, all proposals should be rejected and new proposals solicited with opportunity for all proposers to submit new proposals.

No proposer shall be given preferential treatment or privileged information. If low proposal is within acceptable range of the estimated fair market rental and acceptable in other respects, it should be accepted. All proposers will be given the same opportunity to lower their proposals when no proposal is within acceptable range of the estimated fair market rental.

All proposers shall be required to submit proof of their financial ability to perform. No contract shall be awarded until the agency and General Services are satisfied that the proposer can perform

The successful and unsuccessful proposers shall be so notified in writing.

When agencies are authorized to solicit proposals, they shall submit to facilities planning a list of all prospective proposers notified, copies of any advertising, and copies of all proposals received.

DISQUALIFICATION OF PROPOSERS 1388

A proposer will be disqualified when

1. He is unable to submit proof of his financial ability to perform or provide a performance bond
2 After proposal opening, he is unable or unwilling to perform on conditions and rates specified and agreed

ZONING AND PROPERTY CONTROL 1389

When the state acquires an assignable option, the negotiating agency will assume responsibility for assuring that the property is zoned for the intended use

When the site proposal or lease proposal methods are used, the proposer must get a letter from local zoning officials indicating that zoning for the intended use will be approved on request The proposer also must certify that he has control of the property which he submits as a site.

USE OF A PRIVATE ARCHITECT 1390

Buildings to be constructed for prime occupancy by the state under a lease agreement shall be designed by an architect registered to practice under the Business and Professions Code of the State of California. The architect's preliminary design will be subject to approval by a board consisting of a representative from each of the following state agencies: the tenant agency, the Office of Architecture and Construction, and facilities planning service of General Services

The architect shall also prepare the instruments of service such as drawings and specifications, and supervise the construction.

STATE ADMINISTRATIVE MANUAL
PROCUREMENT OF PHYSICAL FACILITIES

INSPECTIONS 1391

Facilities planning will assume responsibility for inspections of construction and improvements on leases which they negotiate when new construction is required or alterations are estimated to cost $10,000 or more. Tenant agencies are responsible for inspecting and assuring that alterations costing less than $10,000 are performed according to specifications.

When an agency conducts negotiations, they are responsible for inspections.

Any agency responsible for inspections must certify to the Department of General Services that the construction or alterations have been performed in accordance with specifications

LEASING PROCEDURES 1392

Request for Space 1392.1

Any agency requiring space will notify the Department of General Services in writing on space requirement report, Form 9.

Upon approval of the Form 9 by the Department of Finance and the Department of General Services, facilities planning service will determine and notify the agency whether (1) facilities planning will conduct negotiations for the required space or (2) authorize the agency to locate acceptable space

Negotiations for Space by Agency 1392.2

Agency negotiations for space may be conducted only after the facilities planning service has indicated this authority on an approved Form 9.

When the agency has located space which meets their requirements and

1. conditions in proposed lease are the same as authorized in the Form 9 (terms, cancellations rights, area, and type of space),
2. proposed effective date will not overlap term of existing lease except to provide sufficient time for moving purposes,
3. proposed lease is the most favorable to the state,
4. quality of proposed space is consistent with need and meets quality standards of state,
5. value of parking is comparable to value of similar parking facilities in the area, and
6. net rate per square foot is reasonable,

they shall prepare a negotiations summary report, Form 6, summarizing terms and conditions of proposed lease, quality of proposed space, and solicitation and advertising efforts. This report will be attached to the lease agreement and included in the facilities planning lease file.

If any one of the following three conditions exists:

1. the rental exceeds 10 percent above the amount approved in the Form 9,
2. the area is more than 10 percent above the area approved in the Form 9, or
3. the noncancellable term is greater than that on the Form 9,

the agency must forward the lease negotiations report, Form 6, to facilities planning for obtaining approval from the Department of Finance prior to preparation of the lease agreement.

Preparation of the Lease Document 1392 3

Department of General Services' approval of the Form 9 authorizes the agency to prepare a standard form for leases, Form 1. Agencies should inform prospective lessors that *no lease is valid unless executed or approved by the Department of General Services.*

After the agency has prepared the Form 1 and obtained the lessor's signature, it should be submitted to the Department of General Services for final review and approval or execution.

Procedure for Space Procurement, General Services Negotiated 1392 4

BUDGET PREPARATION

General Services—Facilities Planning	1	Initiates annual rental schedule report for each agency listing current rental obligations of the agency for the current budget year, rental obligations which expire during the current budget year, and pending space requirement reports, Form 9, in two copies Retains one copy and forwards the second copy to agency.
Agency	2	a Reviews and corrects the annual rental schedule report indicating changes anticipated b. Returns updated report to facilities planning, General Services, for review
General Services—Facilities Planning	3	a Reviews report for technical adequacy, amount of space proposed, and cost per square foot. b Approves report and returns to agency for inclusion in budget
Agency	4	Includes "Annual Rental Schedule Report" in agency budget and forwards to Department of Finance.
Finance	5	a Reviews agency annual rental schedule report for compliance with fiscal and budgetary policies b. Includes report in Governor's Budget.
Legislature	6	Considers agency rental schedule report as a part of the agency budget

SPACE REQUIREMENT NOTIFICATION

Agency	7	a Prepares space requirement report, Form 9, in quadruplicate Retains one copy and forwards the original and two copies to General Services, facilities planning NOTE: It is the responsibility of the initiator to prepare any sketches necessary to intelligently describe the layout desired and to include these sketches with the Form 9 If more than a sketch is needed, a request for plans should be made a part of the space requirement report b Forwards space requirement report, Form 9, to General Services, facilities planning.
General Services—Facilities Planning	8	a Reviews agency request for space. b Determines whether the Department of General Services or the agency will negotiate the lease and so notifies the agency on a copy of the Form 9. c Obtains Department of Finance approval when necessary.

LEASE NEGOTIATION—GENERAL SERVICES NEGOTIATED

Lease Negotiator	9	a Performs all work required for handling lease transactions including requesting Office of Architecture and Construction to prepare any required plans and specifications.

b Obtains lessor's approval of proposed terms.
c Prepares lease negotiation summary report, Form 6, in triplicate
d Signs the negotiations summary statement portion of the Form 6 and forwards the original and one copy to the requesting agency for their approval of proposed terms.

Agency — 10. a Reviews and approves or rejects lease terms.
b. If approved, returns original Form 6 to General Services, facilities planning Retains copy for encumbrance of funds
NOTE The copy retained for encumbrance must be forwarded to facilities planning prior to the time the facilities planning analyst recommends approval of the lease. The original Form 6 should not be retained by the agency longer than 10 working days.

LEASE AGREEMENT

General Services—Facilities Planning — 11 a. Prepares lease agreement in quintuplicate Forwards original and four copies to the lessor.

Lessor — 12 a Reviews, approves, and signs all copies
b Retains one copy and returns the original and three copies to facilities planning.

General Services—Facilities Planning — 13 a Approves lease
b Notifies agency, Controller, and lessor of approval by distribution of signed copies.

Procedure for Space Procurement—Agency Negotiated 1392.5
See Section 1392 4 for budget preparation and space requirement notification (Steps 1 through 8)

LEASE NEGOTIATION—AGENCY NEGOTIATED

Agency — 9 a Performs all work required for handling lease transactions including requesting Office of Architecture and Construction to prepare any required plans and specifications
b Obtains lessor's approval of the proposed terms.
c Prepares lease negotiation summary report, Form 6, in duplicate
d Indicates approval of proposed terms by signing the negotiations summary statement portion of the Form 6

Agency (official) — 10 a. Reviews and approves or rejects lease terms
b. If approved, authorizes preparation of lease agreement and encumbrance of funds

LEASE AGREEMENT

Agency — 11 Prepares lease agreements in quintuplicate Forwards original and four copies to the lessor.

Lessor — 12 a Reviews, approves, and signs all copies
b Retains one copy and returns the original and three copies to the agency

Agency — 13 Prepares lease transmittal, Form 9036, attaches to lease documents along with the lease negotiation summary report, Form 6, and forwards to the General Services facilities planning for approval and consummation

General Services—Facilities Planning — 14 a Approves lease
b Notifies agency, Controller, and lessor of approval by distribution of signed copies

APPENDIX C
NEWSPAPER SERIES

The following is reprinted from the San Jose Mercury of Monday, January 23, 1967

A MERCURY INVESTIGATION

'Super Service' GSD Plagued With Abuses

By LOU CANNON
Mercury Sacramento Bureau
(First of a Series)

SACRAMENTO—The new Reagan administration is about to launch a major reform in a 'super service" department which was formed to foster efficiency and economy in state government, but has run aground on the shoals of duplication, waste and rising costs

With the creation of the Department of General Services (GSD) three years ago, a "new era" in the management of the state's business was begun, contends the department's glowing progress report

A *Mercury* investigation into the GSD found that this "new era" includes questionable leasing activities, bidding irregularities and recurrent complaints of inefficiency

Official records and a series of interviews with people both in and out of GSD gave this picture of the department that was formed to centralize state services

• An Auditor-General's report, completed late in 1965 but never made public, discovered seven cases of questionable building lease activity in the GSD and its predecessor service in the Department of Finance

• Two of the questionable leases cited by the Auditor-General were negotiated with a Sacramento businessman who subsequently served as director of a land development firm Another director and stockholder of the same firm was GSD Director Robert L Harkness, whose status under the new Reagan administration is currently clouded Reports within the past week indicate that he is about to be relieved of his post as departmental director and shunted into a less sensitive job compatible with his civil service status in the Department of Finance

o GSD spending increased by $8 2 million from its first year in 1963–64 to $57 6 million three years later, an increase of nearly 17 percent Department employment climbed from 4,150 to 4,473

• The GSD-managed State Fair continues to lose money. The 1965–66 fiscal year net loss was $256,641 despite tax revenues of $474,014 received from horseracing

o State parking, centralized when the GSD was born, has been divided among four offices The man who headed the centralized parking charged in a successful court case that he was fired because he "made too many faces red"

o Unauthorized use of state cars is widespread "Anybody can get a car," complained Sen (then Assemblyman) Tom Carrell (D-San Fernando) at a hearing last year

o An investigation by the Little Hoover Commission made public in the San Jose *Mercury* disclosed a near-monopoly in bidding for California Highway Patrol cars and specifications that discouraged competitive bidding The GSD's office of procurement conducted the bidding, which is still under investigation by the Attorney General's office

o A private party, Viertel's Automotive Service, struck it rich at state expense by renting land from the Division of Highways under a Los Angeles freeway A Little Hoover Commission report showed that Viertel's made $43,935 during the past fiscal year for towing and storing cars confiscated by the state in narcotics cases on the state-owned land, which was rented for only $4,680 a year

o Janitorial service costs the GSD 40 percent more per square foot than it does the federal General Services Administration, Legislative Analyst A. Alan Post found Post, who unsuccessfully urged a budget cut last year, is now pushing for adoption of federal standards and a savings of $500,000

o Reports by the Department of Finance, the Legislative Analyst and the State Personnel Board have revealed costly absenteeism at the state printing plant, well above the normal rate for the industry

"There undeniably were abuses of sick leave at the printing plant," concedes deputy director Stanley B. Fowler "But we think we have corrected them"

Harkness and Fowler contend that the GSD has responded favorably to legislative criticisms of the department Further says Harkness, some GSD critics have magnified the department's supposed shortcomings "for their own purposes"

The *Mercury* investigation found strong points as well as weak ones in the state's super service department Auto inspection procedures have been improved so that the state now scraps cars when it is no longer profitable to repair them, rather than at an automatic mileage point

The same Auditor-General's report which raked GSD leasing policies over the coals found property acquisition to be "generally satisfactory."

The state printing plant, despite its absenteeism problems, has made significant savings in the printing of textbooks

And the implications of illegal conflict-of-interest against Harkness and assistant director Arthur Collins arising from the stockholder interests they shared with Sacramento developer Charles E (Duke) Brown remain totally unproven

The GSD won a major victory when an appeals court overturned a $123,000 verdict against the state for the department's award of a leasing contract to Brown

But the *Mercury* also found that the GSD, set up to streamline government, has instead contributed to state government's ever-rising cost Charged with both service and control, the GSD has stressed the former and downpedaled the latter

The results include a rising tide of legislative resentment

The Legislature, acting on a recommendation of the Little Hoover Commission, created the GSD in 1963 out of the Department of Finance.

Hale Champion, Director of Finance under ex-Gov Edmund G Brown, backed the move which was intended to allow the Finance Department to concentrate on policy and control matters and free the GSD for day-to-day operations of government

"If you become deeply enmeshed in operations, you can't concentrate on policy," Champion said "The Department of Finance is a lot better operation since it's no longer involved in the things GSD has to do"

These things include 20 separate services, among them state communications, transportation, property acquisition (except highways), leasing, building standards, office and administrative services, purchasing, printing, "systems analysis," hearings officers for public agencies, state insurance, merit awards and the State Fair

The GSD took over the Office of Architecture and Construction from the Department of Public Works

From the first the new super service department engendered legislative suspicion, some of it inevitably reflecting the traditional conflict between different branches of government.

Exasperated by unproven claims of savings, the Assembly Ways and Means Committee imposed a percentage slash on the GSD budget in 1965. But the department budget soared again in 1966.

Harkness maintains that economies effected by his department show up in savings for the agencies involved, not the GSD But most of the agency budgets have steadily risen, also

After weathering the first gales of legislative skepticism the GSD encountered a more serious storm in 1964 with public disclosure that Harkness served as a member of the board of directors of Northern California Developers, a firm that had holdings near the since-developed Capitol Mall.

Land developer Duke Brown, a frequently successful competitor for state business, later emerged as a director for the firm

Harkness owned 2,000 shares of the stock, which was initially capitalized at $10 a share. His deputy, Collins, owned 500 shares

The GSD director purportedly acquired his stock while holding a lesser position in the Department of Finance. He denied any conflict-of-interest at the time and maintains the same position today, though he is reluctant to discuss the issue.

His reluctance is not shared by Collins, who has kept his stock. The assistant GSD director showed the Mercury a list of original shareholders, a list that included the names of another former Finance Department aide, an employe of the Mental Hygiene Department and a Democratic Party official in Sacramento County who since has been named a Superior Court judge by former Gov. Brown.

Also on the list were four individuals and one investment firm that Collins said have done business at one time or another with the state.

Harkness traded his stock for land in Sacramento. He said at the time the issue erupted that he had stopped serving as a director 10 months before.

Both Gov Brown and Champion strongly defended their subordinate at the time

Recalling the incident, Champion says Harkness "acted honorably and didn't do anything wrong"

"With foresight Bob would have been wise to get rid of the stock when he was named director," Champion added "But no situation came up that confronted him with a conflict"

At the time of disclosure, the Harkness role in the land development company drew this comment from Assembly Ways and Means Committee Chairman Robert Crown (D-Alameda) "There is nothing illegal, but I do certainly feel it is unethical"

Duke Brown to this day remains one of the most influential Sacramento area builders When Gov Ronald Reagan set up recruiting headquarters on the Capitol Mall less than a week after election, Brown turned his plush quarters in the IBM building there over to the fledgling state chief executive

A Reagan official called the action "a semi-donation"

The state leases that resulted in the conflict charges involved Duke Brown, who was not included on the original May 23, 1961, list of shareholders displayed by Collins Brown built the Criminal Investigation and Identification and the Mental Hygiene buildings for the state

The CII building led to the initially-successful suit against the GSD Brown, the second low bidder, had been awarded the contract only a week before Collins acquired his Northern California Developers stock

Procedures in contracts for both the CII and Mental Hygiene buildings were criticized in the auditor-general's report

To answer implications that he had not actually purchased the stock, Collins produced financial records of other stock sales plus a canceled check

One of the stocks sold by Collins to purchase the Northern California Developers stock was the blue-chip Ford Motor Co, currently selling at about $46 a share on the New York Stock Exchange Northern California Developers stock has since slumped to as low as $1 a share

Collins, who said he bought the stock against Harkness' advice because he thought his boss "knew a good thing when he saw it," says he intends to keep his shares until the price goes up.

Asked why Harkness advised against buying it, Collins says: "He knew I didn't have too much money."

Ownership of a large amount of stock in a company with holdings near the capitol might have constituted a conflict-of-interest, Collins conceded in an interview

"But our share of the thing was peanuts," Collins said. "We would have had to be plain, damn fools to try to enrich ourselves in that way"

Refusal to sign contracts with Brown because of the businessman's interest in Northern California Developers would have "penalized the state," Collins said

The auditor-general's report relates this story

The leasing unit of the Department of Finance, now called Facilities Planning Service in the GSD, received some 12 proposals for constructing the CII building G Keith Kenworthy submitted the low bid of a $16,000 per month rental to the state

The state failed to obtain a performance bond from Kenworthy, who after a disagreement with leasing unit officials finally submitted satisfactory drawings for the building on Jan 25, 1961

Brown wrote a letter to the leasing unit on Feb 24 stating that he was aware the state was having trouble with Kenworthy and renewing his earlier offer of a $17,000 rental

At the end of March, Kenworthy had not started construction and the leasing unit under Collins declined him an extension Brown was awarded the contract for $17,000 despite a lower offer from another bidder of $16,500

The records do not indicate how the proposals were solicited or whether a deadline was specified," the report states

Kenworthy sued in June and Brown completed the building in September. On Aug 17, 1962, after negotiations, the leasing unit canceled the five-year lease with Brown and signed a 10 year lease for $13,500 a month

In 1962 Brown won the award to build the Mental Hygiene Building in Sacramento which afterward was leased to the state at a total rental of $1,680,000

The auditor-general's report, in reviewing the latter award, commented that the state had specified a very limited area for the building and had given bidders only 12 days to obtain the necessary details.

'It is our opinion that there was not adequate competition for the Department of Mental Hygiene lease," the report signed by Auditor-General William H Metrifield concluded

To this day the state continues to lease the Mental Hygiene Building from Brown But the CII lease had an unusual sequel

After a legislative committee found that the sprinkler system in the CII building was constructed so that water would pour over criminal records automatically if a fire occured, the CII moved into other quarters

Shortly before the move, Brown sold the building to Los Angeles buyers

The news of the sprinkler system reported in the Mercury, was happily picked by a columnist for the San Quentin prison newspaper who asked the obvious question

"Anybody got a match?"

The following is reprinted from the San Jose Mercury of Tuesday, January 24, 1967

The 'Disappearing' State Records

By LOU CANNON

Mercury Sacramento Bureau

(Second in a series on the costly path of the state's "super service" agency—the Department of General Services)

SACRAMENTO—"One of our most effective economy programs is paper management," contended former State Finance Director Hale Champion

The program, better known to some state officials as the records removal policy, enables state agencies to remove piles of useless records that would otherwise clog state office space

But the policy also has allowed state agencies to destroy purchase order records less than five years old and to throw out some bid records after one year

The *Mercury* encountered the policy last year while investigating California Highway Patrol bidding, monopolized for seven of the last eight years by a single Sacramento area bidder

Though Department of General Services (GSD) officials cooperated with the *Mercury* investigation, records of CHP car purchases before 1962 simply were not available E J Petersen, the state's principal buyer, said they had been destroyed

Similar records are kept by most businessmen at least seven years in accordance with federal and state tax laws

The records removal policy, when vigorously pursued by an agency, makes it impossible to discover the origin of a questionable buying practice, for all practical purposes, most written records before 1962 ceased to exist

Any possible use of this policy to conceal or cover up improper practices is compounded by the fact that the agency itself determines how long records are retained

The GSD, set up to centralize state government and improve its business practices, has nominal control over records removal but rarely exercises it Neither John Berke, who administered the policy, nor Robert C Woodall, the analyst who actually reviews the records destruction lists, can recall a single case where an agency has been told to keep records it wanted to destroy.

"Generally speaking, our problem is the opposite," Woodall said "They're trying to keep the records beyond their useful life"

Woodall said the records removal policy conducted by the GSD's office of procurement calls for purchase orders to remain two years in the open file and three years in the archives before they are destroyed Each type of bid document has a separate schedule of its own, some as brief as one year

The policy was staunchly defended by Champion, who was agency overseer of the GSD and direct boss of department director Robert L Hathaway

"I'll always err on the side of throwing out paper," Champion said

However, the ex-finance director conceded that the specific schedule adopted by the Office of Procurement for purchase orders and bid forms might be incorrect

"You shouldn't set one standard for business and another for government," Champion said

Under questioning Berke also said he thought purchase orders should be kept longer But he said he lacked specific knowledge of any controls imposed by the GSD

The comments of Berke and Champion at best illustrate a common problem in the department set up to streamline and centralize state government services

The GSD is so big, so unwieldy and so reluctant to exercise its control functions that not even the officials in charge seem aware of the effects of their own policies

The *Mercury* investigation into the GSD, established as a super service department three years ago also found that few state purchases have ever been reviewed by the GSD to see if monopoly bidding or other restrictive practices exist

Competition and inspection of the files by the bidders tends to prevent restrictive purchasing practices, maintains Stanley B Fowler chief deputy director of the GSD in charge of purchasing

Fowler said the GSD "prequalifies" bidders by requiring them to file a statement of their financial ability and capability to perform Qualified poten-

tial bidders then receive all invitations to bid on the product they supply.

"The state deals primarily with manufacturers and wholesalers and, by and large, purchases at highly competitive prices," warns a document for bidders supplied by the Office of Procurement "Usually retailers have difficulty in competing for state business"

The CHP car bidding showed that the "usually" statement has some important exceptions Disclosure by the *Mercury* that a single Sacramento area Dodge dealer had furnished all of the CHP cars for seven of eight years, often without competition, also cast doubt upon the GSD belief that bidding practices will remain fair and competitive without review.

Changes in CHP car specifications came about only after the Little Hoover Commission invited representatives of major automotive manufacturers to meet with Harkness The resultant competitive bids saved $600,000 for the state, and put the CHP into Oldsmobiles for the first time in years

Soon after the CHP bid opening, Assemblyman Vincent Thomas (D-San Pedro), chairman of the Joint Legislative Audit Committee, has said he would launch an inquiry into state purchasing practices.

The Thomas committee received—but did not publicly distribute—copies of an auditor-general's report into GSD leasing practices completed late last year. A copy of that report obtained by the *Mercury* shows sharp criticism by the auditor-general of seven specific building leases negotiated by the GSD or its predecessor unit in the Department of Finance

In several cases the auditor-general singled out difficulties in finding out what happened from GSD files

"Most of the files are inadequate; they do not indicate investigations and findings relative to the best spaces at the lowest possible prices," the report stated.

The report found that the GSD failed to give all bidders equal opportunity on an office building in Redding, had signed a lease for a Department of Employment building in Los Angeles that "may not have been in the best interest of the state," and had allowed the Board of Equalization to abandon a lease on its New York office in favor of plusher quarters without adequate justification

In the Los Angeles case the report discovered that the department had acted despite the advice of an employe in its own leasing unit who suggested two other less-costly locations.

"I personally don't want to approve it—*think* it smells," the report quoted the employe as saying His approval was never obtained.

In still another Los Angeles contract, the Public Works Building, the state "paid in excess of $40,000 for unoccupied space," the report said

The report concluded with 11 specific recommendations, eight of them intended to improve the procedures on sealed bids One of the 11 points specified that "no bidder be given preferential treatment or privileged information."

Assistant GSD Director Arthur Collins told the *Mercury:* "They never have been given preferential treatment"

But GSD officials, including Collins, admit that many of the auditor-general's other criticisms are valid and contend they have been met.

"I got the message in the auditor-general's report," said Vaughn Miller, the GSD's facilities planning chief "We went to work on it right away"

Miller said the report lagged behind the GSD's awareness of its own leasing faults, some of which he said were corrected before the 16-page document was published On the other hand, the GSD was not anxious to make the report public

"We certainly didn't rush to the newsstands with copies," Miller said

Harkness said the GSD took the criticisms as "a bible" even though he "hesitated to say that all of them were true" Instead of sampling GSD contracts, Harkness said, the auditor-general picked out certain specific ones

"They went to those and they just analyzed hell and breakfast out of those," Harkness said.

During the course of a three-hour interview Harkness showed a reluctance to discuss only two issues. One concerned leases negotiated by the state with Charles E (Duke) Brown, a leading Sacramento builder who became a director of Northern California Developers, Inc, a firm that owned property near the Capitol Mall.

Harkness also was a stockholder and once a director in the same company, a disclosure that aroused sharp criticism in the Legislature late in 1964 The GSD director, who bought his stock before he became head of the state's property acquisition department, won strong backing from Champion and former Gov. Edmund G Brown.

Subsequently, Harkness traded his stock for some Sacramento land He considers the issue closed, and he doesn't want to bring it up again

The only other issue that Harkness declined to discuss in detail is the controversial case of the state parking facilities analyst, laid off by the GSD for "lack of work" even though the department has added more than 300 employes in three years

The dismissed parking specialist, A Lynn Stewart, charged that the GSD had arranged an administrative survey to fire him because he knew too much

Representing himself in a Superior Court case, the legally-inexperienced Stewart defeated the considerable legal resources of the Department of General Services.

The following was reprinted from the San Jose Mercury on Wednesday, January 25, 1967

52 Wed., Jan. 25, 1967 San Jose Mercury

Stewart Firing A Thorn In GSD's Toe

By LOU CANNON
Mercury Sacramento Bureau

(Third in a series on the costly three-year path of the state's "super service agency"—the Department of General Services Tuesday, the agency's director, Robert Harkness, was replaced by Gen Andrew Lolli Story, Page 2)

SACRAMENTO—When the fledgling Department of General Services (GSD) winged out of the Department of Finance nest in 1963 with 4,150 employes and a $193 million budget, anxious sentinels on the ground floor of state government hoped for a smooth flight.

But expectations that the GSD, an agency charged with the streamlining of many state government services, would make it on its own were sharply dashed only a few months after the department first tried its wings.

Surprisingly, the GSD's downfall came because it decentralized one of the few state services that were already operating on a coordinated basis. The issue, one that would cause gurgles of sympathy from many city managers and county administrators, was parking.

A Lynn Stewart, an experienced and highly-recommended traffic engineer, went to work for the State of California on March 31, 1961 as its sole parking facilities analyst.

When the GSD was born in October 1963 it acquired both Stewart and his parking analyst position Neither survived a year in the fast growing department, but Stewart's firing for "lack of work" became a touch-stone for the agency specifically charged with economizing state government services

Today an official veil of secrecy shrouds the strange case of A Lynn Stewart.

Despite growing complaints about costly state parking lot developments in the 100-block capitol plan area and elsewhere, neither former GSD Director Robert L Harkness nor Assistant Director Arthur Collins would discuss the Stewart case or the question of centralized parking

Nor would any of Stewart's several friends in state government talk about the case on the record The ones that talked at all insisted on doing so outside the confines of GSD buildings, a precaution that they insisted would prevent electronic eavesdropping

(Harkness says he would never permit such devices to be used)

The one exception to the no-talk rule is Stewart himself Since his layoff he has talked persistently, both on and off the record To the consternation of the GSD bureaucracy, he did his most effective "talking" in court

The story Stewart tells in a voluminous Personnel Board and Superior Court record little resembles the picture of non-political efficiency painted by Harkness in his testimony before various legislative committees

Stewart's tale, largely supported by state records and interviews with GSD employes, is of a bureaucracy rife with professional jealousy and careful of stepping on the wrong toes By everyone's admission, including Stewart's, he was not careful.

When Stewart arranged to have a state parking lot built near the State Capitol for less than $10,000, GSD yanked the project out of his hands and paid $23,000 to have it built under the jurisdiction of the State Office of Architecture and Construction Stewart complained

The GSD's reaction to the complaint was to reassign Stewart himself to the state architectural office There, he sat for several weeks without being given any work to do

The record shows that Stewart played a role in obtaining better parking facilities for government employes, as the state's representative on the Inter-Governmental Civic Center Parking Committee for Los Angeles He was removed by Harkness three months after GSD was formed and succeeded on the committee by Collins

And the record presents Stewart's contention, never refuted by GSD, that he was laid off because the department ordered an administrative survey and came

in with "predetermined recommendations" abolishing Stewart's job

As Stewart tells it in the Personnel Board report, the man who made the study, administrative analyst Tom Richards, made the mistake of first preparing a report that failed to call for elimination of the parking specialist's job.

Deputy Director John Stanford refused to accept the study and ordered Richards to make another report, Stewart testified

"I just want to tell you that this idea is to abolish your job and I think you ought to start looking," Stewart said Richards told him when he returned Stewart asked why and Richards purportedly replied.

"You have made too many faces red"

Richards was never called to testify by the GSD Stewart lost his case before the Personnel Board but he won it, without an attorney, in Superior Court

Ironically, the judge who issued the ruling in Sacramento Superior Court was Charles W Johnson, the former departmental secretary of former Gov Edmund G Brown Judge Johnson ruled that the department had failed to show that Stewart had been fired for lack of work

Today, more than two years after Stewart's firing, a Mercury investigation found

- Parking responsibility fragmented among four GSD offices—facilities planning, architecture, automotive and maintenance
- Parking lot developments in the capitol plan area that do not amortize their costs an apparent violation of legislative directive
- Growing waiting lists of employes seeking parking spaces
- Uncollected parking fee delinquencies from 189 legislative employes totaling $1,797 Non-legislative employes have their parking fees taken in payroll deductions

Judge Johnson's decision in Stewart's favor has been appealed by the GSD, and the District Court of Appeal is scheduled to rule Feb 16 Both Harkness and Collins use this as an excuse for not commenting on the department's failure to centralize the parking operation

"We would be commenting in effect on the court case if we did," contends Collins

After his "layoff" Stewart took a cut in pay to work in the Division of Highways then found a job in his traffic specialist's field at higher pay outside state government

A friend still working for the state remembers him as a "highly efficient person who rode roughshod over people who had been active in state government too long—they got him and they got him beautifully"

Stewart issued a parting blast on April 16, 1965, in a lengthy memo to Collins, in which he charged that the entire statewide parking program was disorganized, confused (and) **irresponsible.**"

The memo remains unanswered So, also do the costly questions posed by the super service agency's handling of state parking problems

(Next—Reforming the GSD)

The following is reprinted from the San Jose Mercury of Thursday, January 26, 1967

New GSD Chief Faces A Complex Task

By LOU CANNON
Mercury Sacramento Bureau

Last in a series

SACRAMENTO—Some of the problems facing former Maj Gen Andrew R Lolli, the $23,500-a-year boss of the state's sprawling General Service Department (GSD) may give him some second thoughts about the glories of civilian life

Lolli, the retired commanding general of the western North American Defense Command, takes control of the state's embattled "super service" department on Feb. 1. He replaces Robert L (Bob) Harkness, the only director GSD has had since its creation in 1963

One of the problems facing Lolli was illustrated by the complicated arrangement used by the Ronald Reagan administration to remove Harkness from the directorship.

Bumped Upstairs

The discoursive Harkness, a sometime target of legislative criticism, is a Republican, appointed as a department head by former Democratic Gov Edmund G Brown, and also a career civil servant with more than 38 years experience

The Reagan administration wanted a change of command at GSD, but in order to avoid a "bumping" arrangement that would have moved key Finance Dept personnel from their posts, a new job of assistant finance director was created for Harkness

It pays $24,336 a year and gives the 60-year-old Harkness, who started his career as auditor for the Dept of Mental Hygiene in 1928, an $836 annual pay boost

Gov. Reagan's decision to spend some money on a new job, in hope of major savings in GSD, perhaps shows best of all the difficulty facing the economy-minded administration in translating its budget-cutting theories into practice

Despite Brown's pointing with pride and Reagan's viewing with alarm in last fall's election campaign, virtually all of the career public servants except Harkness remains in charge of the GSD's day-to-day decisions under both administrations.

Fowler Shifted

One such is Deputy Director Stanley B Fowler, who this week dropped down a notch into an assistant directorship, bumping Ray Long back into his former civil service post in the Department of Agriculture The Reagan administration is seeking a deputy director to replace Fowler

Fowler, perhaps the most knowledgeable civil servant remaining in GSD, said he was "not surprised" by the appointment of a retired general

'I wouldn't have been surprised if they named a doctor," Fowler said. "I served under 15 directors in 18 years in the Dept of Employment, and I don't think the background matters—it's the man "

Civil service prevents any mass reductions in state employment, as the Reagan administration learned at an early date

The system's obvious long-suit is continuity in government Employees are on the whole so well-insulated from "spoils system" pressures that even Sacramento County, with its legion of state employees, gave Reagan a majority over incumbent Gov. Brown.

Change Limited

On the other hand, the system has the defects of its civil service virtues Incoming governors, including Reagan, are sharply limited in the changes they can make to carry out their programs

Since savings cannot be made by any appreciable personnel reduction, they will have to come elsewhere if the Reagan administration is to carry out its budget-cut pledge A search for savings is almost certain to include the controversial areas of leasing, building and parking.

And the GSD, carved out of the Dept. of Finance by Gov Brown's administration in 1963, will have to learn to say "no" to some of the requests of the many state departments that it serves.

Avowed purpose of the department's creation was to allow the Finance Dept. to concentrate on the state's fiscal problems while freeing GSD to streamline and centralize

The streamlining, however, remains in question A *Mercury* investigation found

recurrent complaints of waste, duplication and questionable practices, particularly in leasing activities

Much Criticism

The legislative analyst fills pages of his annual report with criticisms of the GSD, and the (Little Hoover) Commission on Organization and Economy has exposed deficiencies in bidding practices and service contracts Various legislative leaders, some of them staunch supporters of former Gov. Brown, took repeated pot shots at Harkness and the GSD

Part of the problem stemmed from the inevitable legislative distrust for veteran bureaucrats

Part arose from the natural conflicts that legislators get into with the executive department over projects they want for their area, a classic example is the state office building planned for San Jose years before the GSD was born but still unbuilt and now the responsibility of that department.

Part of the problem derived from the conflict-of-interest implications ("the only charges of that kind in 38 years," said Harkness) that the ex-GSD director faced in 1964 after disclosure that he owned stock and served as director of a land company with holdings adjacent to the Capitol Mall.

GSA Different

And part of the problem, a small but significant part, arose from what could be called the philosophical direction of GSD toward an agency providing many excellent state services but little state control. The philosophy is different in degree if not in kind from the U. S Government Services Administration, a watchdog agency that has attempted to reduce the costs and expose the economic foibles of the vast federal bureaucracy.

Harkness' former boss, ex-Finance Director Hale Champion, strongly favored the service philosophy of the state GSD and was in some measure responsible for it As Champion saw it, control decisions on governmental economy have to be left up to individual agencies.

"I'd rather take some risks than have government bound up with red tape," Champion contended. "The more you tie the hands of the guy who deals with the situation, the less relationship government has to the people it serves."

Left unanswered is the question of what department, if any, will attempt to reduce costs of California's $4.6 billion-a-year state government The economy function was originally a specific mission of GSD, whose budget grew in three years by $8 2 million to a total of $57 6 million

Millions Handled

GSD's own spending, however, is a minor portion of the money it handles. The department in one way or another administers the expenditure of some $350 million annually and in 1965 conducted property acquisitions totaling $90.8 million alone.

Particularly sensitive is the office of procurement, always a prime target of suspicion for the form of preferential bidding treatment The controversial CHP car specifications raised the question of whether firms selling other products to the state received preferential specifications.

Favoritism or not, the Little Hoover Commission's review of bids have uncovered several instances in which the GSD appears to have made little effort to foster competition For instance, on last Aug 30, the GSD purchased 468 Motorola mobile radios for CHP cars at a cost of $339,797 (less a $79,723 trade-in allowance)

Only one bid was received and the commission is inquiring to see what, if anything, the GSD did to encourage bids from other manufacturers.

The GSD itself has conceded that bidding practices are not reviewed and the department's records removal policy makes it difficult to determine if preferential policies existed in the past

Pride in Record

However, Harkness displayed unflagging pride in the GSD record and dismissed many of the criticisms as unfounded suspicions He contended also that growth of the GSD's own budget provided a distorted picture because, he said, department-induced economies show up as savings for the agencies served by GSD.

"We approached our problems before they consumed us," Harkness said, thumping the table to make his point during the course of a lengthy interview.

As evidence that the GSD has not ignored waste in government, Harkness displayed a strongly worded memo cracking down unauthorized use of state automobiles. He also hailed effectiveness of a GSD order restricting unauthorized long-distance telephone calls.

But on other issues such as the GSD-run state fair Harkness remained essentially unresponsive to criticism

The fair has lost money every year under GSD, showing a net loss of $256,641 in 1966 despite tax revenues of $474,014 from horseracing Ground was broken recently for a gaudy new fair and exposition in northern Sacramento, a $33 7 million package that Legislative Analyst A Alan Post says has been accepted "purely on faith"

Views on Fair

Asked about the exposition, self-styled "showcase of California," Harkness responded this way.

Q—The present fair loses money—is the new fair going to lose money?

A—No The new fair is programmed and planned on a self-supporting basis

Q—What would happen if it doesn't break even? Is there any requirement or restriction?

A—Well, from a psychological point of view I'm not going to answer that because we're so dedicated to it coming out I'm not even going to think that it won't come out. . . .

It was this type of response that led to imposition of an unprecedented percentage cut in the GSD's budget in 1965

The GSD, however, emerged virtually unscathed in 1966 The Legislature approved the budget substantially as submitted without adopting most of Post's suggested cuts.

Change in Air

The situation could change radically this year In the topsy-turvy world of State Capitol politics, Republican career servant Harkness probably benefited from a "don't rock the boat" attitude prevailing among Democratic legislators in 1966 The Democrats are not likely to be under similar restraints in the current legislative session

In the past many of Harkness' leading critics were Democrats, notably Ways and Means Committee Chairman Robert Crown of Alameda. Cracked Assemblyman Alan Pattee (R-Salinas) during hearings of the Assembly Government Organization Committee last year.

"Mr Harkness, when you mention Ways and Means you get kind of a tremor in your voice"

Perhaps the most thorough attempt at review of GSD came during the Government Organization Committee hearings headed by former Assemblyman Milton Marks (R-San Francisco)

Among other things, the hearings demonstrated the difficulty for the Legislature in taking an overall look at the vast GSD Much of the hearing was consumed by Harkness and his deputies going page by page through the department's progress report

Asked to comment on his investigations, Marks issued a two-page statement upholding the principle of separate departments of finance and general services.

As a result of the separation, he said, the functions of both departments were receiving more attention.

Arguing Point

"It seems to me that this in itself is one of the strongest arguing points for the creation of a separate department" Marks said

"This brings us to the second question of whether the programs of the GSD are being managed properly," Marks added "And I think this is what the criticism and controversy surrounding the department is all about"

Marks, who has since been named to a San Francisco judgeship, said his committee's findings will be contained in a report to the 1967 Legislature The report is certain to form the basis of new scrutiny and perhaps some new criticism for the oft-maligned super service department

Based on the GSD's performance in its first three years, it will need all the scrutiny it can get.

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JANUARY 1967

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PART I

WORKMEN'S COMPENSATION

UNEMPLOYMENT INSURANCE FOR FARMWORKERS

Published by the
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OF THE STATE OF CALIFORNIA

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LETTER OF TRANSMITTAL

January 31, 1967

THE HONORABLE JESSE M. UNRUH
SPEAKER OF THE ASSEMBLY, AND
MEMBERS OF THE ASSEMBLY
STATE CAPITOL
SACRAMENTO, CALIFORNIA

Gentlemen:

In accordance with the provisions of House Resolution No. 710 of the 1965 Regular Session, the Assembly Interim Committee on Finance and Insurance herewith submits Part I of a record of committee activities and a report on the subject matter studied by the committee.

Respectfully submitted,

BOB MORETTI, Chairman

Jack R. Fenton, Vice Chairman

Hale Ashcraft
Anthony C. Beilenson
Jack T. Casey
C. George Deukmejian
Houston I. Flournoy
John Francis Foran
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WORKMEN'S COMPENSATION

WORKMEN'S COMPENSATION

RECOMMENDATIONS

1. The committee does not favor an increase in the number of weeks of compensation for the minor permanent partial disabilities of less than 25 percent. Those disabilities rated at 25 percent or higher should be compensated at an increased rate to more adequately reflect the wage loss suffered by the average claimant.
2. For the 1967 session, we recommend an immediate increase in the maximum temporary disability benefit to $80 per week.
3. That an uninsured employers' fund be created to provide immediate benefits to employees of uninsured employers. The fund should be created by an appropriation from the General Fund and administered by the State Compensation Insurance Fund.

WORKMEN'S COMPENSATION

The California workmen's compensation system has been the subject of a rather intensive study for the past four years. At the close of the 1963 legislative session there was created, pursuant to legislation adopted that year, the Workmen's Compensation Study Commission composed of well-qualified representatives of the legal profession, employers, labor groups, insurance companies, the medical profession, the Assembly and Senate, and the public, and chaired by a public member, Conrad J. Moss (now a judge of the Superior Court of Los Angeles County) The commission did an outstanding job of research into the workmen's compensation system Many of its recommendations were enacted into law with the passage of AB 2023 during the 1965 General Session These recommendations, formally acted upon in 1965, dealt mainly with the reorganization of the former Industrial Accident Commission into the Division of Industrial Accidents and the Workmen's Compensation Appeals Board and the strengthening of the administrative, consultative and quasijudicial functions of these agencies. It is not the purpose of this report to review this legislation, suffice it to say that the enactment of that legislation in 1965 was a significant step forward in rationalizing the state's workmen's compensation system

However, significant areas of the workmen's compensation system remained untouched during that session of the Legislature, and it is upon these that your committee has focused its attention Primarily, these unresolved problems relate to the compensation of heart cases under workmen's compensation including the apportionment liability and disability, and the adequacy of benefits under the present statutory limits. These represent difficult problems in the workmen's compensation field to deal with, but the overall success of the objectives of the workmen's compensation system itself require that they be answered.

Compensation of Workmen's Compensation Claims Based Upon Injury or Disease to the Heart

The California workmen's compensation system has been created pursuant to Article XX, Section 21, of the State Constitution, which provides in part that

> The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of Workmen's Compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party.

Pursuant to these powers, the Legislature enacted Labor Code Section 3600 which provides·

> Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as pro-

vided in Section 3706, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

(a) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.
(b) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.
(c) Where the injury is proximately caused by the employment, either with or without negligence
(d) Where the injury is not caused by the intoxication of the injured employee.
(e) Where the injury is not intentionally self-inflicted.
(f) Where the employee has not willfully and deliberately caused his own death
(g) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor

Although this section of the Labor Code, in establishing conditions of compensation, speaks in terms of an "injury" to an employee, this term has a somewhat broader meaning than solely a traumatic injury. The work "injury" is defined in Labor Code Section 3208 as follows

> "Injury" includes any injury or disease arising out of the employment, including injuries to artificial members, dentures, eyeglasses and medical braces of all types; provided, however, that eyeglasses will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to an injury causing disability.

The act, therefore, compensates not only for industrial injuries but for industrial disease, although for such a compensable condition to exist, it must (1) arise out of and be incurred in the course of employment, and (2) be proximately caused by the employment

It should be noted that our statute does not require that there be an "accident" or that the injury or disease arise out of an "industrial accident" The absence of such limiting language has a noticeable effect upon the interpretation of our statutes Similarly, the express inclusion of "disease" in our statute's definition of injury broadens coverage as compared to jurisdictions where an industrial accident is required as a precedent to a compensable injury.

To the average layman, a degenerative disease such as atherosclerotic heart disease is not commonly thought of as industrially caused, and in most cases it is not. However, to the extent that competent medical testimony is presented which indicates that the normal degenerative process was accelerated by work-connected activity, the disease becomes compensable under rulings of the Workmen's Compensation Appeals Board and the appellate courts.

Industry spokesmen maintained at the committee's hearings on this subject on January 27–28, 1966, that all of the 9,791 heart deaths due to atherosclerotic heart disease and to coronary disease which occurred among persons aged 25–65 in 1963 are potential workmen's compensation claims under present legal standards and that, in addition, there are countless nonfatal but disabling heart cases which could potentially be considered work connected under present Workmen's Compensation Appeals Board decisions They maintain that the trend toward finding more and more heart cases compensable has already started and, because of the difficulty in disproving that the heart condition was work connected, a substantial number of these cases are settled by compromises and release

> Mr Edmund Leonard [California Self-Insurers' Association] . . . There has been a great tendency to belittle the realm of heart cases in workmen's compensation as being extremely normal and this on the basis of the number of cases heard over the years before the commission I was given just this morning the most recent run of statistics, and I will make it available to the committee. This comes from the Division of Labor Statistics and Research, showing before the commission in 1953 there were 291 cases involving disease of the arteries and hypertension, including heart disease, and that ending with the fiscal year of June, 1965, there were 1,219 cases presented to the commission
>
> In 1962 there were 723 cases according to the division, and of those 358 were compromised Now this, I think, speaks for itself—the uncertainty in reference to heart matters that require 358 compromises out of 723 cases In 1963 out of 95 cases—467 were compromised Now the 1965 cases, June 30, 1965, 1,219—547 compromised.
>
> Now, I pointed out to you in the short summary, first, in practically every case it is conceded that the employee who suffers disability or death has had severe progressive heart disease for years, sometimes known to exist but its existence often unknown; sometimes symptomatic, often nonsymptomatic or "quiescent."
>
> Secondly, the question of compensability depends upon a medical statement.
>
> Thirdly, there is almost invariably a direct conflict of medical opinion on the question of causal relationship
>
> Fourth, the decisions by the commission on compensability over the years have only been reversed in the only rare number of cases and those where there was absolutely no medical testimony to support their position
>
> Fifth, that unusual stress and strain, emotional or physical, is not in the least required any more to make a case compensable. All you have to show is that the person was employed and then have some medical statement to the effect that that employment was a causal relationship between the employee's routine duties and his disability or death
>
> Sixth, the commission assumes in heart cases that the admonition of Labor Code Section 3202 that the Workmen's Compensation Act "deliberately construed" requires that a similar liberality

be given an interpretation of the lay and medical opinion coming to court so there is a great tendency towards compensability built into the act.

The seventh, and last, is that there is absolutely no standard by which the commission and the courts have acted over the years. [1]

In order to understand the complex case law dealing with this problem, the committee made use of three documents prepared by the legal staff of the State Compensation Insurance Fund The first was prepared in 1952 and submitted to the Senate Labor Committee which, at that time, was examining the workmen's compensation program. The second, titled *Report on Current Appellate Rulings Concerning Workmen's Compensation Claims for Disability or Death Arising Out of Cardiac Conditions,* was submitted to this committee at its request on November 1, 1965, and covers the developing case law between 1952 and 1965 The final report, titled *Supplemental Citations—Report on Current Appellate Rulings Concerning Workmen's Compensation Claims for Disability or Death Arising out of Cardiac Conditions,* was submitted at the committee hearings on January 27–28 and deals with certain cases decided between December 1965 and January 1966. Because these reports represent an excellent and fair discussion of the legal precedents in workmen's compensation cases involving claims arising out of cardiac conditions, we are partially reproducing them here.

DISABILITY OR DEATH ARISING OUT OF CARDIAC CONDITIONS

"The earlier decisions in heart cases fall into two general groups, the first of which is exemplified by the decision in *McNamara v Ind Acc. Com* , 130 Cal App 284, 19 IAC 175 For a number of years the rule laid down in the *McNamara* case was the standard whereby liability was determined in most heart cases In that case the Industrial Accident Commission denied a death benefit to a widow whose husband had died from a heart condition. From physical examinations it was known that McNamara had a preexisting heart pathology, as a result of which he had suffered heart attacks on the two days preceding his death On the day of death he reported to work, drove a truck, and apparently had occasion to crank the truck. He was observed seated at the wheel with the motor running and in evident distress Presumably he had just cranked the truck He died within a few minutes

"The district court of appeal affirmed the commission denial award and laid down the rules which form the basis of the following statements by Campbell .

> " 'Compensation will not be awarded where a chronic heart trouble, which has finally reached such a stage that death may ensue at any time, results fatally while the employee is doing the ordinary work of his employment The fact that an employee dies from heart trouble while doing work which calls for no unusual physical strain raises no presumption of an industrial injury.' (Campbell on Workmen's Compensation, page 291)
>
> " 'There is no sufficient foundation for industrial liability, if the final culmination be brought on merely by the normal exertion of the employment. There must be some unusual strain or exertion, some sudden shock or excitement incident to the employment.' (Campbell on Workmen's Compensation, page 293.)

"At the same time, however, the courts recognized another line of cases in which a recovery of compensation benefits was allowed. It is interesting to note how frequently these decisions are cited almost as a unit by the courts. Most of these

[1] Assembly Interim Committee on Finance and Insurance, *Transcript of Hearing on Workmen's Compensation,* San Diego, January 27–28, 1966, p. 26–27 (Hearing cited as *Transcript.*)

cases were initially denial awards in which the commission decision was annulled by the courts.

"One of the earliest cases of importance is that of *Eastman Co. v Ind Acc. Com.*, 186 Cal. 587, 8 IAC 184 In this case an employee apparently suffered a heart attack, fell from a truck which he was driving, and then was run over by the truck The commission awarded a death benefit, which was affirmed by the California Supreme Court It was held that the death was due to crushing injuries sustained when the truck ran over the deceased In discussing the proximate cause of the death and the possibility that the fall came about as a result of a heart attack, the court quoted with approval the following language from *Wicks v. Dowell*, L R (1905) 2 K.B. Div 225

> "'. . an accident does not cease to be such because its remote cause was the idiopathic condition of the injured man; we must dissociate that idiopathic condition from the other facts and remember that he was obliged to run the risk by the very nature of his employment, and that the dangerous fall was brought about by the conditions of that employment.'

"The Supreme Court concluded that even though it appeared that an attack of dizziness or unconsciousness from heart trouble was a contributory cause of the accident, a finding of death from injuries arising from the employment would find support under the evidence. However, the court also pointed out, considering the cases aside from an idiopathic condition, that acceleration or aggravation of a preexisting disease is an injury in the occupation causing such acceleration; if the disability, although arising from a chronic heart condition, were brought on by any strain or excitement incident to the employment, the industrial liability would still exist A review of the case will show that the court did not place any reliance upon this latter possibility (and the record seems to be devoid of any showing of strain) but merely cited the circumstances as a possibility. Nevertheless, this case is primarily cited because of this dictum by the court.

"In the *Knock* case, *Knock v Ind Acc. Com*, 200 Cal. 456, 14 IAC 177, the employee had a preexisting heart disease He was sent by his employer to inspect some peat lands at an elevation of some 3,300 feet Medical opinion held that the altitude and strenuous walking precipitated a heart attack which caused death. The commission issued a denial award, finding that 'said heart condition was due to a previous diseased condition being precipitated by the employee's situation in a higher altitude than that to which he had long been accustomed' and that 'such situation and precipitation did not constitute an injury arising out of the employment' The Supreme Court pointed out the rule mentioned in the *Eastman* case and annulled the commission's decision

"In *Fogarty v Dept of Indus. Rel*, 206 Cal 102, 15 IAC 182, the employee was 19 years of age. Fogarty was required to repair a broken flume. Because of the emergency of the work, the men were required to work with all possible expedition and did so laboriously for many hours The shift on which Fogarty worked was engaged continuously for 38 hours Fogarty worked in wet clothes and was subjected both to the heat of the sun and the coldness of the night air. He developed what was diagnosed as acute rheumatism, was hospitalized, treated, and ultimately died some two years later of a heart pathology The commission issued a denial award which was annulled by the Supreme Court on the authority of the *Eastman* and *Knock* cases

"*Nielsen v. Ind Acc. Com*, 125 Cal App 210, 18 IAC 232, was a case in which a cabinetmaker suffered a heart attack from which he died He had been employed for 15 years, during which time he had no symptoms. He helped carry an altar top. After arriving at the place where the new altar top was to be installed, it was found necessary to remove an old top The deceased used a hammer and chisel for about five minutes in attempting to remove the old top. While doing this he was stricken with a heart attack and died While this work was part of the regular work performed by Nielsen, it was pointed out by the court that the work in this instance was done in a great hurry and the carrying of the altar top up the aisle of the church was accomplished in an awkward and hurried manner. In citing the *Fogarty, Eastman, Knock*, and other cases, the court pointed out that 'the rule of these cases compels an annulment of the award in this instance because the material evidence unmistakably discloses that, however serious the preexisting heart condition or disease might have been, the unusual exertion and hurry and excitement of the work immediately preceding his death either aggravated and accelerated such preexisting condition or directly caused the death.'

"In *Mark v Ind. Acc Com.*, 29 Cal App 2d 495, 3 C C C. 164, another denial award of the commission was annulled In this case the deceased and another employee raised a motor weighing about 200 pounds and put it into a truck It was taken to a pumphouse and installed The men then attempted to start the motor by cranking it, taking turns doing this The job was finally completed about 10 a m , at which time the other employee states that they were all in, by which he meant they were 'very tired and exhausted' Following this, the deceased drove a truck for about an hour, the truck being used to hoist bales of hay into a barn loft Deceased then had his midday meal, following which for a short time he lifted bales of hay and again drove the truck, but thereafter became ill While the court felt that there was not a direct conflict in the medical evidence before the commission, it nevertheless pointed out that under the *Eastman* and *Knock* decisions an unusual exertion would be sufficient for a compensable claim and that the work of cranking the engine in this instance was both unusual and exhausting.

"As can be seen from the above, the commission decisions in the *Knock*, *Fogarty*, *Nielsen* and *Mark* cases were all denial awards which were ultimately annulled by the courts In these cases the commission adhered to a principle which was ultimately stated or which had been stated in the *McNamara* case, that is, the commission first endeavored to ascertain whether the decreased employee had engaged in unusual work or exertion. While the commission ruled to the contrary, the courts followed the dictum in the *Eastman* case and on a basis of aggravation, resulting from what the court found to be unusual work or effort, annulled the awards. In some instances the work was normal to the employment, but strenuous—perhaps more so than usual.

"In any event, it became uncertain as to which line of decisions might be followed in any given case—the tendency of the commission to follow a more or less strict interpretation of the *McNamara* rule, or the more liberal view of the courts as seen in the *Knock*, *Fogarty*, *Nielsen*, and *Mark* cases At this time the *Calabresi* case came before the commission.

"In the *Calabresi* case, *Liberty Mutual Ins. Co v Ind Acc Com*, 73 Cal. App. 2d 555, 11 C C C 66, the employee regularly lifted and dumped sacks of peanuts This was a normal activity of his employment and a task he performed for several hours each day. He had a preexisting heart pathology While lifting one of the heavier sacks of peanuts, he had a heart attack This case, then, is well beyond the rule in the *McNamara* case, because there was nothing unusual or exceptional in the work he was doing It was hard work, although normal to the employment. The parties requested the commission to make a decision which could be taken to the courts with a clear-cut issue so that doubt arising from the *McNamara* decision could be resolved. Ordinarily in a case with the facts similar to those in the *Calabresi* case a denial award would issue However, for the purpose of establishing a test case in accordance with the wishes of the parties, a compensable award issued and was affirmed by the district court The resulting decisions was interesting.

"The court pointed out that decided heart cases fall into three classes.

"1 Those in which the commission denied an award and the courts affirmed the denial. Typical of this class is the *McNamara* case.

"2 Cases in which the commission awarded compensation and the courts affirmed the award In this class is the *Eastmen* case.

"3. Cases in which the commission denied an award and the courts annulled the denial. In this class are the *Fogarty*, *Knock*, *Nielsen*, and *Mark* cases.

"The court then states, 'The astonishing thing about the state of the decided cases is that counsel have not cited a case nor have we found a California Appellate or Supreme Court case where the commission has made an award of benefits in a heart case and such award has been annulled.'

'The court then said

' Then cases do not, and in the nature of things cannot, stand for the proposition that the exertion must be unusual before it is compensable.'

" From an analysis of these cases and of the principles set forth in this opinion it must follow that where examining physicians or specialists differ as to whether the injury or death was industrial, and a competent qualified physician or specialist testifies that in this opinion the collapse was proximately caused by the employment, and the commission so finds, the award must and should be affirmed although an equally competent doctor expresses a contrary view In such a case whether the strain is a "usual" or an "unusual"

one is only one of the facts involved. If there was strain, *even though a strain was a strain usual to that type of employment, the injury or death is compensable if there is competent substantial evidence to show the causal connection between that strain and the collapse*'

"I have emphasized that part of the opinion above so you may clearly see just how the court has set aside the old rule of the *McNamara* case and has gone so far as to liberalize even the *Eastman, Knock, Fogarty, Nielsen,* and *Mark* cases *Now, all that is required is evidence of any strain or exertion while at work, plus medical evidence to show a causal connection between that and the employment.*" (Emphasis added by committee.)

On November 29, 1954, Mr Everett A. Corten, now Chief Counsel of the Industrial Accident Commission, directed our attention to a recent decision of the court, *Associated Indemnity Co v. Ind. Acc. Com.* (*Johnson*), 120 Cal. App. 2d 423 (1953). The decedent, Johnson, was working as a laborer, digging a pit with a hand shovel, when he collapsed and died The autopsy report showed that the employee was suffering from arteriosclerosis and death was the result of coronary occlusion There was expert medical testimony that the exertion in which the employee was engaged at the time of death, although normal to the employment, could have caused the fatal occlusion The death was held to arise out of the employment

The court stated "The facts of this case in light of the applicable rules of decision which we have stated furnish substantial support for the finding of the commission that Johnson suffered an injury which was proximately caused by the employment." As a rule of decision, the court cited *Liberty Mutual Ins. Co. v Ind. Acc. Com*, 73 Cal. App 2d 555, 558–9 (166 P 2d 908, 11 Cal. Comp. Cases 66), in which the court stated

> "It is now too well settled in this state to require extended citation of authority that the employee is entitled to compensation for disability proximately caused by industrial injury regardless of whether the employee's condition at the time of injury was average or subnormal Thus, an aggravation of an existing infirmity where such aggravation is proximately caused by the employment is compensable, even though a normal man would not have been adversely affected This rule applies even though it is shown that the employee would have ultimately died from such disease, if the evidence shows and the commission finds that the injury hastened or produced his death Industry takes the employee as it finds him A person suffering from a preexisting disease who is disabled by an injury proximately arising out of the employment is entitled to compensation even though a normal man would not have been adversely affected by the event
>
> " . The burden of proof that the injury arose out of and in the course of the employment, and was proximately caused thereby, is on the employee . . It is obvious that whether the employment proximately precipitated the collapse of a preexisting diseased heart and proximately caused it to collapse before normal progressive developments would have resulted in the collapse is a question of fact"

REPORT ON CURRENT APPELLATE RULINGS CONCERNING WORKMEN'S COMPENSATION CLAIMS FOR DISABILITY OR DEATH ARISING OUT OF CARDIAC CONDITIONS

This report will update previous materials supplied concerning important legal precedents in workmen's compensation cases involving claims for disability or death arising out of cardiac conditions

1. Unusual employment-connected stress or strain is not an absolute condition precedent to a finding that employment activity caused or precipitated a disabling or fatal heart condition.

It was emphasized in our report of May 26, 1952, that the old dictum in early cases, which seemed to require an unusual or extraordinary employment-connected stress or strain precipitating a heart

condition, was overturned by the district court of appeal in the *Calabresi* case, *Liberty Mut. Ins. Co. v. Ind. Acc. Com.*, 73 Cal. App 2d 555. This so-called "old rule" emanating from *McNamara v. Ind. Acc. Com*, 130 Cal. App. 284, and other cases, was epitomized in Campbell's treatise on workmen's compensation: "There is not sufficient foundation for industrial liability, if the final culmination [heart attack] be brought on merely by the normal exertion of the employment There must be some unusual strain or exertion; some sudden shock or excitement incident to the employment" (Campbell on Workmen's Compensation, p. 293.) The conclusion was that as of 1952 there was no such requirement in that "Now, all that is required is evidence of any strain or exertion while at work, plus medical evidence to show a causal connection between that and the employment" (Letter of May 26, 1952, p. 7.) Such a rule, still valid today, is based upon the following language in the *Calabresi* case, where Presiding Justice Peters, in analyzing the actual decisions from which the so-called rule requiring unusual stress was derived, concluded that the decisions did not in fact justify such a rule:

> "From an analysis of these cases and of the principles set forth in this opinion it must follow that where examining physicians or specialists differ as to whether the injury or death was industrial, and a competent qualified physician or specialist testified that in his opinion the collapse was proximately caused by the employment, and the commission so finds, the award must and should be affirmed although an equally competent doctor expresses a contrary view. *In such a case whether the strain is a 'usual' or an 'unusual' one is only one of the facts involved.* If there was strain, even though the strain was a strain usual to that type of employment, the injury or death is compensable if there is competent substantial evidence to show the causal connection between the strain and the collapse." (73 Cal. App. 2d, at p. 563, emphasis added.)

The language of the *Calabresi* case and its holding were adopted by the Supreme Court in *Lumbermen's Mut. Cas. Co. v. Ind. Acc. Com. (Cacozza)*, 29 Cal 2d 492 (1946). The court reasoned in citing federal precedents "that an accidental injury may occur notwithstanding the injured is then engaged in his usual and ordinary work, and likewise . the injury need not be external." (29 Cal 2d at p. 498)

2. It is the claimant's burden to show by scientific evidence that the disabling or fatal heart condition is employment connected.

It is evident that the primary requirement for compensability of a heart condition under the *Calabresi* and *Cacozza* cases is that there causal connection between the employment and the condition As in many other cases, "In order to be entitled to an award, petitioners [the employee's dependents] must show a causal connection between the employment and the injury." (See *Daniels v Ind. Acc. Com*, 148 Cal App 2d 500, 503) Further, whether or not there is such a causal connection between the employment and the heart condition is a question of fact. As stated in the *Calabresi* case, "whether the employment proximately precipitated the collapse of a preexisting

diseased heart and proximately caused it to collapse before normal progressive developments would have resulted in the collapse is a question of fact" (73 Cal App 2d at p 559) And, "The burden of proof that the injury arose out of and in the course of the employment, and was proximately caused thereby is on the employee" (*Ibid*; see also *Associated Indem. Corp. v Ind. Acc. Com.* (*Johnson*), 120 Cal App 2d 423, 426 (1953).)

In answering the question of whether or not there was a casual connection between the employment and the heart condition, "Obviously, the commission must depend on the reasoned opinions of attending physicians and experts in the field." (*Calabresi*, 73 Cal. App 2d at p 559) In other words, to support an award of compensation in a case involving the intricate medical question of whether an employee's heart condition resulting in his disability or death was related to his employment, there must be competent medical evidence of work causation.

In *City and County of San Francisco v Ind Acc. Com.* (*Murdock*), 117 Cal. App. 2d 455 (1953), the employee, a maintenance worker for the city's park commission, collapsed as he was cutting trees and branches which had blown down in a storm He was dead a short time later upon arrival at the hospital. The report of one doctor stated his death was due to an acute coronary occlusion, the result of a longstanding arteriosclerosis He also noted that this type of complication "would occur at any moment of the day, whether this man had been active physically, or whether he had been sitting or lying quietly." (*Id.* at p. 457.) On objection of applicant's counsel this doctor's opinion was not admitted into evidence, at which point there was no medical evidence of any kind before the commission The court, in annulling award, stated:

> "To make out a prima facie case it is necessary to prove more than the fact that decedent died while performing a task required by his employment which he had performed on various occasions throughout the years apparently without incident *The present record is wholly devoid of evidence of the cause of death.* It is true that the employee died immediately after performing a task that was the most arduous of any required by his employment. However, it is not a matter of common knowledge that operating a crosscut saw with a partner on the other end is labor of such a strenuous type as to bring on a fatal heart attack. . . . Where the subject matter is within the exclusive knowledge of experts trained in a scientific subject, expert evidence is essential. [Citations]
>
> In the present case there is nothing in evidence bearing on the cause of death. . . The award must be annulled . . . because there is no competent evidence in the present record from which it may be inferred that the employee's death arose out of his employment" (*Id.*, at pp 458–460, emphasis added)

(See also *Peter Kiewit Sons v Ind. Acc. Com.* (*McLaughlin*), 234 A C A 981 (June 1965), award annulled, where no medical evidence related applicant's allegedly disabling back condition to his employment)

3. Medical opinion generally varies regarding the relationship of any activity to cardiac failure, and resultant conflicts on the issue of causation in specific cases present questions of fact for the conclusive resolution of the commission.

However, the expert opinion, essential to a determination of the issue of causation in heart cases, is often varying As noted in the *Calabrese* case, "We have frequently read in applications for writs before this court the divergent views of medical specialists on the effect of strain on a preexisting diseased heart. There can be no doubt but that there is a respectable school of thought that believes that strain, at least a nonunusual strain, does not adversely affect a preexisting diseased heart Other doctors, equally qualified, honestly believe that strain adversely affects such preexisting condition. The existence of these divergent ideas is what has led the commission to render, on occasions, what appear to be divergent opinions " (73 Cal App. 2d at p 560.)

Thus the commission must have the support of medical evidence in finding that an employee's death or disability resulting from heart disease was caused by his employment. In reaching its decision, as in any other case, the commission is faced with the statutory admonition that the workmen's compensation provisions of the Labor Code "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment " (Labor Code Section 3202) In addition, in the case of certain law enforcement officers (Labor Code Section 3212), correctional institution security officers (Section 3212 2), highway patrolmen and other police officers (Section 3212 5), and peace officers in the Bureau of Narcotics enforcement and Bureau of Identification and Investigation (Section 3212 7), heart trouble "which develops or manifests itself during a period while such [person] is in the service . . " of such agencies is presumed to arise out of and in the course of such persons' employment

The commission in heart cases, as in many other cases, is almost invariably faced with divergent conflicting medical opinion respecting the employment relationship of an employee's death or disability resulting from heart trouble But the appellate courts have made it clear that, once the commission weighs the scientific evidence and reaches its decision in light of the above cited statutory admonitions, the decision on the facts is not subject to review so long as there is sufficient scientific evidence to support it.

A good example is *Foster v Ind. Acc Com* , 136 Cal App 2d 812 (1955), where a mechanic from the Division of Highways arrived at work at 7 30 and was found dead an hour and a half later His death was due to a coronary occlusion, although he had no prior symptoms of arteriosclerosis. Decedent had been on light work due to a prior back injury. Dr. Lucia, who had treated decedent on several occasions over a period of years, concluded unequivocally "that the work in which Mr. Foster engaged and the circumstances under which it was consummated directly contributed to his demise, as is clearly shown by the details of his last illness " (136 Cal App 2d at p 814.) Dr Wallace, not acquainted with decedent, but who had studied the medical records and testimony in the case, concluded, "In my opinion, there is no shred of evidence that his job was in any way responsible for his death . . . assuming that he had coronary arteriosclerosis,

there is nothing to support the thesis that his work precipitated the fatal attack or coronary occlusion There are instances when unusual and extraordinary physical activity or severe and exceedingly upsetting emotional upheaval may be said to precipitate occlusion of previously diseased arteries, but certainly neither situation was evident here " (*Id*, at pp. 814–815) On this evidence the commission denied death benefits based on its finding that decedent's death did not arise out of and in the course of his employment The appellate court, in affirming the award, stated as follows

> "While petitioner's arguments are persuasive and the evidence of Dr. Lucia would no doubt have sustained a compensable award if the referee and the commission had accepted it, the rejection of it and the acceptance of a contrary opinion from another expert is not ground for reversal by an appellate court " (136 Cal App. 2d at p 815)

The court concluded that "if there is any evidence, whether direct or by reasonable inference, which will support the finding of the commission, a reviewing court has no power to disturb it [Citations.] The function of the court on review of the action of the commission is to determine whether the evidence, if believed, is substantial and supports the findings " (*Id*, at p. 816)

4. Although not an absolute prerequisite, the presence of unusual physical or emotional employment-connected stress or strain remains an important factual consideration, but some evidence of such stress or strain does not guarantee benefits

The absence of unusual or extraordinary physical or emotional stress or strain under the *Calabresi* case does not preclude an award of disability or death benefits for heart trouble, but the presence of such stress or strain is often a significant factor in commission awards.

The Supreme Court in *Walters v Ind Acc Com*, 57 Cal 2d 387, appears to recognize that an unusual employment-connected *physical* strain is a most important consideration in heart cases, both factually and legally. In the *Walters* case the commission had originally denied disability benefits on the basis of the trial referee's disbelief of applicant's story that he had suffered an attack while attempting to lift the front end of an unusually heavy car. At the original hearing applicant's treating physicians opined that such a lifting incident undoubtedly precipitated applicant's heart attack and his resultant heart trouble, rendering him disabled The carrier's physicians, on the other hand, discounted the effects of any such lifting incident and were of the opinion that the heart attack was spontaneous, a natural incident of applicant's underlying asymptomatic heart disease, and thus not work-connected. After appellate review of the commission's take-nothing order was denied (see 26 C C C 146), applicant sought to reopen the case based on the newly available testimony of three other witnesses, confirming the happening of the heavy lifting incident and impeaching the employer's conflicting version In reversing the commission's refusal to reopen the case, the Supreme Court noted that the original denial was itself supported by very meager evidence, to wit, the failure of the employer's foreman to specifically recall the lifting incident. The additional evidence, both confirming that the incident happened and im-

peaching the foreman's story, was held to constitute a sufficient showing by applicant of good cause to reopen the matter, especially in light of the statutory presumption favoring employee's claims for compensation. The Supreme Court also noted that one of the grounds for reopening a compensation case is a showing that the original award was inequitable

Also, evidence of unusual *mental* stress has been considered by the Supreme Court to be significant in heart cases. The court in *Argonaut Ins Exchange v. Ind. Acc. Com* (*Bellinger*), 49 Cal 2d 706 (1958), in affirming an award of death benefits, held the commission was justified in finding that the employee's fatal heart attack was work-connected in light of the medical evidence that "decedent's work, with its exceptional mental stress and responsibility, might 'be considered the precipitating factor in hastening his exodus' " (*Id.*, at p 713)

Many other cases where appellate review was sought but denied have been found in the reports ("California Compensation Cases," cited "C.C.C ") It should be noted that not all commission decisions are reported—only those where the losing party petitions for appellate review No attempt has been made to trace *all* commission decisions involving heart disorders—the reported decisions, nevertheless, seem to indicate definite factual trends

For example, a physical shock or stress seemed important in *Hartford Accident & Indemnity Co v Ind. Acc. Com.* (*Grief*), 26, C C C 188 (writ denied, 1961). There an award of disability benefits was left undisturbed where applicant, while working as a waitress, suffered a severe electrical shock She had had a preexisting heart murmur but this heart condition had never interferred with her work. The award was based on the opinion of applicant's treating doctor that applicant had suffered fibrillation of the heart as a direct result of the electrical shock, and that once such fibrillation occurs there will be successive episodes until ultimately the fibrillation is constant and disabling Another doctor was of the opinion that the electrical shock had nothing to do with the cardiac condition, and still another was of the opinion that applicant was not, in fact, disabled (See similar asese involving unusual physical stress where appellate review was denied at 29 C C.C. 89, 22 C.C C. 157 and 20 C.C C 100.)

Emotional stress has also played an important factual role. Thus, the District Court of Appeal refused to review an award of disability benefits in *City and County of San Francisco v. Ind Acc. Com.* (*Mums*), 29 C.C C. 257 (writ denied, 1964). The award was based on the treating doctor's opinion that the emotional stress suffered by applicant, a busdriver, in an altercation between himself and a passenger was sufficient to produce the heart symptoms which led to his disabling heart attack (See other emotional stress cases at 27 C C C. 128, 27 C C.C 288, 25 C C C 20, 25 C.C C 91, 24 C C C 12 and 21 C C C. 270.)

On the other hand, some evidence of unusual emotonal or physical stress or strain in and of itself is no guarantee of an award of disability or death benefits Thus in *Grace v Ind Acc Com*, 20 C.C C. 247 (writ denied, 1955), the commission denied disability benefits where applicant, a butler-chauffeur, alleged that his disabling heart attack was precipitated by the unusually heavy lifting involved in slipping pads of paper out from under his employer's living room furniture. The

commission reversed the referee's award if benefits on conflicting medical evidence, noting that but little effort was required to remove pads of paper from underneath furniture (See other such denials at 25 C C C 105, 21 C C C 39, 20 C C.C 74 and 20 C C C 27)

5. In the absence of unusual stress, dependent upon the persuasiveness of the medical evidence of work connection, the commission has awarded benefits for disabling or fatal heart conditions and has been upheld on petition for appellate review, but has just as frequently denied benefits in such cases.

In the absence of any particularly unusual stress or strain where only ordinary exertion is manifest, the commission, in line with the *Calabresa* case, has often rendered awards of death and disability benefits in heart cases, even where employees are stricken performing their ordinary and regular duties In all such cases there is invariably substantial medical evidence to connect the employment with the fatal or disabling heart disease Thus in *City and County of San Francisco v. Ind Acc. Com.* (*DeJarnatt*), 29 C.C C 229 (writ denied, 1964), disability benefits were awarded to applicant, an ambulance steward, who, while pulling out a heavy oxygen tank to inspect it as a part of his normal duties, suffered a severe disabling heart attack. The independent medical examiner concluded that "such exertion even for one or two minutes might have been sufficient to have induced some myocardial muscle necrosis and thereby initiated his beginning infarction " Other medical evidence was directly to the contrary (See other such awards at 30 C C C. 45, 28 C C C 38, 27 C.C.C 42, 25 C C C 242, 23 C C C. 185 and 22 C C C. 130)

On the other hand, many cases appear in the reports in which workmen's compensation benefits have been denied where an employee's fatal or disabling heart attack occurs during or after the performance of his ordinary employment duties In *Daniels v Ind Acc Com*, 148 Cal App 2d 500 (1957), the appellate court affirmed the commission's denial of death benefits Decedent was employed as a "troubleshooter" for an irrigation district with duties including the repair of transformers, meters and other electrical facilities, which occasionally involved the climbing of poles Decedent had had no prior signs of heart disease. On the day of his death he suffered a heart attack while engaged in climbing his third pole of the day His death later at the hospital was attributed to a coronary occlusion An independent medical examiner claimed that statistics verified that physical exercise has nothing to do with death from coronary occlusion Other medical opinion was introduced to the effect that decedent's death was not work-connected Another doctor opined that the work strain was a factor in decedent's lung congestion which led to a rupture of a coronary valve, resulting in death But a further autopsy revealed no such rupture

Similarly, appellate review was refused in *Silva v Ind Acc Com*, 27 C C C 107 (writ denied, 1962), where the commission denied death benefits There an employee, a chipper for a steel company, had had heart symptoms from January 1959, until his death on April 11, 1960 After a pneumonia attack his symptoms persisted and his doctor recommended that he do light work Decedent died while performing his regular duties which apparently involved working in extreme temperatures, climbing stairs and handling equipment

weighing up to 20 pounds His treating doctor reported that decedent's death was work-connected because the doctor had recommended decedent do no heavy work and he was allowed to do such against his instructions, and that the strain and fatigue of the work he was doing would aggravate or accelerate the medical problem and hasten death The autopsy surgeon was of the opinion that the work did not cause or aggravate decedent's underlying heart pathology. Two other doctors also opined that there was no work-connected activity which would contribute to decedent's death or aggravate his underlying heart pathology. (See also *Foster v Ind Acc Com., supra,* 136 Cal App 2d 812 and other denials at 30 C C C 157, 23 C C.C. 46, 22 C.C.C 184, 22 C C C 185, 22 C C C 272, 21 C C.C. 74, 20 C C.C. 1, 20 C C C 262, 19 C.C.C 143)

6. Despite the statutory presumption of work connection, death and disability benefits have been denied in heart cases involving firemen and policemen, but the medical evidence must clearly disassociate the heart condition with the employment.

The commission has denied death or disability benefits to policemen and firemen or their dependents where such employees have suffered disabling or fatal heart attacks The statutory presumption that such heart trouble arises out of their employment was held rebutted by medical evidence, although sometimes in conflict, clearly indicating that the employment had nothing to do with the disability or death The district court of appeal has affirmed the commission in one such case In *Havel v Ind. Acc Com,* 154 Cal App 2d 737 (1957), the commission had denied benefits to a policeman who was disabled by a heart attack occurring at home after two prior experiences while on duty The medical evidence was conflicting, some connecting the policeman's heart disability with his employment in terms of possibilities, and other medical testimony unequivocally denying that there was any connection between decedent's heart disability and his employment. The district court of appeal affirmed the commission's decision on the basis that "there was substantial evidence before the commission to controvert the presumption in favor of the petitioner" The court concluded that "we cannot, therefore, hold as a matter of law that the presumption and supporting evidence necessarily compel the conclusion that the petitioner's heart trouble was of industrial origin" (*Id*, at p 743, see other such denials at 24 C C C. 17, 23 C C C 132, 21 C C C 165, 20 C C C 105, 20 C C C. 202)

It should be noted, however, that the commission has no authority to deny compensation in a death or disability case involving a fireman, policeman or other person entitled to the statutory presumption attributing heart trouble to employment under Labor Code Sections 3212, 3212 2, 3212 5 and 3212 7, where there is no medical evidence specifically disassociating the heart trouble from the employment In *Horn v Ind Acc. Com,* 128 Cal App 2d 837 (1954), the commission had denied disability benefits to a fireman who had had repeated heart symptoms during his long period of employment as a fireman from 1924 to 1953 There was no medical opinion at all on the issue of how the heart disease arose, i e., whether or not it was employment-connected. Further, no physician specifically disassociated applicant's heart trouble from his employment. The district court of appeal annulled the com-

mission's take-nothing order because the statutory presumption of causation had not been controverted by any evidence

7. In rare cases awards have been made based on medical evidence relating an employee's heart condition to his employment, although almost no employment stress was apparent, except that encountered in any normal activity.

Although the presence or absence of stress is often factually important to a determination or work-connection, there are rare instances where awards have been made based on medical opinion attributing an employee's heart failure to his employment, even though there is virtually no manifestation of any exertion, usual or unusual, beyond that encountered in all normal activities Thus, in *City of Los Angeles v Ind Acc Com.* (*Stone*), 29 C C C 154 (writ denied, 1964), the applicant, an electrical inspector, had been suffering from arteriosclerosis from 1958 which had rendered him partially disabled for long periods Applicant had worked on November 14 and 15 but apparently nothing unusual had happened The nature of his work was unexplained He left work on November 15 because of chest pains and returned February 20, 1961 Dr M D Kritzer was of the opinion that his heart problem "was at least made more severe and aggravated by virtue of the fact that this gentleman did work on November 14th and 15th while probably having a posterior myocardial infarction" On this and other medical evidence the commission issued an apportioned award of total disability This decision was let undisturbed by the appellate court

In the *Stone* case the doctor's basis for the connection between the employment and the employee's heart condition was that the employee happened to be engaged in an employment activity even though such activity was not necessarily stressful in any sense of the word Similar medical opinions, which emphasize that *any* activity would have precipitated an attack, have sustained awards, where the activity precipitating the attack happens to be work-connected (See other such awards at 28 C C C 9, 26 C C C 185 and 24 C C C 259)

In what appears to be a somewhat similar situation, the appellate court has affirmed a commission award In *Associated Indem Corp v. Ind. Acc Com* (*Johnson*), 120 Cal App 2d 423 (1953), decedent, employed on a weekend job, had been digging in a pit After a 25-minute respite, during which the dirt was shoveled out of the truck, decedent got back into the pit, picked up his shovel, collapsed and died, from what was determined to be a coronary occlusion Although decedent had no prior symptoms, he was found to have had advanced arteriosclerotic disease One doctor said that the exertion of shoveling would have been but a minor factor in precipitating decedent's attack Another doctor felt that his exertion played some part in his death, but that the same effects "could have been caused by any normal activity, such as eating meals or walking a block" (120 Cal App 2d at p 425) The court in upholding the award concluded

> "Although he was afflicted with general arteriosclerosis which, at the point where the final occlusion occurred, was far advanced, so that death would have occurred in time from the normal progress of the disease, yet the exertion which the performance of his work called for increased the hazard of final occlusion which oc-

curred and which caused his death. The exertion was sufficient, according to the expert testimony, to have brought about, by means of the increased contraction and expansion of the artery and the accelerated blood flow, a dislodging of particles from the diseased lining, causing a block This the autopsy surgeon found had occurred, and caused the fatal occlusion The experts testified that this exertion could have had the effect that the autopsy disclosed That is sufficient support for the finding of the commission as to proximate cause " (120 Cal App. 2d at p. 426)

8. The presence or absence of symptoms prior to the allegedly industrially related heart condition is an important, but not conclusive, factual consideration.

From a review of the reported cases, it is readily apparent that in virtually every case involving disability or death on account of heart trouble there is some degree of underlying preexisting heart disease The manifestations of the preexisting disease seem to be of factual importance in the determination of work causation Thus where the evidence clearly shows that the employee had no prior symptoms of heart disease, his fatal or disabling attack is often related to his employment. (See awards in such cases at 22 C C C. 157, 20 C.C.C 100, 27 C C.C 128, 24 C.C C. 12, 28 C C C 38, 25 C C C 242, 23 C.C C 185, 22 C.C C 130, 26 C C C 185) And, compensation has been awarded where, although preexisting symptoms were present, the heart trouble never had interfered with the employee's work (see awards at 21 C C C 270, 29 C C C 229) On the other hand, compensation is often denied where it is established that the employee's heart condition was symptomatic *prior* to his alleged industrial injury (See denials at 23 C C C 46, 22 C C C 184, 22 C C C 185, 22 C C.C. 272, 20 C C C 1, 20 C C S. 262.) But, again, there is no absolute factual rule relating to the employee's prior condition, since compensation has been awarded even where the employee's underlying heart condition was symptomatic and to an extent disabling (see awards at 27 C C C 42, 21 C C C 165), and denied where apparently there were no prior symptoms (See *Daniels v Ind Acc Com*, *supra*, 148 Cal. App 2d 500.)

9. Apportionment in Heart Cases.

The fact that almost invariably an employee's heart trouble stems in part from a preexisting heart condition gives rise to problems of apportioning liability. An employer is, of course, fully responsible for the industrially caused aggravation or lighting up of a preexisting condition (Labor Code Section 4663), but not liable for the natural and normal progress of a preexisting condition (see *Tanenbaum v. Ind Acc. Com*, 4 Cal 2d 615 (1935))

(a) Death cases. So long as work contributed to the death, there may be no apportionment to preexisting condition, but there may be an apportionment of full benefits as between carriers or employers responsible during the period of work activity found to have caused an employee's fatal heart condition

The Supreme Court has held that Section 4663 applies only to *disability* benefits Thus, in *death* cases, so long as the employee's death was at least partially attributable to industrial factors, full death bene-

fits must be awarded, and there is never an apportionment of liability to the underlying disease, which in fact may also have contributed to the cause of death (See *Pacific Gas & Electric Co. v. Ind. Acc. Com.* (*Drew*), 56 Cal 2d 219) However, the commission has allowed an apportionment of *full* death benefits as between two or more carriers or employers That is, the commission has held two or more carriers or employers proportionately responsible for *full* death benefits awarded to the employee's dependents, where it finds that the employee's heart trouble, resulting in his death, was caused by employment activity during which there were two or more carriers or employers In two such cases the appellate courts have refused to review the commission action (See 29 C C.C. 12; *National Surety Corp. v. Ind. Acc. Com. (Duffy)*, 2d Civ. No 28,753, writ denied, 11/30/64, 30 C.C.C. ____.)

(b) Disability cases. Preexisting symptomatology is an important, but not conclusive, factual consideration

Regarding the apportionment of *disability* benefits between the industrially caused aggravation of, and the natural progress of, the underlying disease, again the nature of the specific effect of the heart disease upon the employee prior to his disabling heart attack is of factual importance. If the preexisting disease was asymptomatic, nonapportioned disability benefits will often be awarded. (See 22 C C C. 157, 20 C.C C 100, 25 C.C.C. 20, 28 C.C.C. 38, 25 C.C.C. 242, 23 C C.C 185, 22 C.C C. 130) The same tendency is observed even where there are symptoms, if the symptoms were nondisabling in that prior to the disabling attack the preexisting disease never interfered with the applicant's employment. (See 30 C.C.C. 90, 29 C.C.C. 229, 22 C.C.C. 185, 26 C C.C. 188)

But once again there are no factual absolutes. The fact that the employee had no symptoms, disabling or otherwise, prior to his disabling heart attack does not preclude the commission from finding that the employee's disability is attributable in part to the aggravation of a preexisting asymptomatic heart condition and in part to the natural and normal progress of that condition, and issuing an appropriately apportioned award This is the precise holding of *Bowler v. Ind Acc Com* , 135 Cal App. 2d 534 (1955) The court held that the question of the extent to which an applicant's disability is caused by the aggravation of the preexisting condition and the extent to which it is caused by the natural progress of that condition is a question of fact for the commission to resolve on the evidence. The court upheld an apportioned award, even though applicant had no symptoms of heart disease prior to his disabling heart attack suffered while engaged in heavy physical labor. The medical evidence indicated that the resultant disability was due in part to his preexisting heart disease.

An example of a factual pattern where such an apportionment becomes necessary is where the medical evidence indicates that an initial heart attack is employment-connected, but a subsequent disabling or fatal heart attack is the result entirely or partially of the natural progress of the employee's underlying heart disease (See 22 C.C.C. 272, 19 C.C.C. 143, 29 C C.C. 239)

(c) Where the medical evidence without conflict calls for an apportionment, the commission must do so

Although usually a question of fact, an apportionment is required as a matter of law where the medical evidence without conflict establishes that an employee's disability is due at least in part to the natural progress of an underlying heart disease The appellate court in *City of Glendale v. Ind. Acc. Com. (Enochs)*, 153 Cal. App. 2d 213 (1957), has ruled that in such a situation the commission is without authority to issue a nonapportioned award In such case all the medical opinion was agreed that a portion of the applicant's disability was caused by the natural progress of his disease, and not by his employment, but one doctor "expressed the view that an apportionment could not be made because of its speculative nature" The court concluded that no matter how difficult the task, the commission should have made an apportionment. "To require the employer to assume the entire financial burden of the applicant's disability simply because it is difficult to make an apportionment between the occupational and nonoccupational causes would not only be contrary to the mandate of the Legislature but also unfair and inequitable to the employer" (153 Cal App 2d at pp. 216–217)

(d) In the case of law enforcement officers and others entitled to the statutory presumption of causation under Sections 3212, 3212 5 and 3212 7, the commission may not apportion compensation for heart trouble to preexisting disease, once causation is found

Respecting those public officers having the benefit of the statutory presumption of causation under Labor Code Sections 3212, 3212 5 and 3212.7, the commission may not apportion any part of the disability compensation to an applicant's preexisting disease The Legislature in 1959 added the following phrase to each of the cited statutes "Such . . . heart trouble . . . so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation."

Recently in *Ferris v. Ind Acc Com*, 237 A C A. 509 (District Court of Appeal, 4 Civil No 7753, 10/7/65, the court held that the effect of the quoted 1959 addition to the cited statutes was to preclude any apportionment of liability to preexisting disease once the commission has found in line with the presumption of said sections that the disability was caused in part by employment (See also *State Compensation Insurance Fund v Ind Acc Com (Quick)*, 56 Cal 2d 681, 686)

SUPPLEMENTAL CITATIONS—REPORT ON CURRENT APPELLATE RULINGS CONCERNING WORKMEN'S COMPENSATION CLAIMS FOR DISABILITY OR DEATH ARISING OUT OF CARDIAC CONDITIONS

This supplement is for the purpose of citing certain heart cases which have been decided since the submission of the report. The sections in which they are deemed to fit will be quoted in full. If a particular section is not quoted, no further cases in that category have been decided.

1. Unusual employment-connected stress or strain is not an absolute condition precedent to a finding that employment activity caused or precipitated a disabling or fatal heart condition. (Pp. 1–3, Report.)

In *City of Oakland v Ind Acc Com.* (*Haley*), 30 C C.C. 393 (writ denied, December 6, 1965, hearing denied by Supreme Court, January 6, 1966), the petitioning city urged that decedent had not been exposed to any unusual stress in his employment as a police clerk on the date of his fatal heart attack The commission's answer observed that under the *Calabrese* case (73 Cal. App. 2d 555) it was unnecessary to show unusual stress, but that in any event as a matter of fact decedent's last day was unusually stressful An award of death benefits to decedent's wife was left undisturbed by the appellate courts.

2. It is the claimant's burden to show by scientific evidence that the disability or fatal heart condition is employment connected. (Pp. 3–5.)

An award of workmen's compensation benefits will be annulled where there is no medical evidence to relate an applicant's disability (caused by a cerebral vascular accident) to her employment *Allied Ins Co v. Ind Acc Com* (*Williams*), 30 C C C 227 (award annulled and case remanded on concession by commission of lack of such medical evidence in the record)

3. Medical opinion generally varies regarding the relationship of any activity to cardiac failure and resultant conflicts on the issue of causation in specific cases present questions of fact for the conclusive resolution of the commission. (Pp. 5–10)

In *Pacific Intermountain Express v Ind Acc Com.* (*Pilkington*), 30 C C C. 266 (writ denied, September 23, 1965; hearing denied by Supreme Court, October 20, 1965), three doctors, all "board certified" as heart specialists, testified on behalf of the employer that decedent's fatal heart attack was not related to his employment. Two other doctors, specialists in internal medicine and cardiology but not "board certified," testified on behalf of applicant that "Pilkington's duties before his death were beyond his endurance and that his continued work caused his attack" (30 C C C 267) An award of death benefits was left undisturbed by the appellate courts See also *Drummond v Ind Acc Com* , *infra*, 30 C C C 292 (writ denied).

4. Although not an absolute prerequisite, the presence of unusual physical or emotional employment-connected stress or strain remains an important factual consideration, but some evidence of such stress or strain does not guarantee benefits. (Pp. 10–13.)

Employment-connected emotional stress was a significant factor in the medical reports supportive of the commission's awards in *El Dorado Ins Exch v Ind Acc Com* (*Simon*), 30 C C C. 302 (writ denied), and *City of Oakland v Ind Acc. Com.* (*Haley*), *supra*, 30 C.C.C 393 (writ denied. December 6, 1965, hearing denied by Supreme Court, January 6, 1966).

5. (No further cases.)

6. Despite the statutory presumption of work connection, death and disability benefits have been denied in heart cases involving firemen and policemen but the medical evidence must clearly dissociate the heart condition with the employment. (Pp. 16–17.)

In *Drummond v. Ind. Acc. Com*, *supra*, 30 C.C C. 292 (writ denied), applicant, a lady deputy sheriff, had heart trouble which her treating doctor asserted was related to the stress of her employment. Defendant's medical expert, and an independent medical examiner, opined that there was no relation between her employment and her heart trouble. The commission's denial of benefits was upheld despite petitioner's contention that the presumption of Labor Code § 3212.5 had not been dispelled by "unequivocal evidence."

7. In rare cases awards have been made based on medical evidence relating an employee's heart condition to his employment, although almost no employment stress was apparent, except that encountered in any normal activity. (Pp. 17–19.)

See *Pacific Intermountain Express v Ind. Acc. Com.* (*Pilkington*), *supra,* 30 C.C C. 266, to the effect that the employee's duties were beyond his endurance. In that case another element appeared, however, in that decedent's employment as a truckdriver so isolated him at the time of his heart attack as to make medical treatment and recovery impossible.

8. The presence or absence of symptoms prior to the allegedly industrially related heart condition is an important, but not conclusive, factual consideration. (Pp. 20–21.)

In cases where applicant's preexisting heart condition was asymptomatic (*City of Oakland v. Ind. Acc Com.* (*Horn*), 30 C.C.C. 269 (writ denied)), and nonlabor disabling (*El Dorado Ins. Exch. v Ind. Acc. Com.* (*Simon*), 30 C C C. 302 (writ denied)), the commission's findings of employment connection to the disabling heart attacks were sustained.

9. Apportionment in Heart Cases.

(b) Disability cases: Preexisting symptomatology is an important, but not conclusive, factual consideration (Pp 22–23)

The appellate courts refused to review commission findings that employment caused applicant's entire disability without apportionment to underlying condition, (1) where there were no prior symptoms (*City of Oakland v. Ind. Acc Com.* (*Horn*), *supra*, 30 C.C C. 269), and (2) where the prior condition was nonlabor disabling (*El Dorado Ins. Exch. v Ind. Acc Com* (*Simon*), *supra,* 30 C C.C. 302).

Respectfully submitted,

EVERETT A. CORTEN
Chief Counsel

SHELDON C. ST. CLAIR
Associate Counsel

At the heart of our quasi-judicial system for determining compensability for work-connected injuries is the availability of expert medical testimony to establish not only the existence of an injury or disease but expert medical testimony to determine the cause of the degenerative disease. As pointed out in the above legal summary, there must be competent medical evidence to establish whether the work-connected activity either caused, accelerated, or adversely affected a preexisting symptomatic or asymptomatic disease before there can be an award In recognition of this problem, the California Heart Association appointed an ad hoc Committee on Workmen's Compensation which conducted a two-year study of workmen's compensation as it relates to the employment and rehabilitation of individuals with heart disease. The report of this committee, as presented to the Assembly Finance and Insurance Committee by Harold I Griffeath, M D, Chairman, California Heart Association Public Relations Committee, pointed out that there are many types of heart disease, the most common being congenital (present at birth), rheumatic (caused by rheumatic fever), arteriosclerotic or coronary heart disease (secondary to atherosclerosis), and hypertensive (secondary to high blood pressure), and with each type of heart disease, impairment can vary from none whatsoever to extremely severe The committee states that with respect to the nature of heart disease

> It is evident that questions relating to diseases of the heart and circulatory system are complex and do not lend themselves to formulae or simple solutions [2]

The Heart Association Committee report also stated·

> The legal problems relating to heart disease are made doubly difficult by the fact that the two major causes of heart disability and death, coronary atherosclerosis and high blood pressure, are diseases about which medical information is far from complete We feel that it is extremely important to emphasize the inadequacy of present knowledge to answer many of the questions raised by Workmen's Compensation Law [3]

The committee concluded that atherosclerosis was a major cause of disease of the heart and circulation and posed the chief legal problem. It pointed out that 50 percent of all men over 45 have present an important degree of atherosclerosis of the coronary arteries In support of this contention, Dr Griffeath reported on a study conducted by the U S Army Institute of Pathology

> I referred to the fact that occlusion of vessels of surprising degree will be seen in apparently healthy young people On the left-hand column which you can't see well are the ages of these people, and they range from 18 to 40 There are only two aged 40, all the rest are 18 to 22 The average age of this group is 21.8 These were all hearts taken from healthy soldiers, American

[2] California Heart Association, Heart Disease and Workmen's Compensation, 1964, p 4
[3] Ibid

soldiers, killed in action in Korea On the right-hand column are listed luminal narrowing That means how much of the artery was still open The first two—100% occlusion in these apparently healthy young soldiers—and then 98, 98, 98, 98, 98, 95, 90, right on down to 50% occlusion These were cases of apparently healthy young boys killed in Korea, frozen, and their hearts were later examined by the Army Institute of Pathology The striking finding of that study which involves 300 hearts was that in 80 percent of those hearts at an average age of 21 8, there was sufficient atherosclerosis that it could be seen with the naked eye in these hearts without even needing a microscope In 80 percent of the boys at an average age just under 22 years, there was sufficiently advanced arteriosclerosis to see with the naked eye. This is shown to illustrate the fact that this disease begins very early in life and is well established early in life This information makes it clear that the disease is well on its way long before employment comes into the picture.[4]

The Heart Association report went on to say·

The development and progression of this condition usually proceeds gradually over a period of many years before the occurrence of symptoms What appears to be a sudden onset of a serious illness in a previously healthy individual is in reality an outward expression of a progressive disease process which has been silent for years The factors which initiate atherosclerosis are poorly understood. The factors which influence the progression of this disease are poorly understood. The factors which determine when the quiescent disease will abruptly manifest itself by sudden death or a nonfatal heart attack are poorly understood

Current knowledge indicates that atherosclerosis is the result of interplay among several factors, including genetic (hereditary), hormonal, and metabolic ("Metabolic" in this sense refers to the quantity and type of certain fat and protein components of the blood as well as clotting components of the blood) Environmental factors may modify the process An example is heavy cigarette smoking which has an unfavorable influence. The modifying effect of certain diets, high blood pressure, diabetes and of physical and emotional stress are under study Time is an extremely important factor It has been said that if a man lives long enough he will certainly die of atherosclerosis The relative importance of these factors varies among individuals and in the same individual at different times Undoubtedly there are factors as yet to be discovered.

Although facts are relatively scant in this field, opinions are plentiful and one can find support for almost any hypothesis. Based on what is known about atherosclerosis, it is the conclusion of almost all experts in the field and the belief of the California Heart Association that atherosclerosis is not primarily due to work but to other causes Complications of atherosclerosis of the coronary or

[4] Transcript, pp 8–9

other arteries are usually unrelated to work but may be precipitated by work activity after the disease process is advanced [5]

With respect to workmen's compensation awards for heart cases as a deterrent to a person with a heart condition being able to find employment, the ad hoc committee has this to say:

> It is the opinion of all members of our committee and the concern of the California Heart Association that Workmen's Compensation Law in California is causing unemployment for people with heart disease who are perfectly capable of working with complete safety for themselves, their employers and fellow workers Industrial spokesmen have stated before our committee that as a consequence of present law and interpretation, employers are unwilling to hire individuals who might expose them to liability for a preexisting impairment It is apparent that this reluctance by employers is increasing.
>
> It follows that as medical science becomes increasingly able to discern heart disease in apparently healthy individuals, we will be creating a formidable new class of unemployables Our committee is aware that there is a tendency at present for larger employers to screen out individuals who are "potential" cardiacs. These are persons who are not diseased but whose age, family history, slightly elevated blood pressure or blood cholesterol level places them in a group with a greater-than-average chance of ultimately developing cardiovascular disease
>
> It is alarming indeed to picture one million or more Californians with an imagined disability, unable to support themselves or their families The committee feels that this prospect is more than just a gloomy prospect. It is a likely consequence of present law as it becomes expressed in relation to the reasonable self-interest of employers The deterrent to employment is largely a financial one involving increased insurance costs, since most employers are familiar with the data from the United States Labor Department and elsewhere indicating that impaired workers have proved generally equal to and in some respects better than other workers if properly placed
>
> The California Heart Association is concerned about the yearly increase in the number of claims based upon heart disease coming before the Industrial Accident Commission It is our committee's conviction that the rate of increase will accelerate rapidly The number of heart claims in relation to the total number of workers with heart disease is still small If the criteria which have led to awards in heart cases before the Industrial Accident Commission were applied in all possible similar cases, the number of heart attacks and other cardiovascular problems which could be judged industrial would, we think, be tremendous A natural consequence of this predicted rapid increase in cardiac claims will be an increased reluctance of employers to hire individuals with heart disease [6]

[5] California Heart Association, ibid, pp 4–5
[6] Ibid, pp 6–7

Finally, the Heart Association made the following observation on the adequacy of medical testimony as it relates to permanent disability evaluation·

> It is the view of many physicians within the Heart Association that awards in workmen's compensation cases involving heart disease are based more on folklore than on scientific facts Though there is certainly a need for clear guidelines regarding the conditions under which disability from heart disease may reasonably be considered as arising from employment, the gaps in present knowledge in this field create difficulty in setting down strict medical criteria for assessing work aggravation. Any such medical criteria would run the risk of being arbitrary and lacking in scientific backing. Although research is needed and is under way to elucidate some of the problems posed by compensation cases, we cannot reasonably expect research data to give us the answer in a specific case with all its individual variables There can be no substitute for a careful analysis of all the factors in the individual case by a highly competent and well informed physician
>
> In the evaluation of disability, newer methods of physiological testing for the determination of disability should be encouraged. Methods of evaluating cardiac and pulmonary functioning during exercise have been developed When properly applied and interpreted, such techniques add objective and quantitative measurements to the assessment of disability Such techniques are especially helpful in cases where disability from emotional problems or lung disease is mistakenly attributed to the heart.
>
> Testing is of greatest help in those cardiac problems which are anatomically relatively stable On the other hand, coronary artery disease, because of the rapidity with which improvement or worsening of the coronary circulation can occur with accompanying variations in the degree of disability, can be evaluated with more limited certainty. No matter how refined the physiological testing, such procedures must be a supplement to the all-important clinical evaluation by a physician with special training and experience in the field of cardiovascular disease.
>
> The Heart Association is concerned about the competence of medical testimony It is believed that higher standards should be applied to medical witnesses The possession of a medical degree does not insure that a physician is competent to give meaningful opinions regarding technical cardiovascular questions. There is a need to study means of elevating the qualifications of medical witnesses or ways of assigning relative credence to opposing testimony. Even more important may be a study of ways to supply the Industrial Accident Commission with highly competent, impartial medical advisers The present system discourages impartial testimony since counsel for each party tends to select medical witnesses of predictable persuasion [7]

Appearing on behalf of the City of Los Angeles and the League of California Cities, Mrs Christina New, Deputy City Attorney for the

[7] Ibid , pp 8–9

City of Los Angeles, discussed both the problems of rebutting testimony before the Workmen's Compensation Appeals Board on questions of industrial causation of heart conditions and the scope of review of appeals board findings Mrs New maintained:

> For heart attack or heart disease to be compensable, the work does not have to be the sole cause or even the primary cause of the heart condition. If the work is but a contributing cause, it is a compensable injury under the facts and law as liberally construed by the Industrial Accident Commission.
>
> The rule . . ., namely, if any doctor testified, including the family physician, that the heart condition was the result of the employment that this should be considered industrial is, in fact, gentlemen, the very rule that is being applied by the Industrial Accident Commission at the present time
>
> Dr. Griffeath pointed out that there is no substantial agreement as to the causes of arteriosclerotic heart disease and that it would be possible to find a doctor to support any medical theory or opinion as to causation. This, gentlemen, is true. This is one of the problems that we are up against. The applicant merely has to go out and find a doctor that will write a report for him saying that his heart condition is industrially caused It doesn't matter how many other reports from other doctors are in the evidence. It doesn't matter if there are reports by independent medical examiners. The referee can and almost invariably will, because of Labor Code Section 3202, construe and find in favor of the applicant that this is an industrial heart condition. Now, this is the situation we are faced with once the referee has so held This is the finding of facts It is a finding of medical facts but it is a finding of facts that is conclusive on appeal. Labor Code Section 3953 says that, and I will quote right from the section: "The findings and conclusions of the commission on questions of fact are conclusive and final and are not subject to review." So if we don't win a case that we feel is definitely a nonindustrial condition at the commission level . . there is no hope.
>
> Also, if we are fortunate enough to have a writ of review granted, if there is any evidence in the record whatsoever, the district court of appeals and the Supreme Court will not disturb the finding of the commission. Not substantial evidence, gentlemen, but any evidence And I will point this fact up by reading from the most recent Advanced California Report dated January 7, 1966, from the case of *Riders Material Company v. Industrial Accident Commission*. The decision was written by the Honorable Justice Mosk and I quote: "Under the rules of construction by which we are bound, findings of the commission must be liberally interpreted in favor of sustaining an award, and even if the findings are inadequate for uncertainty, they will be upheld if they can be made certain by reference to the record. Moreover, conflicts in the evidence must be resolved in favor of the findings of the commission, and if there is any evidence in support, findings will not be disturbed on appeal " Any evidence. Now, this can be the evidence of a doctor that the applicant's counsel has gone out and carefully questioned

regarding his theory—does chronic stress and strain aggravate pre-existing degenerative underlying arteriosclerotic heart condition—and the doctor, especially if he is a treating physician, the family doctor, says, well—I think in this case, yes it did, and he will write a report to that effect, the referee will find it is industrially caused and that is the end of it.

It goes so we petition, if we have it granted, the court will say there is evidence here We could have five other doctors and an independent medical examiner saying—well, we disagree, we feel that this is a nonindustrial condition.[8]

The charge is often made that the family physician, when called to testify for an applicant on the question of industrial causation or aggravation of a heart condition, is not an impartial expert medical witness. This proposition was supported by Dr Griffeath.

It is very common for the family physician to testify, and he is in a position where he often is not an ideal impartial witness I know that I find it very difficult to testify in a case where I am the attending physician You will see individuals who are quite rigid about their attitudes in all cases except their own patients Doctors are human like everybody else, they are influenced by loyalty and emotions We do certainly have a situation where as mentioned the system does seek out people of known persuasion, and if you had a group of perhaps superhuman, ideal, impartial, medical witnesses, they probably would never be asked to testify because they would be too unpredictable[9]

If an employer is faced with a choice of hiring an employee with a known cardiac condition or one with no such condition, he would, all other things being equal, hire the person without the cardiac condition The employer does not, of course, wish to expose himself to a potential workmen's compensation claim which might result in a substantial permanent disability award or the payment of a death benefit Although the permanent disability may be apportioned where it is a symptomatic prior disabling disease, the death benefit is not apportionable One member of the committee questioned Dr Griffeath on the reluctance of employers to hire known cardiac risks:

Assemblyman Russell: Do you have any statistics as to the number of men or women who are unemployable because of . any kind of heart condition?

Dr Griffeath I think this is very difficult information to obtain because most people will not report the individuals they turn down It is difficult to get at times information on hiring practices and why certain individuals are excluded We do know, though, that many companies have exclusion of cardiac policies in their hiring just as insurance companies rate up or exclude cardiacs and we know that this is a real problem We even know that some companies are now screening people as to their risk of developing heart disease and are tending to exclude those individuals who are a high risk even though they are well at the moment.[10]

[8] Transcript, pp 60–62
[9] Transcript, p 23.
[10] Transcript, pp 31–32.

While industry spokesmen argue that heart cases account for a substantial amount of the expenditures for workmen's compensation in this state, others point out that the number of such heart cases before the Workmen's Compensation Appeals Board are relatively small.

> Clint Fair, California Labor Federation, AFL-CIO In 1953, they represented 1 7% of all cases decided by the Industrial Accident Commission] now they have increased to 2 8% in 1964 [and in 1965] they are down to 2 7% The problem is not that great a problem nor is it endangering our system of workmen's compensation when but 2 7% of the cases are in the area in which we have the greatest number of deaths in our society [11]

Given the difficulty that the medical profession itself has had in determining whether a particular patient's heart condition was caused or aggravated by his employment and the lack of any generally accepted medical standard on such causation, can the Legislature set acceptable legal standards different than those now used. One witness thought not:

> Charles Scully With respect to the assumption that there should be a different standard for heart cases, rather than for other types of compensable injury, I submit that the witness that you heard this morning in my opinion obviously establishes that you cannot establish a rule of certitude You cannot come up with statutory criteria which in a medical-legal aspect can fairly evaluate liability or nonliability. As a matter of fact, I believe the only conclusion that you can draw from the testimony of Dr Griffeath this morning is that it is an individual medical-legal determination to be made in each case based upon the existing factors applying to that particular individual in his particular job classification at the time the condition came about [12]

Alternative suggestions have been made with respect to compensating persons with preexisting injuries or illnesses when his condition would make an employer reluctant to hire him One such suggestion was made at the committee hearing by Mr Thomas Harris of the Teamsters Legislative Council.

> We have developed this suggestion, and it was only a suggestion as the attorneys present will immediately recognize, is open to a challenge of constitutionality on the basis of a case that was decided in the Supreme Court some 20 years ago, but courts change, and maybe it would be worth the challenge Our proposal essentially [is] this that any man with one of the statutory defined disabilities whether it be heart or epilepsy or certain other types of injury, leg or back and so forth that the Legislature might define, he could get from the Industrial Accident Division on a proper medical basis a certification that he suffered from this kind of injury He could then go to an employer and say, yes, I have a back injury and had a back injury five years ago, and I am pretty good at this sort of business, here's my card that shows that I am registered with the Administrative Director as having such

[11] Transcript, p 37
[12] Transcript, p. 43.

and such an injury. That man would in no way waive his rights to benefits in any way whatsoever. But as in automobile insurance you have an assigned risk fund that takes care of this, that is assigned risk insurance, that takes care of some of us more incompetent drivers, so you would have this fund that would pay exactly the full benefits as though he were on a par with anybody else. The man would not in any way waive his benefits; on the other hand, the employer's own account would not be charged for those benefits. It could be met, obviously, out of General Fund, it might be met in various other ways but the suggestion we made and that is not the crux of the matter as to how the fund was made Our suggestion was that there be an additional tax on everybody who was paying for workmen's compensation.

We believe that the question that has appeared here today . . . is serious. Not that it is affecting hundreds of thousands of workers, but it is affecting many, many hundreds—probably thousands of workers—who want to work, are able to work, physically able to work, but which under the present state of the law no sane employer, especially small employers, is very eager to hire.[13]

To what extent would the mandatory use of independent medical examiners or heart specialists help solve the problem of the referee gaining superior impartial medical testimony on which to base his decision? Since it has been argued that referees will often disregard the opinion of heart specialists in favor of that of a family physician in reaching a decision on the compensability of a particular heart case, it is necessary to consider this problem

In 1956 a study [14] was conducted under the auspices of the Cardiac and Industry Committee of the California Heart Association to, among other things, test to the degree of unanimity of medical opinion with respect to the relationship between alleged "injury" and heart disease and to determine if the Industrial Accident Commission's decisions in heart cases were consistent with expert medical opinion rendered outside the claims process The study consisted of an examination of 395 heart cases taken from the files of the Industrial Accident Commission These cases were submitted to the panel of outside qualified physicians Over one-half of these cases involved industrial workers and an additional one-fifth were policemen and firemen entitled to the presumption of compensability granted such safety members by various sections of the Labor Code A separate tabulation was kept of these safety members

The panel of examining physicians concluded that 79 out of the 398 cases submitted for review lacked sufficient information upon which to base an opinion Out of the remaining 319 cases, there was unanimous agreement among the reviewers in only 47 cases (15%) Subsequently, 101 of these cases were sent to the same reviewers just as if they were abstracts not previously distributed In this case, only 70 percent of the abstracts were judged the same way by the reviewer the second time On this point the study concluded that the medical judgment as

[13] Transcript, pp 47–48

[14] Beard, Rodney R, M D, et al, "Heart Disease Claims Under the California Workmen's Compensation Act." *Circulation*, Vol XIII, No 3, March 1956, pp 448–456.

measured by reproducibility on case abstracts material is far from reliable However, often when an expert medical witness is called to testify upon such heart cases, he relies on the same information and in many cases does not make a personal examination of the claimant. This is the case in all cases involving claims for death benefits This particular study concluded with these words:

> There is some discrepancy between the judgments of the California Industrial Accident Commission and a group of expert physicians reviewing the cases in abstract form, but it compares favorably with the substantial discrepancy among the physicians themselves, and the discrepancy between one judgment by a physician and a second judgment made on the same case by the same physician, some time later Inasmuch as awards favorable to the claimant must be supported in nearly every case by medical evidence, it appears that education of physicians for the part they play in these proceedings is needed
>
> It may also be pointed out that the allegation that "every heart claim gets an award" has not been substantiated by this study.[15]

The evidence available to this committee would indicate that although there has been a rise in the number of cardiac cases filed with the Workmen's Compensation Appeals Board and its predecessor, there has not been an inordinate increase The increase in the working force and the growing awareness among claimants and counsel of the developing law with respect to this type injury account for much of this increase Taking into account the lack of generally accepted medical standards on the degree to which work-connected activity causes or contributes to heart disease, it is not surprising that in any given case before the Workmen's Compensation Appeals Board predictability of the outcome is uncertain. As in most legal matters, the trier of fact must weigh the evidence presented and, exercising sound discretion and reasoning, reach a decision We are not convinced that there has been an abuse of such discretion by the referees or the board, particularly in light of the unanswered medical problems involved in heart disease We do not believe that the legal framework in this regard, set forth earlier in this report, is manifestly unfair to employers or employees. Although some would like to confine awards based on heart disease to cases arising out of extraordinary or severe stress or strain connected with the work, it must be remembered that the compensation system in California was not designed to provide benefits only for the extraordinary event, but for all ordinary occurrences which result in injury, illness or death.

If there is uncertainty in the appeals board decisions, it stems mainly from the lack of medical certainty in this area. What is required is medical guidelines rather than legal absolutes. The Legislature cannot impose a rule restricting heart awards to cases of extraordinary stress or strain when such a rule would not be based upon reason or substantially conclusive medical evidence that such a

[15] Ibid., p 456

rule is proper. It was our hope that in enacting AB 2023, and in particular Section 139 of the Labor Code during the 1965 General Session, reasonable guidelines could be developed This new code section requires the appointment of a medical advisory committee which is charged in subsection (d) of that section to "assist in developing guidelines for determination of disputed questions of medical fact" This direction to the medical advisory committee should provide the Workmen's Compensation Appeals Board with added medical information to, if necessary, revise its guidelines on heart cases if subsequent medical findings deem this necessary

Benefits

Permanent Disability Benefits

The Governor's Workmen's Compensation Study Commission, in its report, found that there had been a sharp increase in benefit-payroll ratios since 1953, and this increase was contributed to, primarily, by awards in certain categories Table 1 sets forth the aggregate benefit-payroll ratios on a loss-incurred basis for carrier-insured payrolls during those 10 years As can be seen from these figures, the more significant increases took place in three categories death benefits (77.8 percent), major permanent partial disabilities (122 9 percent), and minor permanent partial disabilities (58 5 percent) Wages in this period of time increased by only 43 3 percent

The reason for the sharp rise in death benefits is accounted for by the increased number of death cases (44 9 percent), which roughly corresponds to the increase in covered working force during that period (40.6 percent) In addition, statutory changes in the maximum death benefit from $8,750 or $7,000 (according to whether there is a surviving widow with at least one dependent child or not) to $20,500 or $17,500 respectively has accounted for a 50 percent rise. These two elements taken together account for nearly all of the total 77 8 percent rise in death benefits ratios

However, the increased permanent disability costs cannot be attributed solely to the rise in the covered work force, increased wages or statutory changes of benefit amounts In comparing the respective numerical increase in permanent disability cases resulting from an increased work force to the actual number of cases, an important insight can be gained.

While the temporary only cases have remained 6,421 short of the expected number, major permanent partials have gained 2,586 cases and minor partials 6,940 cases in excess of the expected numbers Hence, a substantial shift across the spectrum has taken place which is in part responsible for the disproportionate changes in the benefit-payroll ratios of the respective loss categories

After reviewing the benefit cost figure developed for the study, the commission concluded:

> The substantial increase in the relative amounts of death benefits was primarily the result of increase in benefit levels The sharp rise in indemnity benefits for permanent disability was not only the product of the growth in covered workers and rise in benefit

TABLE 7

TREND OF BENEFIT/PAYROLL RATIOS ON LOSSES INCURRED BASIS, FOR CARRIER-INSURED PAYROLLS, BY TYPE OF BENEFIT, CALIFORNIA, POLICY YEARS, 1953–62

(Dollar amounts in thousands)

Policy year	Payroll	Total incurred losses	As percent of payroll	Incurred medical	As percent of payroll	Incurred indemnity	As percent of payroll	Death	As percent of payroll
1953[a]	$12,140,520	$78,684	648	$30,959	255	$47,725	393	$3,286	027
1954	12,808,562	81,710	.638	33,181	259	48,529	379	3,670	029
1955	14,365,302	94,365	656	37,744	263	56,621	393	5,330	037
1956	15,754,328	105,198	668	42,282	268	62,916	399	5,471	035
1957	16,408,313	111,488	679	43,446	265	68,042	415	6,515	040
1958	17,709,972	127,345	718	47,771	270	79,475	449	6,691	038
1959	19,329,135	158,493	820	55,307	286	103,186	534	8,146	.042
1960	20,523,865	188,424	918	62,069	302	126,356	616	9,551	047
1961	21,989,544	207,981	951	67,439	308	140,542	643	11,140	051
1962[b]	*22,535,286*	*222,151*	*987*	*73,515*	*313*	*140,806*	*634*	*11,851*	*049*
1962[c]	23,607,312	232,200	984	73,654	312	158,546	.672	11,231	048
Percent increase 1953–62[b]			*46 1*		*22 7*		*61 5*		*81 5*
1953–62[c]			51 9		22 4		71 0		77 8

[a] Policy years 1953–61 are shown on second report basis
[b] 1962 on first report basis
[c] 1962 developed to second report basis by means of factors developed from the two preceding policy years

SOURCE California Inspection Rating Bureau.

Policy year	Payroll	Permanent total	As percent of payroll	Major permanent partial	As percent of payroll	Minor permanent partial	As percent of payroll	Temporary total	As percent of payroll
1953[a]	$12,140,520	$1,815	.015	$14,349	118	$19,982	164	$8,392	069
1954	12,808,562	1,303	.010	15,682	122	19,420	152	8,454	066
1955	14,385,302	2,067	014	16,542	115	23,109	.161	9,516	.066
1956	15,754,328	2,023	013	18,378	117	26,531	169	10,461	066
1957	16,408,313	2,258	.014	20,431	125	28,356	173	10,482	064
1958	17,708,972	1,571	.009	26,526	150	33,093	187	11,594	065
1959	19,228,135	3,497	.018	35,766	185	41,651	215	14,216	074
1960	20,523,965	4,421	.022	48,470	236	48,146	235	15,637	076
1961	21,569,544	4,015	.018	53,541	245	53,771	246	18,076	.083
1962[b]	*23,585,985*	*2,968*	*.013*	*48,730*	*207*	*68,035*	*289*	*20,237*	*086*
1962[c]	23,607,212	4,013	.017	62 131	.263	61,477	260	19,594	083
Percent increase: 1953–62[b]			*—15 5*		*75.4*		*70 7*		*24 6*
1953–62[c]			13 3		122 9		58 5		20 3

[a] Policy years 1953–61 are shown on second report basis
[b] 1962 on first report basis
[c] 1962 developed to second report basis by means of factors developed from the two preceding policy years
SOURCE California Inspection Rating Bureau

TABLE 2

Type of increase	Increase in number of cases		
	Major permanent partial	Minor permanent partial	Temporary only
Expected	922	5,077	20,390
Actual	3,508	12,017	13,969
Excess or deficiency	+2,586	+6,940	−6,421

levels, but in addition the result of a demonstrable shift from injuries resulting only in temporary disability to injuries resulting in a residual permanent disability. The shift occurred across the whole disability spectrum, but had the most pronounced effects on relative costs in the category of permanent partial disabilities of 25 percent and above [16]

Two witnesses at the committee's hearings presented explanations for this increase in permanent partial disability costs One, Mr Raymond Young, Manager, State Compensation Insurance Fund, blamed it on inadequate temporary disability payments presently being made which, in his opinion, forced persons to claim a permanent disability to make up for wages lost while unable to work and being paid this inadequate temporary disability.

In our society, our entire economy is based on the assumption that we will be able to pay for the groceries, the gas and lights, and the installment payments on the car, and our kids' teeth, and tonsils, and so forth, and it is in this area that workmen's compensation can really do its greatest job, in terms of the number of people directly involved

The need exists when the man has the need, immediately after the injury occurred When wage replacement payments are delayed or when they prove to be inadequate to meet basic economic needs, the injured man is forced to seek some other remedy. When he is forced in this direction, a series of ripple effects are set in motion which create problems as great or greater than the ones you have heard expressed here during the hearing.

Specifically, it leads to increased litigation. It leads to a tendency to misuse the permanent disability rating system to augment or supplement inadequate temporary benefits. It tends to delay the return to work

. . . This [chart] indicates that there is 70.28 percent increase in filings before the Industrial Accidents Division since 1958 compared to a 20 percent increase in disabling injuries reported. In other words, 70.28 percent gain in the number of filings for determination by the new Division of Industrial Accidents since 1958.

Another facet of the problem shows up in the apparent shift from cases involving temporary disability only, as contrasted to cases involving permanent disability. For example, a comparison of the figures in 1957 compared to 1962 show that there was a 123.8

[16] California, *Report of the Workmen's Compensation Study Commission*, April 1965, p 46

percent increase in major permanent disabilities, a 62 3 percent increase in minor permanent disabilities compared to only a 25 6 percent increase in cases involving temporary

Assemblyman Beilenson What's the reason, do you think, for this increase?

Mr Young I think there is a real need for these workmen to augment the benefits they are receiving as temporary benefits Quite frequently in correspondence in our files, we see a man who has accumulated a number of bills during the time he has been receiving temporary disability Oftentimes, benefits are delayed, a man doesn't get them when he needs them and when he does get them they aren't enough, so he must seek some other remedy to get himself out of the financial situation

Assemblyman Beilenson: This didn't used to be the case?

Mr. Young I think it was less the case in time when the benefits more nearly approximated the 62 percent [17]

Pressing an opinion contrary to that of Mr Young was Mr. Warren Hanna representing the California Conference of Employer Associations. Mr Hanna attributed the increased number of applications and the increased number of permanent disability awards to three causes First, the increased number of awards for cardiacs and other degenerative pathologies; second, refusal of the Workmen's Compensation Appeals Board to apportion disabilities between those caused by the injury and a preexisting injury or disease; and third, the granting of awards based wholly or in part on the subjective complaints of the applicant In reference to the awards based on subjective complaints which he described as the "subjective racket" the witness mentioned that it is almost unheard of for an applicant to walk away from the Appeals Board hearing without an award of some sort, even if it is solely based on subjective complaints unsupported by medical testimony Further

> . . this makes it possible for a claimant seeking a rating to exaggerate the subjectives, that is, by saying they are so severe that he can no longer do his work adequately or perhaps at all, and if believed by the referee or the board, even though unsupported by any objective finding or sign of disability, the employer can thus be forced to pay for a substantial permanent disability or even, at times, for total and permanent disability [18]

Mr. Hanna suggested the elimination of awards for subjective complaints that cannot be supported by findings of manifest physical impairments. He also suggested that·

> . . . it would be well to eliminate all allowances for minor and minimal disabilities which take up so much time of the board and staff which aren't really disabling.[19]

This latter suggestion was supported by Mr Edmund Leonard of the California Self-Insurers' Association Directing his attention to those applicants who have permanent disability ratings of between 1–19 percent, he postulated.

[17] Transcript, pp. 121–122.
[18] Transcript, p. 101.
[19] Transcript, p. 103.

> . . [they] actually had no wage loss And under the concepts of a wage loss replacement advanced to you and which is the basic concept of a compensation system, this whole 19 percent should be washed out There's no question on that They have no need They have no wage loss and they shouldn't get anything [20]

Reference must also be made to the study by Professor Earl F Cheit [21] on the question of permanent wage loss suffered by permanent disability cases In a study of actual cases Professor Cheit determined that only 7 3 percent of persons with disability ratings between 1 and 19 percent actually suffered a permanent wage loss This figure rises to 27 1 percent for persons with a disability rating of 20–69 percent and 66 8 percent when the rating is 70–100 percent

Of these persons with permanent wage loss in each of the three categories, the median compensation *paid* was as follows

1– 19% permanent disability	$1,200
20– 69% permanent disability	3,294
70–100% permanent disability	16,801

However, for those same persons, those with permanent wage loss, the *actual* median wage *loss* suffered was as follows

1– 19% permanent disability	$27,500
20– 69% permanent disability	42,222
70–100% permanent disability	46,562

These figures would indicate that, measured by a "wage loss" standard alone, a significant number of persons with minor permanent partial disabilities are compensated when they have suffered no wage loss But those persons who do suffer some wage loss are compensated at a fraction of what is the actual wage loss

However, wage loss is not the only criteria used to determine the degree of permanent disability an injured employee has suffered Labor Code Section 4660(a) provides that account shall be taken of the nature of the injury, the age of the applicant, his occupation and the diminished ability of the injured employee to compete in the open labor market

The Workmen's Compensation Study Commission, in its report, recommended that there be no increase in benefits for disabilities for less than 15 percent, but that disabilities greater than 15 percent should be compensated at a proportionately increasing scale so that disabilities of 50 percent would be compensated at 1½ times the present rate and the total disabilities at 2½ times the present rate

Their report on the subject concludes

> We conclude that it is not sufficiently probable that a worker with a permanent disability of 15 percent or less would suffer an actual wage loss after the injury becomes permanent to justify increases in benefits for this group, as compared to the more seriously injured group On the other hand, we conclude that it is sufficiently likely that a worker with a permanent disability of 50 percent or more (equivalent, for example, to loss of the major thumb, index, middle and ring fingers at the proximal joints) will

[20] Transcript, p 146
[21] Cheit, Earl F, *Injury and Recovery in the Course of Employment*, John Wiley and Sons, 1961, pp 179–185

sustain an actual long-term wage loss sufficient to justify an increase in the indemnity rate.[22]

Temporary Disability Benefits

Temporary total disability payments are presently 61.75 percent of the employee's average weekly earnings, but not to exceed $70 per week (Labor Code Sections 4453, 4653). The maximum of $70 per week has been in effect since 1961 when it was raised from $65 per week. The following table, prepared by the Division of Labor Statistics and Research, illustrates the changes in temporary disability benefits from 1953 to 1965:

Year[a]	Average weekly wage of injured workers			Maximum temporary benefit	Weekly earnings needed to receive maximum benefit	Percent of injured workers entitled to receive temporary benefit	
	Total	Men	Women			Equal to 61⅔ of earnings[b]	Less than 61⅔ of earnings[c]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1948	$64 12	$66 54	$45 27	$30	$48 58	22	78
1949	63 94	66 79	44 48	30	48 58	23	77
1950	66 87	69 69	46 67	30	48 58	19	81
1951	72 12	75 71	49 23	35	56 68	26	74
1952	76 50	80 19	52 00	35	56 68	22	78
1953	79 86	83 51	55 63	35	56 68	19	81
1954	80 33	84 10	55 73	35	56 68	19	81
1955	83 49	87 48	57 40	40	64.78	28	72
1956	87 69	91 84	60 58	40	64 78	24	76
1957	90 16	94 71	62 60	50	80 97	42	58
1958	94 63	99 23	65 52	50	80 97	37	63
1959	98 33	102 97	68 09	65	105 26	63	37
1960	102 64	107 65	72 29	65	105 26	57	43
1961	105 77	111 39	72 58	70	113 36	61	39
1962	111 39	117 08	74 68	70	113 36	56	44
1963	114 40	120 10	78 38	70	113 36	53	47
1964	119 43	125 68	81 85	70	113 36	49	51
1965	122 09	128 61	83 56	70	113 36	48	52

[a] 1948–52 as of November, 1953–65 as of September
[b] This column represents the proportion of injured workers earning the same or less than the amount in column 5
[c] This column represents the proportion of injured workers earning more than the amount in column 5

For the calendar year 1966, the percentage of injured workers entitled to receive 61 75 percent of earnings has dropped to 45 percent. This decrease in the effective rate of compensation will continue so long as the average weekly wage in the state increases and the temporary disability benefit is held at $70. One casualty of the present maximum temporary disability benefit is the state's Unemployment Compensation Disability Fund. Unemployment Insurance Code Section 2629 provides that a difference between the injured worker's temporary disability benefits for workmen's compensation and the unemployment compensation disability benefit the employee would have been entitled to if he had been injured off the job can be claimed by the employee. Since the unemployment compensation disability maximum is $80 per week, all workmen's compensation applicants whose weekly earnings are

[22] Study Commission Report, p 204.

above $113 per week may receive an additional $1–$10 per week from the Unemployment Compensation Disability Fund. In effect, the Unemployment Compensation Disability Fund is subsidizing the workmen's compensation program. Since the Unemployment Compensation Disability Fund is entirely supported by employee contributions, while workmen's compensation is employer financed, the industrially injured worker is, in effect, paying the compensation for his own injury. Each year this subsidy amounts to over $2.4 million.

The committee does not look with favor upon the continuing deterioration in the temporary disability compensation rate. The totally disabled workman must be assured of adequate compensation benefits to meet necessary living expenses at today's prices The present maximum temporary disability benefit does not provide such adequacy As a result, serious economic loss is visited upon an employee while he is temporarily disabled, a loss which the workmen's compensation system was initially designed to prevent The committee also does not favor the continued subsidy of workmen's compensation by the State Unemployment Compensation Disability Fund which may seriously deplete that fund The committee would, therefore, favor an increase in workmen's compensation temporary disability benefits to at least that of the maximum Unemployment Compensation Disability benefit

The Workmen's Compensation Study Commission, the Administrative Director of the Division of Industrial Accidents and the Manager of the State Compensation Insurance Fund have all recommended that the maximum temporary disability benefit be raised so that at least 75 percent of the work force would, if injured, be compensated at the rate of 61 75 percent of their average weekly wage This would mean a maximum benefit of $94 a week in a year like 1966 rather than the present $70 per week

Uninsured Employers

Every employer subject to the California compensation laws (other than governmental agencies) who does not have a permit to self-insure must obtain a policy of compensation insurance [23] Failure to do so is a misdemeanor [24] Willful failure to insure may result in the addition of a penalty of 10 percent of the compensation otherwise payable,[25] and the award of a fee for the workman's attorney against the employer.[26] The injured worker may proceed against the uninsured employer for compensation and, at the same time, sue him for damages in the civil courts,[27] with credit being allowed against the judgment in the amount of the compensation award [28] Negligence on the part of the employer is presumed and the defenses of contributory negligence, assumption of the risk and the act of a fellow servant are abolished.[29] The property of the uninsured employer may be attached,[30] and the employer's business may be abated as a nuisance [31] Workers not represented by counsel may

[23] Labor Code, Section 3700
[24] Labor Code, Section 3710 2
[25] Labor Code, Section 4554
[26] Labor Code, Section 4555
[27] Labor Code, Section 3706
[28] Labor Code, Section 3709.
[29] Labor Code, Section 3708.
[30] Labor Code, Section 3707.
[31] Labor Code, Section 3712.

obtain the assistance of the Division of Labor Law Enforcement in collecting awards against uninsured employers.[32]

None of these remedies, potent as they may seem, is of any avail to a seriously injured worker if the employer is insolvent or has inadequate assets to meet any judgment or award California does not have a fund for the compensation of workers of uninsured employers. The worker is left to a remedy resembling an employer's liability act coupled with severe sanctions, none of which is effective against a bankrupt uninsured employer

The Division of Labor Law Enforcement and the Department of Industrial Relations have had the duties since 1953 of enforcing the laws requiring insurance One investigator in San Francisco and one investigator in Los Angeles have the primary duty to enforce compliance with the workmen's compensation laws. This division receives from the Department of Employment cards showing the names and addresses of the approximately 6,500 new employers registered each month. It also receives from the Division of Labor Statistics and Research an average in 1963 of 540 doctors' first report of injury that failed to name a compensation carrier These reports are mailed to the California Inspection Rating Bureau for screening, and those employers found to have no record of workmen's compensation coverage are sent a notice of their obligation to insure In fiscal year 1963–65, 681 employers obtained workmen's compensation insurance as a result of enforcement programs and there were 49 prosecutions for failure to obtain compensation insurance

However, those business entities which maintain that the persons working for it are not employees but independent contractors may often not obtain insurance The question of the employee-independent contractor status of the worker may not then arise until after an accident has taken place If, at this time, the worker is found to have been an employee and not an independent contractor, and the employer has not obtained insurance and has no assets or only limited assets, the employee will be unable to satisfy a judgment or award against the employer This works serious hardships against the injured employee, especially when he is in need of immediate medical attention In cases of severe injury to an employee where immediate and long-term care are required and some form of rehabilitation is a necessity, the employee's eventual physical recovery may be seriously hampered by his inability to get such necessary medical care

The Governor's Workmen's Compensation Study Commission and the other organizations which appeared at this committee's hearing recommended that an uninsured employer's fund be established with an initial appropriation of $100,000 to be administered by the State Compensation Insurance Fund for the purpose of paying awards of compensation against uninsured employers, and for the purpose of supplying immediate medical care The State Fund, as trustee of the uninsured employee's fund, should be authorized to obtain the assistance of the Division of Labor Law Enforcement, the Attorney General and district attorneys to assist it in recouping from uninsured employers the amounts it has paid.

[32] Labor Code, Section 3715

Ohio has such a provision in its statutes (Title 41, Ohio Revised Code, Section 4123) Under the Ohio law, the injured employee may file his application with the Industrial Accident Commission and file a copy of it, together with an affidavit that the employer has failed to insure, with the county recorder The affidavit constitutes a lien from the time of filing in favor of the commission upon the employer's real and personal property and it is recorded like a mortgage The lien is lifted only when the employer pays the award or posts a bond satisfactory to the commissioner The employee receives his award from the Ohio State Compensation Insurance Fund even if the fund is unable to collect from the employer Suit is brought against the employer by a state agent, and such suits are given precedence on the dockets The Ohio State Compensation Insurance Fund also sues the uninsured employer for the premium that he should have paid if he had been insured all along

UNEMPLOYMENT INSURANCE FOR FARMWORKERS

UNEMPLOYMENT INSURANCE FOR FARMWORKERS

CONCLUSIONS AND RECOMMENDATIONS *

The committee favors in principle the extension of unemployment insurance to farmworkers and recommends that in the 1967 General Session a method be devised which will provide such an extension with reasonable eligibility tests and will further provide for the equitable distribution of the cost of such a program without an additional burden being placed on the nonagricultural employers

* Assemblyman Veysey dissents and submits the following statement

"In my judgment, the recommendation should be Unemployment insurance is needed and should be extended to those agricultural employees who have a strong and nonseasonal identification with the farm labor market Strict eligibility tests of earnings and seasonality should be applied to include protection against the chance of loss of earnings rather than the certainty of loss, thus retaining a sound principle of insurance

"There should be adequate safeguards against passing the costs of the agricultural coverage to other employers Agriculture and farmworkers do not seek a subsidy"

UNEMPLOYMENT INSURANCE FOR FARMWORKERS

The two largest employee groups which remain ineligible for unemployment insurance benefits in most states are government employees and farmworkers. The absence of coverage for these groups largely results from the influence of the Federal Unemployment Tax Act All employers subject to this act must pay 3 1 percent of their taxable payroll to the federal government to provide unemployment insurance coverage and administrative costs However, if the employer participates in an approved state unemployment insurance plan, a credit of 2 7 percent is afforded the subject employer However, governmental employees and farmworkers are specifically excluded from mandatory coverage under the federal act For this reason almost all state and territorial unemployment insurance laws exclude these same groups, although the choice is optional with each state Only the District of Columbia, Hawaii and Puerto Rico have extended mandatory coverage to farmworkers.

There has been a significant change which has converted the hired farmworker from his former status in which he was virtually a member of the family living on the family farm to a position in which he is part of a mass nonresident labor supply to be hired as needed The nature and pattern of his employment has become increasingly similar to that found in nonagricultural industry.

Tables 1 to 4 illustrate some statistical details concerning the changing character of agriculture in the United States and the State of California

The trend from a rural to urban society has been accompanied by the increasing "industrialization" of the nation's agriculture Today farming is big business, especially this is true in California Large-

TABLE 1

POPULATION: URBAN, RURAL, FARM—U.S. AND CALIFORNIA, SELECTED YEARS, 1800–1960

(Based on decennial census of population)

Year[2]	United States					California				
				Farm[1]					Farm[1]	
	Total population (millions)	Percent urban	Percent rural	Number (thousands)	Percent of total	Total population (millions)	Percent urban	Percent rural	Number (thousands)	Percent of total
1800	5 3	6	94							
1850	23 2	15	85							
1900	76 0	40	60							
1910	92 0	46	54							
1920	105 7	50 3	49 7							
1930	122 8	56	44							
1940	131 7	57	43							
1950	151 3	64	36	23,048	15 2	10 6	81	29	568	5 4
1960	179 3	70	30	13,474	7 5	15 7	86	24	351	2 2

[1] Farm population is a part of rural population

[2] As of April 1 since 1930, January 1 in 1920, April 15 in 1910, June 1 in 1850 and 1900, August 4 in 1800

SOURCE *Statistical Abstract of the United States, 1966*, U S Department of Commerce, Bureau of the Census

TABLE 2

EMPLOYED PERSONS IN AGRICULTURE BY TYPE OF WORKER: UNITED STATES, 1947–1965

(Persons 14 years of age and over)

Year[1]	Average annual employment in agriculture					
	Number (000)			Percent		
	Total	Self-employed and unpaid family workers	Wage and salary workers	Total	Self-employed and unpaid family workers	Wage and salary workers
1947	8,366	6,589	1,877	100	80	20
1948	7,973	6,227	1,746	100	78	22
1949	8,026	6,181	1,845	100	77	23
1950	7,607	5,773	1,733	100	77	23
1951	7,054	5,408	1,647	100	77	23
1952	6,905	5,278	1,626	100	78	22
1953[2]	6,562	5,094	1,467	100	78	22
1954	6,504	5,051	1,452	100	78	22
1955	6,730	5,030	1,700	100	76	25
1956	6,585	4,893	1,692	100	74	26
1957	6,222	4,535	1,687	100	73	27
1958	5,844	4,173	1,671	100	71	29
1959	5,836	4,148	1,689	100	71	29
1960[2]	5,723	3,856	1,866	100	67	33
1961	5,463	3,729	1,733	100	68	32
1962[2]	5,190	3,534	1,656	100	68	32
1963	4,946	3,271	1,676	100	66	34
1964	4,761	3,179	1,582	100	67	33
1965	4,585	3,093	1,492	100	67	33

[1] Data for the period 1947–1956 have not been adjusted to reflect changes in the definitions of employment and unemployment adopted in January 1957

[2] Not strictly comparable with prior years

SOURCE U.S Department of Labor, Bureau of Labor Statistics

TABLE 3

SELECTED DATA ON SOCIAL SECURITY COVERAGE OF FARM WORKERS—1963

November 16, 1966

	Number of employers	Number of workers	Taxable farm wages		Average number of workers per employer
			Total (millions)	Average per worker	
U S —total[1]					
1955	485,000	1,890,000	$1,520	$805	3 9
1960	475,000	1,900,000	1,920	1,020	4 1
1962	480,000	1,950,000	2,220	1,135	4 1
1964 (preliminary)	475,000	1,950,000	2,290	1,175	4 2
California					
1955	41,700	380,900	$312	$820	9 1
1960	39,600	362,500	412	1,135	9 2
1963	39,000	393,000	493	1,255	10 1

[1] Includes Puerto Rico and Virgin Islands

SOURCE Social Security Farm Statistics, 1955–1963, U S Department of Health, Education and Welfare, Social Security Administration, June 1965.

TABLE 4

CALIFORNIA

(SELECTED DATA FROM 1959 AND 1964 CENSUS OF AGRICULTURE)

November 15, 1966

Item	1959	1964
Number of farms	99,274	80,846
Average size of farm (acres)	372	458
Number of commercial farms (sales $2,500 or more)	66,927	57,283
Number of farms with expenditures for hired labor	62,260	49,076
Total wages paid (millions)	$499	$555
Average wage bill per farm employing hired labor	$8,014	$11,309
Number of farms hiring regular workers (150 days or more)	21,050	22,031
Total number of regular workers hired	80,367	122,131
Average per farm hiring regular workers	3 8	5.5
Value of farm products sold—total (millions)	$2,822	$3,502
Livestock	1,103	1,383
Fruits and nuts	580	742
Vegetables	269	348
Other field crops	774	893
Forest and specialty horticultural products	96	131

SOURCE 1964 U S Census of Agriculture, Preliminary Report, California, Series AC 64-PI, October 1966

scale operations and extensive applications of capital have profoundly altered the character of farm labor utilization

The sharp decline in the number of people employed in agriculture is a well-known trend. What is perhaps not so firmly appreciated is the decline has been less for hired farmworkers than it has been for the self-employed and the unpaid family worker In 1947, for example, when total employment in agriculture in the United States averaged 8.3 million, only one out of every five jobs was filled by hired worker. By 1965 when total agriculture unemployment was down to 4 6 million, one out of three jobs was filled by hired worker. While the industrialization of farming has reduced total labor utilization, it has also resulted in placing relatively greater reliance on hired labor

Other available information indicates that what is true for the nation is true to an even greater degree for California For example, in 1960, when the number of persons living on farms in the United States equalled 7 5 percent of the total population, a comparable figure in California was only 2 2 percent In that year the number of workers reported with farm wages in California subject to social security taxes was larger than the entire farm resident population. The figures were 362,500 migrant farmworkers and 351,000 farm residents For the nation as a whole the comparison for that year shows a total of 3 million farm residents and only 1 9 million farmworkers covered by social security. Also, in that year there were 2 2 million self-employed farmers in the country covered by social security, more than the total number of workers so covered 1 9 million But in California there were only 65,000 covered self-employed farmers, less than one-fifth the number of covered hired farmworkers Truly, California agriculture has become heavily dependent on its hired farm labor force, and the stability of that labor force has become essential.

COVERAGE IN OTHER STATES AND NATIONS

State experience with unemployment insurance for farmworkers is limited Only in Hawaii is there mandatory coverage that applies generally to most farm employment Puerto Rico has a special provision that applies only to fieldworkers in sugar cane, and even this protection differs in nature and in certain respects from that afforded to workers in commerce and industry generally Coverage of farmworkers in other states is entirely voluntary and very few employers have elected to cover their workers

In summarizing the experience Hawaii has had, it should be realized that agriculture in that state is not representative of mainland agriculture Hawaii's agriculture economy is dominated by large pineapple and sugar companies These highly integrated enterprises handle all aspects of production from the growing of the crop to the preparation of finished products There are some large vertically integrated corporate enterprises in California operating in this manner in certain crops so the Hawaii experiences have some relevance Clearly, however, such employers are not representative of California's agricultural economy The Hawaiian unemployment insurance program for agriculture workers was established under a separate law independent of the regular unemployment insurance program This approach avoided conflict with certain requirements of the Federal Unemployment Tax Act.

A special feature of Hawaii's agricultural and unemployment insurance law permits farm employers to cover their workers on a self-financing basis, that is to pay all and only benefit costs incurred by the workers thereby remaining independent of the normal unemployment insurance tax funding arrangements Most employers, accounting for about 90 percent of covered farm employment, have chosen this alternative, the rest are covered under the regular unemployment insurance law Those covered on the self-financing basis pay a flat tax of between one-tenth and one-twentieth of 1 percent of the taxable payroll for administrative cost Farm employers are covered only if they hire 20 or more farmworkers in 20 or more weeks in a calendar year. For self-financing employers the cost of covering farmworkers averaged about 1 percent of the taxable payroll in both 1964 and 1965 For contributory farm employers, those covered under the regulatory law, cost data are not available but their contributions averaged 2 3 percent of taxable payroll in 1964 and 2 percent in 1965

Two aspects of Hawaii's program in agriculture must be noted which helps to explain why benefit costs in agriculture were not higher.

One, farm employment in Hawaii for the most part is fairly stable year around Seasonal employment appears to be of some significance only in pineapple and coffee

Two, the Hawaii unemployment insurance law contains provisions which restrict payment of benefits to seasonal workers Unless they had other substantial employment besides seasonal employment in their base period such workers may receive benefits only in those periods of the year when their seasonal employment normally occurred Since Hawaii has defined farmworkers to be seasonal workers these provisions have authorized to restrict their benefited entitlement

Effective April 1, 1967, mandatory coverage of farmworkers will be provided in Canada There is no minimal size of farms specified Workers will be entitled to benefits on the same basis as other workers covered under the Canadian act and no special seasonal limitations are provided A separate accounting for benefits paid to agricultural workers will be maintained and the government will underwrite the added costs of the program pending a realignment of present contribution rates of both employers and employees (unemployment insurance in Canada is financed by contributions from employers, workers, and the government) It is estimated that 100,000 farms will be covered and 200,000 workers will be affected

Twenty other foreign countries have compulsory unemployment insurance Eleven of these countries include some or all agricultural workers under the protection of their programs A compilation of unemployment insurance and other social insurance benefits provided employees in these countries are presented in Table 5

Cypress exempts farms employment fewer than five workers A size limitation applies in no other industry West Germany excludes agricultural employees who have yearly contracts Ireland excludes female farm employees Italy excludes seasonal workers, regardless of industry. None of the 11 countries which cover agricultural employees make any distinction in eligibility and benefit provision between employees and those covered in other industries Such provisions are applied uniformly to all workers who have coverage Both employers and workers contributed the financing of unemployment insurance in all of these 11 countries, except in Italy where workers do not contribute. Government contributions to unemployment insurance funds are made in six of these countries—Belgium, Cypress, Holland, Ireland, Norway and the United Kingdom

AUSTRIA

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First laws: 1906 (salaried employees) and 1938 (wage earners). Current laws 1955 (employees) and 1957 (self-employed). *Social insurance system* (1 schilling equals 3 8 U S cents)	Wage earners and salaried employees, with separate system for each, provisions largely uniform for both Exclusions Family labor, and casual employees Special systems for miners, notaries, public employees, nonagricultural self-employed, and agricultural self-employed	*Insured person* Wage earners, 7 5% of wages, salaried employees 7% of salary. *Employer* For wage earners, 7 5% of payroll (agriculture, 8 5%, mining, 13%), for salaried employees, 7% *Government* Annual grants to wage-earner and agricultural systems Maximum earnings for contribution and benefit purposes 5,200 schillings a month	*Old-age pension* Age 65 [illegible] or 60 (women), and months of contribution, including 12 months in [illegible] 96 months (payable at [illegible] 55, respectively, after year sickness or unemployment) Reduced by current above 710 schillings a month Reciprocity required for payments abroad beyond months *Invalidity pension* Loss of [illegible] of normal earning capacity 60 months of contribution including 12 months in [illegible] 36 months *Survivor pensions* 60 months contribution, including months in last 36 months
SICKNESS AND MATERNITY First law 1888. Current law 1955 *Social insurance system* (cash and medical benefits)	Employed persons, and pensioners (for medical benefits only) Exclusions Family labor and casual employees Special systems for railway employees, public employees, and nonagricultural self-employed	*Insured person* Wage earners, up to 3 68% of wages, salaried employees, up to 2 4%, pensioners, 1–2 5% of pension (sick funds fix exact rates) *Employer* For wage earners, up to 3 65% of payroll, for salaried employees, up to 2 4% (sick funds fix exact rates) *Government* 50% of cash maternity benefits (Pension Insurance Institutions contribute 3 7% of pensions paid for medical insurance of pensioners) Maximum earnings for contribution and benefit purposes 3,250 schillings a month	*Sickness and maternity* [illegible] Currently in covered employment (funds may 6 months of contribution last 12 months for benefits only)
WORK INJURY First law 1887 Current law 1955 *Social insurance system*	Employed and self-employed persons	*Insured person.* None, except 30 schillings a year payable by self-employed *Employer* For wage earners, 2% of payroll, for salaried employees, 0 5% *Government* None Maximum earnings for contribution and benefit purposes 5,200 schillings a month	*Work-injury benefits* No mum qualifying period.

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AUSTRIA

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
Old-age pension. 30% of average earnings during last 6 years, plus increments per year of insurance of 0 6% of earnings (first 10 years), 0 9% (11–20 years), 1 2% (21–30 years), and 1 8% (after 30 years) Paid for 14 months a year Constant-attendance supplement (if helpless) 50% of above; minimum, 300 sch a month Child's supplement 5% of earnings per child under 18 (25 if student, no limit if invalid) Supplemental equalization payment (if pension small) Amount raising pension to 870 schillings a month, plus 345 sch for wife and 100 sch per child	*Invalidity pension.* 30% of average earnings during last 5 years, plus increments per year of insurance of 0 6% of earnings (first 10 years), 0 9% (11–20 years), 1 2% (21–30 years), and 1 8% (after 30 years) Paid for 14 months a year Special supplement If pension below 40%, increased by 10% of earnings, if 40–49%, increased to 50% Constant-attendance supplement 50% of above, minimum, 300 sch , and maximum, 600 sch a month Child's supplement 5% of earnings per child under 18 (25 if student, no limit if invalid) Supplemental equalization payment (if pension small) Amount raising pension to 870 schillings a month, plus 345 sch for wife and 100 sch per child	*Widow's pension* 50% of basic invalidity pension of insured, minimum for widow over 40 or caring for child, 25% of earnings of insured Also payable to invalid dependent widower *Orphans' pensions* 40% of widow's pension, or 60% if full orphan, for each orphan under 18 (25 if student, no limit if invalid) Maximum survivor pensions 100% of invalidity pension of insured Supplemental equalization payment (if pension small) Amount raising widow's pension to 870 sch a month, plus 316 sch per child, or raising full orphan's pension to 475 schillings Funeral grant 20 days' earnings on death of insured (funds may raise to 40 days), 1 month's pension on death of pensioner	Ministry of Social Administration, general supervision Manual Workers' Pension Insurances Institution and Salaried Employees' Pension Insurance Institution, administration of pensions (separate institutions for agriculture, railroads, mining, and self-employed) Self-governing agencies managed by elected representatives of insured persons and employers Sick funds collect contributions, transmitting them to pension insurance institutions
Sickness benefit. At least 50% of earnings (60% after 5 weeks), funds may add up to 10% of earnings for wife and 5% for each child, subject to maximum of 75% of earnings Payable after 3-day waiting period (salaried employees, 42-day waiting period), for up to 26 weeks (funds may pay up to 52 weeks) *Maternity benefit.* 100% of earnings, for 6 weeks before and 6 weeks after confinement Nursing benefit of 2 sch a day (funds may pay up to 5 sch), for 8–12 weeks after confinement (funds may pay up to 26 weeks). Also, lump-sum maternity grant of 40 sch. (funds may pay up to 100 sch)	*Medical benefits.* Service benefits, ordinarily provided by doctors, hospitals, and druggists under contract with and paid directly by sick funds, some funds operate own clinics or hospitals Medical care, hospitalization, medicines, maternity care, dental care, appliances, and home nursing Patients pay 3 schillings per visit to doctor, 2 sch per prescription, and up to 20% of dental care cost Duration No limit, except 26 weeks for hospitalization (funds may provide up to 52 weeks)	*Medical benefits for dependents.* Same as for insured, but with 10–20% cost-sharing for hospitalization and medicines, maximum hospitalization, 26 weeks Wife receives same maternity care and nursing benefit as insured woman, and lump-sum maternity grant of 600 schillings (funds may raise to 1,000 schillings)	Ministry of Social Administration, general supervision. Nine district, 10 establishment, and 9 agricultural sick funds, administration of contributions and benefits (special funds for mining, railroads, government employees, and self-employed) Self-governing agencies managed by elected representatives of insured persons and employers
Temporary disability benefit (work injury) Ordinary sickness benefit as above payable after 3-day waiting period for first 26 weeks, under sickness insurance	*Permanent disability pension* (work injury) 66⅔% of average earnings during last year, if totally disabled Child's supplement 10% of pension for each child under 18 (25 if student, no limit if invalid), maximum supplement, 33⅓% of earnings Constant-attendance supplement 50% of pension. Partial disability Percentage of full pension corresponding to loss of earning capacity (converted to lump sum if below 25% of full pension)	*Widow's pension* (work injury) 40% of earnings of insured, if age 60 or invalid otherwise, 20% of earnings Also payable to dependent widower *Orphans' pension* (work injury) 20% of earnings for each orphan, or 30% if full orphan Other eligible survivors (if above pensions below maximum) Parents, brothers and sisters, and grandparents receive 20% of earnings	Ministry of Social Administration, general supervision General Accident Insurance Institution, administration of long-term benefits (separate institutions for agriculture and railways) Sick funds collect contributions, transmitting them to accident insurance institutions, such funds also provide temporary disability benefits and first 45 days of medical care

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AUSTRIA—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
UNEMPLOYMENT First law 1920 Current law 1958 *Compulsory insurance system*	Employed persons Exclusions Family labor, casual employees, and public employees	*Insured person.* 1% of earnings *Employer* 1% of payroll *Government.* None (pays cost of emergency assistance) Maximum earnings for contribution and benefit purposes 2,400 schillings a month	*Unemployment benefit* 20 weeks of contribution in last 12 months (52 weeks in last 24 months, if first claim), 12 months extended for sickness, unemployment, noninsured employment, etc Capable of earning ½ of wages of similar worker, willing to work, and registered Unemployment not due to voluntary leaving, misconduct, work stoppage, or refusal of suitable offer (disqualification usually up to 4 weeks) Benefit reduced by other income over 1,200 schillings a month
FAMILY ALLOWANCES First law 1948 Current laws 1949 (employees) and 1954 (self-employed) *Employment-related system*	Employed and self-employed persons, social insurance beneficiaries, and assistance recipients, with 1 or more children	*Insured person* 3% of income tax payable by all income taxpayers *Employer* 6% of payroll *Government* Grants by Provinces	*Family allowances* Child must be under 21 (25 if student or full orphan, no limit if invalid and taxable income of child not over 500 schillings a month)

BELGIUM

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1924 Current laws 1955 (wage earners), 1956 (self-employed), and 1957 (salaried employees) Invalidity pensions provided under sickness insurance	Gainfully occupied persons, coverage effected through 3 separate systems for wage earners, salaried employees, and self-employed Special systems for miners, railroad employees seamen, and public employees (Coverage for invalidity pensions same as for sickness and maternity below.)	*Insured person* 5% of earnings (1955, 5 25%, 1956, 5 5%) *Employer* 6% of payroll (1955, 6 75%, 1956, 7%) *Government* Annual subsidies, according to rising scale Maximum earnings for contribution and benefit purposes (salaried employees only) 9,000 francs a month	*Old-age pension* Age 65 (men) or 60 (women), payable up to 5 years earlier, with 5% reduction a year For full pension, actual or credited employment in all years from 1925, or 15 years for men and 40 for women, otherwise, proportionately reduced pension Substantial retirement necessary Pensions not payable abroad, those of aliens reduced 20% unless reciprocity

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AUSTRIA—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
	Medical benefits (work injury) Comprehensive care, including appliances and rehabilitation (first 45 days provided under sickness insurance)	Maximum survivor pensions 80% of earnings Funeral grant $^1/_{10}$ of annual earnings of insured, minimum, 400 schillings	
Unemployment benefit About 30–50% of earnings, inversely according to 12 wage classes Maximum benefit, 156 schillings a week Dependents supplements 30 schillings a week for 1st dependent, and 22 sch for each other dependent, up to maximum benefit of 80% of earnings Payable after 7-day waiting period, for up to 12 weeks, 20 weeks (if 52 weeks of coverage in last 24 months), or 30 weeks (if 156 weeks of coverage in last 60 months) Unemployment assistance payable to needy citizens when insurance benefits exhausted			Ministry of Social Administration, administration of benefits and placement through its provincial and local employment offices, employment offices managed by tripartite committees Sick funds collect contributions with those for other social insurance programs
Family allowance 155 sch a month for 1st child, 175 sch for 2nd 205 sch for 3rd, 235 sch for 4th and 265 sch for 5th and each additional child (paid for 14 months a year) Also supplement of 175 schillings a month if 3 or more children in family *Birth grant* Lump sum of 500 schillings for each birth plus 2 infant's grants of 600 sch each during first 6 months			Ministry of Finance, administration of program through Family Allowances Equalization Fund attached to Ministry Employers (or social insurance institutions) pay allowances directly to recipients, and settle only surplus or deficit of contributions due with equalization fund

BELGIUM

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
Old-age pension For full pension, 60% (single person) or 75% (married person) of average lifetime earnings, in computing average, earnings for each past year revalued for changes in retail price index Reduced pension (if full qualifying period not met) Percentage of full pension corresponding to proportion of period completed	*Invalidity pension* 60% of earnings Maximum pension 410 francs a month Automatic adjustment of outstanding pensions to 2.5% changes in retail price index	*Widow's pension* 60% of old-age pension of insured Payable to widow age 45, $^2/_3$ incapacitated, or caring for child Automatic adjustment of outstanding pensions to 2.5% changes in price index Adaptation grant (widows not eligible for pension) Lump sum of 1 year's pension	Ministry of Social Welfare, general supervision National Social Security Office in Ministry, collection of contributions and distribution to national agencies administering benefits National Retirement and Survivors Pension Fund, administration of old-age and survivor pensions, managed

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BELGIUM—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
Social insurance system (1 franc equals 2 U S cents)		(Invalidity pensions financed through sickness and maternity insurance)	*Invalidity pension* Loss of ⅔ of earning capacity in usual occupation 6 months' coverage, including 120 days of actual work (3 months and 60 days, if below 25), and coverage during last quarter *Survivor pensions* Coverage during last 12 months, and in ⅓ of period since age 20, or 1926 if later, otherwise, proportionately reduced pension
SICKNESS AND MATERNITY First law 1894 (mutual benefit societies) Current law 1963 *Social insurance system* (cash and medical benefits)	Employed persons (must enroll with mutual benefit society or else with public auxiliary fund) Pensioners covered for medical benefits Coverage of students, public utility employees, and self-employed for medical benefits also authorized Special systems for miners, railroad employees, seamen, and public employees	*Insured person* 5 0% of earnings *Employer* 5 0% of payroll *Government* 32% of medical benefit costs (95% for specified serious diseases), 50% of invalidity pensions in 2nd and 3rd year of payment, 95% thereafter Maximum earnings for contribution and benefit purposes 11,550 francs a month, varies with retail price index	*Cash sickness and medical benefits* 6 months of insurance, including 120 days of actual work (3 months and 60 days, if below 25), and insurance during last quarter *Cash maternity benefits* 10 months of insurance immediately prior to confinement
WORK INJURY First law 1903 Current law 1931 *Voluntary insurance with private carrier*	Employed persons	*Insured person* None *Employer* Whole cost, through direct provision of benefits or insurance premiums (noninsured employers with fewer than 500 workers must contribute to special guarantee fund) *Government* None Maximum earnings for benefit purposes 10,000 francs a month	*Work-injury benefits* No minimum qualifying period
UNEMPLOYMENT First law 1920 (subsidized voluntary insurance) Current law 1945 *Compulsory insurance system*	Employed persons Exclusions Railroad employees, domestic servants, public employees, and family labor Special systems for miners seamen, port workers, and building workers	*Insured person* 1% of earnings *Employer* 1% of payroll *Government* Regular subsidy of 2% of earnings, plus amount of any deficit Maximum earnings for contribution purposes 11,550 francs a month, varies with retail price index	*Unemployment benefits* From 75 days of insured employment in last 12 months to 600 days in last 36 months, rising by age of claimant Ability to earn ⅓ of earnings of similar worker, willingness to accept suitable work, and registration at exchange Unemployment not due to voluntary leaving, discharge for misconduct, strike, or unjustified refusal of suitable offer (disqualification for 4–52 weeks according to gravity of fault and frequency of occurence)

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BELGIUM—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
Automatic adjustment of outstanding pensions to 2.5% changes in retail price index		Funeral grant Lump sum of at least 15 days' maximum cash sickness benefit (Special allowances for orphans paid under family allowance program.)	by administrator representing Ministry, assisted by employee-employer council National Sickness and Invalidity Insurance Institute, general administration of invalidity pensions
Sickness benefit 60% of earnings Payable after 3-day waiting period (salaried employees, 30 days, during which employer must pay full wages), for up to 1 year, payable for additional 2 years if prolonged incapacity *Maternity benefit* 60% of earnings Payable for 6 weeks before and 6 weeks after confinement (not payable to salaried employees during 30 days of paid maternity leave employers required by law to provide them)	*Medical benefits* Cash refunds of part or all of medical expenses General and specialist care, surgery, hospitalization, medicines, laboratory services, maternity care, dental care, nursing, and appliances Insured normally pays for services, and is then reimbursed by society of which a member for up to 75% of amount listed for such services in official fee schedule, 100% reimbursement for ward care in hospital, specified serious diseases, specialist services, mid-wifery, appliances, and to pensioners Duration No limit	*Medical benefits for dependents* Same as for insured	Ministry of Social Welfare, general supervision National Social Security Office, in Ministry, collection of contributions National Sickness and Invalidity Insurance Institute, coordination of program, together with 2 Management Committees for cash and medical benefits Local agencies paying benefits (1) about 2,000 approved private mutual benefit societies, federated into 5 national unions, and (2) district offices of public auxiliary fund, for persons not belonging to mutual society
Temporary disability benefit (work injury) 80% of earnings for first 28 days of incapacity, thereafter, 90% Payable from 1st day of disability, until recovery or certification of permanent disability	*Permanent disability pension* (work injury) 100% of earnings, if totally disabled Constant-attendance supplement Up to 50% of earnings Percent of full pension corresponding to degree of incapacity, if partially disabled (converted to lump sum in specified circumstances) *Medical benefits* (work injury) Medical treatment, surgery, dental treatment, hospitalization, medicines, and appliances	*Widow's pension* (work injury) 30% of earnings of deceased Also payable to dependent widower *Orphans' pensions* (work injury) 15% of earnings per orphan, or 30% if full orphan, payable for not more than 3 orphans Other survivors (in absence of above) Parent, 20% of earnings, grandchild, brother, or sister, 15% Funeral grant Lump sum of 30 days' earnings	Ministry of Social Welfare, general supervision Employment Accident Commission, under Ministry, and local accident boards and inspectors, administration of program, tripartite representation Employers may insure liability with employer mutual associations or private insurance companies Courts approve awards
Unemployment benefit Flat daily amounts equal to 50–60% of average wages of unskilled worker Amounts vary according to marital status, sex, age, and size of locality Maximum benefit 124 francs a day, or 66⅔% of earnings (75% if 4 or more children) Payable after 1-day waiting period, with no limit on duration except in special cases			Ministry of Employment and Labor, general supervision National Social Security Office, collection of contributions National Employment Office, receiving and decision of claims, supervision of paying agencies, and operation of employment service, through about 30 regional offices, managed by tripartite committee Local agencies paying benefits Public paying offices, or trade unions for own members

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BELGIUM—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
FAMILY ALLOWANCES First laws 1930 (employees) and 1937 (self-employed) Current law 1947 *Employment-related system*	All gainfully occupied persons and social insurance beneficiaries, with 1 or more children Coverage effected under two separate systems for employees and self-employed persons Special systems for miners, seamen, and public employees	*Insured person* Employee, none Self-employed, contributions varying with income and occupation *Employer* 10 25% of payroll *Government* Subsidies to both employee and self-employed programs covering any deficits Maximum earnings for contribution purposes 11,550 francs a month, varies with retail price index	*Family allowances* Child must be under age 14 (21 if student, no limit if invalid) Parent must have 100 days of employment a year, or be a social insurance beneficiary Eligible children may include dependent grandchildren, brothers, sisters, nephews, and nieces

CHILE

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1924 Current laws 1952 (2 laws establishing separate programs for wage earners and salaried employees) *Social insurance system* (1 escudo equals about 33 U S cents)	Wage earners program Wage earners, and urban self-employed whose annual income not above Santiago minimum wage Salaried employees program Salaried employees in private employment Special systems for railroad employees, seamen and port workers, public employees, and about 30 other occupations	*Insured person* Wage earners, 6% of wages (7% in arduous occupations), self-employed, 10% of earnings, salaried employees, 8% of salary *Employer* For wage earners, 12 5% of wages (14% in arduous occupations), for salaried employees, 17 83% of salaries *Government* For wage earners, 5 5% of wages (full amount not paid regularly in past) Above contributions also finance sickness and maternity benefits	*Old-age pension* Wage earner, age 65 and contributions in 800 weeks and 50% of weeks since initial coverage (men), or age 55 and contributions in 500 weeks (women), retirement unnecessary Salaried employee, age 65 or 35 years of contribution (men), age 55 and 20 years, or any age if 30 years (women, retirement necessary Payable abroad *Invalidity pension* Wage earner, 70% incapacity (total invalidity) or 40–69% (partial invalidity), contributions in 50 weeks, 40% of weeks in last 5 years, and 50% of weeks since initial coverage Salaried employee, 67% incapacity, 3 years of contribution, plus 1 year for each 5 years above age 30 *Survivor pensions* Deceased was pensioner, or met contribution requirements for invalidity pension
SICKNESS AND MATERNITY First law 1924 Current laws 1953 (wage earners) and 1953 (medical services for salaried employees) *Social insurance system* (cash and medical benefits)	Wage earners program Wage earners, urban self-employed whose annual income not above Santiago minimum wage, and pensioners (medical benefits only) Salaried employees program Salaried employees in private and public employment (medical services only) Special systems for railroad employees, bank employees,	*Insured person* See pension contribution above (Pensioners, 5% of pension) *Employer* Same *Government* Same Also, direct subsidy raising total government share to about ⅔ of cost	*Cash benefits* (wage earners only) Currently insured, 3 months of insurance, and 13 weeks of contribution in last 6 months *Medical benefits* Wage earners, currently insured (eligibility continues during 3 months of involuntary unemployment), self-employed, contributions throughout last 3 months Salaried employees, currently insured, 6 months of insur-

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BELGIUM—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
Family allowance 457 francs a month for 1st child, rising to 1,000 francs for 4th and others, plus 107 frs if age 6–10, 168 frs of 10–14, and 251 frs if over 14 Birth grant 7,250 francs for 1st birth, 5,000 frs for 2nd, and 2,690 frs for each other birth Allowances adjusted automatically for 2 5% changes in retail price index			Ministry of Social Welfare, general supervision National Social Security Office, collection of contributions National Family Allowance Office, distribution of contributions among individual funds Family allowance funds paying allowances About 70 approved occupational and regional funds, auxiliary public fund for persons not otherwise covered, and several special funds

CHILE

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
Old-age pension (wage-earners) 50% of average wages during last 5 years, plus 1% of wages for each 50 weeks of contribution beyond 500 weeks, maximum, 70% of wages Increment of 10% of contributions paid for each 150 weeks of contribution after pension awarded Child's supplement 10% of average pension paid in preceding year, for each child Maximum total pension 100% of wages Salaried employees ½₂₅ of average salary during last 5 years, times years of contribution, maximum pension, 100% of salary If ineligible, refund of employee-employer contributions in installments Automatic adjustment of all pensions	*Invalidity pension* (wage-earners) For total invalidity, 50% average wages during last 5 years, plus 1% of wages for each 50 weeks of contribution beyond 500 weeks, maximum, 70% of wages Partial invalidity 50% of pension for total invalidity Salaried employees 70% of average salary during last 5 years, plus 2% of salary for each year of contribution beyond 20 years Automatic adjustment of all pensions	*Survivor pensions* (wage-earners) Widow or invalid dependent widower, 50% of pension of insured paid at age 65 or if invalid, otherwise, payable for 1 year only Each orphan under 15 (18 if student, no limit if invalid), 20% of average pension paid in preceding year Maximum survivor pensions, 100% of pension of insured Salaried employees Widow or invalid dependent widower, 40% of pension or average salary of insured in last 5 years Each orphan (or parent), 15% of pension or average salary Maximum survivor pensions, 100% of pension or salary of insured If ineligible, refund of contributions Funeral grant Wage earners, 1 month's minimum wage in district, salaried employees, 3 months' minimum salary in Santiago	Ministry of Labor and Social Welfare, general supervision. Social Insurance Service, administration of program for wage earners, through branch offices, managed by tripartite board and director-general Tripartite local councils supervise administration in individual regions Private Salaried Employees' Welfare Fund, administration of program for most salaried employees, about 25 smaller funds cover salaried employees in particular occupations
Sickness benefit (wage-earners) 100% of average wages during last 6 months Payable after 3-day waiting period, for normal maximum duration of 52 weeks, may be extended to 78 weeks in special cases Salaried employees No insurance benefit (employer must pay 100% of earnings during 1st month, 75% during 2nd,	*Medical benefits* (wage earners) Medical services ordinarily provided directly to patients through facilities of National Health Service General and specialist care, periodic medical examination, hospitalization, medicines, dental care, and maternity care Duration No limit	*Medical benefits for dependents* (wage-earners only) Same as for insured Wife also receives same nursing allowance as insured woman All children in country under 15 Medical and surgical care as out-patient, and part of cost of hospitalization	Ministry of Health, general supervision National Health Service, administration of benefits and services for wage earners, through 13 health zones, managed by tripartite board and director-general Service operates own dispensaries and hospitals National Salaried Employees' Medical Service, provision of

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CHILE—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
	seamen and port workers, and other groups		ance, and 13 weeks of contribution in last 6 months
WORK INJURY First law 1916 Current law 1931 *Voluntary insurance with public or private carrier*	Employed persons Exclusion Temporary employees of small firms Special systems for railroad and public employees	*Insured person* None *Employer* Most of cost, through direct provision of benefits or insurance premiums *Government* Special grants to guarantee fund operated by Work Accident Fund	*Work-injury benefits* No minimum qualifying period
UNEMPLOYMENT First and current laws 1937 (salaried employees) and 1953 (service-indemnities for wage earners) *Compulsory benefit systems*	Wage earners program Wage earners covered by service-indemnity program Includes all wage earners except those under special systems or contracted-out at start Salaried employees program Salaried employees in private employment	*Insured person* None (wage earners), or 1% of salary (salaried employees) *Employer* 2% of wages to account from which service-indemnities paid (wage earners), or none (salaried employees) *Government* None	*Unemployment benefit* [illegible] of coverage (wage earners) or 12 months of [illegible] in salaried employment (salaried employees) Able and willing to work, registration for employment, resources insufficient maintenance (salaried employees only) Unemployment not due reasons within control, or to refusal of of at least 50% of earnings.
FAMILY ALLOWANCES First law 1937 Current law 1953 *Employment-related system*	Employed persons and social insurance beneficiaries, with 1 or more children or other eligible dependent Separate systems for wage earners, salaried employees in private employment, bank employees, seamen, public employees, and other groups	*Insured person* 2% of earnings or pension (not applied in practice) *Employer* 22% of payroll *Government* None.	*Family allowances* Child be under 18 (23 if student limit if invalid), also [illegible] Allowances also paid for and aged or invalid parent

CHILE—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
50% during 3rd, and 25% during 4th month) *benefit* (wage-earners only) 100% of wages, payable 6 weeks before and 6 weeks after confinement, may be extended to 12 weeks after allowance 25% of maternity benefit, or allowance in kind, payable after maternity benefit ends until mother ceases nursing child	Salaried employees Limited preventive and curative medical services		limited medical services to salaried employees, on behalf of Private Salaried Employees' Welfare Fund and other auxiliary funds
disability benefit (work injury) 75% of earnings from day injury ausfor up to 1 year	*Permanent disability pension* (work injury) 60% of earnings, if totally disabled Constant-attendance supplement Up to 20% of pension *Partial disability* Lump sum of up to 2 years' earnings according to degree of disability If above specified amount may be paid in 12 monthly installments *Medical benefits* (work injury) Necessary medical and pharmaceutical services, including occupational retraining, provided for duration of need	*Widow's pension* (work injury) 30% of earnings of insured Also payable to invalid widower *Orphans' pensions* (work injury) 20% of earnings for 1 orphan under age 18, and 40% for 2 or more 60% of earnings for 3 or more full orphans Other dependent relatives (if none of above) 10% of earnings each, up to maximum of 30%, payable to parents, grandparents, grandchildren, or other dependents living with deceased Funeral grant Cost of burial	Ministry of Labor and Social Welfare, general supervision Work Accident Fund, administration of program including guarantee fund for all employers, government agency managed by tripartite board Employers may insure liability with Fund, employer mutual association, or private company, though insurance not compulsory
benefit (wage 75% of wage loss after 3-day waiting for up to 6 months or of individual account if earlier. 75-200% of minimum salary in San- Uniform rate for all though reduced employee earns less than salary in district from 1st day of up to 60 days, 180 days in special cases			Ministry of Labor and Social Welfare, general supervision Social Insurance Service, administration of program for wage earners Private Salaried Employees' Welfare Fund, administration of program for most salaried employees, about 25 smaller funds cover salaried employees in particular occupations
allowance (wage earn- 14 escudos per dependent each day worked employees About 11 month per depend-			Ministry of Labor and Social Welfare, general supervision Social Insurance Service, administration of program for wage earners Private Salaried Employees' Welfare Fund, administration of program for most salaried employees, about 25 smaller funds cover particular occupations Employers usually pay allowances directly to own employees, and settle only surplus or deficit of contributions due with administrative agency

CYPRUS

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First and current law 1956 *Social insurance system* (1 pound or 1,000 mils equals U S $2 80)	Employed persons Exclusions Employees on farms with fewer than 5 workers, some part-time employees, and family labor Voluntary coverage for self-employed and persons leaving compulsory coverage	*Insured person* 60 mils (men) or 30 mils (women) a week, married women exempt from contribution *Employer* 60 mils (men) or 30 mils (women) a week per employee *Government* 60 mils (men) or 30 mils (women) a week per insured employee Above contributions also finance cash sickness, maternity, and unemployment benefits	*Old-age pension* Age 65 weeks of paid and annual average of weeks paid or credited incapacity or (reduced pension if of 20–49 weeks) unnecessary Not abroad unless treaty *Invalidity pension* None able *Survivor pensions* 156 weeks contribution paid by ceased, and annual of 50 weeks paid or (reduced pension if 20 weeks) Preceding waived, if death due to injury For full orphans, week of paid by either parent
SICKNESS AND MATERNITY First and current law 1956 *Dual social insurance (cash benefits) and national health (medical care) systems*	Cash benefits Employed persons, except employees of farms with fewer than 5 workers, part-time employees, and family labor Medical care All residents (within limits of facilities available)	*Insured person* See pension contribution above *Employer* Same. *Government.* Same, also, whole cost of medical care	*Cash sickness benefit* 26 of paid contributions and weeks paid or credited in year (reduced benefit if 49 weeks) Married and persons under 18 over 65, ineligible *Maternity grant* 26 weeks paid contributions by or husband, and 50 paid or credited in last (reduced grant if 20 weeks) *Medical care* Residence country
WORK INJURY First and current law 1942 *Voluntary insurance with private carrier*	Wage earners, and salaried employees earning £450 a year or less Exclusions Salaried employees earning over £450 a year, agricultural employees unless using power machinery, domestic servants, casual employees, and family labor	*Insured person.* None *Employer* Whole cost, through direct payment of benefits or insurance premiums *Government* None	*Work-injury benefits* No mum qualifying period
UNEMPLOYMENT First and current law 1956 *Compulsory insurance system*	Employed persons Exclusions Employees on farms with fewer than 5 workers, various part-time employees, and family labor	*Insured person* See pension contribution above *Employer* Same *Government.* Same	*Unemployment benefit* 26 of paid contributions, and weeks paid or credited in year (reduced benefit if 49 weeks) Married and persons under 18 over 65, ineligible Capable of and available work, and daily reporting employment exchange

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CYPRUS

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
[illegible] pension £1 200 a week [illegible] supplements 600 mils for 1st, and 300 mils for 2nd dependent [illegible] pension 600 mils–£1 a week, plus 300–500 mils for 1st and 150–250 mils for 2nd dependent, according to average annual weeks of contribution [illegible]: Refund of employee contributions paid, if over 65 in 1957 and ineligible for pension at 65	*Invalidity pension* None	*Widow's pension* £1 200 a week, if over age 50 at husband's death, over age 40 when last child exceeds age limit, permanently incapable of self support, or caring for child Dependents' supplements 600 mils for 1st, and 300 mils for 2nd half orphan under 14 (18 if student) Reduced pension 600 mils–£1 a week, plus 300–500 mils for 1st and 150–250 mils for 2nd half orphan, according to average annual weeks of contribution *Full orphan's benefit* 600 mils a week, for each full orphan Funeral grant £10 (reduced grant of £5–8, according to weeks of contribution in last year),	Ministry of Labor and Social Insurance, administration of program through employment exchanges and insurance officers
[illegible] *benefit* £1 200 a week, plus 600 mils for 1st and 300 mils for 2nd dependent [illegible] after 3-day waiting period, for up to 26 weeks (or for number of days equal [illegible] number of weeks of paid [illegible], if less) [illegible] *grant* £5 (reduced of £2 500–4, according weeks of contribution in year)	*Medical benefits* Medical services provided directly to patients in government dispensaries and hospitals. Medical treatment, hospitalization, maternity care, and medicines	*Medical benefits for dependents* Same as for family head Wife receives same cash maternity grant as working woman	Ministry of Labor and Social Insurance, administration of cash benefits through employment exchanges and insurance officers Ministry of Health, provision of medical services through public clinics and hospitals
[illegible] *disability benefit* [illegible] injury) 662⅔% of earn[illegible] £15 a month [illegible] after 3-day waiting [illegible] (unless incapacity ex[illegible] 4 weeks), for up to 26 [illegible] [illegible] be commuted into lump	*Permanent disability grant* (work injury) Lump sum of 48 months' earnings (72 months, if under 18), if totally disabled Minimum and maximum grants £100 and £800 Partial disability Lump sum equal to proportion of total disability grant corresponding to percentage loss of earning capacity *Medical benefits* (work injury) Necessary medical treatment, provided in part at government facilities	*Survivor grant* (work injury) Lump sum equal to 42 months' earnings of deceased (less any benefits paid to worker) Minimum and maximum grants £100 and £600 Court determines allocation of grant among surviving dependent relatives Funeral grant (if no eligible survivor) Up to £30	Ministry of Labor and Social Insurance, general supervision Individual cases decided by agreement between employer and injured worker, subject to court review, or otherwise by a court Insurance voluntary unless specifically prescribed for employer or class of employers Insurance available only with private companies
[illegible] *benefit* £1 200 week, plus 600 mils for 1st [illegible] 300 mils for 2nd depen[illegible] [illegible] benefit 600 mils–£1 week, plus 300–500 mils [illegible] 1st and 150–250 mils for [illegible] dependent, according to [illegible] of contribution in last			Ministry of Labor and Social Insurance, administration of program through employment exchanges and insurance officers

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CYPRUS—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
			Unemployment not due voluntary leaving, duel, direct participation trade dispute, refusal of able offer, or failure to self of job opportunity qualification of up to weeks)
FAMILY ALLOWANCES			

GERMANY (WEST)

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1889 Current law 1911 (insurance code), as extensively amended in 1957 *Social insurance system* (1 mark equals 25 U S cents)	Wage earners and salaried employees, with separate system for each, provisions uniform for both systems Exclusion Salaried employees earning over 15,000 marks a year Special systems for miners, public employees, self-employed artisans, and self-employed farmers	*Insured person* 7% of earnings (none if earnings below 10% of ceiling) *Employer* 7% of payroll (14% for employee whose earnings below 10% of ceiling) *Government* Annual subsidy of about ⅓ of cost of wage-earners' system and 1/5 that of salaried employees' system (in principle, covers non-old age costs) Maximum earnings for contribution purposes 2 times national-average earnings in past 3 years (1964 ceiling, 1,120 marks a month)	*Old-age pension* [illegible] at age 60 if unemployed year, or if woman with years of employment in 20 years) 180 [illegible] tribution Retirement necessary unless pension before 65 Pension not alien while residing *Invalidity pension* Inability exercise any gainful (general invalidity) or 50% of normal [illegible] occupation (occupational validity) 60 months of tribution *Survivor pensions* [illegible] 60 months of contribution was pensioner, at death.
SICKNESS AND MATERNITY First law 1883 Current law 1911 (insurance code) *Social insurance system* (cash and medical benefits)	Employed persons Pensioners also covered for medical benefits Exclusion Salaried employees earning over 7,920 marks a year All persons covered required to be member of appropriate sickness fund Special system for miners	*Insured person* 4% to 5 5% of earnings, according to fund *Employer* 4% to 5 5% of payroll, according to fund *Government* None (Pension agencies pay ½ of employer-employee contribution to sickness funds for medical insurance of pensioners) Maximum earnings for contribution and benefit purposes 660 marks a month	*Cash sickness and medical benefits* Membership in fund *Maternity benefits* [illegible] insurance in last 2 years, cluding 6 months in last

Continued on next left hand

CYPRUS—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
after 3-day waiting period, for up to 26 weeks (or for number of days equal to number of weeks of paid contributions, if less)			

GERMANY (WEST)

Cash benefits for insured [illegible] (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
pension 1.5% of [illegible] assessed wages since [illegible] of insurance (latter m- credited periods of in- unemployment and [illegible] after 15) "assessed wages" com- by applying average which his wages of national-average throughout coverage national-average wages in 3 years before claim national-average wage for pensions awarded 1964 850 marks a month) supplements 10% of 3 year national-average each child (55 marks month in 1964)	*Invalidity pension* 1.5% of worker's assessed wages times years of insurance, for general invalidity (see Old-age pen- sion for computation of as- sessed wages and years of insurance) Occupational invalidity 1% of worker's assessed wages times years of insurance Pensions computed as if worker insured to age 55, if 36 months of contribution in last 5 years or if contributions in ½ of months since entered insur- ance Child's supplements 10% of last 3 year national-average wage for each child (55 marks a month in 1964)	*Widow's pension* 100% of gen- eral invalidity pension of in- sured, payable to all widows for 3 months Thereafter, 60% of general invalidity pension if widow age 45, in- valid, or caring for child, otherwise, 30% of occupa- tional invalidity pension Also payable to dependent widow- er *Orphans' pensions* 10% of gen- eral invalidity pension of in- sured, or 20% if full orphan, for each orphan under 18 (25 if unmarried student, no limit if invalid) Maximum survivor pensions 100% of general invalidity pension of insured Funeral grant Lump sum of 20- 40 days' earnings, or 3 months' pension if pensioner	Federal Ministry of Labor and Social Affairs, general super- vision State Insurance Office in each State, administration of wage- earners' progam in State Federal Salaried Employees' Insurance Office, administra- tion of program for salaried employees Sickness funds, collection of contributions
benefit 65% of earn- plus 4% of earnings for [illegible] % each for 2nd and dependents after 1-day waiting for up to 78 weeks in years (during first 6 weeks, must pay wage difference between and 100% of wages, also pay full salary to employee) *benefit* 75-100% of according to fund, 4-6 weeks before and 6 after confinement allowance 50% of ma- benefit, for 12-26 grant 10-25 marks, to fund	*Medical benefits* Service benefits provided to patients by doc- tors, hospitals, and druggists under contract with and paid directly by sickness fund General and specialist care, nec- essary hospitalization, pre- scribed medicines (small fee per prescription during first 10 days of illness), dental care, attendance of midwife or doc- tor at confinement, specified appliances, and travel ex- penses (some funds provide additional benefits) Duration No limit, except 78 weeks for hospitalization in a 3-year period	*Medical benefits for dependents* Same as for insured, except that some funds require larger cost-sharing for medicines Wife of insured man also re- ceives same maternity grant as insured woman, and small nursing allowance	Federal Ministry of Labor and Social Affairs, general super- vision State Insurance Office in each State, enforcement of law and regulations in State Sickness funds, administration of contributions and benefits for members Include about 2,000 local, establishment, occupational, agricultural, and miner's funds, managed by elected representatives of insured persons and employ- ers, and federated into state and national federations

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GERMANY (WEST)—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
WORK INJURY First law 1884 Current law 1963 *Compulsory insurance with semi-private carrier*	Employed persons, most categories of self-employed persons, and students	*Insured person* None *Employer* Contributions varying according to risk, average, about 1.5% of payroll *Government* None	*Work-injury benefits* No mum qualifying period
UNEMPLOYMENT First law 1927 Current law 1957 *Compulsory insurance system*	Employees in private employment Exclusions *Salaried employees* earning over 15,000 marks a year, agricultural employees with yearly contracts, part-time employees, and family labor Special systems for building workers and dock workers	*Insured person* 0 65% of earnings *Employer* 0 65% of payroll *Government* None (pays whole cost of unemployment assistance) Maximum earnings for contribution and benefit purposes 750 marks a month	*Unemployment benefits* [illegible] of [illegible] 2 years Capable of work, available work, and registration at ployment office Unemployment not due to untary leaving, discharge misconduct [illegible] refusal of job offer, [illegible] of training [illegible] 2-8 weeks)
FAMILY ALLOWANCES First and current law 1954 (allowances for 2nd child provided by 1961 law) *Employment-related system*	Employed and self-employed persons, and social insurance beneficiaries, with 2 or more children	*Insured person* None, except about 1% of income by self-employed persons *Employer* 1% of payroll *Government* Whole cost of allowances for 2nd child	*Family allowances* Child be under 18 (25 if invalid) Payable for 2nd child family earnings not over marks a month.

GERMANY (WEST)—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
disability benefit (work injury) Same as for ordinary sickness, including supplementary payments by employer paid by sickness fund for first 18 days, if worker covered under sickness insurance, thereafter, borne by accident insurance fund	*Permanent disability pension* (work injury) 66⅔% of earnings, if totally disabled, minimum and maximum pension, 90 and 2,000 marks a month Special supplement (if cannot work and no other pension) 10% of earnings Constant-attendance supplement 100-350 marks a month Child's supplements 10% of pension for each child under 18 Partial disability Percent of full pension corresponding to loss of earning capacity, if latter 20% or more *Medical benefits* (work injury) Comprehensive care Usually provided by sickness fund during first 18 days, unless specialized care required	*Widow's pension* (work injury) 40% of earnings of insured if age 45, invalid, or caring for child, otherwise 30% of earnings Also payable to dependent widower *Orphans' pensions* (work injury) 20% of earnings for each orphan under 18 (25 if student, no limit if invalid), or 30% if full orphan Parents or grandparents (if needy) 20% for 1, 30% for couple, 60% for 4 Maximum survivor pensions 80% of earnings of insured Funeral grant Lump sum of 1 month's earnings, minimum, 400 marks	Federal Ministry of Labor and Social Affairs, general supervision Federal Insurance Office, in Ministry, direct supervision Industrial and agricultural accident insurance funds, insurance carriers and administration of program, autonomous associations managed by elected employer and employee representatives Employer must affiliate with association for his industry and region
benefit 40%–90% of earnings, varying inversely according to wage class supplements 9 marks a week each for wife and 1st child, 3 marks for 2nd child after 3-day waiting period (unless recipient has [illegible]), for up to 13-52 weeks according to weeks of insured employment, 156 weeks of employment in last years required for 52-week [illegible] pay- [illegible] exhaustion of benefits subject to income test)			Federal Ministry of Labor and Social Affairs, general supervision Federal Placement and Unemployment Insurance Institute, administration of benefits and employment service through regional and local employment offices, Institute and offices managed by tripartite board and committees. Sickness funds, collection of contributions.
allowance. 25 marks a for 2nd child, and 40 for 3rd and each additional eligible child in a			Federal Placement and Unemployment Insurance Institute, administration of allowances for 2nd child Union of Federations of Family Equalization Funds, national administration and equalization of costs for other allowances Family Equalization Funds, administration of allowances and contributions, include about 50 funds for different industrial branches, and for districts in case of agricultural funds, set up within the accident insurance funds

GERMANY (EAST)

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1889 Current law 1956 *Social insurance system* (1 mark equals about 8 U S cents)	Employees, members of cooperatives, and students Special systems for railroad and communications employees and self-employed persons	*Insured person* 10% of earnings (special rates for members of cooperatives, students, and family labor), self-employed normally pay 14% of income *Employer* 10% of payroll (*mining employers*, 20%, special rates for cooperatives) *Government* Any deficit Maximum earnings for contribution and benefit purposes 600 marks a month Above contributions also finance sickness, maternity, and unemployment benefits	*Old-age pension* Age 65 or 60 (women), miners 50 according to length employment 15 years of insurance (5 years if miner age 50 when first and insurance during 5 period since first entry maintained by payment monthly fee) unnecessary *Invalidity pension.* Loss of of working capacity normal earning capacity similar worker 5 years insurance, insurance during ⅔ of period since entry. *Survivor pensions* To wife pensioner, or met earning requirements for age or invalidity pension death
SICKNESS AND MATERNITY First law 1883 Current law 1961. *Social insurance system* (cash and medical benefits)	Employees, members of cooperatives, and students Pensioners also covered for medical benefits Special systems for railroad and communications employees and self-employed persons	*Insured person* See pension contribution above *Employer* Same *Government* Same.	*Sickness and medical* Currently insured *Cash maternity benefit.* months of insurance in 2 years
WORK INJURY First law 1884 Current laws 1947 and 1961 *Social insurance system*	Employees, members of cooperatives, and students Separate system for self-employed workers.	*Insured person.* None *Employer* 0 3 to 3 0% of payroll, according to risk of undertaking. *Government* Part of cost of medical care Maximum earnings for contribution and benefit purposes 600 marks a month.	*Work-injury benefits* No imum qualifying period

Continued

GERMANY (EAST)

Cash benefits for insured (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
...pension 60 marks a ... plus 1% of average ... earnings per year of ... (higher rates for ...	*Invalidity pension* 30 marks a month, plus 1% of average monthly earnings per year of insurance (higher rates for miners)	*Widow's pension* 50% of basic pension of insured (60% if latter was miner), payable to widow age 60, invalid, or caring for child Also payable to invalid or aged widower	Trade Union Federation, national administration of program through its social insurance department and regional executive committees
... supplements, 10 ... a month for spouse 60, invalid, or caring for ... under 3 or 2 children ... 8, and 35 marks a ... for each child under (18 if student)	Dependent's supplement 10 marks a month for spouse age 60, invalid, or caring for child under 3 or 2 children under 8, and 35 marks a month for each child under 15 (18 if student)	*Orphans' pensions* 25% of pension of insured for each orphan under 15 (18 if student), or 35% if full orphan Minimum pension per orphan, 40 marks a month or 70 marks if full orphan	Trade union committees in each establishment and social insurance departments of district executive trade union committees, local administration of program
... pension 115 marks a ... or 125 marks with ... spouse Maximum 80% of earnings	Minimum pension 115 marks a month, or 125 marks with eligible spouse Maximum pension, 80% of earnings	Maximum survivor pensions 100% of pension of insured	German Insurance Institute, administration of pensions for self-employed.
... assistance for needy ... not receiving pension)	(Social assistance for needy invalids not receiving pension)	(Social assistance for needy survivors not receiving pension)	Finance departments of municipal councils, collection of contributions
... *benefit* 50% of earn... (employer must pay ... 40% of earnings ... pay) Maximum bene... 10 marks a day	*Medical benefits* Medical services provided to patients in government clinics and hospitals, or by doctors and hospitals under contract with and paid directly by social insurance system	*Medical benefits for dependents* Same as for insured	Trade Union Federation, national administration of program through its social insurance department and regional executive committees
... from 1st day of mea... (except for 3-day ... period for members ... cooperatives) for up to 26 ... (may be extended to ... weeks if recovery likely ... period), maximum ... of sick pay by em... 6 weeks	General and specialist care, hospitalization, laboratory services, prescribed medicines, maternity care, dental care, appliances and transport	All pregnant women in country, and children under age 3, receive free medical care	Trade union committees in each establishment, local administration Benefits provided directly by employer in nationalized and government establishments, and by social insurance department of local executive trade union committees for private establishments.
... 100% of earn... payable for 8 weeks ... 6 weeks after con... Maximum benefit, ... a day		Wife of insured man also receives layette grant of 50 marks	Medical benefits provided by public health facilities, or through private facilities with which social insurance system has contracts.
... allowance 25% of ... for up to 12 weeks confinement Also, lay... ... of 50 marks			
... *disability benefit* injury) 50% of earn... (employer must pay ad... 40% of earnings as ... pay)	*Permanent disability pension* (work injury) 663⅓% of earnings plus 40 marks a month, if totally disabled	*Widow's pension* (work injury) 40% of earnings of insured plus supplement of 40 marks a month, if age 60, invalid, or caring for young child Also payable to invalid or aged widower Other widows receive 20% of earnings plus supplement	Trade Union Federation, national administration of program through its social insurance department and regional executive committees
... supplement (if dis... 50% or more) 10% of ... for each child under	Supplement if constant attendance required	*Orphans' pensions* (work injury) 20% of earnings for each orphan, or 30% if full orphan, plus flat-rate supplement for each child	Trade union committees in each establishment, local administration Benefits provided directly by employer in nationalized and government establishments, and by social insurance department of local executive trade union committees for private establishments
... from day following in... until recovery or certifi... of permanent dis...	Minimum and maximum pensions 115 and 400 marks a month (or 80% of average earnings)	Maximum survivor pensions 80% of earnings of insured	Medical benefits provided by public health facilities, or through private facilities with which social insurance system has contracts
	Partial disability Percent of full pension proportionate to loss of working capacity, if at least 20% disability	Funeral grant Lump sum of 20 days' earnings	
	Children's supplements (if disability 50% or more) 10% of pension for each child under 18.		

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GERMANY (EAST)—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
UNEMPLOYMENT First law 1927 Current law 1947 *Compulsory insurance system*	Employed persons	*Insured person* See pension contribution above *Employer* Same *Government* Same	*Unemployment benefit* 26 of insurance during last months Capable of work, and tion at employment office Unemployment not due to fusal of suitable offer Other income less than ' and not living with ' able to support claimant
FAMILY ALLOWANCES First and current law 1950. *Public system for large families*	Residents, with 4 or more children	*Insured person* None *Employer* None *Government* Whole cost	*Family allowances.* Family contain 4 or more ' under age 14

IRELAND

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First laws 1908 (old-age assistance), 1911 (invalidity insurance), and 1935 (survivor insurance) Current laws 1952 (invalidity and survivor insurance) and 1950 (old-age insurance) *Social insurance system* (1 pound equals U S $2 80, 1s equals 14 cents, 1d equals about 1 cent)	Manual employees, and non-manual employees earning £800 a year or less Exclusions Nonmanual workers earning over £800 a year, casual employees, and family labor Special system for public employees	*Insured person* Man, 5s 11d a week (3s 9d in agriculture) Woman, 4s 10d a week (2s 10d if agricultural employee) *Employer* For each male employee, 5s 11d a week (3s 8d in agriculture) For each female employee, 5s 7d a week (3s 8d if agricultural employee) *Government* Difference between expenditure and contributions (about 1/3 of cost), also, entire cost of assistance, Above contributions also finance cash sickness and maternity benefits and unemployment benefits	*Old-age pension* Age 70, initial coverage before 60 156 weeks of paid tributions, and annual age of 48 weeks paid credited (reduced 24–47 weeks) unnecessary Not abroad *Invalidity pension* for work 156 weeks of contributions, and 48 paid or credited in last (reduced pension if 25 weeks) *Survivor pensions* 156 contribution paid by ceased or wife, and average of 39 weeks credited in last 3 or 5 For full orphan's pension weeks of contribution by 1 parent

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GERMANY (EAST)—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
	Medical benefit (work injury) Necessary care, including medical treatment and surgery, hospitalization, medicines, appliances, and retraining		
benefit 20% of plus flat amount day for each dependent Flat monthly amount, varying according to locality benefit 100% of after 7-day waiting (unless unemployment 4 weeks of incapacity partial unemployment), up to 26 weeks			Trade Union Federation, national administration of program through its social insurance department and regional executive committees Trade union committees in each establishment and social insurance departments of district executive trade union committees, local administration of program
allowance 20 marks a for 4th child, and 25 for 5th and each other grants of 500 marks for birth, rising progressively 1,000 marks for 5th and subsequent birth			Ministry of Labor and Health, national administration of program

IRELAND

Cash benefits for insured (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
pension £2 10s a week supplement £1 17s 6d week (also payable for dependent invalid husband) assistance of up to 15s a week payable to persons whose other	*Invalidity pension* £2 2s 6d a week (represents ordinary sickness benefit, whose duration unlimited if qualifying conditions met) Dependents' supplements £1 10s a week for 1 adult dependent, 13s each for 1st and 2nd child, and 8s for each other child Reduced rates for married women and youths (Assistance of up to £1 15s a week payable to blind persons whose other income below specified limits)	*Widow's pension* £2 2s 6d a week, or £2 8s if has child under 16 *Orphans' pensions* 13s a week each for 1st and 2nd child, and 8s for each other child under 16 Full orphans £1 5s a week per child (Survivor assistance payable to widows and orphans whose other income below specified limits)	Department of Social Welfare, administration of program with assistance of local offices

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IRELAND--Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
SICKNESS AND MATERNITY First law 1911 Current laws 1952 (cash benefits) and 1953 (medical services) *Dual social insurance (cash benefits) and public (medical services) systems*	Cash benefits Manual employees, and nonmanual employees earning £600 a year or less (excluding casual employees, family labor, and public employees) Medical services Employees covered for cash benefits, and all other persons with small and moderate incomes	*Insured person.* See pension contribution above *Employer* Same *Government* Same, also, entire cost of medical services (shared equally by national and local governments)	*Cash sickness benefit* 26 of paid contributions, and weeks paid or credited in year (reduced benefit if 47 weeks) *Cash maternity benefit* 26 of paid contributions, and weeks paid or credited in year (maternity grant medically needy contribution test) *Medical services* 1 week contribution in last 3 . Also available to any whose income below year, who is unusually or who is a small farmer
WORK INJURY First law 1897 Current law 1934. *Voluntary insurance with private carrier*	Manual employees, and nonmanual employees earning £600 a year or less Exclusions Nonmanual workers earning over £600 a year, casual employees, and family labor	*Insured person.* None *Employer* Whole cost, through direct provision of benefits or insurance premiums *Government.* None	*Work-injury benefits* No mum qualifying period
UNEMPLOYMENT First law 1911 Current law 1952 *Compulsory insurance system*	Manual employees, and nonmanual employees earning £600 a year or less Exclusions Nonmanual workers earning over £600 a year, female employees in agriculture and domestic service, casual employees, family labor, and public employees Special system for manual workers in building trades	*Insured person* See pension contribution above *Employer* Same *Government* Same, also entire cost of unemployment assistance	*Unemployment benefit* 26 of paid contributions, weeks paid or credited in year (reduced benefit if 47 weeks) Capable of and available work, and registration employment exchange Unemployment not due voluntary leaving, duct, trade dispute employed, failure to self of opportunity to employment, or suitable offer tion up to 6 weeks)
FAMILY ALLOWANCES First and current law 1944 *Universal public system*	Residents with 1 or more children	*Insured person* None *Employer* None *Government.* Whole cost.	*Family allowance* under age 16

IRELAND—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
benefit £2 2s 6d a week plus £1 10s for 1 dependent, 13s each 1st and 2nd child, and 6s for each other child after 3-day waiting period for up to 52 weeks, unlimited after 156 of paid contributions *benefits* £2 5s a week payable for 6 weeks and 6 weeks after [illegible] lump-sum maternity grant £2 (£4 for medically	*Medical benefits* Services furnished directly to patients by local health authorities Hospital and convalescent-home care, including doctors' services and medicines for in-patients (patient may be charged up to 10s a day) Specialist and laboratory services for out-patients (patient may be charged 2s 6d for specialist service and 7s 6d for X-ray) Obstetric and pediatric care by doctor or midwife, including necessary hospitalization Dental care and spectacles (after 156 weeks of paid contributions) (General practitioner care provided to medically needy but not to all employees)	*Medical benefits for dependents* Same as for insured, wife of insured man also receives same lump-sum maternity grant as insured woman	Cash benefits Department of Social Welfare, administration of benefits through local offices Medical services Department of Health, administration of services through county and city health authorities, latter provide services in own institutions, clinics, and dispensaries, or elsewhere by arrangement
disability benefit (work injury) 75% of earnings, maximum benefit, £4 a week after 3-day waiting period which is paid for if incapacity lasts 2 weeks	*Permanent disability pension* (work injury) 75% of earnings, if totally disabled, maximum pension, £4 10s a week Partial disability Pension equal to 75% of loss of earnings *Medical benefits* (work injury) Court may direct payment of medical expenses by employer, subject to maximum fees of £5	*Survivor grant* (work injury) For adult survivor, lump sum of 3 years' earnings of insured Minimum and maximum grants, £600 and £900 For orphans, lump sums varying according to earnings of deceased, number of children under 15, and whether half or full orphans Maximum survivor grants £1,800 Payments to insured before death deducted, but not below minimum amounts Funeral grant (if no survivors) Up to £15	Department of Social Welfare, enforcement of law Individual cases settled by agreement between employer and injured worker, or by decision of Circuit Court, all agreements registered with Court Employers may insure with private insurance company or employers' mutual association
£2 2s 6d a week supplements 10s a week for 1 adult and 13s each for 1st and 2nd child, and 8s for each other child under 16 after 3-day waiting period for up to 26 weeks each spell of unemployment (if age 65-69 and have paid weeks of paid contributions may draw benefit without limit until age 70) after means test to unemployed persons eligible for benefit)			Department of Social Welfare, administration of program together with employment service, through its employment exchanges and their branches
insurance 10s a month for 1st child 15s 6d for 2nd and £1 6s 6d for 3rd and each other child			Department of Social Welfare, administration of program, payments made through post offices

ITALY

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1919 Current law 1952 *Social insurance system* (1 lira equals 0 16 of 1 U S cent)	Employed persons Special systems for seamen, industrial managers, liberal professions, railway employees, journalists, public employees, self-employed artisans, and self-employed farmers	*Insured person* 6 65% of earnings *Employer* 13 35% of payroll, plus small wage-class contribution equal to about 0 1% of payroll *Government* Contribution equal to 6 65% of total covered earnings, plus special grants	*Old-age pension* Age 60 or 55 (women) 15 years contribution Pension duced ½ if no Payable abroad *Invalidity pension* Loss 662⅔% (wage earners) (salaried employees) of ing capacity 5 years of tribution, including months in last 5 years *Survivor pensions* Deceased pensioner at death, or years of contribution ing 12 months in last 5
SICKNESS AND MATERNITY First and current laws 1912 (maternity), 1927 (tuberculosis), 1943 (sickness) *Social insurance system* (cash and medical benefits)	Employed persons, and pensioners Special systems for seamen, liberal professions, railway employees, journalists, public employees, self-employed artisans, and self-employed farmers	*Insured person* 0 18% of earnings *Employer* About 9–11% of payroll according to occupation, plus contribution for medical care of pensioners (Includes 2% for tuberculosis insurance) *Government* Special grants	*Sickness and maternity* Currently insured No mum qualifying period, cept for salaried who must be insured last 30 days to receive cal benefits (not cash benefits) *Tuberculosis benefit* 2 contribution, including months in last 5 years
WORK INJURY First law 1898 Current law 1935 *Social insurance system*	Employed persons Special systems for seamen and self-employed farmers	*Insured person* None *Employer* 2 to 7 6% of payroll, according to industry (average contribution about 3 7% of payroll) *Government* None	*Work-injury benefits* No mum qualifying period

Continued on

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
... *pension* For men, annual pension equal to 72 times 45% of first 1,500 lire of lifetime base contributions, plus 35% of next 1,500 lire, plus 30% of rest 72 times 33% of first 1,500 lire of contributions, plus 26% of next 1,500 lire, plus 20% of rest ... for deferral of pension Men, 6-40% of pension if deferred 1-5 years, women, 6-40% if deferred 1-10 years ... pensions 12,000 lire month (15,000 lire if deferred to 65), maximum, 80% average earnings ... supplement 10% of ... for each child under ... invalid ... monthly pension paid December	*Invalidity pension* For men, annual pension equal to 72 times 45% of first 1,500 lire of lifetime base contributions, plus 35% of next 1,500 lire, plus 30% of rest Women 72 times 33% of first 1 500 lire of contributions, plus 26% of next 1,500 lire, plus 20% of rest Minimum pension 15,000 lire a month, maximum, 80% of average earnings Child's supplement 10% of pension for each child under 18 or invalid 13th monthly pension paid each December	*Widow's pension* 50% of pension paid or payable to insured Also payable to invalid widower *Orphans' pensions* 20% of pension of insured for each orphan under 18 or invalid, or 30% if full orphan Parents (inabsence of above) 15% of pension of insured for each parent Maximum survivor pensions 100% of pension of insured Funeral grant Lump sum of 20,000 lire for wage earners, varies by industry for salaried employees	Ministry of Labor and Social Welfare, general supervision National Social Insurance Institute, administration of program through its branch offices, managed by tripartite governing body Separate institutes or funds administer special systems
... *benefit* (wage earners ... 75% of earnings for 1st ..., 66⅔% thereafter ... after 3-day waiting ... for up to 180 days ... be extended in special ... ... benefit 300 lire a ... while in sanatorium, and lire a day after leaving	*Medical benefits* Service benefits provided by doctors and hospitals under contract with and paid directly by Institute General and specialist care, hospitalization, prescribed medicines, 50% or more of cost of dental care, attendance of midwife or doctor at confinement, specified appliances, and spa treatment Duration 180 days in a year Tuberculosis insurance provides curative and convalescent care in sanatorium, post-sanatorium care and rehabilitation, no time limit	*Medical benefits for dependents* Same as for insured Tuberculosis benefit for dependents 300 lire a day for 1st 6 months, and 200 lire a day for next 6 months	Ministry of Labor and Social Welfare, general supervision National Sickness Insurance Institute, administration of program through regional and district offices, managed by tripartite governing body National Social Insurance Institute, administration of tuberculosis insurance program, Institute operates own sanatoria
... *benefit* (wage earners ... 50% of earnings, payable for up to 13 weeks ... and 8 weeks after ... *disability benefit* (injury) 60% of earnings for first 90 days of disability, 75% thereafter ... waiting period of ... days	*Permanent disability pension* (work injury) 100% of earnings, if totally disabled Maximum pension, 450,000 lire a year Constant-attendance supplement Up to 180,000 lire a year Dependents' supplements 5% of pension for wife and each child under 18 or invalid Partial disability Percent of full pension proportionate to degree of incapacity, if over 10% disability *Medical benefits* (work injury) Medical, surgical, and hospital care, appliances, and rehabilitation	*Widow's pension* (work injury) 33⅓% of earnings of insured. Also payable to aged or invalid widower *Orphans' pensions* (work injury) 13⅓% of earnings for each orphan under 18 or invalid, or 26⅔% if full orphan Parent (in absence of above) 13⅓% of earnings for each parent Maximum survivor pensions 66⅔% of earnings of insured Survivor grant Lump sum of up to 550,000 lire, according to category of dependents surviving	Ministry of Labor and Social Welfare, general supervision National Accident Insurance Institute, administration of program through provincial offices, managed by tripartite governing body Institute operates own traumatological centers and hospitals Separate funds administer special systems

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ITALY—Continued

Dates of base laws and types of programs	Coverage	Source of funds	Qualifying conditions
UNEMPLOYMENT First law 1919 Current law 1939 *Compulsory insurance system*	Employees in private employment Exclusions Domestic servants, and occasional and seasonal workers	*Insured person.* None *Employer* 2 3% of payroll Industrial employers also pay 0 2% of payroll to special "wage supplement fund" *Government* None.	*Unemployment benefit* 2 of insurance, and 52 of contribution in last 2 Capable of work, available for work, registered at office. Unemployment not due voluntary leaving, for misconduct, refusal suitable offer or refusal prescribed training certification for 30 days)
FAMILY ALLOWANCES First law 1936 Current law 1961 *Employment-related system*	Employees and social insurance beneficiaries, with 1 or more children or other dependent Special systems for agriculture, insurance and credit, tax collectors, and journalists	*Insured person* None *Employer* 17 5% of payroll (110 lire a day for agricultural employees) *Government.* Subsidy toward allowances for agricultural employees	*Family allowance* Child be under 18 (26 if no limit if invalid) Other eligible dependents invalid husband, and or invalid parent or parent, if their other is below 10,000 lire a

NETHERLANDS

Dates of base laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1913 Current laws 1956 (old age), 1959 (survivors), and 1962 (invalidity) *Social insurance system* (1 guilder equals 27 6 U S. cents)	All residents Special system for public employees	*Insured person.* 8 1% of net income payable by all residents age 15–64 *Employer* 1 5% of payroll *Government* Contributions for low-income persons, and any deficits Maximum earnings for contribution purposes 10,900 guilders a year	*Old-age pension* Age 65 butions paid each year 15 to 64, for full otherwise decrements (no decrements for period, if resident 6 years of residence 58) Retirement Payable abroad. *Invalidity pension* Loss of earning capacity in able occupation 150 of contribution *Survivor pensions* insured, and widow of specified or full orphan

Continued

ITALY—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
[illegible] 200 lire a day. Dependents' supplements 120 lire a day for dependent spouse, each child, and dependent parent [illegible] duration 180 days in a year [illegible] categories of workers in specified localities may receive assistance grants if ineligible for ordinary benefits [illegible] wage earners also receive "wage supplements" equal to 66⅔% of lost wages, if employed less than 40 hours a week (paid from wage-supplement fund), payable indefinitely if working 24 hours a week or more, or otherwise for 3 months			Ministry of Labor and Social Welfare, general supervision National Social Insurance Institute, administration of program through its branch offices. Also administers wage-supplement fund Placement offices receive, investigate, and pay claims in localities where no office of Institute is located.
[illegible] allowance 4,940 lire a month for 1st and each other child [illegible] dependents 3,588 lire a month for spouse, and 1,430 lire for each dependent parent or grandparent			Ministry of Labor and Social Welfare, general supervision. National Social Insurance Institute, administration of program through Central Family Allowances Fund Individual employers pay allowances directly to own employees (except in agriculture), and settle only surplus or deficit of contributions due with local branch of Institute.

NETHERLANDS

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
[illegible] pension. Full pension, 1,770 guilders a year [illegible] by decrement of 2% for each year of non-contribution [illegible] (irrespective of age) About 56% of pension [illegible] half-yearly adjustment of all pensions for each 3% change in wage index	*Invalidity pension* 3,224 guilders a year Partial invalidity 3,188 guilders a year if 66⅔–79% invalidity, or 2,464 guilders if 55–66% invalidity Automatic half-yearly adjustment of all pensions for each 3% change in wage index	*Widow's pension* 2,034 guilders a year, or 2,910 guilders if caring for 1 or more children. Payable to widow age 50 at husband's death, 50% incapacitated, or caring for child under 18 Temporary widow's allowance (if ineligible for pension) 2,034 guilders a year. Payable for 6 months to widow under 27, and extended by 1 month for each year by which widow is over 28, to maximum of 24 months *Orphans' pensions.* About ⅛ of widow's pension for each full orphan under age 10, ⅕ if age 10–16, and ⅓ if age 16 or over Automatic half-yearly adjustment of all pensions for each 3% change in wage index.	Ministry of Social Affairs and Public Health, general supervision Social Insurance Bank, administration of pensions with assistance of employer-employee regional Labor Councils. Bank managed by tripartite board [illegible] National revenue department, collection of contributions

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NETHERLANDS—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
SICKNESS AND MATERNITY *First law 1913* Current laws 1929 (cash benefits) and 1941 (medical benefits) *Social insurance system* (separate but interlocking programs of cash and medical benefits)	Employees earning not more than 10,900 guilders a year Must enroll in approved sickness fund Voluntary coverage for medical benefits available to other persons and pensioners, if annual income below specified levels Special systems for miners, railroad employees, public employees, seamen, and certain other groups	*Insured person* 3 4% of earnings Pensioners, 8 5 or 11 guilders a month, according to marital status *Employer* From about 3% to 9% of payroll, according to risk in industry *Government* None, except subsidy for voluntary low-income contributors	*Sickness and maternity* Membership in sickness fund (as employment or member), no minimum contribution period
WORK INJURY First law 1901 Current laws 1921 (industry) and 1922 (agriculture) *Compulsory insurance with public or private carrier*	Employed persons Separate systems for agricultural employees and seamen	*Insured person* None *Employer* Whole cost, through insurance premiums varying with risk, average rate, about 2% of payroll *Government* None Maximum earnings for contribution and benefit purposes 10,900 guilders a year	*Work-injury benefits* No minimum qualifying period
UNEMPLOYMENT **First law. 1916** Current law 1949 *Dual industry and general compulsory insurance systems*	Employees earning not more than 10,900 guilders a year Exclusions Domestic servants, temporary employees, and public employees Most employees covered under both an industry "waiting benefit" system and general unemployment benefit system, rest covered only under latter	*Insured person* From about 1 to 5% of earnings, according to industry (includes 0 3% for general program, and remainder for industry waiting-benefit program) *Employer* From about 1% to 5% of payroll, according to industry (includes 0 3% for general program, and remainder for industry waiting-benefit program) *Government* 0 6% of total covered earnings (for general program only) Also, cost of social assistance	*Unemployment benefits* For dustry waiting benefits, days of employment in dustry concerned during 12 months For general employment benefits 78 of employment in any dustry during last 78 Capable of work, available and prepared to accept making sufficient effort find work, and registered public labor exchange Unemployment not due voluntary leaving, for misconduct, strike lockout, refusal of offer, or refusal to prescribed training

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NETHERLANDS—Continued

Cash benefits for insured (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
benefit 80% of earn- after 3-day waiting for up to 52 weeks 100% of earn- payable for 6 weeks and 6 weeks after grant Lump sum of	*Medical benefits* Service benefits provided by doctors, hospitals, and druggists under contract with and paid directly by sickness funds General and specialist care, hospitalization laboratory services, medicines, limited dental care, obstetric care, appliances, and transportation Patient shares cost of sanatorium care, artificial limbs, and transportation Maximum duration No limit, except 70 days for hospitalization	*Medical benefits for dependents* Same as for insured person Maternity grant Lump sum of 55 guilders payable to wife of insured man	Ministry of Social Affairs and Public Health, general supervision Industrial association for each industry, administration of cash benefits within industry, approved joint employer-employee bodies with compulsory nationwide membership and tripartite governing boards District and local offices of associations receive and pay claims Approved sickness funds, administration of medical benefits supervision by tripartite Sickness Funds Council About 115 funds now operating
disability benefit injury) 80% of earn- during first 6 weeks, 70% of earnings from first day of in- for up to 1 year	*Permanent disability pension* (work injury) 70% of earnings, if totally disabled Constant-attendance supplement 20% of earnings Partial disability Pension equal to 70% of wage loss, may be commuted to lump sum under specified conditions *Medical benefits* (work injury) Medical treatment, surgery, dental treatment, hospitalization, medicines, and appliances	*Widow's pension* (work injury) 30% of earnings of insured Also payable to invalid widower *Orphans'* pensions (work injury) 15% of earnings for each orphan under age 16, or 20% if full orphan. Other eligible dependents (if above pensions below maximum) Parents, grandparents, parents-in-law, grand children, up to 30% of earnings Maximum survivor pensions 50% of earnings of insured Funeral grant Lump sum of 30 days' earnings	Ministry of Social Affairs and Public Health, general supervision Social Insurance Bank, administration of program Employers must insure with Bank, unless authorized by it to insure with special accident insurance association or private company
benefits Mini- waiting benefits rate of general benefits of going earnings in in- occupation (60% if or not living alone) for dependent of earnings period Varies among as fixed by indus- association Employees industry systems re- waiting benefits for 42 and then general bene- for 78 days Others re- general benefits for 126 assistance for needy bene-			Ministry of Social Affairs and Public Health, general supervision General Unemployment Fund, administration of general unemployment benefits and supervision of waiting benefits, directed by tripartite board Industrial association for each industry, administration of waiting benefits within industry District and local offices of associations receive and pay claims

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NETHERLANDS—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
FAMILY ALLOWANCES First laws 1939 (employees) and 1951 (self-employed) Current laws 1962 *Dual employment-related and general systems*	Employees, self-employed persons of limited income, and social insurance beneficiaries, with 1 or more children, and all other residents with 3 or more children	*Insured person.* Employee, none. Self-employed and non-employed, 2% of net income *Employer* 5 3% of payroll *Government.* Whole cost of allowances for 1st and 2nd child of self-employed persons, and for pensioners. Maximum earnings for contribution purposes. 10,900 guilders a year.	*Family allowances:* Child be under age 16 (27 or invalid) Self-employed must earn than 4,000 guilders a receive allowances for and 2nd child receive allowances only 3rd child.

NORWAY

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First law 1936 *Current laws* 1957 (old age and survivors) and 1960 (invalidity) *Universal pension system* (1 crown equals 14 U.S. cents)	All residents Special systems for railroad employees, seamen, fishermen, forestry workers, nurses, and public employees	*Insured person.* 3 25 to 18 25 crowns a week, according to annual-income class, payable by all residents below age 70 No contribution if income below 4,000 crowns a year *Employer* Amounts equal to contributions of employees *Government.* About 20% of cost, shared between national and local governments, latter also bear cost of supplemental pensions	*Old-age pension.* Age 70 dence in country during 15 20) Retirement Pensions not payable except during absence *Invalidity pension* Loss of normal working Residence during last 5 (aliens must also years of residence after 20) *Survivor pensions* widower, spouse was sioner at death Orphan der 18, resident in and supporting parent
SICKNESS AND MATERNITY First law 1909 Current law 1956 *Social insurance system* (cash and medical benefits)	Medical benefits All residents (dependent spouse earning below 1,000 crowns a year and children under 18 covered by insurance of family head) Cash benefits All employees covered compulsorily, nonemployees may be covered voluntarily Special systems for seamen, fishermen, and public employees	*Insured person.* From 2 20 to 10 crowns a week, according to annual-income class Self-employed pay additional premium if covered voluntarily for cash benefits Pensioners exempt from contributions, unless non-pension income above 1,000 crowns a year *Employer* 75% of contributions of employees *Government* National government, 20% of contributions of insured persons, local governments, 25% of same	fits: 14 days of (nonemployees, 6 *Medical benefits.* sured

Continued on

NETHERLANDS—Continued

Cash benefits for insured (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
[illegible] 19.50 guilders month for 1st child, rising [illegible] a month for [illegible]			Ministry of Social Affairs and Public Health, general supervision Industrial associations, administration of allowances within each industry, larger employers pay allowances to own employees and settle surplus or deficit of contributions due with association Social Insurance Bank, administration of allowances for non-employees and pensioners, with assistance of regional Labor Councils

NORWAY

Cash benefits for insured (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
[illegible] *pension* 315 crowns a for wife age 60 of pension supplement 75 crowns month for each child under [illegible] pensions granted some local governments, some cases after income	*Invalidity pension* 315 crowns a month Supplement for invalid or aged wife 50% of pension Child's supplement 75 crowns a month for each child under age 18 Constant-attendance supplement 60 crowns a month Supplementary pensions granted by some local governments	*Widow's pension* (if pensioner dies) 315 crowns a month, payable to widow age 60 or invalid Also payable to widower age 60 and invalid *Orphans' pensions* 75 crowns a month for each orphan under age 18, or 150 crowns for each full orphan Supplementary pensions granted by some local governments, in some cases after income test Funeral grant Lump sum of 300 crowns	Ministry of Social Affairs, general supervision. National Insurance Institution, national administration of program, supervision of local funds, and equalization of costs by distribution of government contribution. Local insurance funds, administration of program locally. Generally 1 fund in each municipality, funds managed by elected boards
benefit 3-19 crowns a according to annual- [illegible], plus 2 crowns a for dependent spouse and child under 18 after 3-day waiting for up to 104 weeks for tuberculosis, arthritis, and polio- if under treatment) [illegible] 3-19 crowns a according to annual- [illegible], plus 2 crowns a for dependent husband each child under 18. for 6 weeks before and weeks after confinement	*Medical benefits* Cash refunds of part or all of medical expenses, or less commonly service benefits furnished by providers under contract with funds 66-75% of cost of doctors' fees, dental care, and transport, free care in public hospital, maternity clinic, and sanatorium, and listed vital medicines and laboratory services Duration No limit while in receipt of remedial treatment	*Medical benefits for dependents* Same as for insured Wife of insured employee also receives maternity grant of 200 crowns, unless treatment provided in maternity clinic	Ministry of Social Affairs, general supervision National Insurance Institution, national administration of program, supervision of local funds, equalization of costs by distribution of government contribution, and approval of contracts with doctors Local insurance funds, administration of contributions and benefits locally.

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NORWAY—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
WORK INJURY First law 1895 Current law 1958 *Social insurance system*	Employees, fishermen, and students Self-employed may insure voluntarily	*Insured person* None (fishermen, 1% of income) *Employer* 0 60 to 9 crowns a week per employee, according to risk of occupation *Government* Cost of benefits for students, and part of those for fishermen Maximum earnings for benefit purposes 1,667 crowns a month	*Work-injury benefits.* No mum qualifying period
UNEMPLOYMENT First law 1906 (subsidized voluntary insurance) Current law 1959 *Compulsory insurance system*	Employees with earnings above 1,000 crowns a year Exclusions Fishermen, family labor in agriculture and domestic servier temporary employees, and public employees Special system for seamen	*Insured person* 0 25 to 1 20 crowns a week, according to annual-income class *Employer* 0 25 to 1 20 crowns a week per employee, according to income class *Government* National government, 60% of deficit of local funds, local governments, 25% of contributions of insured persons and employers	*Unemployment benefits.* 30 of contribution in last or 45 weeks in last 3 years Able and willing to work, ment office Unemployment not due to untary leaving, discharge misconduct labor dispute which participated, u of suitable offer (disqualification for at 4 weeks)
FAMILY ALLOWANCES First and current law 1946 *Universal public system*	Residents with 2 or more children	*Insured person* None *Employer* None *Government* Whole cost	*Family allowances.* Family normally contain 2 or children under age 16 If both parents aliens, child 1 parent must have of residence in country

NORWAY—Continued

Cash benefits for insured workers (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
disability benefit (work injury) Ordinary sickness benefit as above also payable in case of work injury for up to 52 weeks	*Permanent disability pension* (work injury) 60% of average earnings, if totally disabled Constant-attendance supplement Up to 200 crowns a month Child's supplement 75 crowns a month for each child under 18 (21 if student, no limit if invalid) Partial disability Percent of full pension proportionate to degree of disability (lump sum of 3 years' pension for 15-25% disability) *Medical benefits* (work injury) Comprehensive care, including appliances, no sharing in cost by patient	*Widow's pension* (work injury) 40% of earnings of insured, if age 40 or caring for child, otherwise, 2 years' pension only Also payable to invalid widower *Orphans' pensions* (work injury) 75 crowns a month for each orphan under 18 (21 if student, no limit if invalid) If full orphans, 1st receives 40% of earnings of insured Other eligible survivors Dependent parents, grandparents, brother, sisters Funeral grant Lump sum of 300 crowns	Ministry of Social Affairs, general supervision National Insurance Institution, national administration of program and supervision of local funds Local insurance funds, administration of contributions and benefits locally
benefit 8-19 crowns a day, according to [illegible] income class supplements 2 crowns a day for dependent spouse and each child under 18 (any age if invalid) after 7-day waiting period for up to 20 weeks in a year (30 weeks if over age 50) travel, removal, vocational training, and work-relief allowances also provided.			Ministry of Local Government and Labor, general supervision Directorate of Labor, in Ministry, national administration of program together with employment service. Local insurance funds, administration of program locally under supervision of regional and local labor boards, latter administer employment offices and decide claims
allowance 400 crowns a year for 2nd child under age 16, 500 crowns for 3rd, 600 crowns for 4th, etc (rate rises 100 crowns for each additional child under age 16) payable for 1st child also if orphan, invalid, or parents divorced			Ministry of Social Affairs, general supervision National Insurance Institution, national administration of program and supervision of local funds Local insurance funds, administration of allowances locally

UNITED KINGDOM

Dates of base laws and types of programs	Coverage	Source of funds	Qualifying conditions
OLD AGE, INVALIDITY, DEATH First laws 1908 (old-age pensions), 1911 (invalidity insurance), and 1925 (old-age and *survivors* insurance). Current laws 1946 (national insurance) and 1948 (national assistance) *Social insurance system* (£1 equals U S $2 80, 1s equals 14 cents, 1d equals about 1 cent)	All residents (coverage optional for married women, and for self-employed and nonemployed persons whose income below £208 a year) Graduated provisions cover only employees whose wages are above £9 a week (contracting out from graduated provisions permitted if private plan provides equivalent benefits)	*Insured person* Employee, 8s 3½d (men) or 7s 2½d (women) a week, plus 4½% of weekly wages between £9–18 (contracted-out man, 10s 8½d, women, 8s 8½d) Self-employed, 13s 4d (men) or 11s (women) Nonemployed, 10s 2d (men) or 7s 10d (women). *Employer* 8s 3½d (men) or 7s 2½d (women) a week, plus 4½% of weekly wages between £9–18 (contracted-out men, 10s 8½d, women, 8s 8½d) *Government* Amount equal to ¼ of above flat contributions (¼ for self- and non-employed), lump-sum subsidy, and full cost of national assistance Above flat and government contributions also finance cash sickness, maternity, and unemployment benefits	*Old-age pension* Age 65 or 60 (women) 156 weeks paid contributions, and nual average of 50 or credited (reduced if 13–49 weeks) necessary until age 70 or 65 (women), pension duced by earnings over a week Payable except later increases. *Invalidity pension.* for work 156 weeks of contributions as employee self-employed, and 50 paid or credited in last *Survivor pensions* 156 weeks paid contributions, and nual average of 50 or credited (reduced if 13–49 weeks) For orphans, 1 parent (no minimum period)
SICKNESS AND MATERNITY First law 1911 Current laws 1946 (national insurance and national health service laws) *Dual social insurance (cash benefits) and national health service (medical care) systems*	Cash sickness and *maternity* benefits Employed and self-employed persons (coverage optional for married women, and for *self*-employed persons whose income below £208 a year) Maternity grants All mothers Medical care All residents	*Insured person.* For cash benefits, see flat pension contributions above For national health service, 2s 8½d a week (male employee), 2s 0½d (female employee), 2s 10d (other men), or 2s 2d (other women) *Employer* For cash benefits, see flat pension contributions above For national health service, 7s 2d per employee a week *Government.* For cash benefits, see pension contributions and subsidy above For national health service, about 80% of total cost	*Cash sickness benefit.* 26 of paid contributions as ployee or self-employed, 50 weeks paid or credited last year (reduced benefit 26–49 weeks) *Cash maternity benefit.* 26 of paid contributions in year as employee or employed, and 50 weeks or credited (reduced if 26–49 weeks) *Maternity grants* 26 weeks paid contributions by or husband, and 26 paid or credited in last *Medical care.* Residence country (no other tions)

Continued on next left hand

UNITED KINGDOM

benefits for insured [illegible] disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
old-age pension £3 7s 6d a week supplements 1s 6d for noninsured over 60, £1 for 1st 12s for each other for deferred retirement 1s a week for each 12 of contribution after age (1s 6d if wife over 60) *old-age pension* (if contracted-out) 6d a for every £7 10s (man) £9 (woman) of graduated contributions paid lifetime (payable in to flat pension) assistance payable to persons whose resources needs)	*Invalidity pension* £3 7s 6d a week (represents ordinary sickness benefit, whose duration unlimited if qualifying conditions met—there is no invalidity benefit as such) Dependents' supplements £2 1s 6d for 1 adult dependent, £1 for 1st child, and 12s for each other child Reduced rates for married women and youths (National assistance payable to invalids whose resources below needs, special rates for tuberculous and blind)	*Temporary widow's benefit* (1st 13 weeks for all widows) £4 12s a week plus £1 10s for 1st child and £1 2s for each other child *Widowed mother's benefit* (if child in care) £4 17s 6d a week, plus £1 2s for 2nd and each other child *Widow's pension* (if age 50 at husband's death or when last child ineligible) £3 7s 6d a week *Full orphans* (guardian's benefit) £1 17s 6d a week per child. Funeral grant £25 *Graduated* widow's pension (if not contracted-out) 50% of graduated pension earned by husband before death, payable at age 60 (National assistance payable to survivors whose resources below needs)	Ministry of Pensions and National Insurance, administration of flat contributions and flat and graduated pensions through its regional and local offices Inland Revenue Department, collection of graduated contributions Registrar of Non-Participating Employments, certification of contracted-out plans (plans must provide equivalent pensions, preserve pension rights if employment ends, and be financially sound) National Assistance Board, administration of assistance through its regional and area offices
benefit £3 7s 6d a plus £2 1s 6d for 1 dependent, £1 for 1st and 12s for each other after 3-day waiting (no waiting period if 13 weeks), up to 52 weeks, duration after 156 weeks of *benefits* £3 7s 6d a plus £2 1s 6d for 1 dependent, £1 for 1st and 12s for each other payable for 11 weeks and 7 weeks after lump-sum maternity grant £16 plus an additional £6 confinement in home or at expense.	*Medical benefits* Medical services provided by doctors and druggists under contract with and paid directly by national health service, and by public hospitals General practitioner care, specialist services, hospitalization, maternity care, dental care, medicines, appliances, and home nursing Patients pay 1s for each prescription item, £1 for each dental treatment (except children and expectant or new mothers), 10s for each spectacle lens, and about 50% of cost of dentures Duration No limit	*Medical benefits for dependents* Same as for family head Wife also receives same lump-sum maternity grants as working woman.	Ministry of Pensions and National Insurance, administration of contributions and cash benefits through its regional and local offices Ministry of Health, general administration of medical services through national health service Medical services administered locally by Executive Council for each local health authority area (general medical, dental, and pharmaceutical services), about 15 Regional Hospital Boards, and local health authorities (home nursing, midwifery, etc)

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UNITED KINGDOM—Continued

Dates of basic laws and types of programs	Coverage	Source of funds	Qualifying conditions
WORK INJURY First law 1897 Current law 1946 *Social insurance system*	All employees Special system of supplementary benefits for miners	*Insured person:* 8d a week (men) or 5d (women) *Employer* 9d a week (men) or 6d (women) *Government* Contribution equal to 1/5 of total contributions paid by employees and employers.	*Work-injury benefits* No minimum qualifying period.
UNEMPLOYMENT First law 1911 Current laws 1946 (national insurance) and 1948 (national assistance) *Compulsory insurance system*	All employees (coverage optional for married women)	*Insured person* See flat pension contributions above *Employer* Same *Government* See pension contributions and subsidy above, also, full cost of national assistance	*Unemployment benefit* 26 of paid contributions as ployee, and 50 weeks paid credited in last year benefit if 26–49 weeks) Capable of and available work, and registration employment exchange Unemployment not due voluntary leaving, misconduct, direct tion in trade dispute of suitable job offer, to follow up job or opportunity up to 6 weeks)
FAMILY ALLOWANCES First and current law 1945 *Universal public system*	Residents, with 2 or more children.	*Insured person.* None *Employer* None *Government* Whole cost	*Family allowances* Child be under age 15 (or 19 if student) 26 weeks of residence in last months (aliens must have addition, 156 weeks of dence in last 4 years)

UNITED KINGDOM—Continued

benefits for insured (except permanent disability)	Permanent disability and medical benefits for insured workers	Survivor benefits and medical benefits for dependents	Administrative organization
disability benefit injury) £5 15s a supplements 1s 6d for 1 adult dependent, £1 for 1st child, and for each other child rates for married and youths after 3-day waiting (no waiting period if incapacity), for up 26 weeks	*Permanent disability pension* (work injury) £5 15s a week for 100% disablement Unemployability supplement of £3 7s 6d a week, and dependents' supplements, payable if total incapacity permanent Constant-attendance supplement Up to £2 10s (in exceptional cases, £5) Partial disablement From 23s a week for 20% to £5 3s 6d for 90% disablement (lump sum of up to £380 for 1–19%) Special hardship supplement of up to £2 6s if change in occupation necessary *Medical benefits* (work injury) Provided under national health service	*Widow's pension* (work injury) £1 15s a week for 13 weeks Thereafter, £3 15s if caring for child, invalid, age 50 at husband's death, or age 40 when children reach age limit *Widower's pension* (work injury) £3 15s a week, if invalid and dependent *Orphans' pensions* (work injury) £1 10s a week for 1st child, £1 3s for each other child (£1 and 12s, if not in widow's care) Other eligible survivors Parents (first priority) and other relatives previously dependent on insured	Ministry of Pensions and National Insurance, administration of cash benefits through its regional and local offices Ministry of Health, administration of medical benefits through national health service
£3 7s 6d week Dependents' supplements £2 1s 6d for 1 adult £1 for 1st child, 12s for each other child rates for married and youths after 3-day waiting (unless 12 days lost in 13 weeks), for up to days for one spell After years of insurance, extend- 2 days for each 5 weeks of in last 10 years, 1/10 of benefit days last 4 years, overall maxi- 492 days assistance payable to whose resources needs)			Ministry of Pensions and National Insurance, administration of contributions and records Ministry of Labor, administration of benefits through its regional offices and employment exchanges, includes receipt, decision, and payment of claims National Assistance Board, administration of assistance through its regional and area offices
allowance 8s a week 2nd child, and 10s for and each other child			Ministry of Pensions and National Insurance, administration of program through its regional and local offices.

FINANCIAL IMPLICATIONS OF UNEMPLOYMENT INSURANCE FOR AGRICULTURAL WORKERS

Of serious concern to most groups interested in farm labor coverage under unemployment insurance is the cost of such coverage to agricultural employers not now paying unemployment insurance taxes and to presently covered employers who could be required to pay any deficit generated by agricultural coverage. Although most estimates will vary depending upon eligibility criteria established for coverage, a substantial deficit will result if any large number of agricultural employees are covered Table 6 illustrates the cost of coverage if eligibility and benefit standards were the same as those presently applied for nonagricultural employees This estimate is based upon a requirement of $720 of base period earnings with total benefits limited to 50 percent of base period wages. Although there are currently over 800,000 individuals with noncovered agricultural earnings in any one year, only 265,000 of these receive over $720 of farmworker wages in a calendar year. Table 6 indicates that benefit payments would equal $63 million per year in a year like 1966. With farm employer contributions of 3 5 percent of taxable wages yielding only $25.2 million, a deficit of $37 8 million would result This would necessitate an average increase of 0 2 percent of taxable wages paid by all other employers.

TABLE 6

ESTIMATED COST OF EXTENDING UNEMPLOYMENT INSURANCE COVERAGE TO FARM WORKERS

Estimated full effect in a year like calendar year 1966

Item	Current coverage	Farm workers	Total coverage including farm workers
Amount of taxable wages ($4,100 base)	$19,175 0 million	$720 0 million	$19,895 0 million
Amount of employer contributions, earned total	$550 0 million	$25 2 million	$575 2 million
Cost of benefit payments	$400 0 million	$63 0 million	$463 0 million
As a percentage of taxable wages	2 1 percent	8 75 percent	2 3 percent
Average employment	4,695,000	265,000	4,960,000

SOURCE Department of Employment Report 440C No 2

There is at present a significant subsidization of the currently covered seasonal industries by the stable or high-wage industries in this state. Table 7 indicates the present benefits paid and taxes paid per employee in various seasonal industries. Benefit to tax ratios in these industries are as high as 5 to 1.

The committee is not willing to add a significantly large group of deficit accounts to unemployment insurance coverage at this time without accomplishing concomitant savings or outside financing to prevent an additional burden on those employers currently subsidizing seasonal industries. For that reason proposals have been made to institute a

TABLE 7

(1965 experience)

Industry	Benefits per covered job	
	Benefits	Taxes
Construction other than building—general construction	$386	$182
Contract sorting, etc., of nonctrus fruits and vegetables	615	105
Fisheries	894	186
Building construction—general contractors	360	170
Canning and processing fruits and vegetables	698	195
Sugar refining	216	129
Apparel	193	103
Lumber and wood	262	137
Hotels	130	91

SOURCE Department of Employment Research and Report 353 No. 21, July 29, 1966

weeks-of-work test to determine eligibility in lieu of the present flat monetary wage test now used. Tables 8 and 9 present coverage and cost estimates using a weeks-of-work test. Both estimates use a $20 per week earning requirement. Table 8 uses the present base period (approximately the first four out of the last five calendar quarters prior to filing of an application), while Table 9 uses a base period equal to the 52 weeks immediately preceding the filing of the claim. A number of other proposals concerning financing of unemployment insurance for agricultural labor have been presented to the committee. At this time the committee feels that all proposals including the ones presented here require further study of their soundness and fiscal impact on employers and employees generally before one is recommended. The committee will attempt to develop during the 1967 Regular Session a bill to extend coverage on equitable terms to farmworkers without placing an additional financial burden on industrial employers

State of California
Department of Employment
Report 440H No. 12

Research and Statistics
December 20, 1966

TABLE 8

ESTIMATED COST OF UNEMPLOYMENT INSURANCE BENEFITS
UNDER CURRENT AND ALTERNATIVE ELIGIBILITY REQUIREMENTS
PRESENT COVERAGE AND ADDED COVERAGE OF FARM WORKERS WITH PRESENT BASE PERIOD
IN A YEAR LIKE CALENDAR YEAR 1966

Item	Current benefit formula	Eligibility requirement of		
		20 weeks	15 weeks	12 weeks
A. *Present Coverage*				
1. Number of claimants	960,000	960,000	960,000	960,000
Number eligible	816,000	695,000	770,000	813,000
Number ineligible	144,000	265,000	190,000	147,000
Percent ineligible	15 0 percent	27 6 percent	19 8 percent	15 3 percent
Eligible current formula but not eligible proposed formula	--	133,000	65,000	27,000
Ineligible current formula but eligible proposed formula	--	12,000	20,000	34,000
Net change in number eligible	--	−121,000	−45,000	−3,000
2. Cost of benefit payments	$400 0 million	$343 1 million	$380 4 million	$398 8 million
Amount of change	--	−$56 9 million	−$19 6 million	−$1 2 million
Percentage change	--	−14 2 percent	−4 9 percent	−0 3 percent
Benefits as a percentage of taxable wages	2 09 percent	1 79 percent	1 98 percent	2 08 percent
B. *Present Coverage Plus Coverage of Farm Workers*[a]				
1. Cost of benefit payments, present coverage	$400 0 million	$343.1 million	$380 4 million	$398 8 million
Added cost of farm coverage	$63 0 million	$52 5 million	$58 5 million	$58 2 million
Total benefit cost	$463 0 million	$395 6 million	$438 9 million	$457 0 million
Benefits as a percentage of taxable wages	2.33 percent	1 99 percent	2 21 percent	2 35 percent

[a] See Report 440C No. 2.

TABLE 9

ESTIMATED COST OF UNEMPLOYMENT INSURANCE BENEFITS UNDER CURRENT AND ALTERNATIVE ELIGIBILITY REQUIREMENTS PRESENT COVERAGE AND ADDED COVERAGE OF FARM WORKERS WITH BASE PERIOD ADVANCED TO THE 52 WEEKS PRECEDING THE CLAIM IN A YEAR LIKE CALENDAR YEAR 1966

Item	Current benefit formula	Eligibility requirement of		
		20 weeks	15 weeks	12 weeks
A. *Present Coverage*				
1. Number of claimants	960,000	960,000	960,000	960,000
Number eligible	816,000	736,000	798,000	833,000
Number ineligible	144,000	224,000	162,000	127,000
Percent ineligible	15 0 percent	23 3 percent	16 9 percent	13 2 percent
Eligible current formula but not eligible proposed formula	--	112,000	64,000	34,000
Ineligible current formula but eligible proposed formula	--	32,000	46,000	61,000
Net change in number eligible	--	−80,000	−18,000	+17,000
2. Cost of benefit payments	$400 0 million	$362 4 million	$392 3 million	$406 8 million
Amount of change	--	−$37 6 million	−$7 7 million	+$5 8 million
Percentage change	--	−9 4 percent	−1.8 percent	+1 7 percent
Benefits as a percentage of taxable wages	2 09 percent	1 89 percent [a]	2 05 percent	2 12 percent
B. *Present Coverage Plus Coverage of Farm Workers*[b]				
1. Cost of benefit payments, present coverage	$400 0 million	$362.4 million	$392 3 million	$406 8 million
Added cost of farm coverage	$63 0 million	$56 0 million	$61 0 million	$74 0 million
Total benefit cost	$463 0 million	$418 4 million	$453 3 million	$480 8 million
Benefits as a percentage of taxable wages	2 33 percent	2 10 percent	2 28 percent	2 42 percent

[b] See Report 440C No 2.

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1965–1967

Volume 15 Number 29

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Newton R Russell
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Victor V Veysey
George A Willson
George N Zenovich

JANUARY 1967

Edward Levy, Consultant
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Fern Appleton, Secretary

PART II

GROUP INSURANCE

TRADING STAMP ACT

BROADENED LENDING AUTHORITY FOR SAVINGS AND LOAN ASSOCIATIONS

INSURANCE INSOLVENCY FUND

HEALTH INSURANCE AND ANTIDUPLICATION PROVISIONS

Published by the
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CARLOS BEE
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ROBERT T. MONAGAN
Minority Floor Leader

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Chief Clerk

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LETTER OF TRANSMITTAL

January 31, 1967

The Honorable Jesse M. Unruh
Speaker of the Assembly, and Members of the Assembly
State Capitol, Sacramento, California

Gentlemen:

In accordance with the provisions of House Resolution No. 710 of the 1965 Regular Session, the Assembly Interim Committee on Finance and Insurance herewith submits Part II of a record of committee activities and a report on the subject matter studied by the committee.

Respectfully submitted,

Bob Moretti
Chairman

Jack R. Fenton, Vice Chairman

Hale Ashcraft
Anthony C. Beilenson
Jack T. Casey
C. George Deukmejian
Houston I. Flournoy
John Francis Foran
Stewart Hinckley
John T. Knox
James R. Mills
W. Byron Rumford
Newton R. Russell
Philip L. Soto
Robert S. Stevens
Howard J. Thelin
John G. Veneman, Jr.
Victor V. Veysey
George A. Willson
George N. Zenovich

GROUP INSURANCE

GROUP INSURANCE

RECOMMENDATIONS

1. That Insurance Code Section 10205 be amended to prohibit the delivery in this state of certificates of insurance providing group mortgage life insurance coverage unless the amount of such insurance conforms to that specified in Insurance Code Section 10203.5 (a)(3)(A).
2. That the Legislature in the 1967 General Session give consideration to raising the $10,000 limit on group mortgage life insurance contained in Insurance Code Section 10203.5(a)(3)(A).
3. That the premium guarantee contained in Insurance Code Section 11656.6 be limited to the amount that dividends are due the association or its members from the insurer and only if the insurer notifies the association within 60 days of any past due premium due the insurer from any insured member of the association.

GROUP INSURANCE

Group Credit Life Insurance

During the 1965 General Session, the committee was asked to undertake a study of the effectiveness of the existing statutory limitations governing the amount of group credit life insurance which could be written pursuant to Sections 10203.5 and 10205 of the Insurance Code.

Limitations of these sections were called into question before the committee largely as a result of a certain master group creditor life insurance policy issued by the Metropolitan Life Insurance Company, a New York corporation, in the State of New York. However, the implications raised by this issue go beyond the problems posed by the issuance of this one policy. They involve the degree to which a state's group insurance laws may be ignored while an insurer is providing group life insurance coverage to residents in that state under a master insurance policy issued elsewhere

Insurance Code Sections 10203.5 and 10205 provide as follows:

Section 10203.5 (a) Life insurance conforming to all the following conditions is another form of group life insurance:

(1) Covering one of the following groups:

(A) All members are or become borrowers from one financial institution, including subsidiary or affiliated persons, under an agreement to repay the sum borrowed.

(B) All members are or become purchasers of merchandise or other property (exclusive of securities, investment certificates and bank deposits) under an agreement to pay the balance of the purchase price.

(2) The group numbers not less than 100 new entrants yearly.

(3) The amount insured on any one borrower or purchaser does not exceed·

(A) The amount of the loan commitment in the case of an agricultural or horticultural loan commitment (as defined in Section 10203 55) repayable in one sum or in irregular installments within a period not in excess of 18 months from the initial date of the loan commitment, or ten thousand dollars ($10,000), whichever is less, and

(B) In all other cases the balance of the indebtedness to the institution or vendor, or ten thousand dollars ($10,000), whichever is less, on any one life.

(4) The repayment or payment of purchase price is to be made, under the agreement of loan or purchase; in substantially equal installments over a period not exceeding 32 years; or in payments or installments in accordance with the usual terms of the creditor in the case of a revolving loan or revolving charge account; or in one sum or irregular installments within a period not in excess of 18 months from the initial date of the commitment on an agricultural or horticultural loan.

(5) The policy is issued upon application of and made payable to the institution, vendor, or a creditor to whom such vendor may transfer title to the indebtedness, as beneficiary, and the premiums are paid by or through the institution, vendor, or such creditor.

(b) A policy of insurance conforming to the provisions of this Section is not subject to the provisions of Section 10209 or 10213

Section 10205. A policy of group life insurance shall not be issued or delivered in this State nor, except as otherwise provided in Section 10205.5, shall an insurer provide or agree to provide group life coverage until a copy of the form of the policy is filed with the commissioner and approved by him. Except as provided in Section 10211, such policy shall not be so issued or delivered unless it contains in substance the provisions set forth in Sections 10206 to 10210 hereof.

To more exactly define the issues, it will be necessary to examine the facts surrounding this one particular case.

Under California law, life insurance companies may issue and deliver a policy of group credit life insurance covering real estate mortgage indebtedness, provided the amount of the insurance shall not exceed the amount of unpaid indebtedness or $10,000, whichever is less. (California Insurance Code, Section 10203 5) New York limits the amount of such insurance to the amount of indebtedness, or $30,000, whichever is less (New York Insurance Law, Section 204(C)) A group credit life insurance policy was issued and delivered in New York City by Metropolitan Life Insurance Company to Bankers Trust Company as agent for multiple creditors including the insurance company and several mortgage loan correspondents of the insurance company. As required by New York law, the policy and certificate forms were submitted to the New York Insurance Department and, after review, they were approved.

The Western Mortgage Corporation, a California corporation, is one of the mortgage loan correspondents of the insurance company. The insurance certificates are delivered by the mortgage loan correspondent to its mortgage borrowers who have requested the coverage Most of the mortgage loans made by the mortgage loan correspondent are assigned to the insurance company as security for the money borrowed from it by the mortgage loan correspondent. Over 6,000 certificates of insurance have been delivered to California borrowers

The policy provides that upon receipt of proof of the death of any insured debtor of a creditor, the insurance company promises to pay the creditor the amount of insurance in force on the debtor at the date of his death to be applied by the creditor toward the discharge or the debtor's indebtedness to the creditor The amount of the insurance is equal to the indebtedness, or $30,000, whichever is less.

Group credit mortgage life insurance is a decreasing term insurance and provides protection to a mortgage borrower's family by paying off the mortgage up to the policy limits upon the death of the mortgagor It is not permanent insurance and it has no cash surrender value or loan value.

The California Attorney General ruled in 44 Ops Atty. Gen 55 that the actions taken by the Metropolitan in providing group credit

mortgage insurance to California residents in excess of the $10,000 limitation imposed by California law did not violate California law since the policy here in question was *issued* and *delivered* in New York and only the certificates of insurance were delivered in California. Since Insurance Code Section 10205 only prohibits the issuance or delivery of a policy in California in excess of $10,000 and the certificates delivered here were not part of the policy or necessary thereto, their delivery in this state was not in violation of this statute, therefore, it would appear that any insurer admitted in California may, in a group insurance contract, issued in another jurisdiction, provide coverage in excess of the California limitations to residents of California For that matter, such a group policy could ignore California's regulatory scheme in any number of ways in addition to the limitations on the amount of insurance coverage in the credit life insurance field.

At the hearing of this committee held on November 12, 1965, a representative of the California Association of Life Underwriters argued that there were sound public policy reasons for the limitations placed upon the writing of group mortgage insurance.

> Mr Burns . . There are three primary reasons for statutory controls on the amounts of group credit life insurance. the protection of life insurance companies from unwise group life insurance underwriting ventures, the protection of the life insurance buying public from unwise purchases of certain forms or certain amounts of group life insurance; and protection of the life insurance agency system against unfair competition from "mass marketing"

In precluding the writing of group mortgage insurance, the California Legislature has taken into account the fact that this form of insurance does not carry with it some of the typical guarantees of individual policy coverage under the insured's ownership and control. For example:

The guaranteed right to continue coverage by timely payment of premiums Under group credit insurance, coverage ceases if the debtor-creditor relationship is terminated—such as when a creditor sells the mortgagor's note to another creditor—and the law requires no guaranteed conversion privilege, as is the case with employee group coverage. Moreover, there are no nonforfeiture rights to the insured person as are required by law under individual permanent forms of insurance Loss of coverage can occur by missing one mortgage payment

There is no guaranteed premium rate The mortgagor who takes the coverage in good faith may, by action of others exercising deliberate antiselection against the program, be forced to pay an increased premium rate for which he was not responsible.

And, thirdly, the group policyholder (the creditor) may terminate the coverage without the consent of the insured persons, at a time when they may not be able to get insurance because of poor health.

Arrangements for the discharge of this kind of indebtedness in the event of death are a primary consideration of the individual's overall estate plan. Because of the long period of time usually involved, factors such as the insured's age, the ages of other

members of his family, and desirable provisions for the support of the widow and surviving children all require that the discharge of mortgage indebtedness be individually programmed as part of a personal estate plan These factors are uniquely dependent upon the individual homeowner's particular situation and do not lend themselves to stereotyped treatment under a group insurance plan.

In addition, in a great many instances there is a substitution of mortgages—and perhaps several such substitutions—in the period of an individual's lifetime. As you know so well, California's population is mobile Group mortgage insurance does not take into consideration this increasing mobility of Californians as a result of employment transfer, family growth, income improvement, job promotions, etc Certainly this factor indicates a need for specially tailored, flexible life insurance to meet changing circumstances adequately. The mortgagor, relying on group mortgage insurance in lieu of individual life insurance, may have little or no conversion privileges upon the transfer of the mortgage He therefore loses part or all of this insurance and may be uninsurable at a time when he is faced with the need for an even greater amount of insurance. A further danger in this kind of insurance is seen in the fact that the group policy may be terminated by the insurance company without the consent of the mortgagor himself

As pointed out by Mr Burns, the problem is that·

> . . a blueprint has now been developed by which an insurer may circumvent California Insurance Code Section 10203 5 by claiming California group borrowers are now national groups by virtue of the source of the lender's money supply By this remarkable logic, we are all part of one big national group, since there is just one, hopefully, source of money, the federal government.

Representatives of the Metropolitan Life Insurance Company argued that the $10,000 limitation on group mortgage life insurance contained in California law was unreasonably small and unrealistic taking into consideration today's price levels and the size of the average new mortgage loans in California today. They pointed out that Insurance Code Section 10203 5 was last amended in 1945 to raise the limitation to $10,000 from the then-existing figure of $2,500 and to expand the period of amortization of the permitted loans under this section from 10 years to 20 years (amended in 1947 to extend this period to 32 years).

There was no evidence submitted to the committee which would lead to the conclusion that purchasers of this type of decreasing term credit insurance do not realize that it is not permanent insurance Sales literature submitted to the committee and carrying the letterhead of the Western Mortgage Corporation clearly states that this insurance applies only to the payment of the mortgage if it is less than $30,000 However, no specific reference is made to the fact that this is decreasing term insurance It also appears likely that a purchaser of this type of insurance is not aware that it may be canceled at any time or that the premium may be raised (unlike permanent life insurance) or that the insurance coverage under the group policy may be terminated

if the mortgage is sold to another lender or to an agency such as the Federal National Mortgage Association (FNMA). Although the representative of the insurance company here involved testified that the mortgagor did have a conversion right if the mortgage were sold without recourse to another lender, the price on such a policy might be substantially higher than it would have been at an earlier date due to the age of the borrower-mortgagor It should also be pointed out that legally no such conversion right is required in a credit life policy such as this.

An additional important point raised at the committee hearing was whether this insurance agreement could even qualify under Section 10203.5 if the amount of insurance offered was less than $10,000 Insurance Code Section 10203 5(a)(1)(A) requires that the members of the group " . are or become borrowers from *one financial institution,* including subsidiary or affiliated persons, under an agreement to repay the sum borrowed " The position of the insurance company apparently is that all persons borrowing money from its mortgage loan correspondents meet this requirement since the mortgage loan correspondents receive their money from the insurance company This position seems open to question The financial institution in this transaction could be considered to be the mortgage loan correspondent itself and not the insurance company, its source of money The mortgage loan correspondent may not even be an affiliated person in the meaning of the statute even if the insurer is a financial institution

If this is the case, the legal group eligible for mortgage insurance would only be the 6,000 borrowers from the California mortgage loan correspondent and not all the borrowers nationwide from the 78 mortgage loan correspondents located in 35 states with which the insurance company does business.

However, under the Attorney General's interpretation of our group insurance laws, it is irrelevant whether all the borrowers from all the mortgage loan correspondents are a "bona fide" group since our statute will not apply when the policy is issued and delivered in another state

The insurance carrier here involved argues that if California were to amend its statutes to require that all group certificates delivered here conform to California law the group mechanism itself would be seriously hampered and the state would be attempting to assert its laws over contracts entered into elsewhere As to the first point, we must point out that the group being insured in California—presently over 6,000 insureds—is large enough to constitute a bona fide insurable group within itself and it would not be impracticable for the master policy to state different coverage limits for certificates issued in different states

In passing upon the problems raised by this one policy it must be remembered that there is no national insurance law governing interstate sales of group or individual policies Congress in enacting the McCarren Act in 1944 specifically exempted the insurance industry from regulation under the Interstate Commerce Clause of the federal Constitution This was the wish at that time not only of Congress but of the insurance industry as well It seems strange now to find a leading member of that industry arguing that a state should now exercise no control over the insurance offered to its citizens, thus ac-

cepting the rights and privileges of the license to do insurance business in the state and at the same time bypassing the conditions and limitations imposed by the group insurance laws of that state

Five states (New Jersey, Ohio, Texas, Wisconsin and Maryland) have already recognized the problem under discussion and are exercising either through statute or administrative ruling extraterritorial control over group insurance offered in these states There has been no evidence submitted demonstrating an adverse effect on the availability of sound group life insurance coverage in those states

Since the question raised before the committee was primarily concerned with assuring that the $10,000 group credit life limitation in our statute was observed under policies issued in another state, we shall confine our recommendation for specific legislation to this question. In recommending that Section 10205 of our Insurance Code be amended to require that certificates of insurance providing group mortgage life coverage not exceed that amount specified in Section 10203 5 (a) (3) (A) ($10,000 at present), we do not pass at this time on whether the present statutory limit of the amount of such insurance should be raised We do, however, recommend that the Legislature in its 1967 General Session give consideration to the merits of raising this limitation to more adequately reflect the size of the average mortgage in today's market

Group Workmen's Compensation Insurance

An additional problem area in the field of group insurance brought to the committee's attention during its November 12, 1965, hearing concerns group workmen's compensation insurance Such insurance is provided for in Sections 11656 5–11656 7 of the Insurance Code. These sections provide as follows·

> 11656.6 An insurer may issue a workmen's compensation policy insuring an organization or association of employers as a group if such organization or association complies with the following conditions:
>
> (a) Files with the commissioner or a licensed workmen's compensation rating organization designated by him
>
> (1) A copy of its articles of incorporation and by-laws or its agreement of association and rules and regulations governing the conduct of its business, all certified by the custodian of the originals thereof,
>
> (2) A statement setting forth its reasons for desiring insurance as a group;
>
> (3) A statement certifying that at least 75 percent of its regular membership is engaged in a common trade or business, and an agreement that such percentage of membership will be maintained during such time as a group workmen's compensation policy issued to such organization or association is in force;
>
> (4) An agreement that only those members who are engaged in a common trade or business shall be named by the organization or association in any statement to the commissioner, a licensed workmen's compensation rating organization or insurer as eligible for insurance as a member of the group, and an agreement that

it will immediately notify its insurer if any member of such organization fails to remain a member in good standing in accordance with the basic law, rules and regulations of such organization or association,

(5) A statement in writing undertaking to establish and maintain a safety committee which by education and otherwise will seek to reduce the incidence and severity of accidents

(6) An agreement in writing duly executed guaranteeing the payment of the premiums of all its members while insured under a group policy issued to the organization or association A copy of the resolution of the governing board of such organization or association authorizing the execution of the guarantee agreement shall be filed with the commissioner or a licensed workmen's compensation rating organization designated by him and with any insurer issuing a group policy.

(b) "Common trade or business" as used in this article shall mean

(1) In agricultural enterprises, operations in which the principal pay roll of the employer develops under any combination of the classifications of the Manual of Rules, Classifications and Basic Rates of Workmen's Compensation Insurance approved by the Insurance Commissioner as applicable to farms, nurserymen, cultivating or gardening of flowers, and classifications embracing such other operations as may be conducted by a nonprofit cooperative association composed of producer members and combinations of nonprofit cooperative agricultural marketing associations having a central organization composed of member associations

(2) In the building and construction industry, operations in the construction or repair of commercial or residential buildings or in general engineering construction in which the principal pay roll develops under any combination of the classifications applicable to such construction or repair as they appear in the Manual of Rules, Classifications and Basic Rates for Workmen's Compensation Insurance approved by the Insurance Commissioner Commercial buildings as defined in this subsection shall mean any nonresidential buildings.

(3) For all other enterprises, operations in which the principal pay roll develops under a single manual classification

(c) "Principal pay roll," for the purpose of this section, means not less than 51 percent of the total pay roll for the preceding policy year or in the case of an employer who has no preceding full year's pay roll, not less than 51 percent of his estimated annual pay roll

11656 7. Each member of an organization insured under a group policy shall be treated as a single and separate entity as respects rates, classifications and rating plans

Two or more policies whose experience is combined for any purpose whatsoever, shall be considered group insurance and subject to the provisions of this article unless employers insured by such policies are engaged in operations having a common pay roll or where any rating plan or rating system and the rules applicable to them approved by the commissioner under the provisions of

Article 2, Chapter 3, Part 3, Division 2, require or permit the insurance of more than one employer in a single policy.

At the committee hearing representatives of the Peninsula Builders' Exchange, the California Electrical Contractors' Safety Association, Inc, and the Building Contractors' Association of California raised objections to subsection (a) (6) of Section 11656 6. This subsection requires an association to enter into a premium guarantee agreement with the insurer when the insurer has issued a group workmen's compensation policy covering the association's members If one member of the association which is covered by the policy issued to the association defaults in the payment of the workmen's compensation premium due the insurer the association as a whole must pay the past premium This is the only form of group insurance in which a premium guarantee is required by law.

In a sample of 25 major groups insured by the state fund under this code section the guarantee paid by the associations amounted to $224,730 out of a total premium volume of these 25 groups of $39,063,000 The building association representatives argued at the committee hearing that it is the insurance company through the California Inspection Rating Bureau that sets rates, that it is the responsibility of the insurer to make the necessary credit checks on an individual contractor who applies for insurance through the group as each such contractor must be individually written even though he is a member of the association, and it is the insurer who has the primary responsibility to see that premiums due it from an association member are promptly paid

From the evidence presented to the committee, it would appear that with many such associations little credit checking is done by the association itself of any individual member. The association has relied almost exclusively upon the insurer to make any necessary credit check prior to issuance of an insurance policy. Since any member of the association is eligible for such insurance upon approval of the insurer and an individual contractor may have been a member of the association for a number of years prior to applying for the insurance, it may not be practical for the association itself to do the necessary credit check.

With respect to the payment of the premium to the insurer, again it would appear that the responsibility rests with the carrier since premiums are not paid through the association by the member, but are paid directly to the carrier and each insured is separately rated as provided for in Insurance Code Section 11656.7.

The association is notified by the insurer when there are past due premiums and the individual contractor is to be dropped from coverage However, it is the carrier's decision as to when the individual contractor is to be canceled under the policy and at what point his premium has become so overdue as to warrant cancellation During this period of time when the premium is overdue or increasing in size, the carrier may take little or no action to obtain payment, but the association is continuing to build its liability to the carrier by virtue of the premium guarantee provision contained in the agreement between the association and the carrier. In effect, the association has little or

no control over its exposure to overdue premiums prior to the time a member of the association is canceled by the carrier. At that time it may force the member out of the association but remains liable to the carrier for the overdue premium the individual member has generated.

It must be pointed out the liability of the association extends to all members of the association, not just to the members who are insured through the association's group insurance plan In the case of the Building Contractors' Association, all 1,800 members of the association were liable for a guarantee of $30,000 which was generated by one insured over a two-year period even though less than 300 members of the association were insured under the group policy

Such a premium guarantee when due an insurer is collected in two ways from the association. First, it may be offset against any dividend due the association on the policy. The amount of such dividend, if any, will vary from year to year depending on the experience of the individual members of the group Secondly, the overdue premium may be collected by an assessment upon each member of the association if the association has no permanent fund established to pay such overdue premiums

Apparently, the collection of the premium produces no real financial problem on the members when it is offset against the dividends due to members insured through the group Where the dividend is sufficient to cover any past due premium guaranteed by the association the association as a whole and the nonInsured members of the association do not have to contribute to make up the money due under the guarantee

Associations argue that the existence of the premium guarantee results in the carriers adopting a lax attitude toward individual insureds who may be delinquent in the payment of premiums Since the insurer can always collect the delinquent premium from the association, they do not adequately credit check, nor do they require adequate premium deposits from individual members based upon a check of the individual's past payment record and do not move to collect the past due premiums or cancel the insurance of the delinquent member fast enough to protect the association from incurring sizable financial obligations based upon the guarantee

The Conro case is a case in point Conro was a framing contractor. During one year he was insured by the State Compensation Insurance Fund, but was not a member of the Building Contractors' Association of California and was, therefore, not insured through the group workmen's compensation program He was subsequently canceled by the state fund for nonpayment of premium. The next year he joined the Building Contractors' Association and applied to the state fund for insurance through the group However, the state fund was aware of Conro's previously overdue premium which was still owed it It agreed to insure Conro through the association, it requested a $700 premium deposit from him and worked out an arrangement with him whereby he would pay up his back premium and the premium due for that current year. During the first three months of 1962 he generated $6,600 of premiums, none of which were paid He was subsequently canceled

by the state fund, but by this time he had generated $30,000 of unpaid premiums

There is dispute over whether the Building Contractors' Association has knowledge of Conro's previous unpaid premiums and whether it agreed to admit him to membership with this knowledge and had later knowledge of the overdue premiums generated while he was a member of the association. A state fund representative testified that the Building Contractors' Association had knowledge of Conro's past dealings with the fund and acquiesced in the state fund subsequent decision to insure him. This the Building Contractors' Association denies Nevertheless, the association is liable to the state fund for Conro's delinquent premium.

Recognizing the financial exposure of an association in establishing a group workmen's compensation insurance program, the question remains why they establish such programs The answer is simply because premiums after dividends will in most cases be less than under individual coverage. The association providing a group workmen's compensation plan must maintain a safety program aimed to reduce accident frequency and severity. The existence of such programs has had some effect in reducing accidents and, therefore, workmen's compensation insurance costs In addition, there are savings in the expense portion of the premium dollar due to the group insurance mechanism As one witness testified this savings can be substantial

> Mr Maxwell. . . . normally, if you handle workmen's compensation insurance and you have a small contractor with premiums of $3,000 or $4,000 the best he can possibly expect is an 8 to 10 percent dividend back on his workmen's compensation as an individual. If he is put into a group there is a possibility of recovering 20 to 30 to 35 percent back, which is a substantial saving.

Mr. Maxwell further testified that the association insurance that he handles, California Carpentry Contractors' Association, has had no credit loss in two years because they require a complete credit check by the insurance carrier before the insurance is written and require a 20 percent premium deposit subject to monthly adjustments from each insured The amount of the deposit varies with the volume of premium generated by the insured during the previous year

It would appear to the committee that there are definite financial advantages accruing to the small contractors when he has obtained group insurance through an association Such a contractor gains the benefits of a safety program carried on by the association and his premium rates reflect these savings in addition to expense savings through the group insurance mechanism

However, the insurer may tend to relax credit controls unless continually pressured by the association. Such laxity may also be shown in a failure to require an adequate premium deposit from a contractor. Nevertheless, it is the primary responsibility of the association itself to require that the insurer establish adequate procedures to check credit standings and determine necessary premium deposits In lieu of this, it can either perform the credit checking function itself or seek another insurer to underwrite the group if dissatisfied with the performance of its present insurer.

But the committee does view it as inequitable that the association as a whole and all its members, whether insured under the group plan or not, are liable for any premium due the insurer from a defaulting member To the extent that the dividend due the association is sufficient to satisfy any premium guarantee, all the members who are insured through the association suffer if their dividend is reduced. However, to the extent the dividend which might be due is insufficient to cover the guarantee and an assessment against the entire membership of the association is necessary, noninsureds as well as insureds are liable Since these noninsured members share no benefit, it seems inappropriate to require them to share the risk of loss.

The committee, therefore, favors amendments to Insurance Code Section 11656 6 to limit the liability of the association to the extent that the insurer may only recover as against any dividend due the association or the insured members of the association, but only if the insurer notifies the association within 60 days of any past due premium owed the insurer by any insured member of the association.

TRADING STAMP ACT

TRADING STAMP ACT

CONCLUSIONS AND RECOMMENDATIONS

1. The Trading Stamp Act as it is now constituted is an ineffective regulatory tool The act does not provide an effective statutory mechanism for the public protection of stamp holders
2. That a minimum capital requirement supplement the existing statutory bond requirement.
3. That merchant associations that collectively guarantee redemption of stamps issued by a member of the association be excluded from the act if the members of the association exclusively issue and redeem such stamps and if the guaranteed collective redemption is from stock on the shelves of any and all members of the association. To effect exclusion, an association would file with the Corporation Commissioner a statement that stamps are issued and redeemed exclusively by members of the association and a copy of an agreement between the members of the association setting forth their collective liability to redeem from their stock in trade
4. That licensed companies should file semi-annual reports with the commissioner. The commissioner should prescribe the data that will be presented in the semiannual report as well as the year-end report. The commissioner should also prescribe a uniform basis for reporting outstanding stamps and the statutory bond
5. That companies to be licensed under the act be required to maintain financial responsibility which will be defined by the commissioner in light of requirements set forth in the act

TRADING STAMP ACT

Since the California Legislature enacted the Trading Stamp Act (hereafter referred to as act) which took effect in 1960, two stamp companies licensed under this act have become insolvent and have been liquidated in accordance with procedures set forth in the act In both instances of liquidation, the redemption value on the outstanding stamps was under 33 cents on the dollar Not all stamps were tendered, however, so in both instances the actual redemption value on those that did turn up worked out to be under 50 cents on the dollar The fact that in these cases the redemption value was relatively low, raised a question as to the effectiveness of the act in providing protection for stamp holders of insolvent companies, inasmuch as the act was passed with the intent that it would impart to stamp holders a greater degree of protection than that which existed or would exist in lieu of the act These low-payout cases taken together with the fact that they arose from involuntary liquidations should cause some concern as to whether stamp holders are being provided with any added protection whatsoever Perhaps history would have been no different absent the act, and if this is correct, then from a protection standpoint the act is indicated to be ineffective Nevertheless, the act probably did impart to stamp holders some measure of protection, but as testimony at the hearing indicated, certain people feel the added protection brought about was, and is, minimal

It is conceded that some, a relatively few, of our economic endeavors will be unsuccessful with consequent adverse results Those economic entities infringing upon the public interest are regulated so that the adverse effect of failure will be minimized To this extent the regulation is oriented toward minimizing the effect of a given situation rather than guaranteeing that a thorny situation will never occur In looking at an imaginary curve where at the lower end are placed companies not vested with public interest and at the upper end are placed companies substantially interlaced with the public interest, such as banks, insurance companies, and savings and loan associations, the placing of a stamp company on that curve depends upon factors which are not easily resolved into a clear cut placement decision

Conclusions concerning whether protection of stamp holders is needed by virtue of some vesting of public interest in the stamp business are frequently drawn from assumptions or data which indicate the extent to which a consumer incurs an out-of-pocket expense for the stamps If the stamps are paid for, then the stamps have value to the consumer and the public Public interest comes into play because the consumer has paid for his stamps and, therefore, it is in the public interest to make sure that he can redeem, fulfill his expectation, just as it is in the public interest to make sure that the depositor can withdraw his money from a bank If the stamp did not cost the consumer money, then the stamp could be classified as a free gift and, therefore, present a lesser case for protection for the public. This question of

whether the consumer has paid for a stamp or received that stamp gratuitously is at this time unresolved. There exists considerable controversy as to whether the merchant's, or retailer's or manufacturer's cost of procuring stamps is passed on to the consumer in the form of higher product prices, or whether this cost is absorbed in their profit and loss account as an advertising expense. While the question of price shifting remains for the most part unresolved, at least not free of controversy, there is another approach to resolving the problem as to whether the consumer pays for the stamps.

This approach would be an opportunity cost analysis An opportunity cost analysis could hold that a consumer does pay for his stamps if because of the inducement provided by the stamps this consumer has foregone better value available at a nonstamp store. This better value would be evidenced by lower price, better service or better quality.

At any rate, there is a strong case for saying that stamps cost the consumer some money, at least cost some consumers some amount of money Where this is the case, these stamps can represent the consumers' claim to offsetting lost value—an offset to lost opportunity provided in the form of lower price, better service or better quality or to offset a flat price paid for the stamps in the form of higher product prices If the consumer redeems his stamps, he hopefully receives at least this offset to lost value or cost incurred In a sense this process of offset through a redemption of stamps is like the process of withdrawing money from the bank The stamp company, like the bank, holds value owed to a consumer, except, of course, that the stamp company pays no interest on the money held for redemption There are, of course, a number of other significant differences between the operation of a bank and a stamp company In summation, it would appear that the consumer in paying for his stamps, perhaps unwittingly, finds himself, at least from an expectation standpoint, in the same camp as a bank depositor, and as a consequence of this expectation and value entrusted to another, it is in the public interest to see that he receives something in return for his stamps commensurate with any risk he has assumed A stamp holder, however, cannot be said to assume that same kind of risk that the equity owner and lender assume, primarily because the investment objectives of the stamp holder with respect to stamps are relatively limited The equity owner and to a lesser extent the lender are looking for profit, their expectation of profit correlates in a general sense with the risk they assume The stamp holder's implicit expectation is to get his money back Certainly this is the case where he has paid for his stamps, and even where his stamps cost him nothing, an unlikely situation, the stamp holder still cannot be summarily pushed into a buyer-beware posture when he accepts the stamps

If it is conceded that for reasons of public interest or equity there is to be protection for the stamp holder, the protection then can come from one of three directions: from management, voluntary regulation; from the marketplace, informal regulation, and from government, formal regulation State regulation is embodied in the aforesaid Trading Stamp Act found in the Business and Professions Code. Section 17773 sets forth the bonding requirements of companies licensed under the act. This section provides in part that for each $100,000 in gross

income from trading stamp business in California in a company's last fiscal year, a company's correlative bond requirement is $15,000 with a cutoff when the bond reaches $150,000 This basic requirement is modified, however, to the extent that a company's gross income from trading stamp business is less than $65,000 during its last fiscal year or where a company has not previously done business as a trading stamp company in California In either of these cases, the bond requirement is $10,000 Thus, the bonding requirement ranges from $10,000 to $150,000 and is either related exclusively to gross income or to the fact that a company is doing business as a stamp company in California for the first time

In the event of the liquidation of a stamp company, the statutory protection afforded stamp holders is represented by the bond The bond is a guaranteed residual liquid asset, but by its very nature, it bears no relationship to the potential claims against a company Since there is no control over potential claims, outstanding stamps, against the bond and furthermore as gross income for a given year is not directly related to outstanding stamps at the end of that given year, a situation arises where the size of a bond is no indication of protection afforded stamp holders For example, company A has a $40,000 bond and company B has a $20,000 bond, while company A has stamps outstanding representing $90,000 worth of claims and company B has claims outstanding worth $30,000 Taking these figures by themselves and in the event of liquidation of both companies, the size of the bond is of no consequence as far as relative protection to stamp holders is concerned If in this situation assets are brought into the picture, then, of course, these would have to be taken into account along with the bond to ascertain in which case the stamp holders would redeem at the higher payout In view of this analysis, protection to the stamp holder would appear to be better afforded by having some type of liquid asset reserve requirement, for example, in the form of cash or marketable high grade securities—similar to a reserve requirement of a bank Such a requirement would be related to outstanding stamps, and while this requirement would not be a 100 percent reserve requirement, at least it would bear some better relationship to stamp liabilities and at the same time act as a constraint on the issuance of stamps, at least to a point where a company cannot ignore the effect of incurring liabilities This type of regulation would in effect represent an assurance of liquidity The cash and deposits completing this requirement would be unpledged—not, for example, representing security for a surety bond As previously stated, another effect of such a requirement would be to prevent the uncontrolled buildup of stamp liabilities or, conversely, prevent assets from being depleted to a point where the stamp holders' interest in assets is seriously diluted This type of requirement could be so designed that if a company's ratio of liquid assets to stamp liabilities fell below a certain percent that bonds could be posted to the effect of bringing the ratio up to the minimum standard and thus preventing a statutory insolvency This ratio would also have to take into account merchandise held for redemption, which merchandise would in a sense represent a liquid asset to a stamp holder.

Another protection mechanism would be a requirement that stamp companies licensed under the act maintain a minimum capital account,

which would not take into account any bond posted in accordance with the now existing bond requirement. Such a requirement would not entail the prohibitive cost that a strict bond requirement would There could also be some required correlative relationship between capital and outstanding stamps A minimum capital account, however, while providing some assurance that assets of a stamp company can shrink by an amount equal to the capital before the outstanding liabilities become impaired, at least on a book value basis, does not necessarily assure liquidity. A company can have most of its assets tied up in accounts receivable, stamp inventories, and fixed assets necessary to the maintenance of a stamp business and still satisfy a capital requirement. Nonetheless, at some point a company's erosion of liquid assets will be reflected in its capital account to the extent that capital has fallen below some minimum ratio requirement By the time the capital ratio reflects this erosion, however, the company's ability to redeem stamps may have been significantly vitiated Reflecting this fact, banks have both a reserve requirement to assure liquidity for deposits and a minimum capital requirement to provide a base for some erosion of asset value before the ability to redeem deposits becomes impaired It would appear that the stamp holder is afforded better protection by a stamp company having both a surplus capital account and liquid assets backing up outstanding stamps—at least backing up some percent of outstanding stamps

In addition to the question of adequate bonding and the related protection afforded stamp holders, the act was scored at the hearing for not excluding merchant associations which distribute their own coupons and which coupons are redeemable only by the issuing merchant In this connection, there exists some confusion as to whether a stamp company that supplies coupons to merchants and then redeems for them is excluded from the act Testimony was also taken on a number of other issues, including improved financial reporting to the Corporation Commissioner, improved procedures for the handling of insolvent companies and control over the issuance of promotional stamps.

BONDING AND CAPITAL REQUIREMENTS

Mr. Jerald Schutzbank, the Corporation Commissioner, testified that the bonding requirement which exists under present statute has proved to be of limited value as a residual reserve for stamp holders

> Mr. Schutzbank. The committee has asked us whether the bonding requirements are adequate and the answer is taken alone today, they are not. In two examples in which they have been the only place to look for funds to pay stamp holders, they have proven insufficient We doubt the validity of using bonding alone as the regulatory tool . . . Probably a more desirable approach would be to combine net capital requirements and bond requirements .

Assemblyman John Foran raised a question as to the rationale of the present system of relating bonds to gross receipts when it appeared that relating the bonding requirement or a bonding requirement together with a capital requirement to the number of stamps outstanding provided better protection to stamp holders His question pointed out

the fact that the size of the bond is no indication by itself of consumer protection, for under the present system, a company can incur liabilities, in the form of outstanding stamps, with little regard, if it so chooses, to the bond which the company has pledged.

> Mr Schutzbank I think you are quite right, Mr Foran. I don't know what the reasons were; however, one of them might have been . . an inconsistency among the various companies as to how to determine the outstanding liability. This is one of the major problems in the industry from our standpoint, at least . . whether you use 100 percent of the outstanding liability or whether you make an appropriate reduction for the stamps which you know are not going to be redeemed because there is a certain loss through destruction or because people will not present them. . . . it is necessary for there to be some uniform gauge as to whether you use 95, 80, 70 or some other figure [representing the percentage of the total to be considered as certain to be redeemed].

Assemblyman Jack Casey pursued this matter further by raising a question as to problems that might be involved in reporting stamp sales and stamp redemptions to the commissioner so that his department could determine approximate outstanding liability on stamps and thus be in a position to measure that liability against a bond or bond plus the capital of a company.

> Mr Schutzbank. We don't think it is a substantial problem We think it is one of the things which we should be receiving under a proper regulatory statute.

A representative of Sperry and Hutchinson Company, Mr. Burleigh Pattee, challenged certain testimony concerning inadequacy of the statutory bond requirement Mr Pattee indicated that the bond requirement had been increased in 1964, and that the present requirement was one of the highest under any licensing provision in the California codes and higher than similar bond requirements applicable to stamp companies in other states He felt the present bond requirement was adequate in screening out financially unstable trading stamp companies, adding that bonding companies themselves screen those businesses for which a bond is issued He pointed out that there can be no guarantee of full liquidating value unless companies were required to post bond for 100 percent of the value of all stamps issued and outstanding, but that this type of requirement would impose a prohibitive cost on companies It was further submitted that even a 100 percent bonding requirement, that is to say, relating the bonds to outstanding stamps, would not guarantee 100 percent payout in the event of liquidation, since liquidation expenses themselves would erode the amount available for disbursement Mr Pattee's emphasis on screening out financially unstable companies implies that this is more or less the general purpose of a bond requirement—to act as a screening device first and secondarily to provide protection to stamp holders The bond requirement taken in this context would be more on the order of a licensing fee or other licensing requirement rather than a mechanism for providing a guaranteed residual asset

As an alternative to a 100 percent bond requirement, Mr. Pattee indicated that the posting of a bond providing limited protection to stamp holders was the more reasonable approach Assemblyman John Foran questioned Mr Pattee about another alternative—a capital requirement Specifically, Mr Foran was interested in Mr Pattee's views on a capital requirement as a supplement to the existing bond requirement or as a device to supersede such bond requirement.

> Mr. Pattee · I can't speak on behalf of my company because I haven't discussed that matter with them, but I can see nothing wrong with such a provision at the present time as long as we have exact standards (Answer appeared to be with respect to a minimum capital requirement and not a capital correlation with outstanding stamps)

Concerning standards, Mr Pattee felt that if any changes came about, that definite prescribed standards should be established by the Legislature as against being established by a state agency under authority granted by the Legislature At this point Assemblyman Newton Russell raised a question concerning the effect of statutory requirements on smaller stamp companies and on competition within the trading stamp industry.

> Mr. Pattee Our company is a wealthy company, able to meet its redemption requirements and I don't think we would be one of the ones under attack, if that is what you mean But we think it is an unhealthy situation where you make it very difficult for the small companies in the state to operate We think it is better to have competition—better for the industry as a whole
>
> Assemblyman Russell · I am talking about the bonding and the reserves .
>
> Mr. Pattee Well, I made my statement that we are opposed to increasing the bonding provisions
>
> Assemblyman Russell But [whom] do you think it would fall more heavily upon?
>
> Mr Pattee I think it would fall more heavily upon the smaller companies, because I think that a company that is as [wealthy as the company I represent] has no difficulty in getting bonds
>
> Assemblyman Russell. Then would you say that based upon this and carried to a logical conclusion, that this type of legislation, as you understand it, would tend to eliminate competition?
>
> Mr Pattee I think it would have a tendency to eliminate competition.

Indicated in the foregoing discussion is the view that the bonding requirement could become a burden on some companies and force them to withdraw from competition At the same time, these companies by virtue of their being flushed out of the industry would not necessarily take with them all of the unsound, mismanaged companies Looking at the subject of prohibitive bonding requirements from another viewpoint, one might say, based on certain foregoing testimony, that the

price to be paid for a high degree of solvency is too high, and even with that price paid there is no certainty of solvency.

FINANCIAL REPORTS FILED WITH THE COMMISSIONER

Section 17764 provides in part that each licensed company will provide the Corporation Commissioner with a short form balance sheet as of the licensed company's most recent fiscal year Aside from this report, no other financial data are filed with the commissioner Testimony regarding the short form balance sheet centered on the usefulness of the data contained in the report for use in the commissioner's supervision of licensed stamp companies Mr Schutzbank referred to the short form balance sheet as being of minimal use as a regulatory tool He pointed out that from some of the statements he receives, it is not clear whether the stated capital account includes the bond or whether the bond is not taken into account in the report He added that there is no consistency in the way the licensed companies handle this matter. He contrasted this regulatory tool, the short form balance sheet, with some of the regulatory tools at his disposal in the regulation of industrial loan companies He noted that in his capacity as commissioner he has power to pass upon the business and personal reputation of the individuals that would be operating a new industrial loan company If their reputations indicate that they are not capable of running an industrial loan company, the license may be refused on this basis alone No such authority vests in the commissioner in his licensing of stamp companies With respect to industrial loan companies, there is also a minimum capital requirement—specifically, a capital stock requirement and a required paid-in-surplus or reserve equal to 50 percent of the required minimum capital stock requirement, and both requirements must be met before a company can commence operation or open a branch office The capital stock requirement of an industrial loan company is based on the number of industrial loan business offices of that company, where those offices are located and the date the industrial loan company commenced business in California While the foregoing requirements are not presented in more specific detail, they still suffice as an indication of the fact that such requirements give rise to authority that is broader than the commissioner's vested authority with respect to stamp companies As a side note, state requirements concerning bank capital are oriented toward branches and population rather than deposits Deposits are, however, used as the base measurement for required reserves, and in light of this fact, it is apparent that bank regulation does take into account certain bank liabilities Returning to the commissioner's position on the short form balance sheet, the gist of his discussion was that this financial statement was of minimal value to his department For comparative purposes Section 1930 of the Financial Code concerning the filing of financial reports by banks is here set forth:

> Every bank and every trust company shall make and file with the superintendent whenever required by him a report in such form as he may prescribe, verified by two of its principal officers, showing its financial condition and such other information as the superintendent may require at the close of business on any past

day designated by him. If such bank or trust company regularly keeps its books on an accrual basis the report may be prepared on an accrual basis. The verification shall state that each of the officers making it has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

Section 1931 of the Financial Code reads as follows

The superintendent shall call for the report specified in Section 1930 from all banks and trust companies at least three times each year, and for at least three times each year shall designate as the day as of which such reports shall be made the day designated by the Comptroller of the Currency for reports from national banking associations

Section 1934 of the Financial Code is also of comparative interest.

The superintendent may at any time require any bank or trust company to make and file with him a special report furnishing such information as he may specify when necessary to inform him fully of the actual financial condition and affairs of the bank or trust company.

A stamp company is, of course, not strictly analogous to a bank, and, therefore, application of bank requirements to stamp companies is out of order without some further analysis of the problems regulation seeks to alleviate for both types of industires One thing that may be gathered from a look at some of the bank reporting requirements is that these requirements recognize the limitation of a year-end balance sheet. The balance sheet is basically a picture of a company at a given point in time. The figures in the balance sheet necessarily reflect peculiarities of a given company, such as seasonality and accounting procedures for subsidiaries or correspondents and, therefore, may not give a worthwhile indication of the position of a company

In his discussion of financial reports, Mr. Schutzbank testified that other regulatory laws provided his department with relatively more control over accounting procedures and reporting In this statement, the commissioner, for example, could have been referring to regulations concerning credit unions In this connection, Section 15803 of the Financial Code, and which section follows that setting forth the power of the commissioner to receive an annual report, provides the commissioner with relatively broad power with respect to receiving financial data That section reads as follows.

Every credit union shall make other special reports to the commissioner as the commissioner may from time to time require Such reports shall be in the form and filed at such date as prescribed by the commissioner and shall, if required by him, be verified in such manner as he prescribes.

Mr Schutzbank was questioned as to whether his department could interpret the present statute as authorizing periodic audits. Mr. Schutzbank indicated that an interpretation of this nature may or may not be justified and that such an interpretation, at any rate, would rep-

resent a very broad perspective of what the statute says Even assuming such a broad interpretation had substance, the commissioner noted that his department is not budgeted to make such periodic audits He then indicated that if periodic audits were statutorily prescribed, then the cost of such audits should be borne by the licensed companies.

> Mr Schutzbank . in addition to which we have no provision for the charge for those audits which means that we have a substantial budget problem One of the things which is inherent in any traditionally regulatory statute is that the regulatory statute is self-sustaining, and we would suggest that any regulation include that That is not possible as we read the statute today, if we were to find that we had the authority to do these additional audits

Mr Herbert Wenig, Assistant Attorney General, indicated that his office felt the Corporation Commissioner should have the authority to receive periodic financial reports Within this context, Mr Burleigh Pattee, however, testified that the licensed company he represented felt that there was no necessity for giving the commissioner authority to undertake periodic audits The reason submitted for such a position was that periodic audits would result in a substantial increase in administrative expenses both to the state and the companies so audited While on the subject of audits and interim reports, Mr Pattee added that his organization felt the present annual short form balance sheet sufficed as far as the commissioner's requirements were concerned Assemblyman Jack Casey then questioned Mr Pattee concerning the added burden that would be imposed on the licensed stamp companies if they were required to submit quarterly reports to the commissioner (reports in this context meant statements which would include meaningful information on outstanding stamps)

> Mr Pattee: Well, that involves a very serious problem, Mr. Casey, to my company for this reason: You have your sales in California; you have thousands and thousands of transients who come here in the summer and bring their books with them and they are redeemed here . . . Some of the California stamps are redeemed in other states as well The administrative burden of going over the literally millions of books of this company to determine which California stamps have been redeemed is almost insurmountable.
>
> Mr. Casey· I mean just the reporting of the stamps that you have sold in California and redeemed In regard to your company, there probably would . . . be too much difficulty, but what you would do is to get to these smaller companies that . . operate solely within the state.
>
> Mr. Pattee. . . . it wouldn't be very meaningful where my company is concerned because of the large visiting transient people who come to California, there are greater redemptions here than there are sales, so we have a negative figure each time
>
> Mr. Casey· [We would not be too much concerned with your company] but we [would] be getting [information on] these other companies that are solely California operating

Mr. Pattee· Well, I will certainly take it up with [my company] and see if there is any reason they wouldn't object to such a provision. . .

COMPANIES INCLUDED AND EXCLUDED FROM THE ACT

Testimony was taken at the hearing concerning the extension of the definition of trading stamps as contained in the act As the act now reads, it appears that merchant associations who issue and redeem their own stamps are included There is confusion, however, as to whether a stamp company which supplies stamps to and redeems stamps for merchants is included under existing statute. Gift Stars, Inc, is one such company.

Apparently Gift Stars, Inc., forms contracts with various manufacturers and packers, most of whom are large companies and advertise nationally Gift Stars by virtue of the contract authorizes the other party to use the mark "Gift Stars" on stamps, and these stamps may be obtained by the other contracting party from Gift Stars or from a printer selected by the other party When the stamps are obtained from Gift Star, the other party reimburses Gift Stars for the cost of paper and cost of printing No other payment is indicated to be made at this time Regardless of the means by which the other party obtains stamps with a Gift Stars mark, such stamps must be capable of being identified by an Orth-Scanner, an electronic identification device, used by Gift Stars, since it is by this device that Gift Stars is able to determine which contracting manufacturer or packer issued the stamps which have been returned to Gift Stars When the manufacturer or packer is singled out, it is billed for the stamps redeemed, that is, the redemption value plus profit of those stamps redeemed Concerning redemption, both Gift Stars and its parties to contract make available to the stamp collector a catalog indicating certain gifts that may be obtained with such stamps as well as a description of the redemption process The reason for central redemption, at a Gift Stars center, rather than at the issuing manufacturers' or packers' place of business is so that stamp holders can collect Gift Stars' stamps issued by various manufacturers and packers and present them collectively on a particular gift noted in the catalog

Some sections germane to the issue of exclusion are here set forth:

> Section 17750 "Trading stamp" means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service or cash
>
> Section 17750 1 "Trading stamp" also means any stamp or similar device issued as a gift or as a consideration in any transaction other than in connection with the retail sale of merchandise or service, by a trading stamp company which also issues such devices in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, and which may be redeemed by the rightful holder on the same basis as, or interchangeably with, any trading stamp issued as described in Section 17750.

Section 17751 "Trading stamp" does not include any redeemable device used by the manufacturer or packer of an article, in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine, or other publication.

Section 17752. "Trading stamp" does not include any coupon, caused to be prepared by the merchant using the same and distributed by him to his customers, which coupon, ticket, certificate, card or other similar device is redeemable only by such merchant for or in connection with the purchase of specific articles of merchandise carried in his stock.

Section 17753. The Legislature finds and declares that the devices described in Sections 17751 and 17752 are classes of articles that are not employed in connection with practices which must be regulated as provided in this chapter to protect the people of California against improper activities of irresponsible trading stamp companies.

In a letter opinion to the Corporation Commissioner concerning stamp companies, the Attorney General held that Gift Stars, Inc, is not excluded from the act Parts of that opinion are here set forth:

Section 17751, which excludes redeemable devices used by a manufacturer or packer, was designed to differentiate between concerns issuing their own trading stamps and those which use trading stamp companies, . . Evidently the Legislature did not want to regulate manufacturers and packers which create and issue redeemable devices. Gift Stars, Inc, however, is not a manufacturer but a separate company which furnishes and redeems coupons for the manufacturer Indeed, there is no clause in the agreement between Gift Stars and the manufacturer which makes a manufacturer liable for the redemption of stamps Since a manufacturer is not liable, it is arguable that the manufacturer is merely the agent of Gift Stars. The plan is promoted and initiated by Gift Stars, Inc, and Gift Stars, Inc, is the principal party in the development of this plan.

The apparent purpose of the Legislature was to distinguish between concerns which issue their own stamps and those which use stamps of a trading stamp company This distinction was made so that the financial responsibility of trading stamp companies could be assured by the licensing and bonding requirements of the Trading Stamp Law

Gift Stars, Inc, is in the same position as any trading stamp company, and its financial responsibility should be assured Thus, a reasonable result, under the circumstances, is to treat Gift Stars, Inc, in the same manner as any other company which is not a manufacturer and which issues and redeems stamps.

In light of this opinion, the Corporation Commissioner indicated that his department was not seeking statutory enlargement of the definition of trading stamps Thus, it can be inferred that the commissioner thought such "stamp supplhers" should be included in the act.

A different argument to the inclusion of "stamp suppliers" was presented by Mr. Robert Hays, who represented Gift Stars, Inc. He pointed out that Section 17751 excludes from the act a redeemable device used by the manufacturer or packer in advertising or selling an article. With this in mind, he added that the "stamp supplier" acts as an agent of the manufacturer or packer. With respect to the Attorney General's opinion on the matter of "stamp suppliers," Mr. Hays indicated that his research on this subject led him to reach an opposite conclusion. In support of his position, Mr Hays pointed out significant differences between a "stamp supplier" and a nonsupplier type company regulated under the act before the Attorney General's opinion. The thrust of his exposition was that the "stamp supplier"-merchant relationship was an agency relationship, with the supplier, therefore, being merely a longer arm of the merchant. Implied in this argument is the assumption that stamp holders can ultimately look to the merchant for redemption In this respect, Assemblyman Anthony Beilenson questioned Mr. Hays as to the exact nature of the relationship that exists between Gift Stars and its customers

> Assemblyman Beilenson: The manufacturer is not liable for the redemption, though, is he? Doesn't the public have to look to the stamp supplier?
>
> Mr. Hays: No, sir. As I have said, these stamps, . . on their face will read that . . legally the manufacturer [is] liable anyway. . . . Well, . . . the point is that it is now expressed on these [stamps] that it is the responsibility of the manufacturer to redeem if this is not done by [my company].
>
> Assemblyman Beilenson: According to the Attorney General, there is no clause in the agreement . . which makes the manufacturer liable for the redemption of stamps; therefore, it is arguable that the manufacturer is not the principal of [your company].
>
> Mr. Hayes: . . . it is inconceivable to us how a manufacturer can cause the products to be sold bearing these representations that upon the [presentation] of these [stamps] certain gifts will be obtained and then avoid liability.
>
> Assemblyman Beilenson. If [your company] weren't there, went out of business or something, then each of these manufacturers would have to supply these little gifts?
>
> Mr. Hays: It is our belief that this is the clear-cut responsibility of the manufacturer, even under the ordinary principles of law, but the company is now making that relationship [evident in] its contracts with the manufacturer.

Comments were also made by Mr. Hays with respect to administrative problems which might arise if his company were regulated by the act

> Mr. Hays: You run into a tremendous administrative problem here if regulation is attempted of this type of operation. We heard a lot this morning about the problem that exists even in the typical case, [but when my company] gives these manufacturers the right to print these [stamps] themselves, if they don't want

to order them, and since [my company] has an obligation only to redeem when these are presented, [the company] does not sell the stamps to these merchants or to the public, but only furnishes them to the manufacturer [My company] is not in a position to know how many of these stamps have been issued until such time as they are actually presented for redemption, and for that reason, it would be impossible for a company operating in this manner to say, "Well, how many stamps have we got outstanding for which we are responsible?" Only the manufacturers know that and the manufacturers are exempt under the statute. [And] the manufacturer in each instance is still holding these funds until these [stamps] are presented for redemption.

Testimony on the definition of trading stamps was heard concerning merchant associations which print, distribute and redeem their stamps collectively. These merchant trading stamp associations are now included under the act. A representative of such an association felt that these types of organizations should register with the State of California, as nonprofit stamp associations as such and should, by virtue of this fact, be excluded from the requirements of the act The Corporation Commissioner, however, indicated that these associations should not escape regulation simply because they operate on a nonprofit basis He pointed out that such associations issue stamps and are responsible for the redemption of these stamps, so that if an association's reserves were inadequate for a given liability exposure, the problem of redemption could still arise.

The commissioner, nonetheless, added under further questioning that if the aggregate capital, that is to say, the combined capital of all the merchants belonging to an association, stood behind the redemption of a stamp or stamps issued by one member of the association, then the potential problem of nonredemption is considerably minimized Thus, according to the commissioner, these associations that stand behind stamps issued by their members present less of a problem than do the licensed companies This lesser problem comes about not by the fact that these associations are nonprofit but rather arises from the fact that these associations for the most part have sufficient capital to assure redemption of their stamps Assemblyman Newton Russell questioned the commissioner concerning the exemption of such associations from the act.

> Assemblyman Russell: . . . it would be all right to exclude or minimize regulations in regard to this type, Mr. Schutzbank?
>
> Mr. Schutzbank: No. . . . you still have to have sufficient regulations to say that those businesses in total do have enough to back up the redemption liability.

Assemblyman John Foran questioned Mr. Schutzbank concerning the exclusion of certain associations which do stand behind the redemption of a stamp or stamps issued by a member of that association

> Mr Schutzbank: I think, for example, if there were an exclusion which said that whenever there was an association of merchants, all of them issue stamps and all of them mutually redeemed and all of them have a joint liability for the redemption of the

stamps, and if they are not redeemable by any body other than those who issue and are not issued by any one other than those who redeem, that I wouldn't have any great hesitation in exempting that group The main reason for this is the joint liability.

PROCEDURES FOR HANDLING INSOLVENT COMPANIES

Testimony was heard on the statutory liquidation procedures that were followed in two recent liquidations and which procedures entailed considerable administrative expense—at least relative to the funds available for claims The commissioner was questioned as to the organization of his department to undertake liquidation of licensed stamp companies. Mr. Schutzbank indicated that his department was not organized to handle the redemption of a large number of stamps. He pointed out that a good part of liquidation expense is attributable to the processing of stamps, and he further indicated that this expense of processing stamps also reflects the slow disposition of liquidation cases attributable to procedures set forth in statutes Assistant Attorney General Herbert Wenig, presented testimony applicable to the procedures under question

> Mr. Wenig. Now if a trading stamp company in a prior three-month period has not redeemed stamps, a person or persons may file a complaint with the commissioner. A notice is then served on the company, asking the company to redeem those particular stamps represented by the complaint within 10 days Now, presumably at this point the company could prevent further investigation or involvement by merely redeeming those stamps represented by that complaint. If the trading stamp company . . failed, however, to redeem within 10 days, . the commissioner must publish a notice of the fact in three newspapers, advising that additional claims may be filed and this notice must be published over a period of three months Then after completion of publication, the commissioner, within 30 days, must hold a hearing to determine that the company has failed to redeem its stamps. This hearing cannot be held until 20 days have elapsed from the date the company is notified of the hearing. Then, at the hearing the company may pay the claims which have been presented to the commissioner If the company does not pay, then the commissioner within 10 days after the failure to comply with [his] demand . . . files an action against the trading stamp company and its surety.
>
> Now, under [this procedure] this represents an absolute minimum of 130 days from the date of the filing of the first complaint, and it is possible within the time allowed by the statute for 190 or more days to elapse before even the lawsuit is brought.

Mr Wenig then proceeded to discuss a remedy for this lengthy statutory redemption process His proposal was aimed at preventing insolvency rather than at some shortening of the commissioner's proceedings applicable to insolvent companies

> Mr. Wenig: Because the gathering of the claims represents great time and effort, because approving and paying claims is [a] disproportionately [large expense], because many stamp holders,

though disappointed, do not file claims and because the bond will pay only a small percentage of claims, the approach to protecting stamp holders should be from an entirely different direction. It should be toward assuring at the outset that a company possesses adequate capital and reserves for its operation and that reserves will be commensurate with redemption liability Because of wide spread public interest and because homemakers are unable to spend time in investigating and checking various companies, the State should have some means of assuring trading stamp customers that they are being dealt with fairly and equitably.

Mr. Wenig added that once the commissioner went through the aforesaid liquidation procedures, he might still have to go through a court trial and an appeal before he could reach the assets of a nonredeeming company In response to a question about notifying merchants to cease issuing stamps of a stamp company that has not redeemed, Mr. Wenig had this to say:

> Mr. Wenig· Well, presumably you would have this time lag of the 10 days and then the three-months publication notice and then another possible 30 days before anyone could undertake to notify a retailer that he shouldn't continue to use the stamps.

The commissioner commented briefly on the possible granting of authority for him to issue cease-and-desist orders. He merely indicated that the question of issuing such orders to prevent unsound practices is akin to the general question of strengthening the Trading Stamp Act. Mr. Burleigh Pattee, however, speaking for the company he represented took a position against extension of the commissioner's authority so as to permit issuance of cease and desist orders to prevent unsound business practices

> Mr. Pattee: Such power on the part of state officers to issue cease-and-desist orders to prevent undefined, unsound practices is unprecedented. . . . in the case of a public utility, a supervisory commission is authorized to issue cease-and-desist orders against a few specified and clearly defined unlawful practices. However, private businesses are generally subject to injunctions concerning the conduct of their business only upon application to a court In such circumstances, the court makes an appropriate order pursuant to generally accepted legal standards.

PROMOTIONAL STAMPS

The use of promotional stamps as a competitive device to attract new business can in certain instances weaken a company's ability to redeem stamps. Since promotional stamps represent a gift by the stamp company, when these stamps are presented for redemption the assets available for such redemption are taken from net capital or assets held to redeem nonpromotional stamps issued and outstanding. If the company issuing promotional stamps has just begun business, capital would represent the principal source of funds for the redemption of such stamps If the company had been doing business for some period of time, then the funds used to redeem such stamps might be traced to a source other than capital. Thus, if a company does not practice

some degree of restraint commensurate with its financial ability to redeem gratuitously issued stamps, the issuance of such stamps could cause a real solvency problem.

The Corporation Commissioner indicated that promotional stamps by themselves present no real problem for his department. When promotional stamps, however, are issued beyond that amount which the reserves of the given company will support, then the commissioner pointed out that a problem does arise with respect to the security afforded the stamp holders of that given company.

> Mr. Schutzbank: We think that this is one of any number of perfectly legitimate methods which free enterprise anticipates in the operation of a company. On the other hand, there must be control only in the sense that the issuance of promotional stamps does not undermine the entire structure of the company; so if a company which has a capital of one million dollars would care to issue promotional stamps of one-half million dollars, so they still have plenty of available funds and assets to meet the redemption of those stamps when they come in, we see no objection [to this practice]. So that the problem of the stamps is solved when you talk in terms of sufficient capital, sufficient bonding requirements, sufficient accounting requirements, and sufficient control over the definition of redemption liability

Mr. Burleigh Pattee argued that any interference with a company's right to issue promotional stamps would be illegal as that interference would infringe upon the right of a business to establish its own prices. An exchange took place between Assemblyman Beilenson and Mr. Pattee over the question of whether restrictions on the issuance of promotional stamps thwarted free trade.

> Assemblyman Beilenson· What would be illegal about that?
>
> Mr. Pattee. This is a price fixing Are you talking of the question of prohibiting a man to set his own price on his stamps?
>
> Assemblyman Beilenson We are talking about the giving out of free stamps.
>
> Mr Pattee· Free stamps, I say that, in effect, is legislation which sets the price of the stamps

The discussion of promotional stamps also focused on the distinction between a gift per se and a piece of paper which represents a claim for a gift The latter would include a promotional stamp Where promotional stamps are issued, stamp holders must look to the company for value Based on this fact, it was argued that a stamp company might overemphasize business development simply because of the fact that no account need be made for such stamps until some time beyond the date of issuing stamps. With the case of a gift that has value upon issuance, this type of promotional device would appear to have a built in restraint, at least more so relative to any restraint that may exist in the issuance of promotional stamps

SUBSEQUENT DEVELOPMENTS

Thrifty Green Stamps, Inc, a licensed California stamp company with a maximum $150,000 bond, has ceased to redeem its outstanding stamps In June 1966, rumors apparently began circulating that this company would be unable to redeem its stamps These rumors led to subsequent runs on company redemption centers, and, eventually, the State Board of Equalization filed against the company a sales and use tax lien of $22,894 and attached the company's bank account The company's inability to redeem stamps reflects these factors along with an undercapitalized financial position.

As of December 1966, the company had an estimated $131,000 of outstanding stamps indicated to be stated on a 70 percent reserve basis Against this claim, there is the $150,000 bond and whatever amount these creditors can obtain on their proration share of other assets available for all unsecured creditors It appears, however, that the bond will represent the principal asset available for stamp holder claims, thus, the indicated redemption value for these claims is 35 cents on the dollar

On April 30, 1966, while licensed and issuing and redeeming stamps, this company was indicated to have liquid assets in the form of cash and government securities of $1,233 39 Merchandise inventory, which is assumed to be exclusively available for the redemption of outstanding stamps, was stated at $325,073 33 On this same date, the company had outstanding stamps stated on a 70 percent reserve basis of $631,-562 81 The company had a deficit capital account (capital stock plus surplus) of $238,324 38 For the four-month period ending April 30, 1966, the company had stamp sales of $799,738 96

As an operating concern and on the basis of the figures presented, the company, while licensed, was, in April 1966, indicated to be significantly undercapitalized

BROADENED LENDING AUTHORITY FOR SAVINGS AND LOAN ASSOCIATIONS

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CONCLUSION

While there may be a good case for broadening the lending authority of savings and loan associations, the committee is not prepared at this time to make a recommendation On this subject there is need for more analysis and information concerning the effect upon the competitive structure of the consumer loan industry and the real estate market were savings and loan associations allowed to broaden their lending authority.

DEVELOPMENT OF LENDING POLICY

The early American savings and loan associations (savings and loan associations hereafter referred to as SLA) were cooperative building societies patterned after English building societies With the advent of the industrial revolution, urban migration increased and, in turn, strained the urban housing facilities then available During this period of history, a sophisticated mortgage loan market had not yet developed to handle the financial requirements of low-paid workers, and tenancy, therefore, was the principal means of urban shelter for these workers From this background, cooperative building societies developed as social ventures aimed at providing a mechanism through which low-paid workers could finance homeownership

In America, SLA over a period of time gradually changed their financial programs and form of business and eventually assumed the character of today's mutual companies and stock companies Among the many changes which occurred during this evolution were (1) SLA acceptance of savers who had no intention of buying a home; (2) continuity of existence—in the early cooperative, the organization terminated when all cooperative members had purchased homes and had paid up their shares; and (3) incorporation under state laws

SLA have always specialized in home mortgage loans, which specialization is now mandatory owing to restrictive statutes enacted at both the federal and state levels This policy of restricting the allocation of SLA assets, rather than resorting to free market allocation, developed from the following tenets and was shaped by the following historical facts·

(1) Specialized lending is traditionally what the SLA have always done, and, therefore, SLA should restrict themselves to familiar markets.

(2) The construction industry and homeowners' organizations lobbied effectively for a specialized homeowner credit system and lobbied effectively against measures which might stem the flow of mortgage credit

(3) The health of the construction industry is considered vital to the well-being of the economy, and, therefore, such industry should have priority access to savings as compared with other industrial sectors of the economy.

(4) Public policy has been to stimulate homeownership, since such ownership is held to create better citizenship, family stability, and a better environment for the future generation In each of these instances, homeownership is viewed as a "socially desirable investment"

(5) A "specialized financial institution philosophy" of the 1930's underlies much of the present restrictive lending legislation Adherents to this philosophy felt that (a) competition among savings institutions had to be restricted in order to save man from himself, i e, institutions in direct competition would push up deposit rates and reach out for inferior or marginal loans, both of these actions being to the

detriment of the stability of the overall economy; and that (b) liabilities should be matched with liquidity requirements, i e, liquidity requirements of SLA deposits are better fitted, as compared with bank deposits, for long-term mortgage investment

In order to effectuate a specialized financial institution, SLA were given certain statutory competitive advantages over banks so that the SLA might effectively compete for funds and then be in a position to channel a large amount of such funds into the mortgage market In furtherance of this specialized financial institution policy, SLA then, relative to banks, generally operated under and continued to do so, less restrictive reserve requirements Until the recent advent of bank certificates of deposit, together with relatively higher rates paid on these deposits and the overall increase in interest rates, the SLA were able to compete effectively with alternative investment opportunities for savings.

PROBLEMS ASSOCIATED WITH PRESENT LENDING POLICY

Basically, when SLA offer a depositor a higher rate of interest than alternative investment opportunities offer, depositor savings at SLA will tend to be relatively more stable than those savings in the alternative investments By alternative investments is meant investments of comparable risk, e g, bank savings deposit and high-grade corporate and government debt In the instant example the liquidity requirements are different for SLA and the comparable alternative investments Looking at SLA debt investments, i e, loans and investments which are assets to a company but at the same time are a borrowed source of funds for the company, such investments will tend to be less convertible into cash over a short period of time relative to aggregate conversion of total bank liabilities or high-grade government and corporate bonds SLA do, therefore, tend to place their depositors' funds in relatively less marketable investment opportunities, to wit, mortgage lending. Underlying this type of SLA lending policy is the axiom previously stated that investments should be matched more or less with liquidity requirements.

On July 27, 1966, a hearing concerning the subject of broadened lending authority for state chartered SLA was held in San Francisco. At this hearing, representatives of the Council of Savings and Loan Financial Corporations as well as a representative of the California Savings and Loan League spoke in favor of broadening the lending authority of these associations

Mr. James Rittermal of the Council of Savings and Loan Financial Corporations testified that California statute does not control the lending and investment policies of federal chartered SLA Associations of this type do operate in California Mr Rittermal pointed out that broadening of the lending power of such associations by congressional action would, therefore, have an effect on the competitive balance between the federal chartered associations and the state chartered associations in California In this connection, he noted that there are two programs before Congress that seek to broaden the lending power of the federal chartered associations One of these programs seeks to establish federal chartered mutual savings banks While state chartered

mutual savings banks are not operative in California, they are important in certain areas of the Northeastern United States If Congress were to adopt legislation allowing for the federal chartering of mutual savings banks, such institutions would become an active factor in California's financial market This could come about because of the fact that this proposed program would allow for conversion of federal chartered SLA to federal chartered mutual savings banks, and as the latter type of institution would have broader lending power relative to that lending power of federal chartered SLA, it is highly likely that the federal chartered SLA would convert so as to acquire greater lending flexibility Greater flexibility would arise, for example, from the fact that federal chartered mutual savings banks would be able to make educational loans, unsecured personal loans up to $5,000 and invest in common stock. In the event Congress established the federal chartering of these banks, Mr Rittenmal felt that the Legislature should follow this move by enacting legislation to provide for the conversion of state chartered SLA to such mutual savings institutions.

Another program before Congress calls for the broadened investment and lending authority of existing federal chartered SLA. It is proposed that these SLA be allowed to make, for example, unsecured loans for the purchase of home furnishings and mobilehomes, and to make individual consumer loans for any purpose up to $5,000 This type of program is supported by the US Savings and Loan League and the National League of Insured Savings Associations These two supporting groups differ as to the specific recommendations for broadened lending power of the SLA, but it is sufficient, nevertheless, to say that both groups would have federal SLA lending authority be more liberal than that authority now possessed by California's state chartered SLA.

Apart from congressional interest in the lending power of federal chartered mutual savings banks and SLA, the council expressed an interest in liberalizing the lending power of California's state chartered SLA irrespective of congressional trends or action In essence, the council felt there was a definite need for broader lending power rather than just a need arising out of competitive conformity with federal chartered institutions With respect to the basic need for broader authority, the council presented Dr Preston Martin, Professor of Finance at the Graduate School of Business Administration of the University of Southern California, who testified as to the analysis and conclusions of a paper prepared by himself, dated July 1966, and titled, "The Consumer's Changing Financial Needs, State and National Trends Compared "

Related to Dr Martin's comments is the fact that the policy of balancing liquidity requirements with investments runs into trouble if (1) the SLA liquidity profile changes and/or (2) available investment opportunities are inadequate An association's liquidity profile will change if the association competes with alternative investment opportunities at a lower interest rate or for that matter, even a narrowed premium rate of interest As is generally known, bank certificates of deposit with their relatively high yield as well as the significant overall increase in interest rates in the money market have had an impact on the liquidity profile of SLA This fact was alluded to by Dr Preston Martin

> Dr Martin. As the committee well knows, savings inflows to banks and the saving and loans have fluctuated widely over the period . 1958 to and including the first five months of 1966 In California, savings and loans had a peak net inflow of savings of $3 2 billion in 1963 compared to the net inflow [to banks] of savings . . . in that year of $1 75 billion As the committee also knows, by 1966 savings and loans had fallen behind commercial banks and other seekers for the saver's dollar and one estimate of the first five months of 1966 is that savings and loan associations had a savings net loss, or outflow, of somewhere in the neighborhood of $125 million, at the same time that commercial banks in this state were gaining in excess of $1 0 billion in savings deposits, time deposits and certificates of deposit added together
>
> A chief factor in the decline of savings and loan market share of savings, both at the state level and the national level, has been their inability to compete fully in the market for savings on a rate basis

Besides a changing liquidity profile, SLA can run into another problem which arises as an outgrowth of their present lending policy SLA primarily have one investment outlet, real estate lending In this lending market, the California associations' principal loan is the conventional trust deed, which unlike an FHA or VA loan is not capable of discount in the secondary market provided by the Federal National Mortgage Association Thus, relative to the FHA and VA loan, the conventional trust deed is less marketable This being the case, it is not ideally suited for the investment of depositor funds when those funds are likely to be withdrawn from a given association in response to a change in interest rates

Given an inflow of funds into an association, that association has little opportunity to invest these funds in anything other than real estate lending opportunities Table I provides a statistical profile of the assets of insured California SLA, and this profile clearly demonstrates that SLA opt for real estate loans over their statutory alternative investment opportunities, cash and government securities

TABLE I

TOTAL ASSETS BY MAJOR CLASSIFICATIONS, INSURED CALIFORNIA AND ALL U.S. SAVINGS ASSOCIATIONS

(in Millions of Dollars)

	Total assets		Total real estate loans		Cash and U S govt securities	
	Calif	U S	Calif	U S	Calif	U S
1965	$25 834	*$129,442	$22,176	*$110,202	$1,932	*$11,304
1964	23,851	119,355	20,529	101,333	1,915	10,981
1963	20,675	107,559	17,677	90 944	1,827	10,424
1962	16,460	93,605	13,911	78,770	1,587	9,489
1961	13 292	83,135	11,241	68,894	1 271	8,526
1960	10 728	71,476	9,141	60,070	989	7,275
1955	4,107	37,656	3,516	31,408	421	4,401

Source *California Savings & Loan Data Book*, 1966 Edition
* Preliminary

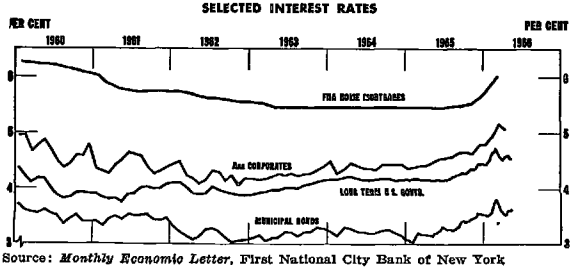
Statutory considerations aside, the reason for this selective allocation is obvious as cash is a nonearning asset and government securities may not afford a high enough yield to cover the deposit and operating costs of an association On this latter point, the average yearly rate paid on deposits in SLA in California is about 5 25 percent, while high-grade bond yields, in relation to this rate, do not afford a return that is sufficient to cover SLA deposit costs and all other costs, in addition to earning a profit. This squeeze is apparent from the data presented in Illustration 2, which is taken from Dr Martin's report. The average yearly rate paid through about mid-1966 on deposits at California SLA lies slightly below 5½ percent As can also be seen from the data in this illustration as well as in Illustration 1, the average rate on government bonds and treasury bills at mid-1966 does not fall above that deposit rate of SLA (which is a cost to SLA) In fact, the average government bond rate is below the SLA average deposit rate of about 5½ percent Obviously, neither of these statutory alternative investments for SLA offers an outstanding profit-making opportunity. The average government bond rate is such that SLA would on investment incur a loss The same situation would probably prevail with investment in treasury bills, especially when effect is given to the nondeposit costs of SLA, which costs must also be covered before profit is realized.

As can also be seen from the data in Illustration 2, the conventional loan rate in California at mid-1966 was about 7 percent When fees and points are worked into this figure, the gross rate of return to SLA would be higher than 7 percent It appears, however, that the SLA gross rate of return earned on conventional loans made at current relatively high rates and earned on older portfolio loans at lower rates (which loans represent the major portion of an association's portfolio) is not high enough to provide SLA with the funds necessary to compete in a rate war and at the same time maintain profitability

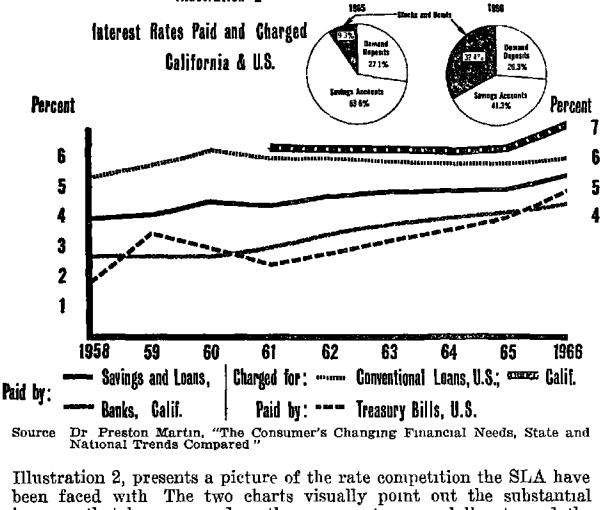
While the term rate war is not really the appropriate term to describe the situation the SLA find themselves in—tight money is more appropriate—the term, nonetheless, indicates the type of competition that has been developing for the saver's dollar. Illustration 1 provides data which when taken together with that data presented in

ILLUSTRATION 1

SELECTED INTEREST RATES



Source: *Monthly Economic Letter*, First National City Bank of New York



Source Dr Preston Martin, "The Consumer's Changing Financial Needs, State and National Trends Compared"

Illustration 2, presents a picture of the rate competition the SLA have been faced with The two charts visually point out the substantial increase that has occurred in the average treasury bill rate and the rate paid on certain other money market obligations The rate paid by banks to depositors has also increased, certainly so for a certain class of depositors, but this fact is not fully reflected in Illustration 2 This illustration does not give effect to the real competitiveness of banks in the market for savings, because the bank rate shown includes the rate paid on certificates of deposit as well as the rate paid on savings deposits If exclusive effect were given to the rate paid on bank certificates of deposit rather than to this rate lumped together with the relatively lower rate paid on the banks' other deposits, the bank rate shown in Illustration 2 as of mid-1966 would be considerably higher From an analysis of these graphs, it can be determined that the competition for savings is intense It was certainly so at mid-1966 In intense competition for savings, SLA appear to be restricted from profitably competing on a rate basis because of the peculiarities of their long-term mortgage investment market, i e , their older, lower rate loans do not turn over fast enough (a point developed further in the report)

As SLA cannot make worthwhile profits on their alternatives to real estate lending, the present restricted lending policy of the SLA gives rise to another problem when the real estate market is weak and the SLA are, to the contrary situation discussed above, effectively competing for savings This successful competition would result in a substantial, steady inflow of dollar deposits to the SLA Keeping in mind the profit problems SLA would have with government bonds and treas-

ury bills, it appears that the SLA would tend to place depositor funds in a weak real estate market as against their other alternatives. Table II indicates the cyclical nature of a segment of the California construction industry.

TABLE II

NUMBER OF NEW PRIVATE DWELLING UNITS AUTHORIZED BY BUILDING PERMITS IN CALIFORNIA FOR STANDARD METROPOLITAN AREAS

1965*	140,376	1960	165,961
1964*	213,670	1959	195,905
1963*	260,997	1958	166,644
1962	210,958	1957	148,481
1961	176,167	1956	156,712

Source *California Savings & Loan Data Book*, 1966 Edition
* Revised Data

With respect to the particular problem caused by a weak real estate market and an inflow of savings to SLA, Dr Martin had this comment to make

> Dr Martin . . . the decisions to save and the decisions to borrow are made by two different groups In the main, the savers are not always the borrowers, and so these two kinds of money flows do not always match In the 1950's, savings and loan associations in California, and to a large degree in the United States, dominated the savings market, and the principal need of the consumer sector of the regional economy and the national economy was indeed mortgage debt In this period, therefore, the financial resources and the financial credit needs of consumers of households matched most of the time However, in some years the "fit" between resources and needs was not ideal, and 1963 is certainly the most notable example In 1963, savings went to savings and loans in unprecedented volumes, and savings and loans had no legal choice but to lend on mortgages if they were to maintain high rates of return and to maintain their position in the savings market by passing on these returns to savers The result is rather generally conceded to be an overbuilding of housing in the State of California and, to some extent, in the whole United States Furthermore, it may be that coupled with this there was an underlending in the consumer sector Consumer demand was certainly expanding rapidly in 1963 and 1964, both regionally and nationally.

Aside from problems associated with the restricted nature of having one principal investment outlet and in having a liquidity profile change, another problem arises with respect to SLA statutory lending policy in that this policy tends to prevent associations from effectively competing for savings, i e , change their liquidity profile through their own efforts By offering a higher rate of deposit interest, SLA can remain competitive in the acquisition of savings and, therefore, work to maintain a somewhat stable liquidity profile Increasing the deposit rate of interest results in an association paying a higher rate on all savings accounts, and thus significantly increases such an association's cost of money This cost is not so easily offset by increasing the association's return on its real estate loans This point was brought out by

Mr. Dean Cannon who testified at the hearing for the California Savings and Loan League.

> Mr. Cannon: It is important that you understand that, when our rate on savings is increased, the increase affects every dollar in the institution—not just the money that comes in after the effective date of the increase We must have some means of increasing our earning power in times such as we are experiencing today if we are to continue to be a viable industry and continue our contributions to the economy of California. Although it is true the money we are lending in the mortgage market today is bringing a higher rate of return, these loans are made on an amortized basis over a period of between 20 and 30 years and the result is that there is no significant increase in the total earnings for our institutions It would take too many years to really have a measurable effect and thereby increase the amount of earnings needed to pay the necessary rate for savings. We must, therefore, have the flexibility to make shorter-term loans, to which real property does not lend itself, so that the proper adjustments may be made in earning capacity in accord with whatever the monetary climate is at any given point in history.

As Mr Cannon pointed out, SLA have a turnover problem in the sense that they cannot quickly and effectively react to interest rate changes in the marketplace This turnover problem arises because of the relatively long amortization period on the general real estate loan or for that matter the average period during which the loan has life, i e , the period during which the encumbered property is not sold and a new loan financed The SLA are not turning over enough money every year to reap benefits from the general up trend in interest rates.

Testimony at the hearing also developed the point that SLA principal market, real estate lending, is undergoing a long-term structural change The significance to SLA of this change is that expenditures on housing will increase but at a lesser rate than spending on other consumer items. On this subject, Dr. Martin had this to say.

> Dr Martin: Consumer needs for financing not only changed between 1963 and 1966, but they're changing over the long run. This is in part because more and more households are of three types the young marrieds, the empty nesters, who are retired or who are about to retire; and the other individuals who are living by themselves. Another circumstance which the financial institutions of this country must cope with is the factor of changing family size, particularly among young households The average size of a family is declining and has been declining since 1961 This is true in California The increasing importance of these three kinds of households compared to the husband-wife-two-or-three-children household is evidenced very clearly by the booming markets for certain kinds of consumer goods and services . . . mobilehomes, campers, vacation homes, boats and other leisure-time goods

From the standpoint of present lending authority problems and the public interest, an argument was made that when families buy homes they frequently take out a loan at one institution for real estate and at

another institution for furniture and appliances. Borrowing at different institutions involves a credit check at each one and it is a process that is economically inefficient and costly to the borrower If the borrower were able to obtain funds at one institution for purchase of his home as well as the appurtenances, the one credit check and economies arising therefrom would better serve the public

> Dr. Martin Our conclusion . indicates that on balance the public would be better served if savings and loans had broader lending powers, especially in the consumer field. The need for consumer financing, though it is growing, is less dollarwise than that for mortgage financing Thus, mortgage lending is indicated to be the prime function of savings and loans, with consumer lending a residual one. However, the public is better served when financial and real resources are allocated according to the public's changing needs In the short run, wider lending power means flexibility in lending to match flexibility in spending by consumers.
>
> Less compartmentalization and more flexibility among lenders may lead to higher returns to savers over the business cycle and may lead to lower consumer financing charges It would certainly enhance competition in the consumer financing industry, which result itself is in the public interest

A similar argument was made by Dean Cannon of the Savings and Loan League.

> Mr Cannon. Years ago, the investment that was necessary for furnishing and equipping a house represented a relatively small part of the cost of moving into a new home Today, our housing requirements have changed, and these costs for furnishings and equipment now represent from 10 percent to 20 percent of the purchase price of the home, or from $2,000 to $4,000 for a $20,000 house Normally, the family that buys this house will have used its cash resources for the down payment and will have little or no cash left to make these necessary purchases They must then seek financing from other sources, since savings and loan associations cannot now make loans on this type of security Generally, the financing available to them is on a short-maturity basis with "add-on" interest rates, which makes the monthly payments high at a time when the family can least afford it
>
> With package home financing, economies could be realized by utilizing information already on file, thereby reducing the costs of credit analysis, accounting, advertising, collections and other operational activities The public interest will thus be served by providing this type of package financing to the consumer, and it is in this area of finance that we strongly feel our business must be permitted to enter.

Mr. Gareth Sadler testified as to the department's view on broadened lending power He indicated that the department felt there was some merit in providing SLA with greater flexibility with respect to lending Aside from this point, the department also recognized that general lending parity should be maintained between state chartered

associations and federal chartered associations. He added that the primary concern of his department was the orderly growth of the industry and with a view to the impact upon the SLA of broadened lending authority, the department was concerned with (1) what regulatory limitations should be considered with any new lending authority and (2) what the effect of broadened lending authority would be with respect to the operation of the department.

Concerning limitations on broadening lending authority, Mr. Sadler noted that the department had not gone into this subject in any great detail primarily because the specific areas of additional authority had not as yet been determined. He did, however, submit that bank regulation provided an example of the approach SLA regulation might take. In bank regulation, commercial, savings and trust operations of a bank are distinct organizations established as such by the banking laws of the State of California. In this connection, the type of broadened lending authority SLA are indicated to be interested in could be organized from a regulation standpoint as a special department of the association and separately licensed as such. Mr. Sadler was then questioned by Chairman Moretti on specific matters concerning regulation of the industry.

> Chairman Moretti . . . . , do you see a need for a change in the reserve requirement for the savings and loans if their lending authority were to be expanded?
>
> Mr Sadler Not necessarily. I think that the question probably would resolve itself into an individual case-by-case basis, and again, if I am correctly interpreting the procedures that are presently followed by the Department of Banking, they do make this exact judgment in adjustments as between different departments of a given bank I think there's no question that a great majority of our associations could properly undertake this and would have adequate reserves. I think that it would call for a careful review on an individual basis which would be a part of the review of the staff and other qualifications of the lending institution.

Pursuing the question of direct lending as compared with the purchase of consumer paper, Committee Chairman Bob Moretti questioned the Savings and Loan Commissioner, Mr. Gareth Sadler, as follows

> Assemblyman Moretti. How do you feel, Mr Sadler, about the possibility of direct lending on the part of the savings and loans versus purchasing of consumer contracts where in one they do their own credit checking and background work and in the other case they are relying on someone else to do it and have not had direct contact with the person who is being loaned the money?
>
> Mr. Sadler· I think we may here be dealing with another question which I am sure has arisen before in other financial institutions and one of the normal safeguards which is used is to require recourse arrangements on the part of the seller. I think that should be an adequate answer; I'm not sure it is the only answer I think the goal should be to provide reasonable flexibility. I think it would probably be better to approach the thing on a gradual basis but

without restrictions outlawing a particular form of business activity.

Dr. Martin was questioned as to whether SLA granted broader lending power would tend to channel most of their funds into short-term consumer loans as against the trust deed loan secured by real estate, owing to the relatively higher rate of interest available on consumer loans

> Dr. Martin . . portfolio decisions are not just a matter of what yield do you get on various parts of the portfolio. For example, such savings and loan associations will hold treasury securities in excess of that amount required of them in order to have higher liquidity. Now the treasury security, particularly in the short end of the scale, is usually the lowest yielding thing around. But the management decision is made to hold a certain volume of treasury securities This is a mortgage lending institution, and it will not succumb to yield as the sole criteria.

Concerning just what was meant by consumer loans, the following comments by Assemblyman Jack Casey and Mr. Rittermal are of interest

> Assemblyman Casey · So, actually we're talking on a broader basis than merely just consumer financing of individual articles You're thinking of the purchase of accounts receivable and that type of thing. You could move into department stores and purchase their consumer paper and to automobile firms and purchase their consumer paper.
>
> Mr Rittermal I personally believe that we are. I think your question relates to the originator of the loan, and I don't see that this topic we're discussing necessarily develops simply in the originator

Mr Jerald Schutzbank, the Corporation Commissioner, as an observer at the hearing was called upon to answer certain questions In the process of testifying in this manner, he commented on the need to keep regulation of various industries on a uniform basis.

> Mr Schutzbank · I might take this opportunity, though, to express the one area in which I do have a point of view on that subject, and this is one on which I feel rather strongly with respect to the industry as it exists today . . . Here, I'm referring to the general structure of regulations in industries such as this, where I do believe there is imposed on the respective industries regulation which is unreasonable only in the sense that it is not necessarily uniform The authority which is given to one agency over one industry is not necessarily the same as that which is given to another agency with respect to another industry . . consideration is going to have to be given at some point in the context of the committee's hearings here or elsewhere to the fact that there are many entities now engaged in the consumer credit business, some of which are regulated in that regard, some of which are regulated in other regards, and some of which are unrelated in one way and are not unrelated in another. The pattern is not as uniform as it

should be in order to prevent unfair competition betweem the various business enterprises I think that one of the legitimate complaints, if you can call it that, which the various industries have made and which I think they are entitled to make, is that they should, in any event, not suffer the difficulty of competing with another industry in the same market under different rules.

I think that it does go without saying that as you extend that flexibility [broadened lending power] the need for uniformity becomes all the greater

Mr Alvin O Wise, Jr, representing the California Loan and Finance Association (composed of companies licensed to loan on the security of personal property under the authority of the Financial Code and supervised and regulated by the Division of Corporations) testified in opposition to proposals to allow SLA to enter the consumer loan field He emphasized that SLA if they were to enter the consumer loan field would do so, at least under existing circumstances, with certain competitive advantages

Mr Wise· In the origin of the savings and loan movement, they were afforded certain privileges as a class of lenders or as an organization These are privileges which are not afforded to banks, industrial loan companies, personal property brokers, or any other classification of lenders Examples of these privileges include the fact that savings and loan associations are allowed to accumulate a reserve of 15 percent of outstanding liabilities As this accumulation of money grows and the reserve account grows, they have a tax advantage from income tax in that no income tax is required to be paid upon the reserves If this privilege were allowed, and savings and loan were to loan money for consumer finance purposes, the competitive disadvantage to personal property brokers, banks and other lending institutions would be obvious Another privilege which we wish to call to the attention of this committee is that savings and loans can borrow from the Federal Home Loan Bank at a rate of interest lower than that which is available to competitive lending institutions of any other kind To permit savings and loans to enter into the consumer loan market would be to permit one class of lender to borrow federal money for the purpose of lending on personal property where this privilege is denied to personal property brokers The Commissioner of Corporations, Mr. Schutzbank, has already brought to your attention . . the problem of regulation of loans in the consumer finance field It is our position that, if this committee should permit savings and loans to enter into the consumer finance field, the regulations required of our industry would have to be uniform and required of theirs Last, and perhaps most important, we wish to call to the committee's attention the question of whether or not permitting, under state law, savings and loans to enter into a consumer lending business would be constitutional California is unique in that the interest rate is fixed by the Constitution of this state, the basic interest rate Historically, in order to provide for certain types and classifications of lenders, by constitutional referendum, lenders as a

class were excepted. We have the banks, we have personal property brokers, [and] we have . industrial loan companies credit unions, [and] small loan licensees In the constitutional referendum, each of these classifications of lenders was excepted from the mandate of the Constitution and the power delegated to the Legislature to fix their rates and regulate them We seriously question that any legislation which would authorize savings and loans to enter into the special class of lender created by the constitutional referendum, namely, personal property brokers who are by definition authorized to loan on the security of personal property, would be constitutional

SUBSEQUENT DEVELOPMENTS

Under new rules announced by the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board, the SLA and commercial banks are limited in the maximum interest payments they can make on savings held at these institutions The new rate regulation will be in effect through approximately October 1, 1967

In California, all Federal Home Loan Bank member SLA may now pay up to 5 25 percent on depositor accounts with no maturity requirement Compounded daily, this is an effective annual rate of 5 39 percent The maximum rate member banks of the Federal Deposit Insurance Corporation or Federal Reserve Board may now pay on any time or certificate of deposit of under $100,000 is 5 percent This rate is ¼ percent below the previous ceiling on such consumer type deposit accounts The net effect of this legislation and particularly that aspect of it here described, is to establish or enlarge upon a consumer deposit rate premium in favor of SLA as compared with banks

INSURANCE INSOLVENCY FUND

INSURANCE INSOLVENCY FUND

RECOMMENDATIONS

1. The committee does not favor the alteration of the present order of priorities of paying claims against insolvent insurers
2. The committee would favor the granting of standby assessment powers to the Insurance Commissioner to pay claims against insolvent workmen's compensation or casualty insurers Such assessment powers should be limited to the extent assets of the insolvent insurer are insufficient to pay claims arising out of insurance contracts

INSURANCE INSOLVENCY FUND

Two recurring issues that faced this committee during the 1965 General Session concerned problems associated with the payment of claims against insolvent insurance carriers It is indeed unfortunate that this state must concern itself with problems of insurance company insolvencies since we have gone to great lengths to prevent the existence of such situations We have in this state a regulatory scheme, including minimum capital requirements for insurance companies, periodic examinations and audits of all insurance companies, and a rating law that will allow for an adequate premium charge on risks. However, we have not as yet developed a method of protecting a company from poor or dishonest management or overly aggressive and unsound underwriting It is because of these latter reasons that most insolvencies occur.

During the 1965 General Session, this committee considered two bills affecting the payment of claims against insolvent carriers Senate Bill 545 proposed to alter the priority of paying such claims while AB 2410 would have established an insurance insolvency fund to pay all claims against certain classes of insurance carriers The former bill would redistribute claimants' rights to an inadequate pool of assets still favoring some claims over others while the latter proposal would create a new and additional fund out of which all claims would be paid

The present priority system is set forth in Section 1033 of the Insurance Code That order of priority in numerical sequence is as follows

1 Expenses of administration
2 Unpaid charges due under the provisions of Section 736.
3 Taxes due to the State of California
4 Claims having preference by the laws of the United States and by the laws of this state
5 All other claims

SB 545 would change the above priority schedule by substituting subdivision 5 above with subdivisions 5, 6, and 7, which are set forth below:

5 All claims except those described in subdivision 7 hereof which are based upon workmen's compensation and employer's liability insurance contracts and any awards of the Industrial Accident Commission against the person being liquidated
6 All other claims based upon insurance contracts allowed for sums in excess of one hundred dollars ($100), except those described in subdivision 7
7 Claims on account of return premiums and other claims based upon insurance contracts allowed for one hundred dollars ($100) or less
8 All other claims

As is well known in liquidation proceedings, there is rarely an instance when all creditors, i.e., claimants, are fully paid off This is especially true in the case of involuntary liquidation. In view of these facts, SB 545 appears to seek to move workmen's compensation claimants one more step up the payment ladder and thus provide such claimants a better change of full payment This was one argument used by supporters of the bill during the 1965 session. On closer analysis, however, this is not the result Current statutory provisions and case law give workmen's compensation claims priority over most other claims. One of these applicable code sections. Labor Code Section 4908, reads as follows:

> A claim for compensation for the injury or death of any employee or any award or judgment entered thereon, has the same preference over the other debts of the employer, or his estate and of the insurer which is given by the law to claims for wages. Such preference is for the entire amount of the compensation to be paid This section shall not impair the lien of any previous award.

Section 1204 of the Code of Civil Procedure sets forth the preference for wages in any liquidation proceeding, and segments of this section are here presented:

> When any assignment . is made for the benefit of creditors . . wages and salaries rendered . . within 90 days prior to such assignment . . and not exceeding nine hundred dollars ($900) each, constitute preferred claims and liens as between creditors of the debtor, and must be paid by the trustee, assignee, or receiver before the claim of any other creditor of the assignor, insolvent, or debtor .

The statutory preference of workmen's compensation claims was reaffirmed in *In Re Interstate Indemnity Co.*, 219 Cal App 2d 809, 815 (1963), where the court cited Labor Code Section 4908 and CCP Section 1204

> Section 4908 of the Labor Code gives workmen's compensation claims the same preference over the other debts of the employer, or his estate and of the insurer which is given by the law to claims for wages The section extends such preference to the entire amount of the compensation to be paid, unlike the preference accorded claims for wages which extend only to wages earned in the 90-day period of employment prior to insolvency
>
> The preferential nature of a wage claim is established by the provisions of Section 1204 of the Code of Civil Procedure The section applies to "any proceeding in insolvency or receivership."

In applying the above statutes to the existing order of payment contained in Section 1033 of the California Insurance Code, it appears that workmen's compensation claims already have priority over all of the claims expressly set forth below such claims in SB 545 If the existing statutory priority of workmen's compensation claims has force, then the effect of SB 545 would be to move down rather than up such claims Under the existing system such claims are coequal with wage

claims Under SB 545 wage claims, covered in subdivision 4—as they are under the present system of priorities, would be given a higher priority than workmen's compensation claims, which would be covered in subdivision 5, i e , these claims are no longer coequal Nevertheless, workmen's compensation claims under SB 545 would continue to carry the same priority over the same claims as is apparently set forth in the existing order of payment The actual effect of SB 545 is two-fold · (1) to move workmen's compensation claims one step down the payment ladder and (2) to break out certain types of claims falling below workmen's compensation claims and affirmatively subordinating them to other claims

Thus, workmen's compensation claims would be subordinated to wage claims, loss claims of $100 and more would be subordinated to workmen's compensation claims, loss claims of less than $100 and return premium claims would be subordinated to claims of $100 or more, and finally, all other miscellaneous and trade creditors' claims would be paid last Those subordinated would be all loss claimants except the workmen's compensation claimants, the return premium claimant, and the trade creditor

Who are the persons with claims against an insolvent carrier and to what extent have such claims been satisfied in past insolvency liquidations? Such claims represent many types of persons They may be injured workers filing a workmen's compensation claim, a third party claimant filing a personal injury or property damage claim, the insured himself with a personal injury or property damage claim, or a medical claim or a claim for the return of the unearned portion of the yearly prepaid insurance premium, filed either by the insured himself or by a premium finance company which has advanced the yearly premium on the security of the borrower/insureds, promissory note and assignment of the return (unearned) premium Such claims may be for a few dollars in the case of a small loss claim or return premium to many thousands of dollars for a large personal injury claim

If the premium has been paid by a premium financer, who has an assignment for the return premium, and he is able to collect the return premium from the insolvent insurer, the borrower/insured will not be liable under the promissory note If, however, the premium finance company cannot collect the return premium or unearned premium, it will move against the borrower on his promissory note In effect then, the borrower owes the premium finance company money on the promissory note which was for insurance protection he will not receive since the insurance company is insolvent and, in addition, must come up with additional money to buy a new insurance policy Although this cost may be relatively small in comparison to a large personal injury claim filed with the now insolvent insurer, it can, nevertheless, represent a severe hardship to the person with limited financial resources

In some insolvency cases, however, the premium finance company which often is chartered as a state or national bank finds itself not in a subordinated position, but in a paramount position to other claimants against the insolvent carrier This anomaly was pointed out by

the Insurance Commissioner, the Honorable Richard S. L. Roddis, in testimony before this committee on September 16, 1966

> Commissioner Roddis. The bank has a form of off-record fluctuating noncontractual security interest known as a bankers' lien Many banks engage in premium financing business, and I think probably any bank that knew what it was doing and engaged in that business and was dealing with one of these perhaps weaker [insurance] companies . . . will to the extent that it can do so, induce, if possible, the insurer with whom it has extensive financing arrangements, to maintain a deposit in the bank or maintain certificates of deposit in the bank If that company, that insurer, then becomes insolvent, the bank, to the extent to which it has deposited funds of the insurer in its possession, is not in the same situation as the average return premium claimant The bank at this point . . has a claim and, except as to workmen's compensation, the claim has considerable legal force By virtue of the banker's lien it can offset against the loss so that they in effect come out with 100 cents on the dollar even though other claimants may receive a lesser proportionate payment as a result of eventual liquidation. . It is of interest that two companies which became insolvent, Tower Indemnity Company, and a reciprocal interinsurance exchange, which was under common management or common control with the people who controlled Tower . had premium financing relationships with [a bank. The bank] held substantial certificates of deposit from both insurers Initially, the bank took the position that it could offset the deposit against its assigned returned premium claims as to both companies [1]

One method whereby all claimants of insolvent insurance company would be assured of reimbursement is through the operation of an insurance insolvency fund Such a fund would obviate a priority system of payment, at least for those claimants covered by the fund The rationale of insolvency fund would be consumer protection similar to that afforded depositors at most banks and savings and loan associations through the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

Several states have already created insurance insolvency funds covering one or more classes of insurance The State of New York has a Workmen's Compensation Surety Fund and a separate Motor Vehicle Liability Surety Fund The workmen's compensation fund provides compensation and death benefits for persons with claims against an insolvent workmen's compensation carrier which was admitted to do business in that state Each workmen's compensation insurer is required to pay into the fund 1 percent of its net written premium per year. However, payment into the fund is suspended when the fund equals 5 percent of the New York workmen's compensation loss reserves of $2 3 million whichever is greater Contributions are reinstated when

[1] Assembly Interim Committee on Finance and Insurance, Transcript of Hearings on Payment of Claims Against Insolvent Insurance Carriers, September 16, 1966, pp 45–46

the fund falls below this level [2] The fund is administered by the Insurance Department and the State Workmen's Compensation Board

The New York Motor Vehicle Liability Surety Fund and Public Motor Vehicle Liability Surety Fund provide insolvency protection to persons with claims arising out of motor vehicle accidents These funds are also financed by contributions from admitted liability carriers based upon their written premiums.

Wisconsin has also established a Workmen's Compensation Surety Fund It is divided into threee separate funds; a stock fund, a mutual fund and a reciprocal fund Each is supported by contribution of 1 percent of earned premiums of admitted workmen's compensation insurers Payments into the fund cease when it equals 5 percent of the loss reserves of the carriers

The New Jersey fund is a Motor Vehicle Liability Fund and applies only to motor vehicle liability carriers The contribution rate is one-half of 1 percent of net direct written premium per year with contributions ending when the fund reaches 5 percent of net direct written premium of the covered insurers No claim of less than $100 is payable from the fund which, of course, eliminates many return premium claims and smaller motor vehicle property damage claims

The State of Minnesota has a somewhat different system of insuring the payment of workmen's compensation claims against an insolvent insurer. Its statute provides for a prorata assessment of other admitted workmen's compensation carriers to cover any unpaid workmen's compensation claims of an insolvent carrier The total sum assessed cannot exceed 1 percent of the workmen's compensation premiums written in that state

In addition, the federal government is becoming interested in the problems created when an interstate insurer becomes insolvent A subcommittee of the United States Senate headed by Senator Thomas Dodd of Connecticut conducted a two-year study of insurance insolvencies among the so-called high risk automobile casualty companies Near the close of the 1966 congressional session, Senator Dodd introduced S. 3919 which would subject all interstate automobile insurers to mandatory participation in and financing of a Federal Motor Vehicle Insurance Guaranty Corporation

The Dodd bill would subject all interstate automobile insurers to mandatory participation in and financing of the guaranty fund that would protect policyholder claimants against insurer insolvencies, the contractual performance of policies issued by intrastate insurers that are reinsured in any part in interstate commerce also would be guaranteed on a mandatory participation basis; other intrastate insurers could elect to apply for guaranty status

The proposed corporation would be constructed and funded along the lines of the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation, and would be modeled to reflect several features of the auto insurance guaranty funds of New York and New Jersey

The proposed corporation, in addition to its guarantee functions, would be given sweeping examination powers to determine the

[2] This description applies to the Workmen's Compensation Stock Surety Fund A separate Fund exists for mutual insurers

soundness of insurers seeking guaranty status, as well as the authority to terminate an insurer's guaranteed status if it can be established that the company has failed to make prescribed corrections of practices in the issuance of policies found to be unsafe or unsound.

The guaranty fund would be financed initially by the sale of $50 million of capital stock to the Treasury, to be repaid later, the corporation also would be authorized to borrow up to $500 million from the Treasury in the event extraordinary demands jeopardize the fund's solvency

But guaranty fees paid by the participating insurers would maintain the fund on a self-supporting basis The bill calls for a semiannual charge of one-eighth of 1 percent of each insurer's net direct written premium; this is estimated as sufficient to cover all claims costs, as well as all administrative expenses of the corporation, including those of examinations.

The guaranty fee computed on an annual basis, according to these estimates, would amount to a charge of 37 5 cents to 75 cents on the average automobile insurance policy.

The corporation, in the event a guaranteed insurer is declared insolvent by a state court, would assume any pending claims against its guaranteed policies, and any other claims filed during the course of the liquidation or receivership proceedings The corporation would adjust and settle any such claims only up to the policy limits, less mandatory deductibles that would be applied to each claim, ranging from $100 on third-party liability claims to $300 on policyholder claims

On the payment of any claim, the corporation would succeed to the rights of the policyholder or assured as against the insolvent insurer

No matter what level of tax or contribution may be required to create and maintain an insolvency fund, the cost of the fund will be borne by the consumer since the insurance premium charged the insured will reflect this additional cost To this extent, the consumer is buying insurance against insolvency In another context, the consumer can be thought of as paying for certainty when he pays the insolvency fund tax Insurance is supposed to substitute certainty for uncertainty, but this definition of insurance is subject to qualification inasmuch as certainty can be washed out through insolvency An insolvency fund, therefore, provides a mechanism to effectuate the foregoing definition without qualification, i e, certainty would mean just that—not certainty so long as solvency is maintained As the consumer is paying for the insolvency fund, he can be said to be paying to wash out an infirmity in the economic system which causes certainty to fall short of being an absolute

Opinion is not uniform, however, on the advisability of establishing an insurance insolvency fund in California Many objections to it were raised at this committee's hearings on the subject The Insurance Commissioner of the State of California objected to the fund on several grounds

> Commissioner Roddis · In the first place, I would fear . . the risk that the existence of such a fund would take the pressure off of some insurance commissioners to do an agressive and per-

haps ever better job, or seeking an ever better level of solvency control and regulation.[3]

In rebuttal to this assertion, Mr James Denebeim, Vice President of Vista National Bank, asserted that the federal experience with the Federal Deposit Insurance Corporation was exactly the opposite of that which the commissioner thought might result in California.

Mr Denebeim: . . . when the FDIC came in, the banks found that instead of the State Superintendent of Banks and the Comptroller of the Currency being less regulatory they took now a more zealous view of their position because they now had a fund to protect as well as their normal duties So, it worked just the opposite Instead of going to the point of being lazy, they went to the point of increasing their ability In addition, we got the FDIC who came in on top of it and with greater zeal and started to enforce the banking laws to protect—you might say—the fund [4]

Secondly, the Insurance Commissioner felt that the existence of such a fund might weaken the Insurance Department's position in the courts when the department sought to obtain a court order placing a company in conservatorship.

Commissioner Roddis The parties before a court are usually, at least in the first instance, the commissioner and the equity owners who think the commissioner shouldn't have taken it over . . There's a certain tendency on the part of some judges, not all but some, to feel that perhaps the commissioner acted too soon My own feeling is that there are cases that the presumptive position should be the other way, but the company always has an explanation, for example, that they could have written their way out of the problem. You would have to know the record of some of the litigation we have had in some of these insolvency proceedings to really have the feel for the psychological problems, if you wish, in court.

Now, with the fund in existence that psychology would be all the greater because the equity owner should be in a position to say "the Insurance Commissioner shouldn't have moved so aggressively, we had a chance of salvaging this thing and nobody would have gotten hurt if he had let us go on and run the string out some more before he moved on us because, after all, there's always that fund to back it up and policyholders would not have been hurt" [5]

The third objection was that good, healthy, well-run companies should not be required to subsidize or protect the weaker, not so well-run companies Another objection concerned possible retaliatory taxes that could be levied against California insurers doing business in other states if California created an insolvency fund and required contributions into it from all insurers admitted to do busines in this state.

Commissioner Roddis: The addition of the assessment would probably be viewed and construed under the retaliation constitu-

[3] Transcript, page 51
[4] Transcript, page 91
[5] Transcript, pages 51–52.

tional or statutory provisions of most other states as an additional assessment or tax, and probably to the extent to which it was applied to forms would be applied to California companies in every other state on a retaliatory basis. The only way, of course, to avoid retaliation would be to confine the assessment to California companies, domestics alone, in which case obviously then the rate has to be a great deal higher and you have the obvious problem of equity . . .[6]

The commissioner's position on the possibility of a retaliatory tax being imposed upon California companies by other states was supported by Mr. Perry Taft, Pacific coast manager and counsel of the American Insurance Association.

Mr. Taft· . . . in my experience in the western states, fortunately we've been able to successfully persuade the state authorities that they shouldn't apply it; but in Utah eight years ago the State Tax Commission did attempt to apply on our New York member companies, retaliation on both the automobile and workmen's compensation solvency fund, and we went around and around, almost to the point where we're going to court over it and they finally backed down. So, in Utah, very definitely we ran the risk of their attempting to apply this because the New York rate is 2 percent, the Utah rate is 2 percent, so they were equal in that respect, so Utah figured that if a Utah company doing business in New York had to contribute to this (fund), the Utah ought to get the equivalent of that assessment for the State of Utah.

Right now we're involved in a protracted series of negotiations with the State Insurance Commissioner of Nevada in this very same area on our New York member companies as a result of Nevada having passed in 1963 for the first time a retaliatory law. And the ironic thing about this Nevada situation is that in Nevada they're trying to apply retaliation on a workmen's compensation solvency fund on our New York companies, although our New York companies can't even write workmen's compensation in Nevada because it's a monopolistic state fund.[7]

A representative of the insurance industry, Mr. John P. McFarland, speaking on behalf of the Industrial Indemnity Company and the Firemen's Fund of San Francisco, suggested that what was needed was not insolvency fund but an increase in the capital and surplus requirements an insurer would have to have in order to do business in this state.

Mr McFarland: You will note that the trouble that we have had has been with insurance companies that have been under capitalized. They have been, in many instances, on reserve. The commissioner cannot, as was testified to this morning, immediately go out and detect and wave a red lantern the moment an insurance company becomes under reserved. But if there is sufficient capital back of the company, that is sufficient. Now, the insurance industry is a little bit hesitant about coming forward and suggesting increases in capital and surplus, because it looks

[6] Transcript, page 53.
[7] Transcript, pages 89–90.

as though we're trying to build up a competitive wall against other people coming into the business This is simply not so But our posture has to be guarded somewhat carefully lest we be accused of this The insurance has, of course, let's face it, a selfish interest when we come to setting up state funds or other types of funds to pick up the check on insurance losses We don't like the idea of furthering encroachment in private industry, quite frankly.[8]

The committee does not feel that an adequate solution to the insolvency problem can be found in merely altering the present order of priority of paying claims against an insolvent insurer. SB 545 fails to improve the position of the workmen's compensation claimant. It does, however, affirmatively subordinate other classes of claimants It is doubtful if any of these claimants would ever be made whole by the device of affirmative subordination.

The concept of an insolvency fund has as its virtue the ability to make whole all claimants who are covered by the fund However, with the exception of the standby assessment powers contained in the Minnesota statute, other types of funds contain inherent weaknesses or dangers The possibility of other states imposing retaliatory taxes on California companies operating in these states is a real threat. If California were to impose a tax or mandatory contribution on all insurers doing business here, in order to support the fund, other states might view this as sufficient to impose retaliatory taxes on California companies

Therefore, the committee would only favor at this time that the commissioner be granted standby assessment powers which would enable him to assess admitted carriers pro rata to the extent that an insolvent carrier's assets were unable to satisfy claims based on insurance contracts Such assessment powers should extend only to workmen's compensation carriers and casualty carriers In addition, a sufficient period of time should be given to the assessed carriers to meet the assessment at the assessment dates so that no undue strain will be placed upon the solvent carrier's reserves

[8] Transcript, page 72

HEALTH INSURANCE AND ANTIDUPLICATION PROVISIONS

HEALTH INSURANCE AND ANTIDUPLICATION PROVISIONS

CONCLUSIONS AND RECOMMENDATIONS

1 The committee notes that the health insurance industry contracts with insureds to cover certain expenses, and that some insureds submit claims and receive benefits in excess of covered expenses However, the information available to the committee at this time does not warrant a conclusion that any "insurance profit" is not used by the insured to cover medical expenses incurred but not covered by the policies Since the insured has paid for both policies he should be entitled to the cash benefit of the policies Since the committee has not been convinced that any potential savings through antiduplication provisions will be passed on to the consumer in the form of lower premiums it cannot recommend such provisions at this time If further investigation shows such a saving will result and an adequate system of informing insureds that their benefits will be limited by antiduplication provisions is developed we will reconsider our recommendation.

HEALTH INSURANCE AND ANTIDUPLICATION PROVISIONS

It appears that the health insurance industry is faced with a situation wherein some insureds can and do collect on a given claim benefits which exceed related costs This excess collected is termed an insured's insurance profit (hereafter referred to as overinsurance profit) When an insured is in a position where upon sickness or injury he might be able to collect an insurance profit, he is considered to be an overinsured

If there are problems caused by the existence of overinsurance, these problems can technically arise because of the fact that (1) both a husband and wife are employed and covered as a spouse under the other's group disability policy, (2) an individual, perhaps in recognizing that many insurance policies do not reimburse the full value of medical costs, holds, for instance, two policies—either both being individual policies or one being an individual policy and the other a group policy; and (3) an insured is covered under unemployment compention disability insurance, which is required by statute for a good many employees in California, as well as being covered under a health insurance plan with no exclusion clause relating to hospital benefits payable under unemployment compensation disability insurance Another overinsurance situation can arise when an insured has medical coverage under an automobile insurance policy as well as coverage under a health insurance plan

Assuming that an overinsurance problem exists, three basic forces appear to underlie that problem · (1) increasing awareness on the part of the public of the value of health insurance, (2) the growing utilization of group insurance plans, and (3) the increasing number of husbands and their wives who are both working

Limited data are available that can be used as a reference to the measuring of the dollar impact of overinsurance profit A 1961 study of hospital insurance in California [1] found that 6 9 percent or 15,700 hospital patients of a sample group received benefits which exceeded their respective hospital costs This overinsurance profit averaged $201 per person; aggregate overinsurance profit amounted to slightly over $3 155,700 These figures did not take into account disability hospital benefits which all of the sampled claimants were eligible to receive When these disability hospital benefits were taken into account, it was found that 38 7 percent of all measured claimants benefited financially from their hospitalization While extensive data are not available concerning the California overinsurance experience, and for that matter the national experience, it is indicated that overinsurance profit is being garnered by some insureds and that this profit is on an average

[1] Nathan Sinai *et al*, *Disability Insurance in California*, Bureau of Public Health Economic Research Series No 11, University of Michigan (Ann Arbor, Michigan Braun-Brumfield, Inc, 1965) p 163

and a per capita yearly basis amounting to a considerable sum of money.

It has been argued that the overinsurance phenomenon gives rise to problems for the insured, the insurer and the public. For example, it is generally held by those familiar with insurance economics that overinsurance profit has been a direct causative factor accounting for increasing health insurance premiums. The reasoning in support of this view runs like this With the supply of hospital facilities relatively constant over a short period of time, a demand force based on getting the most out of several health insurance policies can impart an unnatural strain on hospital facilities and, therefore, contributes to or aggravates the inflation of medical costs This, in turn, leads to a conclusion that a demand force of this type is inimical to the public interest From the insured's standpoint, it can be argued that overinsurance profit engenders disrespect for insurance programs It is indicated that this profit and, for example, concomitantly performed unnecessary medical service both work to distort rehabilitation programs and vitiate employment incentive

To the extent that there exists an overinsurance problem, it is indicated that underwriting procedures alone are not effective to remedy such problem Underwriting is ineffective because it must cope with too many variables affecting benefit and cost measurement Group benefits are, for example, affected by collective bargaining processes; medical costs will vary geographically Both of these variables present underwriting estimation problems for a mobile, unionized labor force In light of these variables, it would be possible for an insured to be an underinsured at one point in time and an overinsured at another point in time Furthermore, relatively low group premiums would of necessity increase if group underwriting were to be made more complex through measurement at a given point in time of the overinsurance exposure of each individual within the group

It has been argued that while an insured may collect benefits which exceed cost on a given claim, this so-called overinsurance profit cannot really be considered as a profit at all when a broad perspective is taken of an individual's health problems This argument maintains that there are many medical expenses not covered by health insurance and that the covered medical expenses are not fully compensated for. Therefore, there is no overinsurance situation but rather an underinsurance situation wherein the so-called overinsurance profit is used to defray what would otherwise be an out-of-the-pocket expense This argument appears to hold that when once relatively more comprehensive and full benefit health insurance policies are available at a reasonable cost, then so-called overinsurance may present a real problem; but at the present time, the so-called overinsurance problem is illusory in view of uncovered and uncompensated medical expenses that arise to place an economic burden on insureds An argument of this nature appears to maintain that what an insured pays for in the form of actual insurance coverage is not the standard of measuring whether or not an insured is overinsured, but rather the standard should be that insurance coverage that would be purchased if it were economically available for purchase

An interim hearing was held on May 31, 1966, in San Francisco regarding antiduplication provisions in health insurance policies Such provisions have been proposed as the most effective mechanism for handling an overinsurance problem. The interest of the insurance industry in effecting a solution to this alleged problem has resulted in sponsored studies of such provisions and, in turn, these studies have led to the formation of a group model antiduplication provision, and that provision is, in part, here set forth.

The "model" provision is based on two guiding principles

1 Employees and employers will accept nonduplication provided it permits recovery by the insured of all covered medical expenses.
2. In order to be effective claim settlement has to be simple and easily understandable to employers and claimants.

It is also important to note that the "model" provision was drafted in a form which makes it adaptable to basic plans (i e hospital, surgical and medical expense) as well as major medical.

Briefly the "model" industry provision works as follows·

1. It is a firmly established principle that when a claimant is insured under two or more plans he should be permitted to recover, in total, the amount of the reasonable and customary charges for necessary items of medical expense that are covered in whole or in part under any one of the plans before either plan reduces its benefit payment. Such expenses are referred to as "allowable expenses."
2. Whenever one plan does not contain a nonduplication provision that plan must pay its benefits before the plan which does have a nonduplication clause.
3. When two or more plans contain nonduplication clauses the following "order of benefit determination" establishes the sequence of payment:
   a. the plan covering the patient as an employee pays before the plan covering the patient as a dependent
   b the plan covering the patient as a dependent of a male person pays before the plan covering the patient as a dependent of a female person.
   c where the order of payment cannot be determined in accordance with these rules, the first plan to make payment will be the one that has covered the insured for the longer period of time.
4. The plan that pays first calculates benefits exactly as though duplicate coverage did not exist.
5. The second plan to make payment will therefore reimburse the claimant for all allowable expenses not covered by the other carrier provided this amount does not exceed the benefits payable under the plan in the absence of duplicate coverage
6. Benefit credit—that amount of money which is "saved" through application of a nonduplication provision on a given claim—accrues for a subsequent period, generally one year, as a credit to be applied against future claims

The net effect of this arrangement is that the claimant is either reimbursed for 100 percent of his allowable expenses or receives the full benefits payable under both plans that would have been allowed if neither plan contained nonduplication provisions

As indicated in the above, "allowable expenses" and "order of benefit determination" are key features of the group model antiduplication provisions The term "allowable expenses" gives the broadest, most absolute protection to the insured patient In effect, it guarantees that the insured patient will be protected up to 100 percent of any necessary, reasonable and customery item of expense, all or part of which is covered under at least one of the plans insuring the person for whom the claim is made

"Allowable expenses" is a concept consistent with the overall purpose of the nonduplication provision—that is, to conserve insurance dollars which otherwise would be wasted because of an overinsurance situation

"Order of benefit determination"—the second guiding principle—affords a reasonable, relatively simple criterion for determining the order of responsibility each insurance plan shall assume in paying benefits when a condition of overinsurance exists This principle, of course, does not apply unless at least two plans involved in the same claim have a nonduplication provision.

"Excess carrier " In a situation where two plans exist—and only one of the plans contains the nonduplication provision—the plan with the provision automatically assumes secondary responsibility for benefit payment This would be true even though under the terms of "order of benefit determination" the plan normally would be the primary carrier for benefit payments.

HOW THE GROUP MODEL ANTIDUPLICATION PROVISION WORKS—A CASE STUDY

The Coverage · Tom Jones is covered under a group health insurance plan provided by the ABC Corporation. His wife, Mary Jones, is under a group plan provided by the XYZ Corporation Under the ABC plan, where Tom Jones works, his wife is included as a dependent spouse Under the XYZ plan, where Mary Jones works, her husband is enrolled as a dependent spouse.

Illustrative Claim: Tom Jones is the insured patient Hospital and surgical expenses for an appendectomy performed on Mr Jones total $600 As Example A illustrates, in the absence of a nonduplication provision combined benefits under two plans would amount to $850 ($400 in total benefits under the ABC Plan for hospital and surgical expenses and $450 in total benefits under the XYZ Plan)—hence the Jones family would realize a profit of $250

In Example B, since only Tom Jones' plan contains the nonduplication provision, it automatically becomes the "excess carrier " Accordingly, Mary Jones' plan assumes responsibility for paying first, and her husband's plan, as the "excess carrier," pays the lesser amount

In Example C, where both plans contain the provision, the situation is reversed Tom Jones' plan becomes the "primary carrier" and

his wife's plan the "secondary carrier" Therefore, Mary Jones' plan pays the lesser amount.

Dependent Children In all three illustrations had the patient been a dependent child of Tom and Mary Jones, identical circumstances would have prevailed In Example A, the same profit would be realized by the family In Example B, the child would be covered first under the mother's plan, which contained no nonduplication provisions In Example C, the father's plan would assume primary benefit responsibility, and the mother's plan, secondary, consistent with the "order of benefit determination" provision The latter dictates that the plan covering the dependent of a male person pays before the plan covering the dependent of female person

EXAMPLE A

WHEN NEITHER THE ABC PLAN NOR THE XYZ PLAN HAS THE ANTIDUPLICATION PROVISION

Total allowable expenses for medical charges for appendectomy		$600
Employee benefits payable by ABC Corporation (Tom Jones' plan)	$400	
Dependent benefits payable by XYZ Corporation (Mary Jones' plan)	$450	
Total benefits payable by both plans		$850
Profit to Jones family		$250

EXAMPLE B

WHEN ONLY ONE GROUP PLAN (i.e., ABC PLAN) HAS THE ANTIDUPLICATION PROVISION

Total allowable expenses for medical charges for appendectomy		$600
Dependent benefits payable by XYZ Corporation (Mary Jones' plan)	$450	
Employee benefits payable by ABC Corporation (Tom Jones' plan)	$150	
Total benefits payable by both plans		$600
Out-of-pocket expenses		$0

EXAMPLE C

WHEN BOTH PLANS HAVE THE ANTIDUPLICATION PROVISION

Total allowable expenses for medical charges for appendectomy		$600
Employee benefits payable by ABC Corporation (Tom Jones' plan)	$400	
Dependent benefits payable by XYZ Corporation (Mary Jones' plan)	$200	
Total benefits payable by both plans		$600
Out-of-pocket expenses		$0

In both the 1963 and 1965 General Sessions of the Legislature, the insurance industry sponsored a bill that was designed to incorporate into the California Insurance Code an antiduplication provision patterned after the group model antiduplication provision In both sessions, the bill was referred from committee to interim study.

Mr Joseph D Thomas, Chief Assistant Commissioner of the California Department of Insurance, presented views on the subject of antiduplication provisions in general and also testified as to the department's position on this matter.

> Mr. Thomas . . . the existence of these reports [status reports concerning overinsurance control and prepared by the insurance industry at the request of the National Association of Insurance Commissioners] indicates to the department certain things
>
> One is that both the commissioners and the insurance industry believe that the lack of adequate contract provisions for eliminating or restricting duplication of benefits in health insurance policies is a serious and important problem
>
> two, that solution, fair and acceptable to all interests, is most difficult.

The Chief Assistant Commissioner indicated that the department believes there is an overinsurance problem in California. He pointed out that most other states permit some form of an overinsurance provision in group policies and in guaranteed renewable and noncancellable individual policies Since in his opinion the present provisions of the California Insurance Code do not allow antiduplication provisions to be written into health insurance policies, and in view of the factors commonly cited as undesirable consequences of overinsurance profit, he presented certain department suggestions to alleviate problems associated with such profit

> Mr Thomas The California department does not believe the final form of AB 1301 [submitted in the 1965 General Session] is necessarily the one best solution This proposed solution is commonly referred to as the Pettengill provision. You will recognize that it was advanced as a solution only after the commissioners [National Association of Insurance Commissioners] adopted a somewhat similar but different provision . in December, 1963 . . [applicable] to both individual and group [policies].
>
> The California department makes these suggestions:
>
> One, that the law be changed to permit but not require the Pettengill solution
>
> Two, that a law be enacted to: (1) state duplication is a problem; (2) describe the evils the problem creates, (3) state the purpose of the law is to prevent these evils; and (4) authorize the Insurance Commissioner to approve for use in group policies one or more additional wordings which will reasonably and fairly prevent, or decrease, overinsurance and its attendant evils
>
> . . . . three, serious thought be given to extending [the use of any new provisions] to individual policies, particularly guaranteed renewable and noncancellable health policies.

Under current California law, the overinsurance proration provisions permitted in individual policies are virtually ineffective Proration is not applicable where policies are written on a noncancellable or a guaranteed renewable basis. Proration can be effectuated in a situation where an insured having insurance policies with such proration provisions issued by several insurers, has not given notice to an insurer of coverage by another insurer Since most policies are indicated to be written on a guaranteed renewable basis, the insurer on notice appears to be in a position where it cannot modify coverage commensurate with other coverage There are other problems with respect to proration and individual policies For example, premium adjustment between several insurers for the purpose of determining an insured's return premium is rendered more difficult by the fact that the expense involved in determining such adjustment is considered by industry sources to be prohibitive Also, the insured is likely to be confused by the proration process and return of premium. Furthermore, the computation of the return premium is not easily effected where several policies have different provisions

A question was raised concerning the effect of antiduplication on premium rates Mr Thomas indicated that the effect of antiduplication

should be downward pressure on premium rates This downward pressure on rates would be realized owing to the intense competitive environment of the health insurance industry He further indicated that, under the present overinsurance situation, the additional medical expense attributable to that situation is passed on to consumers in the form of higher premium cost. Thus, those insureds who do not choose to collect an overinsurance profit still end up paying for some of the added medical service caused by those insureds collecting such profit. In response to a question concerning insurers taking into account duplication of benefits in the calculation of experience tables, Mr. Thomas pointed out that this is done with respect to hospital benefits under unemployment compensation disability insurance by companies writing other group health insurance.

> Mr Thomas: . . it would be considered in the relatively minor areas where the California law now permits provisions which prevent overinsurance. There is a permission in the California law, for instance, in a group case, to exclude the benefits that you might get under the [unemployment compensation disability insurance] law and have the group policy be excess of anything that [this] law provides That definitely would be taken into account in estimating the . . premium for that type of a case as distinguised from one which would duplicate the . . benefits [under that law]

Mr Richard Edwards, Counsel of the Health Insurance Association of America, testified on the need for passage of a bill which would permit antiduplication provisions to be written into health insurance contracts While Mr Edwards did not explicitly characterize this need as an exigency, he did point out the passage of such a bill was needed to improve, among other things, the underwriting of policies covering employees under group contract in California together with employees in other states permitting antiduplication provisions in group contracts.

> Mr Edwards: . my central purpose in being here is to try to bring you to the belief that I have that it is imperative, absolutely essential, that California enact legislation of the type described by Mr Thomas . . , because all other states have legislation which now permits their Insurance Commissioner or director or superintendent, to have this type of policy provision in group basic contracts and in other types California now has granted the authority, already existing authority, to your commissioner to permit this type of provision in major medical, group major medical and group comprehensive contracts, but not in group basic contracts In that sense, California does not have this type of legislation, and it is sorely needed so that the group contracts may be issued affecting employees in California where the status of the group contract is outside of California and vice versa
>
> The other factor that has moved this from the area of desirable legislation to absolutely essential legislation is, of course, the enaction of Medicare Medicare will create certain pressures on utilization of medical care facilities that will reduce, if not eliminate, any tolerance zone that existed before for excessive utilization by reason of overinsurance

Mr. Edwards concurred with the testimony of Mr Thomas to the effect that the competition in the group health insurance market was of a nature that any savings brought about through antiduplication would tend to be passed on to the consumer in the form of lower premium cost Mr Edwards also pointed out that the proration approach to overinsurance is impracticable in today's market owing to, for example, relatively excessive administration cost in calculating proration of benefits. While on the subject of proration problems, he was questioned about other approaches to the elimination of overinsurance profit and, in reply, indicated that proration and order of benefit determination (antiduplication) were as far as he knew the only effective alternative approaches to the problem of overinsurance

In response to questions by Assemblyman Newton Russell regarding antiduplication provisions in both group and individual health insurance policies, Mr Edwards indicated that the more urgent need for such provisions was with group policies This line of questioning also covered the complexities of a situation where an insured has an individual policy and a group policy, with the latter containing an antiduplication provision

> Assemblyman Russell. Is it practically impossible to put this nonduplication provision in individual policies?
>
> Mr. Edwards: The situation on the individual policies differs in this respect In 1950, the . National Association of Insurance Commissioners adopted a "model law," which all 50 states have adopted, called the Uniform Individual Accident and Sickness Policy Provisions Law Now, it contains a series of overinsurance provisions [and] those provisions are in the California Insurance Code. It would require a separate amendment to achieve the same type of thing on the individual side that I am suggesting for the group side . . we would hope that both steps could be taken, but there is no question about it—the most urgent need of the two is for enabling legislation which will let your commissioner authorize it on the group side We support both forms of legislation We would like to see the new overinsurance provisions on both individuals and groups
>
> Assemblyman Russell: What if you have a situation where you have a group policy that has these provisions in it, and I have an individual policy [without such provisions]. Would [the insurer on my individual policy curtail benefit payments]?
>
> Mr Edwards. In the Pettengill provision, there is a section called "definition of a plan" and the definition of a plan recites the forms of coverage which you will take into account in determining whether benefits have exceeded the cost of an illness or a disability. Many insurers do not include individual policies in that definition of a plan, which means that in those circumstances they ignore individual policies Our recommendation to you . . . would be that we would hope that that discretionary device . . . could be left to the Insurance Commissioner to administer as the pattern of financing medical care changes . . [So], . . if the definition of a plan in the group contract you describe includes individual policies, then, in effect, the individual policy would be primary and the group would be secondary

Concerning the passage of antiduplication legislation, Mr Lewis Keller, representing the Association of California Life Insurance Companies which sponsored antiduplication bills in the 1963 and 1965 General Sessions, indicated that a two-step process, that is to say, separate introduction and enactment of a group antiduplication bill and an individual antiduplication bill, would be more desirable than a single inclusive bill. The reason for this legislative bifurcation of related subject matter arises from the fact that interest groups of each class of insurance have separate views concerning antiduplication Apparently, antiduplication in an individual policy appears to present more complex problems relative to those problems associated with group antiduplication As the process of ironing out problems of individual antiduplication might slow up passage of group antiduplication, the introduction of separate pieces of legislation was thought to be the better procedural approach

Assemblyman Jack Casey questioned Mr Edwards on the mechanics of overinsurance collection and as to how such collection procedures would be affected by antiduplication Mr Edwards indicated that if an insured failed to identify other coverage, and if, for instance, a hospital and a doctor were to submit bills to each insurer, the insured would receive payment from both insurers Verification of doctor bills is for the most part a very informal process, but as a consequence of this informality, overinsurance can become a problem At this point Assemblyman Jack Casey raised the following question·

> Assemblyman Casey: Isn't this more of a problem with administration rather than legislation?
>
> Mr Edwards· It is a problem with administration, but in California, uniquely, the commissioner at this moment has no authority to authorize the insurers to solve the problem by administration and that is all we are asking for.

A question was directed to Mr. Edwards by Assemblyman George Willson concerning possible administrative changes the insurance industry would effect upon passage of legislation of the type that was under discussion

> Mr. Edwards I would hope that the enactment of the type of legislation that we are urging would be followed by a ruling from your Insurance Commissioner authorizing the Pettengill provision as one of the means for achieving this end and then the insurance companies would have, instead of a problem, [relief from] the problem, because as it stands now, they already have the administrative machinery set up by reason of the fact that all other 49 states permit this provision All we are asking for is that your commissioner be given what the other 49 commissioners have so [that giving your commissioner new power] will . remove an administrative impediment instead of requiring creation of new administrative machinery
>
> Assemblyman Willson . . . well, then, the simple solution you are seeking is that we change the state law to allow the commissioner to permit the companies to sue for the overage, is that is?

Mr. Edwards: Well, not to sue for the overage. . . . to the best of my knowledge this provision has been operating in the other 49 states . . , and in California in respect to major medical comprehensive . . and I have yet to encounter a single lawsuit where the right to recovery provision is involved. What more often happens on the right of recovery provision is that if discovery is made that the individual withheld the information as to other coverage, the insurer simply telephones or writes to the insured [and requests remittance]. . . . in many instances where the request . . . to be remitted is declined, insurers still very often do not litigate because it is considered bad insurance relations

With respect to payment on covered expenses under the Pettengill provision, Mr. Edwards indicated that such expenses would be covered 100 percent. On this subject of coverage of expenses, however, a previous question and answer exchange between Assemblyman Victor Veysey and Mr Joseph Thomas was as follows·

Assemblyman Veysey· . . when you really look at it . . most cases of duplicate coverage because [of] the deductions and the other costs that are involved, is it generally possible for an individual to really make an overall profit by having duplicate coverage?

Mr Thomas: Yes, it is possible. The Insurance Commissioner did consider the point that you are pointing up [and] that perhaps the man should be allowed to collect 110 percent or something like that.

A question was raised by Assemblyman Jack Fenton with respect to the merchandising of insurance policies with antiduplication provisions contained therein. Specifically, Assemblyman Fenton was concerned about a lack of consumer counseling to the effect that such consumer might be purchasing unneeded insurance

Assemblyman Fenton: Is somebody going to counsel him and say, now you don't need this—this is taken under the group policy and you don't need this? They are going to give him everything he asks for, aren't they? . . they give him everything he wants and then [will] come the time when they are going to say, well, you can't get this because it is covered under group policy . .

Mr. Edwards: I believe, sir, the very fact that 80 percent of the employers and unions accepting new major medical contracts have now included this provision in those contracts demonstrates their faith [in antiduplication]. . . most agents will explain to the insured his needs and will take into account his group coverage. . . . I am sure there are exceptions that can be found, but I think this kind of legislation has to be directed to that overwhelming majority, and, if you adjust it to the exception, you really leave the majority exposed to this risk that I have identified.

On the subject of lower premium costs, Mr. Edwards was questioned as to his views on the effect of antiduplication on premium cost He indicated that the experience has been a lowering of group contract premium charges by the member companies of the Health

Insurance Association of America who instituted the Pettengill provision.

A considerably different viewpoint with respect to a so-called overinsurance problem and any need to remedy that problem was presented by representatives of the Kaiser Foundation Health Plan. Inherent in their argument, in fact, explicitly set forth, is that overinsurance is defined too narrowly Taking a broader perspective, they argued that there is not overinsurance but rather underinsurance. On this matter Mr. Jerry Phelan of Kaiser had this to say:

> Mr. Phelan: . . . most policies have little or no coverage of such things . . . as application for drugs. Take the . . . man who is in the hospital but he has overinsurance in the amount of $200 on hospitalization, but when he is released from the hospital he has to take drugs on an outpatient basis for a year and say those drugs at $20 a month are going to cost him around $250 for the coming year. Under AB 1301 no portion of the $200 excess on the hospital could be applied to pay for those drugs. However, the same man, even if he had an operation and suffered a deficit of $200, the overinsurance in the hospitalization could be applied to that. . . . we think that the definition of "allowable expense" is too restrictive and that [this] definition should be expanded to cover any medical expense or any health care expense that the individual might have in the coming year or whatever the claim determination period might be.

Mr. Gibson Kingren, also testifying for Kaiser, had these comments to make·

> Mr Kingren: There has been a great deal of discussion about overinsurance. I suggest that we raise the question [as to what overinsurance is]. If I have a heart attack and have to take anticoagulants the rest of my life at an expense of $25 to $35 per month, plus periodic checkups, normally not included in health insurance programs, and my insurance policies pay me $100 or $200 over what my expenses are while I'm in the hospital, can anyone say that I am overinsured?

Mr Phelan suggested that in determining overinsurance the expenses of a family unit should be the criterion of measurement. In this respect, it was pointed out that a situation can exist where a dependent, for example a child, will have less insurance coverage than the primary insured.

> Mr. Phelan: Take the case of the father and child in an automobile accident. If the father, again, has a $200 excess on his hospital, but the child needed an operation but there is not sufficient surgical coverage under either policy for the child, then no portion of the father's $200 excess could be turned over to satisfy any deficit benefits for the child . . . we would suggest that since the family, for insurance purposes [is a] single consuming unit, that all expenses of all members of the family be put in the base to determine whether there is overinsurance.

Regarding the lack of incentive to recover brought about by overinsurance profit, Mr. Phelan submitted that an individual has in given situations a legitimate incentive to attempt to remain in the hospital for the full limit of his hospital benefits. For example, where he is hospitalized and overinsured for overhospitalization but facing convalescence in a nursing home where he has no insurance coverage, such a situation of incentive would arise In this connection and with respect to the need to have effective utilization of medical facilities, the application of the hospital excess to the cost of residence at a nursing home would, in the foregoing example, effect better utilization of facilities At any rate, it was argued that the incentive to remain in the hospital in such a situation is not an incentive founded merely upon a desire to make a few dollars.

Mr Phelan took a definite stand against antiduplication in individual policies and against consideration of individual policies in determing excess coverage.

On the subject of malingering and overinsurance, Mr. Gibson Kingren suggested that it is not easy for a person to malinger In this connection, he pointed out that a doctor admits a person to a hospital; the patient himself does not effect admittance The inference to be drawn from this is that doctors will make use of some objective standard in determining the need for admittance. Hence, it would be a rare case where one is admitted to a hospital without some reason for being there Nevertheless, previous testimony by other individuals on this very point brought forth a view that some doctors tend to be biased in favor of their patient's request.

Turning to the subject of inflated costs and overinsurance, Mr Kingren had this comment to make:

> Mr Kingren· Inflates costs to whom? I don't know, because if you deny a patient the right to fully protect himself against medical expenses, you have inflated the patient's cost [and] lowered the insurance company's costs. If the insurance companies want to lower premiums, there are some obvious approaches. Published data show that certain classes of individual policies pay out as little as 10 cents in claims [on] the premium dollar This results in a high rate of profit which might be lowered by either a more liberal benefit schedule or lower premiums.

In discussing the motive of insureds in obtaining several health insurance policies, Mr Kingren felt this reflected the desire of people to want more protection The insured is trying to cope with uncertainty. He does not have a worthwhile premonition as to what his medical expenses will be, but he does have some notion of the fact that most insurance policies do not cover all medical expenses. If improvement is needed in the field of health insurance, Mr. Kingren indicated that the insurance industry should first work toward effecting more comprehensive medical coverage before the industry concerns itself with the so-called problem of duplicated benefits

The California Labor Federation, represented by Mr Clint Fair, did not take a firm position with respect to the adoption of antiduplication provisions in group health insurance policies This organization, how-

ever, was very much interested in what would happen to insureds covered under group policies were antiduplication to be effected As group insurance is a negotiated fringe benefit, the federation, on behalf of its individual members, was indicated to have a vested interest in the disposition of benefits under such negotiated policies Nevertheless, while no opposition to such duplication was presented, the federation submitted that it would find it difficult under present circumstances to support legislation like that of AB 1301 The federation expressed more of an interest in developing more comprehensive health insurance programs On this point the federation's views appeared to coincide with the view presented by a Kaiser Foundation Health Plan representative concerning comprehensive coverage On the matter of lower premium costs, Mr. Fair expressed a view to the effect that he was not convinced that antiduplication would in fact result in lower premium costs Furthermore, if there did come about a savings owing to the implementation of antiduplication and these savings were not passed on to insureds in the form of relatively lower premiums, Mr. Fair felt that there was no certainty that such savings would be passed on in the form of greater policy benefits. While Mr. Fair did not directly oppose antiduplication, the tenor of his comments reflected a skepticism as to certain alleged results of antiduplication

Mr Paul Putnam of the Public Health League who, at the hearing, spoke for Blue Cross, indicated that the latter organization was in favor of antiduplication With respect to California Physicians Service (a corporation under the authority of the Attorney General), this organization, whom Mr. Putnam also spoke for, was indicated to be actively working on proposals to eliminate benefit duplication Aside from these brief comments, Mr. Putnam chose not to elaborate on the views already presented concerning inflated medical costs as a consequence of benefit duplication except to say that both of the aforesaid organizations believe that overinsurance profit does increase medical costs.

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ASSEMBLY INTERIM COMMITTEE REPORTS
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FINAL REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON PUBLIC UTILITIES AND CORPORATIONS

TO THE CALIFORNIA LEGISLATURE
(House Resolution No. 710(q), 1965)

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ALAN G. PATTEE
JOHN P QUIMBY
PHILIP L SOTO
WILLIAM F STANTON
JAMES E WHETMORE
JOHN C. WILLIAMSON

EUGENE R LEYVAL, *Committee Consultant*
DON I FOLTZ, *Committee Consultant*
ARLENE JESPERSEN, *Committee Secretary*

January 10, 1967

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Speaker

HON CARLOS BEE
Speaker pro Tempore

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Majority Floor Leader

HON ROBERT T MONAGAN
Minority Floor Leader

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON
PUBLIC UTILITIES AND CORPORATIONS
Sacramento, January 10, 1967

HON JESSE M UNRUH
Speaker of the Assembly

AND HONORABLE MEMBERS

Dear Speaker Unruh and Members

Pursuant to House Resolution No 710 section (q) of the 1965 California Legislature, your Assembly Interim Committee on Public Utilities and Corporations submits its report of functions and activities during the 1965–67 interim

Respectfully submitted,

JOSEPH M KENNICK
Chairman

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HOUSE RESOLUTION NO. 531
RELATING TO ROCK, SAND AND GRAVEL RESOURCES

REPORT TO THE ASSEMBLY
COMMITTEE ON PUBLIC UTILITIES
AND CORPORATIONS

MEMBERS OF THE STUDY GROUP

Dr Horace N Gilbert, *Chairman*
Professor of Business Economics
California Institute of Technology

Dr Ian Campbell, *Vice Chairman*
State Geologist, Division of Mines and Geology (Currently Director, California State Department of Conservation)

Lyman Gillis
Assistant State Highway Engineer
Operations Department of Highway Transportation Agency and Public Works

A C Keith
County Surveyor and Road Commissioner
Riverside County

John E Roberts, A I P
John Roberts & Associates, Inc
Planning Consultants

R G Trevorrow
President
Pacific Cement & Aggregates, Inc

Jack D Wickware
Assistant Legal Counsel
League of California Cities

Laurence Wilson
President, 1965–66
American Institute of Planners
California Chapter

EX-OFFICIO

Stanley M Lourimore, Deputy Legislative Counsel
California State Legislature

SECRETARY

Don Reining, Executive Secretary
Southern California Rock Products Association

CONSULTANT

Sam Schauerman
Dean of Physical Sciences
El Camino College

December 1, 1966

November 16, 1966

ASSEMBLYMAN JOSEPH M KENNICK
Room 3132, State Capitol Building
Sacramento, California

Dear Mr Kennick

I am happy to transmit herewith the report of the Study Group on the Rock, Sand and Gravel Resources of the State of California, authorized by House Resolution No 531 Our group was asked to examine disputes between the aggregate industry and local zoning authorities, and, if possible, to find a basis for resolving those disputes

The Study Group has completed its work I am most pleased to report that our recommendation is a unanimous one it preserves the essential features of the powers of local authorities with regard to land utilization, and it makes a significant move in the direction of recognizing the great interests of the larger community in securing access to much needed natural resources

The membership of the study group was well balanced it included (a) representatives of the zoning authorities, particularly the city and county governments and a professional planner serving them, (b) the aggregate industry in both the northern and southern areas of the state, (c) the State Highway Commission, which uses approximately one-third of the annual output of the industry, and (d) the public in the persons of the Director of Conservation for the State of California, and the chairman of the Study Group, Professor of Business Economics, California Institute of Technology We were pleased to have the advice of Stanley M. Lourimore, Deputy Legislative Counsel, State of California, throughout our deliberations

The testimony presented at our five meetings was by invited persons representing the points of view concerned with the problem They were not public hearings in the usual sense We had access to the reports of the four hearings held in 1963 on the same problem, under House Resolution 376, which were in the nature of public hearings We did not think it necessary for our particular assignment to repeat them

I am sure that you will be pleased to know that there was 100 percent attendance by the eight members of the Study Group at our seven meetings, five of which were hearings and two closed for the purpose of debating our conclusions The expenses of the members in attending these meetings were met entirely by themselves We are proud of this demonstration of interest, and of confidence in the assignment given us by your committee.

On behalf of the Study Group, I wish to give recognition to the important contributions of Don Reiming who served as our secretary, and to Sam Schauerman who served as our consultant Mr Reiming, Executive Secretary of the Southern California Rock Products Association, scheduled our meetings, prepared the agenda, and arranged for the transcription of testimony presented Mr. Schauerman, Dean of Physical Sciences, El Camino College, drafted our report As you can readily imagine, this involved tedious review of voluminous testimony, extensive research, and thorough field work The good spirit that char-

acterized the work of the Study Group extended to our relationship with Mr Reming and Mr. Schauerman

The problems of conservation and of urbanization loom large in our great state Our Study Group believes that it has made an initial contribution toward the resolution of the particular problem of the rock, sand and gravel industry in its relation to local zoning authorities We hope that our report will prove useful to you and your committee

Respectfully yours,

HORACE N GILBERT
Professor of Business Economics
Chairman of the Rock, Sand and Gravel Study Group

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CALIFORNIA LEGISLATURE

1965 Regular (General) Session

HOUSE RESOLUTION NO. 531

Relative to the Rock, Sand, and Gravel Resources of the State

WHEREAS, During the 1963-65 interim period the Legislature received considerable testimony on the subject of the orderly development of the state's sand, gravel and rock resources and found within that testimony a sound basis for concern; and

WHEREAS, The Assembly Committee on Public Utilities and Corporations, in its report of January 11, 1965, to the Legislature, declared that there is a need to resolve disputes between the aggregate industry and local planning authorities and thereby acknowledged that consideration of further testimony by the committee "is not likely to produce meaningful results until the interested parties have resolved their differences", and

WHEREAS, The Assembly Interim Committee on Public Utilities and Corporations, in its report, recommended that the Legislature establish a specialized group of technically qualified persons to attempt to formulate a workable solution to the sand, gravel and rock development issue, now, therefore, be it

Resolved by the Assembly of the State of California, That the Rules Committee be directed to authorize the creation of a "study group" to inquire into the problems presented by the depletion, or loss of availability through other causes, of the rock, sand, and gravel resources in this state The "study group" shall report its findings not later than December 1, 1966, together with recommendations for action, including specific legislative proposals necessary to adequately protect and preserve the rock, sand and gravel resources of this state, and be it further

Resolved, That the members of such "study group" shall be appointed by and shall conduct its affairs under the direction of and shall be responsible to the Chairman of the Assembly Interim Committee on Public Utilities and Corporations, and that the study group shall remain in existence only until December 1, 1966, at which time it shall report to the Assembly Interim Committee on Public Utilities and Corporations

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SUMMARY OBSERVATIONS AND RECOMMENDATIONS

The summary observations and recommendations that were agreed upon by the Study Group in a meeting held on October 12, 1966, are the result of much discussion and compromise They represent the most acceptable solution found for the problems of conserving rock, sand and gravel to which unanimous support could be given Final agreement was reached on the following points

1 Rock, sand and gravel resources are vital to the private and public construction industry which, in turn, is a necessary adjunct to the rapid population growth in the state
2 The problems of conserving natural resources are by their very nature broad in scope and thus suggest a regional approach to study and planning
3 Land use regulation should remain an important function of city and county governments
4 The state's role should be one of establishing a public policy on conserving rock, sand and gravel as well as other natural resources, and assisting local and regional agencies in their efforts toward implementing the policy
5 Recent interest in federal legislation to control open pit mining and reclamation was noted by the Study Group

RECOMMENDATIONS

The following recommendations requesting action by the California State Legislature are respectfully submitted to the Assembly Committee on Public Utilities and Corporations·

1 It is recommended a pilot study involved with the inventory of rock, sand and gravel reserves in an area of critical shortage as determined by the State Geologist be initiated by the State Legislature at public expense The study should be conducted by the State Geologist with assistance from other public agencies and qualified consultants approved by him The performance and phases of a consultant's study should be subject to the general supervision and direction of the State Geologist

The "inventory study" should provide sufficiently comprehensive data relating to reserves to permit its use by industry, public and quasi-public planning agencies in determining needs for the future This implies a regional concept to the study and to the use of this information in planning Every encouragement should be given to the regional cooperative planning agencies, Southern California Association of Governments and the Association of Bay Area Governments, to become involved in making the study and to the data and conclusions in planning

In addition, legislation would provide for a continuing interest in regional studies on a systematic basis so that all areas of the state could have the benefit of adequate information for regional

planning and local decisions The pilot study area would be one of the more critical areas, but it is assumed other regions will eventually face a similar need

2 To provide for continuing study in a systematic manner, it is recommended financial assistance be provided to the local and regional agencies The funding of Senate Bill 703, Section 2205 of the Public Resources Code is suggested for this purpose

3 The State Planning Law requires that certain basic elements be included in every master or general plan formulated by planning bodies The Study Group recommends the necessary amendments to said planning law to provide for the identification of rock, sand and gravel deposits to serve the planning area, as well as other natural resources, be a required element in every master or general plan

4 The adoption of a resolution by the state to encourage cities, counties and regional associations to cooperate with the Division of Mines and Geology is recommended A draft of this proposed resolution as well as the recommended legislation is found in Appendix A

POSSIBLE NEXT STEPS

It is apparent from the report that the Study Group considered seriously the possibility and wisdom of transferring traditional authority over land use from local to regional and even state jurisdictions, to a greater degree than has been recommended Such points of view were expressed by individual members who entertained a haunting concern that a sufficiently bold position had not been taken Might it not be better to accept the fact that intensive urbanization and the proliferation of zoning authorities creates new problems that demand new methods for their solution? These members of the Study Group believed that the real challenge, in view of the inexorable trend of the times, is to adapt our institutions so that they will help, not hinder, the well-being and development of our larger communities. All members were aware of the oft-repeated claim that the winds of change may be blowing with respect to the traditional authority of local jurisdictions over some aspects of land use

The rising tide of interest in conservation with regard to many natural resources in addition to rock, sand and gravel, may be becoming irresistible, and the acute problems associated with urbanization are exhibiting explosive characteristics Significant evolutionary steps have already been taken in the direction of increasing the role of regional organizations and authorities, in efforts to solve both groups of problems The federal government has initiated action through the Appalachian Regional Development Act that relates to the ways in which state and local authorities take steps to meet such problems

In the interest of unanimity and in the belief that a first, even if modest, step holds promise of resolving at least some of the disputes between the aggregate industry and local zoning authorities, the Study Group did not put alternative recommendations to a vote Experience will indicate the need, if any, of further, more aggressive, legislative action.

The positions of the aggregate industry and of the zoning authorities, are set forth clearly in our report The fact that they could agree on a recommendation is pleasing, and it may lead to constructive developments But the question can still be asked "Are the best interests of the larger community, in this case the people of the State of California, being served by indication of ability to work out local and even regional solutions to the problems of land use?" Some of the members of the Study Group, possibly a majority, were not convinced that those broader interests would be best served

The aggregate industry is young, it has made progress in the direction of operating efficiency and pro-social orientation Competition is keen Zoning authorities have only recently been confronted with the special problems of wasting natural resources and of dynamic urbanization The Study Group has observed that progress has already been made, sometimes with the aid of informal and advisory organizations, in resolving problems of land use Constructive developments of this kind are promising, but they might well be aided and accelerated by the proposals set forth in our recommendations

INTRODUCTION

Under House Resolution No 376, four separate hearings were conducted on the subject of "zoning of rock, sand and gravel deposits and the establishment of reasonable and uniform limitations, safeguards and controls over future production "[1] The resolution was assigned to the Assembly Interim Committee on Public Utilities and Corporations

The testimony to the committee revealed certain basic conflicts which have occurred around excavation operations The economic importance of excavating the aggregate near the point of consumption can lead to conflicting concepts of land use, objections by some homeowners, and increasing demands for control or even banishment of operations As a result, sand and gravel deposits are being lost to other uses and primary sources of this important resource are being rapidly depleted Since no single workable solution was presented to the committee, a recommendation was made for the adoption and assignment to the Assembly Committee on Public Utilities and Corporations, a house resolution that enables the Assembly to create a "study group" to recommend specific legislative action[2] It was felt a meaningful solution could only result from the meeting of the minds of various parties in a concerted effort to resolve their differences

House Resolution No 531 was adopted as recommended in 1965 Members of the Study Group were carefully chosen to represent various capabilities in the field of government and the sand and gravel industry The guidance of a practical economist with a considerable interest in the subject as chairman of the group was acquired

[1] Assembly Interim Committee Reports, 1963–65, *Assembly Interim Committee on Public Utilities and Corporations*, Vol 16, No 9, p 9
[2] *Ibid*, p 10

BACKGROUND

THE GEOLOGY [3]

Sand and gravel is a non-renewable resource that is formed and deposited by nature Man cannot manipulate the patterns in which the deposits are located The location of any extractive site is restricted by the facts of geology to the boundaries of the sand and gravel bearing lands However, the presence of quality deposits does not insure their accessibility for development In addition to the natural limitations, supply and demand, transportation, land ownership and land use considerations can impose significant plant location restrictions [4]

The bulk of California's sand and gravel is obtained from stream deposits, both past and present The rugged mountains are drained by streams which transported and deposited huge volumes of materials in channels, floodplains, and alluvial fans The natural abrasive action of stream transport grinds up and removes most of the soft weak rocks and concentrates the harder, firmer particles The maximum size of gravel gradually decreases downstream and commercial, production centers in the deposit where the proper blend of sand and gravel can be obtained Fortunately, many favorable portions of the streams occur in the flat-lying areas near population centers, as for example, the San Joaquin River near Fresno, the American River near Sacramento and the Santa Clara River in Ventura County

Alluvial fan deposits also are widely exploited for aggregate Fan deposits ordinarily contain lenticular beds of poorly sorted sand and gravel, interbedded, because of the frequent shifting of the stream, with varying proportions of silt and clay One of the major sources of aggregate for the San Francisco Bay area is the alluvial fan of Alameda Creek near Niles in Alameda County The principal sources of aggregate for the Los Angeles County area are the alluvial fans of Big Tujunga and San Gabriel Rivers

In spite of their advantages, some stream deposits are not exploited because of such economic factors as poor quality, inaccessibility, excessive distance to market, insufficient tonnage of material available and restrictive local legislation Certain deposits are unsuitable because they contain physically unsound or chemically reactive rocks Some thick deposits may contain severely decomposed material at shallow depths beneath seemingly fresh and durable materials Thus, although superficially it may appear that sand and gravel deposits are located throughout the state, not everywhere are they equally suitable

Crushed stone from quarries in bedrock or "ledge rock" is used for many of the same purposes as sand and gravel particularly where stream deposits are not adequate or of sufficient quality to be economically mined If the demand is sufficient to warrant the expense involved, material from deposits containing harmful proportions of detrimental substances may be beneficiated or processed to reduce the detrimental components to an acceptable level

[3] See Transcript Vol 2, Harold Goldman, pp 39–42

[4] Bauer, Anthony M, *Simultaneous Excavation and Rehabilitation of Sand and Gravel Sites* University of Illinois, p 10

THE ECONOMICS

Sand and gravel production in California rose from 4 7 million tons in 1920 to 113 million tons valued at 129 million dollars in 1964 California is the leading producer of sand and gravel in the nation, producing one-seventh of the nation's total About one-third of the total California production is from the Los Angeles area There are approximately 800 producers in the state, half of which are commercial operations, the other half are contractors for government agencies [5]

The continued influx of population with resulting demands for homes, multiple dwellings, commercial and industrial buildings, highways, and public works projects accounted for an increase in production of 100 percent between 1954 and 1964 Sand and gravel are used primarily as aggregate in mixtures with portland cement or asphalt by the construction industry The construction industries represent annual expenditures in the 7 billion dollar range which should reach the 10 billion dollar mark by 1970 [6]

The largest single user of aggregate products is the state It has been estimated 35 percent of the sand and gravel produced is used by the various state agencies [7] The Division of Highways estimates in building freeways that each $100 of construction uses approximately 7½ tons of sand and gravel materials of all categories An eight-year planning program approved by the division June 6, 1966, calls for construction costs totaling approximately 3 87 billion dollars by 1975 This program will require 290 6 million tons of sand and gravel by using the above conversion figures In addition, the Department of Water Resources estimates indicate a need for approximately 7½ million tons of concrete and asphaltic concrete aggregates for the State Water Project by 1972 [8]

Sand and gravel for aggregate is by nature a large tonnage commodity of low unit cost The price of sand and gravel has not risen proportionately with other construction materials For example, 10 years ago in the bay area, one ton of sand sold for $1 21, f o b plant, today, a ton of sand sells for about $1 30, f o b plant Prices have remained remarkably stable in spite of rising operational costs because operators have absorbed some of these increased costs themselves and offset others by means of automation Expensive machines are needed for the modern operations and a modest plant at today's prices would cost ¾ of a million dollars [9] Total production costs per ton of aggregate are low enough that even slight differences in operating cost of competitive plants may determine their commercial success or failure [10]

The single factor which most escalates the delivery price of sand and gravel is the distance of haul under present practices and regulations The figure 5¢ a ton mile is commonly used to estimate transportation

[5] See transcripts, Vol 2, Harold Goldman, p 39
[6] *Ibid*, p 39
[7] Assembly Interim Committee Reports, 1963-65, Vol 16, No 9, p 9
[8] From interviews in Sacramento, June 21, 1966
[9] See transcript, Vol II, Harold Goldman, p 42
[10] Division of Mines and Geology, *Mineral Commodities of California* Bulletin 176, 1957, p 513

charges [11] Should the hauling distance be increased by 20 miles, the price of aggregate would increase $1 per ton. This could easily represent an increase of 50 to 100 percent on the delivered cost of sand and gravel to the consumer Some idea of the effect distance has on the price of aggregate delivered to the consumer is indicated on Map A, which was prepared by H Zinder and Associates, Incorporated

LAND USE REGULATION

In California, city and county governments find their source of power to enact land use regulations in the Constitution, Article XI, Section 11 which provides

> "Any county, city, town or township may make and enforce within its limits all such local, police, sanitary and other regulations as are not in conflict with the general laws."

The limitations on those police powers are (1) The regulation must be local. (2) Such regulations must not conflict with the general laws of the state (3) Certain constitutional limitations which result from court interpretations In general, the latter limits are imposed by courts when they find the local governments are "arbitrary, unreasonable or confiscatory" [12]

Land use regulation is an important function of city and county governments. Zoning ordinances for whatever purpose ususally define standards aimed at fostering public health, safety or general welfare The Study Group reviewed a representative sample of zoning ordinances regulating quarry operations, the results of which are reported here

Zoning regulations determine land use and development and are considered as tools for expression of public policy. Metzenbaum cautions, "Unless a zoning ordinance can successfully meet the requirement of being reasonable in its application, and unless it is enacted for the purpose of protecting the public safety, health or welfare, it cannot be expected to meet with the approval of the courts And this is as it should be . . Unfortunately, some have become so strongly inclined toward the benefits of zoning as to look upon it as a cure-all for every civic evil, and they vigorously resent any suggestion to the contrary A careful survey, however, discloses that zoning is not a panacea. It is a step in the right direction, and if appropriately—reasonably—applied and sensibly practiced, it will have ever-broadening beneficial effects" [13]

Sand and gravel extractions in most areas of California are permitted in zones allowing such multiple uses as agricultural or industrial uses A few cities or counties have adopted exclusive natural resources or gravel zones while others are considering such legislation.[14]

Permits or outright zone changes for the extraction of rock, sand and gravel in districts not automatically permitting such use are obtained,

[11] See transcript, Vol I M C Lorenz, p 113
[12] Herring, Frances W, Editor, *Open Space and the Law*, Institute of Governmental Studies, University of California, Berkeley, 1965 p 7
[13] Metzenbaum, James, *The Law of Zoning*, Vol 1, 2nd Ed, p 10
[14] See Transcript, Vol 1, Milton Breivogel, p 68, Vol 1, Forrest S Dickason, p 42, Vol 1, M C Lorenz, p 117, Vol 3, James Fairman, p 51, Vol. 4, Bill Livingstone, p 2

generally, through application to the local agency having jurisdiction over the deposit Public hearings may be required to be held in conjunction with these applications at which time arguments for and sometimes against the issuance of such permits are heard Quarry zones, conditional uses or variance permits so approved are generally accompanied by standards or conditions which are designed to effect compatibility with the use of affected properties

There is little uniformity in the zoning or use permit regulations established by local jurisdictions Indeed, there may be differences in the conditions imposed on the various use permits within a particular area depending on what the local government believes is desirable and necessary to make an operation at that location compatible with adjacent land uses Where ordinances are established to regulate the sand and gravel operations, however, there are some common elements

The ordinances generally outline conditions to be met by the industry in maintaining and operating a quarry or they require the operator to specify these conditions as part of the application for a use or zone permit It is common to require the property lines to be specified and limit excavation to within 25 or 50 feet of the boundaries This is particularly true when the boundary borders another person's property, public highway or street, and certain types of easements To avoid erosion problems, the excavation is required to slope within specified limits or to have terraced sides

In an effort to provide for public safety and to screen the exterior appearance of excavations, the ordinances often require perimeter fences and landscaping wherever adequate water supplies are found Dust is required to be controlled particularly on roads leading in and out of the sites, and noise and vibration is required to be held to a minimum Often the access and hauling route to be taken by truck traffic is part of the conditions of the permit Mention is made also of spillage from the trucks on public roads Operating hours are frequently regulated particularly when the operation is near residential areas

The regulations may require certain procedures to protect streams and water bearing strata Drainage of water accumulated in pits may be required also Compliance with requirements of the Air Pollution Control Board is mentioned in some ordinances

Permit or application fees are charged by some authorities as well as inspection fees Liability insurance is often required of the operator Bonding may be part of the ordinances especially where provisions are made for reclamation of the site There is a trend to require reclamation plans at the time of application or within a brief time period following the granting of a permit

Time limits are sometimes made a part of the conditions of a use permit Whether such limits are one year, five years or more, a reapplication or review may be required and may involve an additional public hearing Whether such a time limit is part of the ordinance or not, provisions may be made to revoke or suspend a permit on sufficient cause and with due process

Perhaps no single ordinance will contain all of the above elements The contents of the ordinances viewed by the Study Group varied from

very general and brief regulations to legislation which was quite specific on almost all the topics mentioned [15] More stringent conditions seem to be found where the quarry operations border urban development and where homeowners are most likely to object to extraction operations

In some jurisdictions the conditions are allowed to vary The ordinances in these instances often treat the conditions as guidelines which might be applied in toto, in part, or not at all

SUMMARY

Though the rock, sand and gravel industry lacks the glamour of other mining ventures, its products are used in huge quantities as basic materials for concrete and asphaltic concrete Production of these materials in California make this the state's second largest mining industry in terms of volume and dollar value [16]

"To be suitable for use as concrete aggregates, the sand and gravel deposits must have the following characteristics

1 The cost of extraction and processing must be low
2 The deposits must have acceptable physical and chemical properties.
3 The deposits must be located close to the market (A hauling distance of only 20 miles can double the costs)
4 The producer must have the legal right to extract the deposits, process them, and transport the materials to the population centers " [17]

Land use controls which affect the location of a sand and gravel operation and control the excavation, processing and transporting of these products are presently the responsibility of the city or county in which the deposit is located The regulations include standards which vary from one jurisdiction to another and which are designed to control quarry operations for public health, safety and welfare There is a trend to include planning for reclamation of mined lands as a condition of use

[15] See Transcripts, Vol II, Jack Wickware, Appendix
[16] Moore, William W, Editor, Engineering Bulletin No 29, Dames and Moore, p 1
[17] *Ibid*, p 1

A DISCUSSION OF THE PROBLEMS

DEPLETING RESOURCES AND CONSERVATION

People are both a blessing and a problem to the sand and gravel industry As a community begins to grow, a demand or market for the aggregate products is created The high-bulk, low-cost product is extracted as close to the consumer as possible (the population centers) Continuing growth means more and more residential, commercial and industrial sites are located in the rural areas The urban developments approach and then surround established gravel pits and cover potential deposits while demands for the products continue to increase because of the needs of an expanding population for the material, for its structural growth

These new neighbors of the industry register complaints which include excessive noise and dust, depreciated land values, safety hazards and depleted unsightly pits Testimony to the Study Group provided no evidence to substantiate or refute these claims Several examples were cited, however, where reasonable and effective zoning ordinances combined with conscientious and responsible producers have successfully operated without complaint [18] In spite of this, continued pressure particularly at public hearings conducted for zone changes, new permits or renewed permits result in some denials to the industry and in stricter restrictions on operations

At one time, the producer could move to more remote locations reducing the available supply of aggregate (albeit, requiring increased transportation costs), but today the sand and gravel deposits are limited The reserves in the San Gabriel Valley are estimated to reach depletion in ten years and the Tujunga Cone in seven years These are major sources for the Los Angeles metropolitan area [19] New deposits in remote locations are removed far enough from the consumer that increased costs are a real economic factor

Industry representatives warn that available deposits of sand and gravel are rapidly dwindling Their concern is for the lack of adequate planning for the utilization of natural resources in many areas where the deposits are located, the opportunity for emotional rather than objective decisions provided by present procedures in local use permit and zoning change hearings and the lack of regional planning to conserve this resource which may deny consumers of neighboring communities low-cost aggregate [20]

The testimony presented to the Study Group revealed few instances where the city or county General or Master Plan provided specifically for sand and gravel resource areas In the more usual case, therefore, the plans have failed to identify valuable and necessary aggregate reserves, and this despite the fact that projected population increases,

[18] See transcripts, Vol I, Forrest Dickason, p 12, Vol 5, Paul Foxworthy, p 2, Vol 5, Crawford Williamson, p 30–31

[19] See transcripts, Vol I, John Kerfoot, p 15, 16

[20] See Transcripts, Vol I, E O Roleffer, p 2, Vol I, John Kerfoot, p 23 and 25, Vol II, Bruce Bravo, p 64, Vol III, Glenn Rick, p 16, Vol IV, Stewart Adler, p 39, Vol V, Crawford Williamson, p 29, Vol II, Bruce Woolpert, p 62, Vol II, William Downing, p 29

and urban expansion, imply an immediate planning need to identify and conserve a vital natural resource The deposits are often not identified until encroached upon by residences Each decade, urban settlement in the United States extends over an additional 15,000 square miles in and around the metropolitan complexes It is the smaller urban places that take up most of the land used or withdrawn from other uses by new urban growth, and yet their land use problems have had little or no planning or policy attention [21]

Although local agencies are becoming more active in cooperative planning with regard to many problems of regional character, planning in relation to natural resources and the aggregate industry has received insufficient attention A notable exception is the inter-governmental body, Amador-Livermore Valley Rock, Sand and Gravel Study Committee [22] This committee is made up of representatives of the industry and several local governments for the express purpose of recommending solutions to problems of conservation, zone regulations and site rehabilitation

The need to conserve sand and gravel resources is recognized by some local officials The Los Angeles City Council and Planning Commission authorized a study, completed in 1954, which strongly indicated the need to conserve and utilize reserves [23] Ventura County recently hired a private consulting firm to survey the available resources and predict the future needs [24] The City of San Diego entered into a cooperatively financed study with the California State Department of Conservation, Division of Mines and Geology, which includes a survey of the rock, sand and gravel resources in the city and which is to be utilized by the city planning department to develop a report recommending actions to conserve deposits, control operations and provide for rehabilitation [25] Orange County also conducted a study in 1965 on sand and gravel resources of the county [26]

The most consistently mentioned deterrent to effective planning and ultimate conservation is the lack of information [27] Most of the studies conducted by local jurisdictions and the Division of Mines and Geology lack an inventory approach which would estimate the quantity and quality of each deposit The studies are said to be further limited by the fact that the majority of resource areas identified are lands owned or leased by the industry neglecting other possible deposits The best and sometimes only source of information is from the industry Resourceful and responsible producers have not only furnished the most detailed information on deposits but have served as an effective force in the conservation of aggregate resources It has been largely through their efforts and long-range investments that sand and gravel deposits are preserved

[21] See Transcript, Vol I, E O Rodeffer, p 3
[22] See Transcript, Vol II, Warren Harding, William Parness, William Downing, pp 1–28
[23] See Transcript, Vol I, Calvin Hamilton, p 102
[24] See Transcript, Vol I, M C Lorenz, p 115–116
[25] See Transcript, Vol III, Glenn Rick, p 8, James Fairman, p 31
[26] See Transcript, Vol I, John T McGinnis, p 37
[27] See Transcript, Vol I, Frank G Bonelli, p 61 (many others)

It is difficult to ascertain what data and what form the information should take to be most helpful to those who would make use of reports "We are launching urban development and environmental geology studies that relate to the problems of environmental health, transportation, land use, and urban and regional planning The problem of urban expansion into areas of potential quarry sites and the realization that construction materials may be denied for the very development programs that require them has become but one facet of this kind of study. Water supply and production, foundation problems, drainage problems, and a variety of land use problems all require geological information Unfortunately, we have not known how to secure this information in minimum time for maximum return, nor have we known how to prepare reports that could and would be used by the city planner or engineer We are concerned with project evaluation and review techniques for urban and regional studies" [28]

Conservation of sand and gravel implies setting land aside for agricultural or some other nonconflicting use until circumstances require extracting its resources Much of this land may be suitable for subdivisions, commercial or other conflicting use The land then may need to be preserved for many years with a less profitable interim use leading possibly to a type of inverse condemnation [29] Industry representatives expressed a willingness to purchase or lease such land provided there was some assurance the aggregate could be mined [30]

In addition to the long-range planning, conservation suggests zoning regulations that will avoid conflicting land uses An exclusive natural resource or sand and gravel zone could require posting of the property to inform land owners in the vicinity that a quarry operation is or will be in this area Urban encroachment in these areas, however, may bring pressure upon local officials to consider zoning changes that will prohibit sand and gravel extraction

EXTRACTIVE OPERATIONS AND RECLAMATION

In spite of increased efforts by responsible producers to conduct operations in a compatible manner and to comply with all land use and other regulations, there is continued opposition to quarry sites in many locations The opposition may be based on misconceptions resulting from a picture of the operations of years past or the few producers who, as may be found in any field, perpetuate a bad image Responsible producers take advantage of the opportunities for improved public acceptance and for the dissemination of factual information to correct these misconceptions Production of rock, sand and gravel is limited to locations selected by nature, and when such locations are virtually surrounded by urban development, it is appreciated that production activities are subject to operating conditions sufficient to assure reasonable compatibility with other uses

Industry representatives have pointed out that judicious and objective determination of land uses may be difficult under the pressure of objecting homeowners They express concern that local decisions can

[28] Hambleton, Dr W W, "Education of Geologists for Geological Surveys," *Journal of Geological Education*, June 1966
[29] See Transcript, Vol I, M C Lorenz, p 118, Vol V, Paul Foxworthy, p 5
[30] See Transcript, Vol IV, Stewart Adler, p 42, Vol I, John Kerfoot, p 30

vacillate [31] Cooperation between the industry and zoning authority to avoid this kind of pressure and to improve mining operations is possible [32]

Some zoning decisions have placed a time limit on conditional use permits The objections to having such restrictions include

1 Insufficient time to amortize the original investment
2 Serves as a deterrent to long-range planning and expensive improvements
3 Sets the tone for relations between the industry, government, and community through expensive and time-consuming public hearings [33]

Arguments in favor of a time limit for review generally include

1 To determine the producer's compliance with conditions of the permit
2 To provide an opportunity to review land use problems and any changes in conditions which may have occurred within the time period [34]

Reclamation of depleted sand and gravel deposits is becoming common practice in the industry Examples of such projects can be found in the National Sand and Gravel Association's publication "Case Histories" and in California through testimony presented to the Study Group [35] As population expands and land use becomes more intense, three criteria for a reclamation program emerge—public pressure, regulations, and land value

People see examples of a scarred countryside brought about by deserted mining operations and use this as one basis for opposing sand and gravel operations in some areas One of the basic objectives of reclamation, then, is to improve the industry's image to the public Local authorities are also becoming more concerned about an ultimate use of the land This is reflected in the trend to include in zoning regulations some provisions for planned reclamation and land development The Study Group also learned of legislation at the federal level which is under consideration and which has as one major objective the reclamation of open pit mines The third criterion for land reclamation is the incentive offered by increasing the land value [36]

The types of reclamation projects completed or proposed include residential, commercial industrial, recreational (Vasona Reservoir in Santa Clara County), agricultural and flood control developments In some instances, the pits would be filled and brought back to their origi-

[31] See Transcript, Vol I, E O Rodeffer, p 2 Vol I, John Kerfoot, p 25, Vol II, Bruce Bravo p 64
[32] See Transcript, Vol I, Forrest S Dickason, pp 43–44, Vol I, Milton Breivogel, p 85
[33] See Transcript, Vol II William Downing, p 18, Vol III, Glenn Ricks, p 10, Vol V, Crawford Williamson, p 33
[34] See Transcript, Vol II, William Fraley p 31, Vol III James Fairman, pp 40–41
[35] See Transcript, Vol I E O Rodeffer, p 9, Vol I, John Kerfoot, pp 31–32, Vol II, William Downing p 22 Vol II Karl J Belser, p 69, Vol IV, Dan Mikesell, p 17 Vol V, Crawford Williamson, p 30
[36] Banet Anthony M, *Simultaneous Excavation and Rehabilitation of Sand and Gravel Sites*, A Report of a Research Project, University of Illinois, p 28

nal level and in other cases, the development takes advantage of the new land contour A use of depleted pits that is receiving a great deal of attention, particularly in the Los Angeles area, is sanitary land fill The annual refuse disposal in Los Angeles County is estimated at 9 million tons Through a joint power agreement with the City of Los Angeles, the county has set up a trust fund to acquire disposal sites for future use Proposed sites include quarry zones in the San Fernando Valley and San Gabriel Valley These areas can be obtained through condemnation proceedings should such action be required [37]

Sanitary fills frequently are looked upon with much disfavor by homeowners in the vicinity of the disposal site Some officials are concerned, too, about underground water pollution [38] Experiments with plastic lined pits and jute with plastic mixed lining are being conducted to allow sanitary fill below the water table level In other cases, the use of "clean" or inorganic fill through and above the underground water table has permitted the upper reaches of a depleted pit to be used for rubbish disposal

If possible, the most opportune time to plan reclamation of quarries is prior to the start of excavation This allows the producer to divert part of his capital towards reclamation and provides the community planners an opportunity to project future land use patterns [39] It is unrealistic, however, to expect such a plan to remain inflexible in the face of changing land use, to place a time limit on reclamation, or to reclaim the land while extraction is proceeding in the same immediate area.[40]

THE STATE'S ROLE

The Study Group devoted a major share of its attention to determining the role that the state should assume to resolve some of the problems concerning sand and gravel extraction and, in particular, preservation of deposits An extreme viewpoint would suggest the state should pre-empt the zoning and regulation of sand and gravel quarries, removing such authority from the local jurisdictions The opposite end of the spectrum would require no action by the state, and assumes the cities and counties along with the industry will cooperatively solve their problems in the best interests of all concerned Neither view was considered practical by the Study Group, but rather a solution was thought to lie somewhere between these extremes

Removing the police power of local governments in relation to this resource is opposed by local agencies and some industry representatives on several grounds This power has been traditionally exercised locally as granted by the State Constitution [41] Special consideration for one industry by pre-empting control in this field will open the door to many other equally concerned interest groups [42] State control will remove the determination of land use and standards of operation from the people most affected by the location of quarry sites [43] In addition,

[37] Reining, Don, *Our Natural Resources*. A Speech delivered to the National Sand and Gravel Association, February 8, 1966
[38] See Transcript, Vol I, E O Rodeffer, p 10, Vol I, John Kerfoot, pp 31–35
[39] See Transcript, Vol II, William Downing, p 19, Vol II, Harold Goldman, p 46
[40] See Transcript, Vol I, John Kerfoot, p 34, Vol II, Harold Goldman, p 46
[41] See Transcript, Vol I, Louis Nowell, p 84, Vol II, William Parness, p 15
[42] See Transcript, Vol V, Paul Foxworthy, p 4
[43] See Transcript, Vol I, Milton Breivogel, p 79

uniform regulations which would be applied throughout the state could not take into account the variety of situations presented by the geography and geology of the various areas [44] Only the local jurisdictions can accurately evaluate the maximum benefit to be gained from a property and how best this property fits the concept of a balanced community.[45] Finally, there is no assurance that by pre-empting this field the problems as they exist today will be solved [46]

To maintain the status quo on the other hand, is unrealistic according to industry representatives who warn that unless there is increased concern and action to conserve aggregate near population centers, there will be significant economic consequences for the citizens in the form of increased construction costs [47] The best chance for accomplishing this, it is argued, is by providing an appeals board or broader controlling body [48] One industry representative stated local officials cannot always make objective decisions when a crowd of homeowners oppose a zoning change or the granting of a use permit, particularly when the opposition is based on emotion rather than reason [49] Help is needed, too, where zoning authorities do not realize adequate controls can be utilized in a quarry operation to protect the public [50] A common fault found with local planning and zoning is the lack of regional considerations which will become more critical as populations increase and sources of sand and gravel decrease [51]

Several problems were identified in relation to a lack of regional planning First there is the question of whether local planning and zoning officials will take as broad a view of regional needs as is required for the best use of deposits within a local jurisdiction Indeed, the production and use of aggregate products are very often not in the same jurisdiction [52] Conserving and extracting sand and gravel deposits may depend on avoiding extreme variations of control, particularly, where these controls affect the producers ability to be competitive within the region Finally, a deposit or quarry operation which is annexed to a new jurisdiction may be more easily protected when it is part of a regional plan

Considerable agreement was found in proposing the state should assume a greater responsibility for assisting local governments with more detailed information on the location, quantity and quality of deposits An inventory that would provide decision making bodies with essential data not now available making it possible to develop more comprehensive plans to conserve sand and gravel requires study in depth Many cities and counties lack the finances and technical personnel to conduct an inventory study [53]

[44] See Transcript, Vol I, Calvin Hamilton, p 104, Vol II, William Downing, p 19 Vol II, Bruce Woolpert, p 59
[45] See Transcript, Vol II, William Downing, p 17, Vol III, James Fairman, p 36
[46] See Transcript, Vol III, Charles Porter, p 44
[47] See Transcript, Vol V, Crawford Williamson, p 29
[48] See Transcripts, Vol II, Bruce Bravo, p 64, Vol I, John Kerfoot, p 24
[49] See Transcript, Vol I, E O Rodeffer, p 2
[50] *Ibid*, p 6
[51] See Transcripts, Vol I, John Kerfoot, p 23, Vol I, Forrest Dickason, p 48, Vol I, Milton Breivogel, p 66, Vol I, M C Lorenz, p 121, Vol III, Ray Kepner, p 30
[52] See Transcript, Vol IV, Stewart Adler, p 46
[53] See Transcript, Vol I, John T McGinnis, p 41, Vol I, Forrest S Dickason, p 47, Vol I, *Frank Bonelli*, p 61, Vol I, Calvin Hamilton, p 106, Vol III, James Fairman, p 37

PROPOSED SOLUTIONS

The preceding sections of this report have pointed out that rock, sand and gravel are essential to the economy of the state and vitally important to the entire construction industry As is readily apparent, aggregates must be extracted where suitable deposits are found and, to be economically useful, they should be produced near the consumer The deposits must be of sufficient quality to meet the specifications of various private and public construction projects and of sufficient quantity to justify a large investment in plant

The report also points out the importance of local land use regulations The many factors which are necessarily considered in planning and zoning can best be evaluated by the local officials The requirements for complete and accurate information would apply equally to any public agency who is faced with the determination of land use

The authors of the Ventura County study reached the following conclusions

1 Land uses such as housing can be designated in many areas while sand and gravel resources are found in only limited quantity and consequently should be protected from less vital land uses

2 City county, and state agencies should evaluate the future supply and demand of industrial minerals to avoid the almost impossible task of protecting these minerals after the deposits are surrounded by urban housing

3 The government agencies in cooperation with producers should develop satisfactory ordinances for operating and reclaiming open-pit mines [54]

Much of the testimony heard by the Study Group would support these conclusions The action that may be required to implement them, however, becomes a point of contention among the various groups represented The following proposals calling for specific legislation at the state level have been suggested by various individuals and discussed by the Study Group

STATE CONTROL

1 Mineral Aggregates Bill This legislation would put zoning, permits and quarry operation regulations under a state agency The bill would delegate to this agency the power to license the excavation and production of mineral aggregates, adopt and enforce rules and regulations controlling such operations and approve and supervise the execution of reclamation plans for areas from which the aggregates have been extracted The powers so delegated to the state are preempted by the state to the exclusion of cities and counties

The purpose of the bill would be to secure the public interest in continued availability of rock, sand and gravel, and their production under uniform regulations operative throughout the state The regulations would afford protection against injury or serious annoyance to person or property and provide for the reclamation of the lands

[54] Moore, William W Editor, 'The Urban Threat to the Sand and Gravel Industry,' *Engineering Bulletin*, No 29, Dames & Moore, pp 8–9

Opposition to legislation of this type would be vigorous and widespread The objections to land use decisions at the state level include removal of those decisions from the public most affected, variety of alternatives are known best by local authorities, and the impossible task of designing uniform regulations with the variety of situations There is insufficient evidence to justify the removal of police powers of the local governments over a specific type of land use and placing such powers at the state level

2 State Land Bank A proposal for conserving sand and gravel deposits on the urban fringe would give power to the state to acquire land in advance of need, plan its use, and then lease it to private industry to develop according to the plan The legislation would require determination of projected needs, appropriation of funds to acquire the land, and some procedure for choosing the private company who would be willing to excavate the aggregate

The objective would be to remove control of sand and gravel deposits from local jurisdictions and place responsibility for development with the state Local pressure in opposition to quarries would then be less effective

The cost to the state, thus the taxpayer, would be significant In addition, Article I, Section 14 of the California Constitution states that private property can be taken under eminent domain power only for a public use To interpret sand and gravel extraction as a public use is not acceptable To require that all the lands so acquired be developed for public use following depletion of the aggregate is unrealistic Little support was found for this suggestion, though, in a specific situation it might be acceptable and advisable A program in Phoenix, Arizona, for example, is designed for multiple-use projects where land is acquired for park purposes, with interim uses for excavation of sand and gravel, followed by sanitary fill

3 State Appeals Board This suggestion was for an act to be added to the Public Resources Code It provides for a State Resources Appeals Board consisting of the Director of Conservation and 10 additional members appointed by the Governor, with the advice and consent of the Senate Representatives would be chosen from the cities, counties, industry and the public Producers or citizens could appeal to the board any local decision relating to a zoning ordinance or action on a conditional use permit or variance or other permit affecting aggregate production The appeals board would have the power to overrule the local decision A review would only be made when an appeal is registered with the State Resources Appeals Board by affected parties

The purpose of such an act would be to prevent unreasonable decisions or conditions and limitations affecting natural resources Equal protection would need to be provided for the general public Such an agency would be expected to be concerned with the regional implications of the city and county decisions

Some producers looked upon this proposal as the best possible solution It would provide a body between the city or county and the courts that the producers expect would be concerned about the regional needs and would not be influenced by objecting property owners The police power of local zoning authorities would be preempted to the extent that local decisions could be reversed

City and county representatives and some producers do not see this as a solution They argue that there is nothing omnipotent about a state body and that the local needs are in fact better met at that level Cities and counties question legislation which will benefit special interest groups and are concerned about opening the door to other groups who might desire the same treatment They believe regional planning can be brought about through cooperative organizations such as the Association of Bay Area Governments and the Southern California Association of Governments

Some members of the committee believe the importance of sand and gravel to the economy of the state and the inadequate protection currently being given to future reserves at the local level make this proposal worthy of consideration The relatively brief time that cooperative government planning organizations have functioned, particularly in southern California, may have prevented their official concern over depletion of the resource Such concern would be welcomed by producers and public alike No one of the Study Group advocated wholesale removal of zoning powers from the local governments

REGIONAL CONTROL

Each of the above proposals could be assigned to a regional agency which would bring the control closer to the people and provide the same advantages attributed to state control The need for regional considerations is emphasized by the fact that the Amador Valley is a primary source of aggregate for the bay area, and San Bernardino will eventually be a primary source for Los Angeles city

4 Los Angeles Basin Rock, Sand, and Gravel District This proposal would result in an act to be added to the Public Resources Code A sand and gravel district would be established in the Los Angeles area where the depletion of aggregates is most critical The board of directors of the district would be empowered to (a) inventory the sand, gravel and rock resources of the area, (b) prepare a master plan for conservation and development of the resources, (c) provide information and recommendations to the local jurisdiction in line with the above actions, and (d) hear and determine appeals from local decisions in zoning or permit proceedings which affect production and distribution of rock, sand and gravel in the district

The board membership would include representatives of the cities, counties, industry and public The district board would be empowered to tax the production of rock, sand and gravel for the purpose of defraying the costs of conducting district business

Proponents for legislation state it could be desirable for several reasons· The advantages of regional study and planning would be realized, action would be taken in one of the more critical regions of the state and could serve as a test program for possible adoption elsewhere as the need arises; a designated body as an agency of the state but with only regional jurisdiction would be able to improve the relations between the public, government and industry through education and study

Opposition could be expected on the same basis as any other legislation which would threaten local zoning authority In addition, existing state laws would allow for similar regional actions on a voluntary

basis Evidence of such voluntary activity, however, in relation to conserving our natural resources is sketchy and needs encouragement

A question arises with regard to the tax on producers to meet the district expenses If the natural resources are important to the economy of the region and state, then taxing should perhaps be distributed on that basis

LOCAL CONTROL

Some opponents of state or regional control legislation insist that the problem can be handled at the local level if certain enabling legislation is enacted The need generally identified is for more information and education Several proposals were investigated by the Study Group and are included here

5 Continuous, Cooperative and Comprehensive Planning This proposal assumes the effective tools for preserving sand and gravel deposits and controlling quarry operations are based on area-wide and long-range planning Restrictions such as inadequate information tend to keep the potential benefits of local planning from being fully realized In addition, the scope of planning and action may embrace problems far beyond the limited concern of local jurisdictions A comprehensive regional general plan which identifies sand and gravel deposits, then, should provide necessary information for local policy determination

The multiplicity of agencies and factors which must be considered in local determination of lands to be used for sand and gravel production suggest a need for a regional approach to planning The importance of regional study of mineral resources is advanced by Dr W W Hambleton, "We have been active in the field of regional economic studies and applied product research and development For the past several years we have involved people from geophysics, statistics, petroleum engineering, mining engineering, geology and econometrics in studies to develop methodologies for regional economic analysis Regional economic growth is not simply a consequence of a discrete set of local decisions, and every sizable injection of new investment brings with it a train of related economic events characterized by a multiplier effect We are dealing increasingly with the whole field of a system analysis and operations research in the economies of the mineral industries "[65]

Powerful inducement to engage in area-wide planning could be provided by the state in the same way as the Federal Housing Act Funds for planning and study would be provided to a metropolitan area when there is continuing, comprehensive and cooperative planning by counties and cities The legislation should require that the general plan for a region identify the location of natural resources Area study commissions on mineral resources might be formed voluntarily with adequate incentive

The legal requirements for local zoning decisions would be unaffected, though recommendations from the regional planning agencies would be sought or required Frances W Herring says, "The required review of local zoning decisions by a higher jurisdiction, when

[65] Hambleton, W W, "Education of Geologists for Geological Surveys," Journal of Geological Education, June, 1966

such decisions bid fair to affect neighboring communities or the region as a whole, is a desirable new tool of zoning administration "[56] The conservation of natural resource districts designated on a master plan would possibly require an exclusive zone for that use before planning might have much effect Multiple use should at least be restricted to nonconflicting uses such as agriculture, forestry, and recreation

6 Local Conservation Commissions The state might enact legislation enabling local conservation commissions to receive some funds for the purpose of studying the problems, inventorying the deposits and recommending legislation within a local jurisdiction The commission would not have powers beyond those already granted local governments, but rather would serve a purpose in placing emphasis on problems not now receiving sufficient consideration Hopefully, a coordinated and vigorous local program in cooperation with industry could develop a conservation program, more thought would be given to alternative land uses, and influence on the public might be realized through a concentrated information program

Adequate legislation exists now for cities and counties to move in this direction The Division of Mines and Geology is authorized to enter into agreements with local governments to investigate resources in order to prevent their loss to urbanization through Senate Bill 703, Section 2205 of the Public Resources Code Lack of funding has curtailed activity in this area, but the possibility does exist A serious question arises, then, whether there would be a need for and use of this type of legislation

INVENTORY

A special consideration was given to the need for an inventory because this was the most frequent suggestion for legislative action The need for assistance stems from the high cost and lack of technical personnel to accomplish a detailed study at the local level Without additional information, though, local officials may be unable to determine the value of any particular deposit and the justification for conservation of that deposit

The advantages in having the state, through the Division of Mines and Geology, coordinate inventory investigations are as follows: The information would be uniform which has advantages for both California and its cities and counties, the investigations are more readily controlled assuring accuracy and usability, and the studies could be conducted only where the need exists To consider a detailed statewide inventory of deposits is unwarranted and financially prohibitive Several concepts have been advanced to suggest the role the state could play in providing funds and other assistance for an inventory

7 A pilot program could be launched utilizing state and local resources by choosing a metropolitan area for detailed inventory It possibly should be an area where the problem of depleting resources is most critical such as Los Angeles or San Francisco The legislation would provide for funding and the basis for local and state cooperation The coordination of such a program could be placed with the State Division of Mines and Geology with latitude to involve public agencies

[56] Herring, Frances W, *Open Space and the Law*, Institute of Governmental Studies, University of California, Berkeley, 1965, p 102

or private consulting services where such assistance might be advantageous

8. A systematic approach could be taken whereby state assistance in inventory studies would be controlled under predetermined conditions A systematic accumulation of pertinent data such as the life of existing deposits, population growth, changing economic conditions, trends in urban development, etc., could be fed to a central state or regional agency The data could be arranged or processed in such a way that it becomes most useful in determining where the critical problems will exist with regard to depletion of sand and gravel deposits The information would have to be filed in an easily retrievable way

When a certain region approaches a predetermined situation where the future conservation will be made difficult by problems known to exist, an inventory of additional deposits will be encouraged Cooperative involvement of the state, industry, and local governing bodies could provide incentive to make a thorough study of the region, share the cost among the various interests, and assure some uniformity of information It is conceivable that an approach such as this could lead to greater understanding by the industry and governments of each other's problems

Under either of the above proposals, the role the State Geologist would assume should be clearly defined A suggestion that he be made available in zoning change or permit proceedings as an expert witness did not receive adequate support It would be difficult for him to be an expert in the many considerations of land use In addition, testifying at local hearings has been against tradition and reserved primarily for the private consultant

The use of private consultants or consulting firms as well as other public agencies in special phases and special situations in developing the inventory would perhaps be advisable inasmuch as the Division of Mines and Geology does not now have all the necessary equipment and is presently understaffed for such an exhaustive survey The coordination and direction could be handled by the present staff working in close cooperation with the area representatives The distribution of information might also be centralized with this agency

APPENDIX A

An act to add Chapter 2.5 (commencing with Section 2220) to Division 2 of the Public Resources Code, relating to rock, sand, and gravel, and making an appropriation therefor

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

SECTION 1. Chapter 2.5 (commencing with Section 2220) is added to Division 2 of the Public Resources Code, to read

CHAPTER 2.5. ROCK, SAND, AND GRAVEL

2220. The Legislature hereby finds and declares that:

(a) Rock, sand, and gravel are essential to the economy of California and vitally important to public and private construction in this state.

(b) These materials must be extracted where suitable deposits are found, and, to be economically useful, they must be produced near the point of consumption.

(c) In many regions of the state, the rock, sand, and gravel supply situation is extremely critical since the deposits of these materials which are presently available for production in that area will be exhausted within a few years.

(d) Other potential sources of rock, sand, and gravel to meet the continually increasing demands of the state and other public and private users of rock, sand, and gravel cannot now be used due to the policies and practices of the public agencies which have jurisdiction over the areas in which these potential sources are located.

(e) In order to protect the future economic growth and development of the state and to insure that an adequate supply of rock, sand, and gravel will continue to be available at a reasonable cost in any region of the state where the rock, sand, and gravel supply situation is now, or hereafter becomes, extremely critical, it is imperative that the State Geologist be required to (1) cause an inventory to be made of the rock, sand, and gravel resources of any region of the state in which the State Geologist determines that there is a serious threat that an adequate supply of rock, sand, and gravel will not continue to be available at a reasonable cost, (2) prepare recommendations for the conservation and development of the rock, sand, and gravel resources of the region; and (3) provide information derived from the inventory and the recommendations to the public agencies, and organizations of public agencies, within the region.

2221. Whenever the State Geologist determines that there is a serious threat in any region of the state that an adequate supply of rock, sand, and gravel will not continue to be available at a reasonable cost, he shall cause an inventory to be made of the rock, sand, and gravel resources of the region.

2222 The inventory shall be made by the Division of Mines and Geology or, if the State Geologist determines that the division is unable to make the inventory, shall be made by any other person or organization selected by the State Geologist pursuant to a contract which is approved by the Director of Conservation.

2223 The inventory shall determine, among other things, both of the following:

(a) The location, quantity, and quality of the rock, sand, and gravel resources within the region which are presently available for production

(b) The location, quantity, and quality of the rock, sand, and gravel resources within the region which could be developed for commercial or public use

2224 Based upon the information derived from the inventory, the State Geologist shall prepare recommendations regarding the conservation and development of the rock, sand, and gravel resources of the region

2225 The State Geologist shall furnish to public agencies, organizations of public agencies, and producers of rock, sand, or gravel, within the region, and to any other persons, agencies, or organizations which request such information and recommendations, the following information and recommendations:

(a) Information regarding the location, quantity, and quality of the rock, sand, or gravel resources within the region which are presently available for production or which could be developed for commercial or public use

(b) The recommendations of the State Geologist regarding whether any rock, sand, or gravel resources should be currently developed and used or should be conserved for future use.

(c) Information and recommendations regarding the manner in which any rock, sand, or gravel resources may be developed for commercial or public use

(d) Any other information or recommendations which the State Geologist determines may be necessary to insure that an adequate supply of rock, sand, and gravel will continue to be available at a reasonable cost within the region

2226 The State Geologist may request any person, public agency, or private agency or organization to aid or assist him in carrying out the duties which are imposed upon him by this chapter

2227 The State Geologist may receive, on behalf of the state, for use in carrying out the provisions of this chapter, any gifts or grants of funds from any person, public agency, or private agency or organization.

SEC. 2 The sum of _____ ($_____) is hereby appropriated from the General Fund to the Division of Mines and Geology of the Department of Conservation for expenditure in carrying out the provisions of Chapter 2.5 (commene-

ing with Section 2220) of Division 2 of the Public Resources Code with respect to one region of the state selected by the State Geologist pursuant to the provision of such chapter

TENTATIVE DRAFT
BUDGET BILL ITEM

_____ For expenditure by the State Geologist, pursuant to Section 2205 of the Public Resources Code, in providing financial assistance to local and regional agencies for special studies and investigations relating to rock, sand, and gravel resources_____

TENTATIVE DRAFT

An act to amend Section 65302 of the Government Code, relating to planning

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

SECTION 1. Section 65302 of the Government Code is amended to read

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A natural resources element which designates the general distribution and general location and extent of natural resources. The natural resources element shall include, among other things, the location, quantity and quality of the rock, sand, and gravel resources within the area covered by the plan.

TENTATIVE DRAFT

ASSEMBLY CONCURRENT RESOLUTION NO. ____

Relative to encouraging cities, counties, and regional associations to cooperate with the Division of Mines and Geology.

WHEREAS, Rock, sand, and gravel resources are essential to the economy of the State of California and vitally important to public and private construction in this state, and

WHEREAS, The problems of development and conservation of these natural resources are by their very nature broad in scope and thus suggest a cooperative approach to study and planning; and

WHEREAS, The cooperation of cities, counties, and regional associations with the Division of Mines and Geology of the Department of Conservation is a vital element in the development and conservation of the rock, sand, and gravel resources of the state, now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Members of the Legislature respectfully urge cities, counties, and regional associations to cooperate with the Division of Mines and Geology of the Department of Conservation in the development and conservation of the rock, sand, and gravel resources of the state

APPENDIX B

HOUSE RESOLUTION NO. 531

A List of Hearing Witnesses
(In order of testimony)

Volume 1—Los Angeles—September 28, 1965

E D Rodeffer: Director, Southern California Rock Products Association, President, Rodeffer Industries
John Kertoot President, Southern California Rock Products Association, President, Owl Rock Products Company
John T McGinnis Vice Chairman, Orange County Planning Commission
Forest S Dickason County Planning Director, County of Orange
Dale Hemly Attorney at Law, Santa Ana
Frank G Bonelli Supervisor, First District, Los Angeles County
Milton Breivogel, Director of Planning, Los Angeles Regional County Commission
Louis Nowell Councilman, First District, City of Los Angeles
Calvin Hamilton Director of Planning, City of Los Angeles
M C Lorenz Director, Department of Public Works, Ventura

Volume 2—San Francisco—December 7, 1965

James Fales, Jr City Manager, Pleasanton
Warren R Harding City Councilman, Pleasanton; Chairman, Amador-Livermore Valley Rock, Sand and Gravel Study Committee
W H Parness City Manager, Livermore
William Downing President, Kaiser Sand and Gravel Company, Member, Amador-Livermore Valley Rock, Sand and Gravel Study Committee
William Fraley: Director of Planning, Alameda County. Mr Fraley read a statement from John D Murphy (Chairman, Alameda County Board of Supervisors)
Harold B Goldman: Geologist, Division of Mines and Geology, California Department of Conservation
Bruce Woolpert Planning Commissioner, Santa Cruz County, President, Granite Rock Company.
Jack Cedarblade: Executive Secretary, Northern California Rock, Sand and Gravel Producers Association Mr Cedarblade read statements from E F Brovelli (Member of the State Mining Board) and Karl J Belser (Director of Planning, Santa Clara County)
Jack Bravo California Rock and Gravel Company
Howard L Reese City Manager, Fremont

Volume 3—San Diego—January 18, 1966

Michael C Fletcher President, Ed Fletcher Company
Glenn A Rick, President, Rick Engineering Company Mr Rick represented San Diego County Rock Producers Association.
James Fairman Director of Planning, City of San Diego
Charles E Porter Assistant to the City Manager, City of San Diego
William A Craven Executive Assistant, San Diego County Board of Supervisors, Planning Commission, Oceanside
Roy M Kepner Natural Resources Specialist, San Diego County Department of Agriculture

Volume 4—Riverside—April 12, 1966

William R Livingston: Assistant Planning Director, Riverside.
Paul Anderson Supervisor, Riverside County, President, California Supervisors' Association
Daniel D Mikesell. Vice-Chairman, Board of Supervisors, San Bernardino County
Stuart L Adler President, San Bernardino and Riverside Counties Rock Producers Association
Dick Bowman Chief, Division of Resource Management, Bureau of Land Management District Land Office, Riverside

Volume 5—Sacramento—May 17, 1966

Paul Foxworthy, City Manager, Azusa.
Jack M. Merelman: Legal Counsel, County Supervisors Association of California
Crawford Williamson: Teichert & Son
Richard Rathfon Assistant City Manager, Sacramento

PRODUCTION AREAS	①	②	③	④	⑤	⑥
CASTAIC	101	153	146	240	345	402
ANTELOPE VALLEY	228	279	278	368	402	368
SUN VALLEY	050	080	101	149	232	314
IRWINDALE	141	084	137	154	191	228
UPLAND	217	132	191	219	186	173
SAN BERNARDINO	333	248	313	363	246	173
ORANGE	197	125	178	149	057	191
CAPISTRANO	231	175	228	185	084	*28

NOTE Above costs in dollars per ton paid by the consumer for transport of rock and sand as calculated from Minimum Rate Tariff 17 of the Public Utilities Commission State of California Calculations by the Transportation Committee Southern California Rock Products Association May 1966

MAP A

UTILITY REGULATION

In accordance with the ongoing interest of the Public Utilities and Corporations Committee in matters involving regulation of public utilities, the following subject areas were studied

REGULATION OF AMBULANCE RATES

One hearing was conducted on September 13 and 14, 1966, in San Diego

Scope

As a result of a federal regulatory agency decision that ambulance firms are in interstate commerce, employees of such firms are now covered by the provisions of the Fair Labor Standards Act In order to meet increased labor costs private ambulance firms are finding it necessary to raise rates and, in some cases, seek subsidies from governmental bodies to continue operation

The Public Utilities Code does not name ambulance rates as being under the jurisdiction of the California Public Utilities Commission Regulatory jurisdiction at the state level currently rests with the Department of Motor Vehicles and the California Highway Patrol The regulatory jurisdiction of these departments appropriately relates to vehicles and safety equipment At the present time, regulation of ambulance rates exists at the city and county levels of government

In the larger urban areas, the administrative and economic capacities of local government generally make it possible to provide for ambulance service at rates which have been adequately reviewed and approved by local authorities In many of the smaller cities and rural areas of the state, limited budgetary and administrative capacities may preclude local authorities from exercising such regulatory functions The result in these areas is often inadequate ambulance service at expensive rates

In view of these factors, it was the intent of the committee to inquire into the feasibility and wisdom of granting the California Public Utilities Commission jurisdiction over ambulance rates

Positions

Representatives of cities testified that regulation of ambulance services and rates beyond the local level is not desirable Factors such as population density, street patterns and geography vary considerably throughout the state and have a direct influence on the organization and economics of ambulance services Local authorities are best qualified to determine and react to these variables

Spokesmen for the ambulance industry agreed with the concept of local control of ambulance services There was general agreement, however, that many rural areas need financial assistance in order to provide adequate ambulance service at reasonable rates

Analysis and Recommendation

The committee concluded that ambulance services are primarily a para-medical facility The arguments for local jurisdiction are com-

pelling Since there is general agreement that economic problems are responsible for high rates, the matter of financial assistance should be pursued with a view to administration at the local level in accordance with state standards. The committee recommends that this subject be approached as a public health matter. The committee concluded that ambulance rates should not be regulated by the Public Utilities Commission of the State of California.

POWER BLACKOUT

One hearing was conducted on December 15, 1965, in Sacramento

Scope

As a result of the power failure in the northeastern states in November, 1965, there had been widespread speculation as to the possibilities of a similar occurrence in California The committee was interested in learning about California's posture with respect to power blackouts

Positions

The committee heard testimony from representatives of electric utilities in California, cities, and state officials.

California electric utilities were pioneers in long distance, high voltage transmission Methods were developed in California to protect long transmission lines and to guard against losing power loads Electric utilities in California employ equipment which will automatically unload part of the system in the event of frequency irregularities. This type of equipment was generally not in use in the northeastern part of the United States at the time of the power failure in 1965. There are a great number of ties connecting the northeastern utilities together and a serious power failure on one system pulled other systems down

In California, each electric utility system carries enough generation in reserve to protect its own system Its ties will open automatically before any failure on one system pulls another system down. Since this action takes place over a wide area, it is dependent on a great many relays. The chances of any malfunction are extremely remote Should a malfunction occur there would not be an overall effect such as was experienced in the northeast.

On the state level the California Disaster Office is part of the Governor's office and is basically a planning and coordinating agency

Whenever an emergency or natural disaster occurs, the Disaster Office is charged with coordination of mutual aid and disaster relief activities provided by state and federal agencies and local jurisdictions throughout the disaster area. The State Electrical Operating Engineer of the California Disaster Office is charged with coordinating individual electric utilities in the event of a complete electric breakdown in California.

The State Fire Marshal is empowered to establish minimum regulations for fire safety, which includes emergency power, especially for lighting, in schools, public gathering places, emergency facilities such as hospitals and state-owned buildings Enforcement of these regulations is delegated almost completely to local authorities.

A representative of the League of California Cities testified that virtually all cities have equipped themselves with independently oper-

ated standby power equipment for the essential emergency services in case of limited power failures

Analysis and Recommendation

Power failures of a limited nature due to such causes as traffic accidents, storms and equipment failure cannot be completely eliminated in California. However, emergency procedures and standby power sources have been provided for by state agencies, California electric utilities, virtually every city and important facilities such as hospitals Such measures are designed to minimize the extent and duration of any possible power failure in California

Testimony at this hearing did not disclose the need for legislation to avoid a power blackout such as occurred in the northeast

TELEPHONE SOLICITATION

One hearing was held on October 4 and 5, 1966, in Compton

Scope

The committee's interest was in the area of *uninvited* telephone solicitation calls to private residences The term *uninvited* is used to describe telephone calls made from a list of names, addresses or telephone numbers without regard to whether or not the party being called has indicated any prior interest in receiving such a call. Telephone solicitation is generally used for charitable fund raising, political campaigning and for commercial purposes

While telephone solicitation is not prohibited under present law, the committee was aware of widespread concern and annoyance on the part of private telephone subscribers over uninvited telephone solicitation for commercial purposes

Positions

Testimony was heard from housewives, senior citizens, witnesses representing consumers, charities, law enforcement, telephone companies and the California Public Utilities Commission Hearing notices were mailed to numerous firms known to be involved in telephone solicitation None of these firms sent representatives to testify before the committee

Witnesses representing telephone companies and the California Public Utilities Commission testified that, under present law, telephone service must be provided without regard to the fact that telephone equipment may be used for uninvited calls to private residences for commercial purposes

Testimony before the committee was overwhelmingly opposed to this type of telephone usage. At issue is the individual's right to privacy in his own home as opposed to the rights of legitimate businesses and organizations to advertise and sell their products, services or special cause.

Telephone solicitation for charitable purposes and for political campaigning were distinguished as generally nonobjectionable in view of the high public purpose served by such causes

Representatives of law enforcement agencies testified to the high incidence of fraud involved in commercial telephone solicitation. A pub-

lic agency in one metropolitan area processed approximately three hundred cases of fraud in one year A high percentage of these cases were traced to telephone solicitation

The committee received recommendations ranging from outright prohibition of commercial telephone solicitation to various restrictions on this type of telephone usage Representatives of law enforcement agencies testified that enforcement of outright prohibition or restrictions on commercial telephone solicitation per se would involve difficult problems of identification and proof

Analysis and Recommendations

The committee found strong opposition to unmvited commercial telephone solicitation on the part of private telephone ratepayers Testimony from law enforcement officials revealed an alarming incidence of fraud related to unmvited calls to private residences for commercial purposes In view of the fact that difficulties of proof and identification would frustrate effective enforcement of outright prohibition or restrictions on unmvited commercial telephone calls to private residences, the committee does not recommend such an approach at this time

The committee concluded that, as a first step, legislation should be enacted providing that where a sale or contract results from an initial contact by an *unmvited* telephone solicitation call to a *private residence*, the party who had received the unmvited telephone solicitation call shall have the power to rescind the contract for a period of fifteen days after the contract is formed This will provide private residence telephone ratepayers the opportunity to reconsider the matter free from any sales pressure on their telephone or in their homes The committee believes that public awareness of such legislation would limit the possibility of fraud and discourage this type of telephone usage The committee recommends that such legislation should not apply to ratepayers whose telephones are installed for business purposes A review of the effectiveness of such legislation should be undertaken by the Legislature, allowing for a reasonable period of operation

An act to add Article 2 5 (commencing with Section 17550) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to business solicitation

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

SECTION 1 Article 2 5 (commencing with Section 17550) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read

Article 2 5 Solicitation by Telephone

17550 A contract resulting from an unsolicited telephone communication to a private residence by a solicitor for commercial purposes may be rescinded by the solicited contracting party The power to rescind must be exercised within fifteen days after the making of such contract

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ASSEMBLY INTERIM COMMITTEE REPORTS
1965–1967

Volume 19 Number 14

REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON SOCIAL WELFARE

MEMBERS OF THE COMMITTEE

JACK T. CASEY, *Chairman*
WILLIAM F STANTON, *Vice Chairman*

ROBERT E BADHAM
CLAIR W BURGENER
JOHN L BURTON
EUGENE A CHAPPIE
EDWARD E ELLIOTT
WINFIELD SHOEMAKER
JOHN G VENEMAN

JANUARY 1967

THOMAS JOE, *Consultant*
MARY VIRGINIA KALES, *Secretary*

A REVIEW OF REHABILITATION POLICIES AND PROGRAMS

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

JESSE M. UNRUH
Speaker

CARLOS BEE
Speaker pro Tempore

GEORGE ZENOVICH
Majority Floor Leader

ROBERT T MONAGAN
Minority Floor Leader

JAMES DRISCOLL
Chief Clerk

LETTER OF TRANSMITTAL

CALIFORNIA STATE LEGISLATURE
ASSEMBLY COMMITTEE ON SOCIAL WELFARE
January 5, 1967

HONORABLE JESSE M UNRUH
Speaker of the Assembly, and

HONORABLE MEMBERS OF THE ASSEMBLY
State Capitol
Sacramento, California

Gentlemen

The Assembly Interim Committee on Social Welfare submits herewith its report to the Legislature on 1965–67 Interim studies This report is devoted to the following subject

A Review of Rehabilitation Policies and Programs

The attached report presents a brief review of each problem and sets forth the general conclusions and recommendations of the Committee for the legislation which seems indicated These conclusions and recommendations are the result of a series of public hearings and additional research conducted during the interim period

Respectfully submitted,

JACK T CASEY, *Chairman*
WILLIAM F. STANTON, *Vice Chairman*

Robert E Badham (with reservations)*
Clair W. Burgener
John L Burton
Eugene A. Chappie
Edward E Elliott
Winfield Shoemaker
John G Veneman

* To Recommendations 2, 4, 11, 12, and 16

PREFACE

This report has to do with the total subject matter of rehabilitation Five public hearings were held which dealt with various programs of the Department of Rehabilitation, but there is no attempt here to duplicate the hearing transcripts Committee hearings held on this subject were as follows

Nov 22–23, 1965 LOS ANGELES	—Review of existing vocational rehabilitation policies in California
Dec 3, 1965 SAN FRANCISCO	—California Industries for the Blind
Dec 7, 1965 SACRAMENTO	—Contracts
Dec 21, 1965 SAN DIEGO	—Business enterprise program
March 2, 1966 SACRAMENTO	—Interagency transfers

Anyone interested in reading the complete transcripts should contact the Committee office

In this report, an attempt is made to consolidate and synthesize many of the questions and ideas brought out in the hearings, particularly those which are significant for legislative action. The recommendations made are in the nature of broad policy proposals rather than of legislative bills. These proposals must be viewed in the context of the present relationships between the Department of Rehabilitation and other agencies, and are, therefore, not narrowly confined to that administrative jurisdiction

The report begins with a statement of the Committee's legislative recommendations, followed by three supporting sections. These are. 1) a summary and description of the existing programs of the Department of Rehabilitation, 2) a discussion of financing, and 3) an analysis of issues brought out by the hearings

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RECOMMENDATIONS

1 It is the Committee's judgment that the present scope of activities of the Department of Rehabilitation is too broad *The Committee recommends that the Department's proper role be the direct vocational training and placement in competitive employment of the physically and mentally disabled*

2 In order to permit the Department of Rehabilitation to concentrate on its primary task, within its limited ceiling of Federal reimbursement, *the Committee recommends that such prevocational programs as the Orientation Center for the Blind and the Field Service Counselors for the Blind be transferred to the Department of Social Welfare, which has no ceiling on Federal reimbursement and which is the chief social service agency It is further recommended that the State Department of Social Welfare be renamed the Department of Social Services*

3 *The Committee recommends that a study be made of the feasibility of applying orientation and field service counseling programs to other disability groups*

4 *Because of the proven value of the present Orientation Center for the Blind, the Committee recommends that all necessary budgetary support be provided for the hiring of sufficient staff to permit full utilization of the facility* It has been estimated by the Department that an additional $60,000, of which $15,000 would be State money, would be required to fully staff the Orientation Center

5 *The Committee also recommends that the Department of Social Welfare recognize the Department of Rehabilitation as the employment training agency for public assistance recipients who qualify for rehabilitation services*

6 In order to encourage disabled public assistance recipients to participate in on-the-job training, *the Committee recommends that provision be made in the law for the exemption of a portion of earnings in determining the welfare aid grant.*

7 *The Committee views the present cooperative agreements between the Department of Rehabilitation and other agencies as pilot projects which should be reviewed by the Legislature before they are reauthorized or expanded*

8 *The Committee takes the position that the Department of Rehabilitation should not provide purely medical rehabilitation where this is available under the State Medi-Cal Program*

9 *In regard to the Business Enterprise Program, the Committee recommends that the Legislature limit the percentage of the operators' trust fund which can be used for new expansion purposes*

10 *The Committee also recommends that an intensive study be made of the feasibility of establishing a system of financial incentives to encourage business enterprise operators to begin independent ventures in the food service field*

11 *The Committee recommends that a distinction be made between workshops which provide temporary work training in marketable skills and workshops which offer work adjustment or permanent employment It is further recommended that public and private work adjustment and long-term workshops be transferred to the jurisdiction of the State Department of Social Welfare*

12 The Committee recognizes the special value of the present work activity centers serving 200 mentally retarded Aid to Totally Disabled recipients through the Social Service Amendments to the Social Security Act *The Committee, therefore, recommends expansion of such services to a greater number of mentally retarded recipients through increased Budget support*

13 *The Committee urges the Department of Rehabilitation to give even greater emphasis than it already has to the inclusion of its clients in training programs for the general population,* such as MDTA, apprenticeship programs public and private trade schools, colleges and universities, and on-the-job training The Committee recommends engaging more of the private sector in the rehabilitation of disabled persons through some type of incentive, instead of establishing separate rehabilitative training facilities

14 *The Committee recommends the establishment of a Board to review and adopt regulations of the Department of Rehabilitation in public hearings which are duly publicized The Committee also recommends that the Board of Rehabilitation hear complaints and settle grievances for clients or applicants for service* On the basis of testimony and other information coming to the Committee, it has been found that the Department's necessarily broad policy-making discretion requires that concerned individuals, organizations, and other departments be apprised of regulation changes in advance of their adoption and that a fair hearing procedure be available for clients

15 *The Committee recommends that the Board of Rehabilitation and the Legislature cooperatively establish priorities for rehabilitation services and that every effort be made to provide rehabilitative services and training for employment to the culturally disadvantaged, without retarding the growth of programs for other physically and mentally disabled persons*

16 *Finally, the Committee urges the Legislature to memorialize Congress to remove the ceiling on Federal Rehabilitation matching funds*

SECTION I

SUMMARY AND DESCRIPTION

GENERAL INFORMATION

Through action of the State Legislature, the Department of Rehabilitation was established on October 1, 1963, but all of its units had existed before that time It has three major programs Vocational Rehabilitation Service, Disability Certification, and Rehabilitation of the Blind. The Department of Rehabilitation is one of four Departments within the Health and Welfare Agency The Department provides employment services to the physically and mentally handicapped in the State and attempts to reduce dependency through a wide variety of restorative and retraining services

The Department is headed by a Director and a Chief Deputy Director, and is organized into four sections, an Administrative Services Section, a Division of Vocational Rehabilitation, a Division of Disability Determination, and a Division of Rehabilitation of the Blind The Division of Vocational Rehabilitation has approximately 500 total positions, the Division of Rehabilitation of the Blind has approximately 200, and the Disability Certification Program has 225, for a total of 1 000 positions in 42 offices and 2 districts

The Department of Rehabilitation had 40.024 cases referred to it during 1964, of which 9,025 were accepted for service Of an active caseload of 20,171 during 1964, 3,044 were closed as rehabilitated An additional 3503 cases were closed before rehabilitation could be undertaken due to factors such as loss of contact, the indifference of the client, or an increase in degree of disability An additional 1,246 cases were closed although the person never achieved employment after receiving the rehabilitation services

The Federal law broadly defines who is eligible for service States have the discretion of selecting for rehabilitation any individual with a mental or physical defect affecting his employability, as long as the rehabilitation plan is realistic and "feasible " California's Department of Rehabilitation has the stated policy of giving priority to persons with major handicaps requiring long-term and intensive effort rather than those with relatively minor disabilities remedied by eye glasses, hearing aids, braces, or trusses The Department has the expressed policy of not helping those who might find employment on their own or who would be likely to be assisted elsewhere Selection of clients is not based necessarily on the need to show quick results, on the other hand, individuals whose potential is judged to be extremely limited, and who are considered unlikely to benefit from the program, are not accepted either An applicant's disability may not be considered sufficiently serious to warrant rehabilitation training or, on the other end of the scale, his disability may be so severe that he does not meet the "feasibility" criterion Even within this selective framework, the Department is financially capable of serving only a small percentage of

those needing rehabilitation services The 1965 Amendments to the Federal Rehabilitation Act have allowed the inclusion of sociocultural factors in the determination of disability, which further broadens the clientele, but makes selection sometimes even more difficult

For the numbers, earnings, and occupations of successful rehabilitants for the fiscal year ending June 30, 1965, see Appendixes 1 and 2 Types of services provided are shown in Appendix 3 Appendixes 4–6 show the types of disabilities of the clients Appendixes 7–12 cites their income and its sources Appendix 13 gives the age, race, and sex of the clients Appendixes 14 and 15 give a comparison by states of the number of referrals, cases accepted, and per capita expenditures, while Appendixes 16–18 show the number of rehabilitants nationwide since 1920, and the disabilities and occupations of rehabilitants on a national basis

VOCATIONAL REHABILITATION

Vocational rehabilitation has been a function of State Government since 1921 In fact, it is one of the oldest of California's social programs The current Vocational Rehabilitation Division in the Department of Rehabilitation offers diagnosis and evaluation, vocational guidance, and other services aimed at bringing disabled individuals to the point of employment These other services include, but are not limited to, maintenance, transportation, prosthetic devices, medical or psychiatric treatment, on-the-job training, personal tutoring, supplies, and placement of selected individuals in small business enterprises Work evaluation, training, and employment may be provided in privately operated sheltered workshops Individuals may be supported through high school, junior college, or university as part of their rehabilitation training

The central administrative unit of the Division is in Sacramento, with regional supervisory offices in Oakland and Los Angeles, and 11 district and 23 branch offices Rehabilitation counselors, located in the district and branch offices, have the primary responsibility for rehabilitation They maintain continued personal contact with their clients and perform the necessary tasks of testing, counseling, referral, and employer public relations The rehabilitation plan is the result of the joint efforts of the counselor and the client

1. Caseload

The Vocational Rehabilitation caseload has been increasing, the total of active cases has grown from 16,000 in 1960–61 to approximately 20,000 in 1963–64 The number of cases carried from year to year has risen from 9,000 to 11,000 in the three-year period from 1960–61 to 1963–64, while new cases accepted have increased from 6,000 to 9,000 in the same period

Total cases closed yearly have increased from 6,330 to 7,750 in the aforementioned combined three-year period Cases closed as rehabilitated have slowly, but gradually, increased from 2,487 in 1960–61 to 3,045 in 1963–64, cases closed, unemployed after plan developed, have increased from 1,050 in 1960–61 to 1,245 in 1963–64 *Cases closed for other reasons still make up a plurality of the cases, going from*

2,841 in 1960–61 to 3,502 in 1963–64. These other reasons are not specified by the Department

Within the Division of Vocational Rehabilitation, there are specific programs, including rehabilitation services to recipients of Old Age Survivors and Disability Insurance (OASDI), the industrially injured, and some patients in mental hospitals

2. Cooperative Agreements

In addition to its direct functions, for the past year, the Department of Rehabilitation has been authorized to engage in interdepartmental contract agreements which are rehabilitative in nature The Department of Rehabilitation provides funding and staff to operations within the facilities of other departments The essential purpose of these cooperative agreements is to provide a necessary rehabilitation element in programs of the Departments of Corrections, Public Health, Mental Hygiene, and Education Over $8 million of Federal money has been authorized to the Department of Rehabilitation to augment and initiate rehabilitation services in the programs of these other agencies

As an example of a cooperative interdepartmental agreement, the Legislature authorized the Department of Rehabilitation to utilize $750,000 of Federal funds in 1965–66 to develop programs in local school districts The purpose of these programs is to provide vocationally oriented experiences to mentally retarded and physically handicapped young people while they are still in school Programs of this type were established in approximately 25 school districts

Another cooperative program between the Department of Rehabilitation and Youth and Adult Correctional agencies, assigns rehabilitation counselors to both inmates and parolees Agreements with the Department of Public Health focus on the strengthening of counseling and referral services to Crippled Children's Services and to the regional diagnostic centers for the mentally retarded In addition, cooperative programs are being developed with the Department of Public Health to provide vocational rehabilitation for alcoholics Another joint program, this time with the Department of Mental Hygiene, authorizes the placement of rehabilitation counselors in State Hospitals for the mentally ill and retarded and establishes a special program for the mentally retarded at Agnews State Hospital

The major theme dominating these cooperative agreements is that of strengthening existing social programs by the infusion of a vocational rehabilitation element, while achieving maximum utilization of Federal funds

There is also a special project that is being carried on by the Division of Rehabilitation Services for recipients of public assistance This program places vocational rehabilitation counselors in county welfare offices to determine whether disability is a factor in a recipient's unemployability and whether rehabilitation services would be useful Although the Aid to the Blind and Aid to the Totally Disabled categories provide some rehabilitation clients, there is also a major potential for rehabilitation services in the Aid to Families with Dependent Children (AFDC) category It has been estimated that at least one-third of

AFDC parents have a disability or health problem, which may make them eligible for rehabilitation services

The results so far of the efforts to rehabilitate recipients have been minimal. Only 850 Public Assistance recipients were rehabilitated through the Department of Rehabilitation in 1964–65 Of these, only 90 were Aid to Totally Disabled recipients, out of a total caseload of 75,000 in this category.

DISABILITY DETERMINATIONS

There are two offices within the Department of Rehabilitation which deal exclusively with disability determinations for OASDI benefits More than 100,000 disabled Californians and their families receive Social Security Disability Benefits amounting to between $100 and $150 million annually. Although this is a Federal program, the benefit claims by disabled persons are adjudicated by the Division of Disability Determination of the Department of Rehabilitation

Social Security Benefits for disabled workers under age 65 were first authorized by Congress in 1956 The eligibility requirements have been extended since then and the numbers of persons included grows larger every year. The typical beneficiary is a married man under age 60, disabled by a cardiovascular or nervous system disease He has a wife and two dependent children and his monthly benefits range between $254 and $300 per month

In addition to determining the extent of disability for purposes of OASDI, the Division staff studies the case folder of each benefit applicant If the information submitted for OASDI purposes indicates a potential for rehabilitation, the case is referred to the Division of Rehabilitation Six thousand cases were referred in 1965–66 on this basis, out of 59,600 determinations made during this time The client is not actually seen until he is contacted by the Division of Rehabilitation

REHABILITATION OF THE BLIND

The third major program is the Division of Rehabilitation of the Blind. Like the Division of Vocational Rehabilitation, this division provides counseling, physical restoration, vocational training, and job placement, in this case for clients who are blind or severely visually handicapped Blind clients are served by counselors specializing in rehabilitation of the blind, unlike other counselors whose caseloads usually represent a variety of disabilities During the fiscal year 1964–65, 155 legally blind and another 290 visually handicapped clients were rehabilitated by the division

In addition to the general vocational rehabilitation program for the blind, the division has several special programs These programs are pioneering in nature and have been of special interest to the Legislature because of their possible applicability to other disability groups These programs are described briefly

Orientation Center for the Blind:

This is a short-term residential rehabilitation center for the blind with new quarters opened in Albany in 1964 It has a capacity of 40 clients and a projected workload of 100 clients per year All residents receive instruction in mobility, communication skills (braille and

typing), techniques of daily living, and the development and reorientation of hand skills through shop work, sewing, and cooking.

At present, the Orientation Center has only 23 clients The Department has limited the Center to this number because of lack of financing for sufficient staff to serve the total capacity

Field Rehabilitation Services:

This program provides prevocational rehabilitation services (typing, braille, mobility, self-care) to the blind and severely visually handicapped at home, in hospitals, and in institutions. The program also offers counseling and orientation for families of the newly blind

Industrial Rehabilitation Services:

The Department of Rehabilitation operates two types of rehabilitation workshops· the California Industries for the Blind and the Opportunity Work Centers

The Opportunity Work Centers consist of three rehabilitation workshops which provide training and employment to over 100 blind and otherwise disabled workers These are subcontract shops primarily engaged in assembly and packaging

California Industries for the Blind is composed of three manufacturing rehabilitation workshops producing government contract items and commercial products and offering employment to up to 230 blind and otherwise disabled workers

Business Enterprise Program:

This is a training and· placement program for operators of vending stands, snack bars, and cafeterias The program provides employment opportunities to more than 250 blind operators and, in addition, they employ over 200 other disabled workers Also included is a training program in food service occupations for the nonblind disabled for placement in competitive employment Installations are located in public buildings and industrial establishments

There are 11 State Civil Service administrators working with the blind operators The operators earnings are shown in the following table·

BUSINESS ENTERPRISE PROGRAM
OPERATORS EARNINGS

Number of Operators	*Vending Stands*	*Food Service Operations*	*Monthly Earnings*	*Percentage of the Total*
34	24	10	Under $200	13 9
70	39	31	$201–$400	28 7
61	26	35	$401–$600	25
37	15	22	$601–$800	15 2
21	7	14	$801–$1000	8.6
6	2	4	$1001–$1200	2 4
5	3	2	$1201–$1400	2 1
3	2	1	$1400–$1600	.5
5	3	2	$1601–$1800	2.1
2	1	1	$1801–$2200	8

SECTION II

FINANCING

The State Department of Rehabilitation is the smallest and newest department under the Health and Welfare Agency. Since the Department of Rehabilitation's establishment as a separate department in 1963, the Federal Government has played a leading role in the expansion of its fiscal base During this period, the State's financial contribution has not changed. The State Legislature has merely authorized the expenditure of the additional Federal funds without proposing specific new programs.

During the year 1964–65, the Department received $1 04 of Federal matching for every $1 00 of State money used to carry out the rehabilitation function. The total budget for that year was $13 5 million. The Federal Rehabilitation Act was amended to change reimbursements for the fiscal year 1965–66 California benefitted more than any other state The ratio of Federal funds previously allocated to the states was influenced heavily by per capita income factors, which had worked to the detriment of California as a high income state Now all states receive reimbursement at a 75–25 ratio, which doubles the amount of rehabilitation money available to California at no increase in State costs. Even prior to this new development, the Department showed rapid financial growth, as is shown below.

Total Expenditures:

Total State-Federal expenditures by the Department of Rehabilitation have risen from approximately $9 5 million in 1962–63, to $13 5 million in 1964–65 Projective estimates by the Department of Finance show that the Department of Rehabilitation will have expended some $22 2 million in this past fiscal year, 1965–66. It is estimated that the Department of Rehabilitation's budget will total $31 5 million for the present fiscal period, 1966–67, more than a tripling of expenditures over a four-year period.

General Fund Expenditures:

Actual expenditures from the State General Fund by the Department of Rehabilitation have risen from $3 8 million in 1962–63 to $5 3 million in 1964–65 The State General Fund authorization for Rehabilitation for 1965–66 was $5 7 million. The appropriations request for the 1966–67 period was reduced to the amount expended from the General Fund by the Department of Rehabilitation in 1964–65, an amount of $5.3 million

Federal Fund Expenditures:

The difference between the total expenditure by the Department of Rehabilitation and monies from the State General Fund is made up by Federal funds. Such Federal funds amounted to $3 6 million in 1962–63 and $5.2 million in 1964–65

Expenditures for Cooperative Rehabilitation Services:

The Legislature authorized the Department of Rehabilitation to expend some $8 7 million in Federal funds for the Cooperative Rehabilitation Services Program for fiscal 1965–66, which would provide a total statewide program of $17 4 million The Department of Finance estimated, however, that only $3 7 million would actually be utilized for the program during the 1965–66 fiscal period, since program growth has not kept pace with available financing

In the 1965–66 review of Budget requests, the Legislative Analyst suggested that some criteria be established to evaluate the Cooperative Rehabilitation Services Program and its massive infusion of additional Federal monies into the programs of the cooperating State Departments and Agencies

Summary 1965–66 Fiscal Year Expenditures for the Department of Rehabilitation:

State General Fund	$5,467,000
Federal Matching Funds	9,477,000 *
Cooperative Rehabilitation Services (Federal funds)—out of a total authorized of $8 7 million	3,734,000
Disability Certification Program (OASDI)	3,504,000
TOTAL FUNDS EXPENDED BY THE DEPARTMENT OF REHABILITATION	$22,182,000

* Due to the passage of HR 8310 by the last Congress, the percentage of Federal matching funds was increased from a sharing of 51 19% to 62 5% in the 1965–66 fiscal year to 75% in the current fiscal year Thus, the State General Fund monies of $5 7 million appropriated, matched by approximately the same amount in Federal grants, engendered an additional $3 6 million in Federal funds for this past fiscal year, for a total Federal matching of $9 4 million

In the 1966–67 fiscal year, with a General Fund expenditure of $5 3 million, at a Federal matching ratio of 75%, there will be an increase in Federal funds of $8 to $10 million.

DEPARTMENT OF REHABILITATION
TOTAL FEDERAL-STATE EXPENDITURES

62–63	$9 5 Million
63–64	$11 1 Million
64–65	$13 5 Million
65–66	$22 5 Million
66–67	$31.5 Million (Estimated)

SECTION III

POLICY REVIEW, FINDINGS AND RECOMMENDATIONS

A review and in-depth analysis of State rehabilitation policies and practices is especially timely, in view of the fact (pointed out in the previous section) that the Department's budget has more than tripled in the last four years The increase in Federal funds available for the employment rehabilitation of disabled persons is the result of growing nationwide concern in this field California's program is developing rapidly under the stimulus of Federal dollars, but the State Legislature has provided scant direction and has played a relatively passive role The Legislature has not initiated major rehabilitation policy during the last 12 years and has authorized little in the way of additional State financing The 1959 Report of the Joint Interim Committee on the Education and Rehabilitation of Handicapped Children and Adults, Senator James J. McBride, Chairman, represents the last comprehensive review of the rehabilitation field by the Legislature

Although the Department of Rehabilitation is the smallest social agency in California, its task is given high priority by the public and by government officials The Department does not undertake this task alone, but works in a broad field along with the other social agencies "Rehabilitation" is a goal of virtually every social agency in the State The functions of the various agencies in relation to this goal must be differentiated It is the duty of the Legislature to pinpoint the responsibility of each department in the achievement of the aims of rehabilitation The major task of the Committee at this point is to define the function of the Department of Rehabilitation vis-à-vis the other departments, so that the Legislature may consider the financing and legislation necessary to fulfill this function.

A UNIFORM LEGISLATIVE VIEW

The Legislature has consistently expressed and proven its concern for the rehabilitation of the disabled However, the many legislative proposals which have been enacted all too often represent a piecemeal approach The rehabilitation program has been augmented at various times, according to the urgings of special interest groups and the availability of favorable Federal matching These factors, along with the failure of the Legislature to reevaluate rehabilitation policy, have resulted in a patchwork program, with pieces scattered among various departments

As previously indicated, any comprehensive analysis cannot be arbitrarily limited by departmental jurisdictions The Committee would be failing in its duty if it merely recommended adjustments and modifications within the established programs of the Department of Rehabilitation In order to go beyond existing departmental lines, a func-

tional orientation to the problems of rehabilitation is offered here This functional viewpoint provides the necessary means of dividing the broad responsibility among various agencies on a systematic basis

A functional perspective emphasizes *type of service,* as opposed to a clientele orientation, which looks at services in terms of a particular *class of persons* Occasionally, a functional and a clientele orientation may coincide Objective characteristics of a class of persons, such as physical disability, blindness, or retardation, may define service needs peculiar to a particular class. While this may occur in some cases, it is contended here that most service needs cut across categorical lines and that a functional method of organization best meets these needs

A strictly client-centered orientation has a number of disadvantages; first, there is a great likelihood that several departments or divisions would be duplicating a whole gamut of services—each for the group it serves (We see this happening currently in many State programs) In addition, responsibility is difficult to pinpoint in cases where a group does not fit into any existing client category Furthermore, there is inequality of service, with some persons receiving greater benefits based on group membership rather than on need for service A clientele-centered bureaucracy leads to fragmented and piecemeal program development and repetition of programs which cut across group lines

It is recognized that special interest groups will continue to argue for a clientele-centered department for themselves, a department which may include services ranging from the granting of assistance, to help with self-care, to placement in gainful employment But the contention of the Committee is that any group of persons, whether blind, disabled, retarded, or otherwise disadvantaged, vary among themselves as to characteristics and needs and that many characteristics and needs are shared with other groups and with the general population It is further contended that there should be a distinction between *welfare* programs which maintain the individual economically and in his capacity for self-care and self-improvement, and *vocational rehabilitation* programs which propel him to economic independence These functions should not be mixed in a single administrative structure, whether organized on the basis of a clientele-orientation or some other basis The more varied a department's responsibility, the less primary is the concern with vocational counseling and placement

As the Director of the Department of Rehabilitation stated in a hearing held on December 7, 1965, "I think the chief function of the Department of Social Welfare is income maintenance, and in the process of keeping family income up to a reasonable level, they are also charged with the responsibility of doing what they can to get them back to work Our responsibility is strictly rehabilitation, whether they come from welfare, from an institution or . right out of school or whether they are just not in any of these situations, but because of an automobile accident or injury or something like that, they lose their job and they need to have somebody come in and help them get going again, even though they aren't (economically) dependent "

CONCEPTS OF REHABILITATION

The Committee sees the Department of Rehabilitation's task as that of training the physically and mentally disabled in marketable skills leading to competitive employment Self-care, self-improvement, and social adjustment are certainly prerequisites to successful economic rehabilitation, but they are secondary to the Department of Rehabilitation's goals.

The Committee feels that legislative and budgetary augmentations, which have expanded and added to the Department's functions, should bring a direct measurable return in terms of client employment, rather than in terms of maintaining or improving personal adjustment Job success for the disabled is important not only for economic reasons, but because of the by-product of social and psychological benefits to the individual Many personal adjustment problems can be improved through gainful employment This is not to deny that many disabled persons must be trained to accept and live with their disability, but such training is not primarily vocational in character and should be the function of a more appropriate agency

In order to concentrate the efforts of the Department of Rehabilitation in the proper channels of vocational training, the existing programs must be scrutinized Some present functions of the Department need to be redefined or transferred as a precondition to a proper focus on strictly *rehabilitation* functions which are the major means of breaking the cycle of dependency Not only is it more logical for the Department of Rehabilitation to concentrate its efforts on employment preparation and placement for practical and accountability reasons, but this specialization should result in better utilization of Federal matching funds.

The Federal Government does allow rehabilitation matching for prevocational adjustment training, as well as vocational training itself However, there is a ceiling on Federal rehabilitation funds Therefore, priorities must be set, as the establishment of too many goals will dilute the use of the funds

It is not always easy to draw the dividing line between vocational and prevocational activities. Probably no one could fail to see the distinction between prevocational instruction in personal grooming and communication skills (braille or lipreading) and vocational activities such as on-the-job training in private employment Many activities in the rehabilitation sphere are not so easily differentiated But some guiding distinction between the two must be formulated by the Legislature in order to make the Department of Rehabilitation primarily accountable for vocational training Otherwise, the Department may continue to develop nonvocational programs in a cradle-to-grave approach to clients

The functions of other departments would also be clarified if the Department of Rehabilitation's function were delimited in terms of vocational training for disabled and socially handicapped persons The Departments of Education, Social Welfare, Mental Hygiene, and Employment could then gear their own activities to coordinate with, but not duplicate, the Department of Rehabilitation's primary efforts. The Department of Rehabilitation is, therefore, protected from assuming the burdens of other departments in such areas as compensatory

education, vocational training for the nondisabled, and the provision of social services of a nonvocational nature In addition, in no case should the Department provide purely medical rehabilitation when it is available under the State Medi-Cal Program

The problem of setting limits to the scope of the Department of Rehabilitation has been further challenged by the 1965 Amendments to the Vocational Rehabilitation Act These amendments have extended the definition of disability by giving greater weight than ever before to sociocultural factors A person with educational and cultural disadvantages may find that a minor defect prevents him from obtaining gainful employment and, therefore, makes him eligible for rehabilitation services. A person without these disadvantages of background presumably would be able to overcome a minor disability on his own and would not be eligible for rehabilitation services. Under the broadened definition, the client will still have a verifiable mental or physical defect, but an emphasis on the sociocultural factors contributing to his unemployability is also permitted

While any attempts to better the situation of the disadvantaged is commendable, this new emphasis raises major issues in regard to financing and setting priorities In 1964–65, the Department of Rehabilitation turned away over 25,000 of 40,000 persons referred for service. The Department itself acknowledges that even the total 40,000 referrals constitute only a fraction of the disabled persons in need of vocational rehabilitation. However, because of financial limitations, the Department admits that it is unable to serve three-fourths of those coming to it for service, much less to seek out those who have never been referred Therefore, even with the new Federal funds coming to the Department, it is doubtful that adequate attention can be given to this large clientele which now includes the disadvantaged

The Department of Rehabilitation, in testimony presented in the hearings before this Committee, declared the policy of serving the "hard core" disabled, rather than those with minor disabilities who could be more easily placed. Is the serving of the less disabled, even though culturally disadvantaged, a retreat from this position? It is already difficult to steer a middle course between those who are "unfeasible" for rehabilitation and those who are not sufficiently disabled, without injecting this new element The primary reason the Department gives for serving only a selected group of the disabled is lack of financing Should the additional Federal financing now available be used to extend rehabilitation services to a larger proportion of the traditional clientele, or should it be used to offer services to a new class of disabled persons, the socioculturally disadvantaged who may have only minor discernable mental or physical defects?

The Committee recommends the establishment of a Board to review and adopt regulations, hear client complaints, and, in cooperation with the Legislature, set priorities for rehabilitation services This Board shall make every effort to fulfill the needs of the culturally disadvantaged, without retarding the growth of programs for other physically and mentally disabled persons This may require the use of the funds and programs of other departments in the service of the disadvantaged It may also mean an additional State appropriation for rehabilitation purposes.

There follows a discussion of the specific issues raised in the Committee hearings on rehabilitation

POLICY IMPLICATIONS OF COOPERATIVE AGREEMENTS

During the past fiscal year, as has been briefly mentioned, the Department of Rehabilitation initiated and completed several contract agreements with other State agencies and local school districts At the completion of the current fiscal year (1966–67), in excess of $8 million of Federal rehabilitation money will have been infused into programs of other departments A brief discussion of the policy implications of such agreements is merited

The Legislature has always urged that the maximum resources be brought to bear on any given problem, whether in the field of rehabilitation, education, or medical care At the same time, however, the Legislature has also insisted upon holding agencies fully responsible for specific areas of financial investment The determination of responsibility requires particular clarification in regard to interdepartmental agreements

The issue can be discussed by using a few examples. The Department of Corrections is charged with the responsibility and is given financial support for the broad purpose of rehabilitating law violators and returning them to society This is rehabilitation not only in vocational terms, but certainly economic rehabilitation is a major part of the goal Likewise, special education programs for handicapped children are the responsibility of local school districts and the State gives special reimbursement to enable the particular needs of the handicapped to be met One of the major considerations of special education programs for the handicapped is preparing the children for adult life and work

During the past year, these programs and other broadly rehabilitative programs in departments other than the Department of Rehabilitation have been enriched through Federal rehabilitation money The existing State and local expenditures in these programs have served as the base for Federal rehabilitation matching money. If this trend continues, other agencies will be competing for a larger share of rehabilitation funds This in turn will decrease the availability of funds for clients not in the programs of these other agencies

Approximately half of the total Rehabilitation budget for 1966–67 will be used in multi-service centers and cooperative agreements, neither of which are directly administered by the Department of Rehabilitation As laudable as these programs are, the important question is, should they be financed at the expense of basic programs?

Because of this question, the Committee views the present cooperative agreements as only pilot projects which must be reviewed by the Legislature before they are reauthorized or expanded, so that measurement or performance tests may be applied The Legislature must weigh the degree of success and financial effects that these programs will have on the unmet needs of all the potentially employable disabled in the State The effect of rehabilitation funds on the total budget of the agencies involved in contracts with the Department of Rehabilitation must also be evaluated. Recognizing the convenience of applying Federal financing to existing programs, the Committee warns against

the possible danger of confining rehabilitation innovations to persons in institutional settings, without expanding services to persons outside these institutions The emphasis of rehabilitation should be community-based and should reduce, rather than provide an incentive to, institutionalization in regard to the availability of services

BUSINESS ENTERPRISE PROGRAM

The Business Enterprise Program, referred to in Section I, is concerned with the training and placement of blind persons as operators of vending stands, cafeterias, and snack bars These facilities are located in public buildings, Federal, State, or local. The program was initiated by Congress in 1936 through the Randolph-Shepard Act.

In California, business enterprises are semi-independent operations The Division of Rehabilitation of the Blind offers training, selects locations, buys equipment, and installs the operators After the operator has a location, he is essentially a private businessman, in that he does his own planning, hiring, buying, and bookkeeping However, he is subject to the periodic supervision of the Division and to its rules and regulations He is encouraged to train other blind and handicapped workers in food service and to give them priority in hiring In addition, he must pay a fixed percentage of his gross receipts, not to exceed 6%, into an operators' trust fund

There are about 250 blind operators, with net earnings ranging from less than $200 up to $2200 per month (See previous description of Business Enterprise Program in Section I) The earnings depend upon the size and character of the location, the type of food service (cafeteria, snack bar or dry vending stand), and the initiative and imagination of the individual The Committee has been generally impressed with the Business Enterprise Program in terms of its economic success and the quality of the food service offered to customers.

The problems connected with the program arise primarily out of its semi-independent character. The operators are not direct employees of a sheltered program and do not have constant supervision or fixed wages Still, they remain at their locations on the Division's approval They have limited influence over the rules which may affect their livelihood No provision is made for placing the successful operators in competitive employment The Business Enterprise Program offers economic opportunities to selected individuals, but does not fall into the classification of competitive employment

The Committee recommends that specific steps be taken by the Division to provide economic incentives to individuals to move out of the program and into independent food service occupations If turnover were encouraged in this way, the Business Enterprise Program could become a training ground for a larger number of blind persons, rather than a protected place of permanent employment for a few The Committee recognizes that there are certain risks involved in this approach, since competitive businesses may fail Risks may be involved, but successes are more genuine In addition, training followed by placement in competitive employment is more consistent with the goals of rehabilitation.

Another issue of special concern to the Committee is the amount of discretion the Division has in the use of the operators' trust fund The fixed percentage of each month's gross income which goes into the operators' trust fund is to be used for improvements to existing locations, such as the addition, maintenance, and replacement of equipment.

In 1963, the Legislature authorized the Department to spend a portion of these funds to establish *new* locations Setting up entire new locations is extremely expensive and use of the operators' trust fund for expansion purposes necessarily limits the amount available for improvement to existing locations Many marginal locations are in need of substantial remodeling, which is often very costly It is important to keep a reserve in the trust fund and to prevent excessive expansion to new locations at the expense of existing locations.

The Department already has a General Fund allocation as its major source of money for expansion purposes. The operators should have some legal guarantee that their trust fund will not be completely depleted by new expansion activities. To this end, the Committee recommends that a fixed percentage of the operators' trust fund be allocated for expansion purposes and that the remainder be retained exclusively for maintenance and improvements to existing operations.

ORIENTATION CENTER FOR THE BLIND

The program of the Orientation Center for the Blind, presently under the Department of Rehabilitation, is not primarily vocational in character. Employment is not its essential goal and it does not provide vocational training in marketable skills Rather, the Orientation Center assists newly blinded persons to adjust to blindness.

If he is to function at all, every individual who becomes blind must become oriented, whether the techniques of orientation are taught in an intensive and formalized manner, or they are learned over a long period of time by trial and error In general, it is vital that the individual be started in the orientation process soon after blindness If he is not, he is likely to become defeated and dependent because of the crushing weight of attitudes and opinions which equate blindness with dependency and helplessness

In general, those people entering the Orientation Center are new in the experience of being blind and must concentrate on those problems raised by blindness, they do not have, nor is it reasonable to expect them to have, a clear vocational objective. In addition, there are many blind people who need orientation training and who will never develop a vocational objective, for example, mothers and homemakers are an important group to whom this generalization would apply. Although orientation is a necessary prerequisite of vocational training, it is not something uniquely of value to vocational rehabilitation Spokesmen for the Department of Rehabilitation agreed in public testimony that the activities of the Orientation Center, though often followed by employment, are prevocational in character.

Orientation in the techniques of daily living is much more a social service than a rehabilitation function. It falls directly within the scope of services for self-care and self-improvement.

If the Orientation Center were transferred to the Department of Social Welfare, 75% reimbursement would probably be available under the Social Service Amendments of 1962 The Committee is working with officials of the Department of Health, Education, and Welfare to clear up doubts raised in Committee hearings about such a transfer The funding aspect is especially important, since another Orientation Center is projected for the Los Angeles area.

This new source of funding is important because California is already receiving maximum Federal matching under the Rehabilitation Act, but there is no ceiling on social service matching In addition, the Orientation Center Program, when transferred to Social Welfare, would not have to be limited to serving persons with specific vocational goals This high quality prevocational program could be continued and expanded under the general provisions of the public assistance Social Service Amendments For many blind persons, orientation is a first step which eventually leads them to vocational training Under the recommended reorganization, the orientation program would continue to stimulate the client's self-confidence and motivation to seek a vocational objective The latter can be given greater attention by the Department of Rehabilitation when it becomes exclusively concerned with vocational matters.

It is recommended that the Orientation Center program be transferred to the Division for the Blind, already established in the State Department of Social Welfare The existence of this division would seem in itself to be a contradiction of the functional principle enunciated earlier However, orientation is not now provided to any other group even though persons suffering from other sudden and catastrophic disabilities would no doubt benefit from similar programs Therefore, until the orientation program is expanded to include physical disabilities other than blindness, it would seem practical to place it in the Division for the Blind of the Department of Social Welfare.

One generalized benefit resulting from a clientele orientation toward the blind has been that the blind have been a pioneering and experimental group Many changes which were later extended to others were originally tried on a pilot basis with the blind But this does not justify the indefinite perpetuation of services exclusively for the blind It is recommended that orientation programs be considered for other disabled groups When this is accomplished, orientation of the blind would be provided within an administrative context of social services

FIELD SERVICE COUNSELORS FOR THE BLIND

Many of the considerations applicable to the Orientation Center also apply to the Field Service Counselors Program This service is presently administered by the Department of Rehabilitation

Field Service Counselors visit blind people in their homes Clients of this service range in age from the very young (16 years) to the very old Thus the requirements of the clients vary from the need for stimulation and motivation to become self-sufficient, to palliative measures designed to make the individual's situation a little more comfortable at the close of life The methods and techniques taught the blind clients in their homes must, of course, be those appropriate to blindness, but in addition, they must be adapted to the needs and prospects

of the individual. Some of the people served by the field service counselor will become candidates for vocational rehabilitation services, but others will not. Because some of the services are not vocationally oriented, about half of the program is eligible for Federal matching as a rehabilitation program It might be possible to revamp the activities and purposes of the service in a manner which would qualify for full federal reimbursement within the Department of Rehabilitation, but insofar as this is done, essential elements such as training in self-care would be sacrificed

According to testimony presented in hearings before the Committee, almost the whole battery of Field Services would come under the Social Service Amendments, including such services as protective services; the enlistment of relatives, friends and other resources for planning, the securing and maintenance of safe living conditions, and personal, home and money management

The proposal made here is to transfer the Home Teacher Counselor Service to the Department of Social Welfare under the Social Service Amendments, thus enabling this important program to continue unemasculated, and receive a higher share of Federal reimbursement than is available under the provisions of the Vocational Rehabilitation Act

It is likely that many aged and mentally retarded, as well as some severely physically disabled, could benefit from a Home Teacher-Counselor Service During previous Legislative Sessions, proposals for a similar service for retarded persons have been presented, but have not been successful in being enacted Future legislation should look to expansion of the Home Teacher-Counselor Service to appropriate groups To avoid further fragmentation of service programs such as this one, the Legislature should establish the responsibility in the Department of Social Welfare before expansion to other groups takes place

SHELTERED WORKSHOPS

Another area of special interest to this Committee is sheltered workshops Most sheltered workshops in California are privately operated and employ persons with various mental or physical disabilities, and sometimes the aged. There are also three State operated manufacturing workshops for the blind (California Industries for the Blind—CIB) and three Opportunity Work Centers for the Blind

The State operated shops are supported financially by production profits and State General Fund allocations These shops are the direct administrative responsibility of the Department of Rehabilitation

Private workshops are financed by a combination of profits and donations In addition, some retarded recipients of Aid to Totally Disabled receive private workshop "training" paid for by the Department of Social Welfare, even though the expectation of competitive employment is minimal The private workshops also receive referrals and administrative guidance from the Department of Rehabilitation Rehabilitation counselors use these workshops as a resource for their clients

There has been much confusion about the purposes of workshops Some claim to be temporary training centers, yet they usually do not teach marketable skills and many, even most, workers remain year after year Other workshops see their function as the provision of gain-

ful employment to severely disabled persons unable to compete in the labor market Yet, regular work, adequate wages, minimum working conditions, and routine fringe benefits are not provided Between 80 and 90% of CIB workers, for example, still must supplement their wages with Blind Aid Still other workshops claim to offer occupational therapy and other services to help the client develop good working habits, adequate relationships with others, activity, and a way to fill his time.

Most workshops do not want to be stamped with the terminal employment or therapeutic labels Instead, they try to combine these functions with a rehabilitation function; the resulting danger is that none of the three purposes, training, the provision of employment, or therapy, may be adequately realized The workshop becomes the "single door" through which the client is offered solutions to all his problems A Department of Rehabilitation fact sheet describes the "number one goal of California Industries for the Blind" in these multiple terms: "Rehabilitation of the blind through dignified profitable employment by means of work evaluation, work adjustment, on-the-job training, work experience and placement in private industry."

Even skills which depend on products now in a declining market "offer opportunities for work evaluation, work adjustment, and work experience." These "opportunities" are not the opportunities sought by the employment-minded trainee

The same departmental fact sheet goes on to describe how four workers at the Los Angeles CIB facility achieved gainful, competitive employment Two found employment in skills learned at the workshop; one as a brush maker, the other in a drapery manufacturing company The other two rehabilitants found work in their former professions of piano tuner and musician In these latter cases, CIB takes the credit for giving them the "confidence and encouragement . . that led to successful placement "

If, as the Committee contends, the rehabilitation process is training in marketable skills, and the measurement of success is gainful employment, then rehabilitation is a relatively minor function of workshops. To the extent that workshops do not fulfill a rehabilitation function, they should not be a primary economic training resource for the Department of Rehabilitation.

Over the past three years, 41 persons have left CIB for other employment. Out of the current 254 employees, 184 have been in the workshop for at least one year and 105 have been there five or more years Twenty persons have been there 20 years or more

As more positive and fruitful steps are taken to provide those services leading to the reintegration of disabled persons into society and for adequate public assistance where such reintegration is not feasible or does not include earning a livelihood (as in the case of the very old), the need and justification for the existence of sheltered workshops is progressively lessened, or at least is changed In any event, full employment, full integration into society and a maximizing of the capacity to earn a livelihood of each disabled person are the appropriate goals to be sought, rather than a return to social isolation, the workshop, and economic dependency

Instead of relying on sheltered workshops, public or private, to provide training in marketable skills for disabled persons, other training resources should be more fully utilized The long experience of California Industries for the Blind has demonstrated the workshops' failure as genuine training centers, even though they have enjoyed full State support

There are ongoing training programs, such as MDTA, which could conceivably include some handicapped persons Colleges and vocational schools should be utilized more fully, perhaps by paying extra fees for any additional effort involved in including a handicapped student Private vocational schools and private employers too should be given guidance and reimbursement to stimulate their involvement in training disabled persons A disabled person who completes a training program along with nonhandicapped students has a headstart in obtaining and adjusting to competitive employment

The Department is reimbursing some employers for giving on-the-job training to disabled clients The Committee recommends a stronger emphasis in this direction Another hopeful sign on the horizon is the Manpower Services Act, recently considered by Congress. This Act would transform present Employment Service Offices into job clearance centers which would give special attention to the disabled and disadvantaged. These directions would seem more fruitful than a segregated workshop program, however well-developed In addition, there is no doubt that using existing training and placement facilities would be more economical in the long run than creating a separate workshop training program for the handicapped

The majority of existing workshops, public and private, perform essentially prevocational adjustment functions or at best provide nonskilled extended employment for severely disabled, retarded, or aged persons If workshop programs are to continue to rely on public financial support, they would seem to be more appropriately a part of a broadly based social service program rather than a function of a rehabilitation agency If, as is contended here, the task of the Department of Rehabilitation is placement in marketable skills, workshops have not proven their contribution to this end Funds allocated to workshops under the present setup have not produced commensurate results.

The funds which the Department of Rehabilitation is providing for reimbursement and guidance to private workshops and the funds (in excess of $400,000) expended by State-operated shops should properly be transferred to the Department of Social Welfare The workshop goals of self-respect, work activity, and social stimulation can be more fully dealt with by that Department Workshops which teach handicrafts, sewing, and other such tasks can supplement or, in some cases, substitute for the types of activities now taught by Home Teacher-Counselors For persons able to leave their homes during the day, but not able to benefit from formal orientation in a residential setting, a community workshop program could offer not only handicraft instruction, but training in mobility, braille, lipreading, cooking, and other appropriate skills. Such shops could continue to provide day-time activities for aged, retarded, and disabled persons These modified social service type workshops or centers should be geared to the needs

of individuals and not confined to economic rehabilitation goals Each client's potential for self-care and self-direction would be encouraged, and where an employment potential was evidenced, a referral would be made to the Department of Rehabilitation or to the Department of Employment. There is little question that these multiple functions would be reimbursable under the social service provisions, thus freeing rehabilitation money for the undiluted task of vocational training and placement

There is a particular need for social service work activity programs for the 9000 mentally retarded who comprise 11% of the Aid to Totally Disabled caseload As the Chief of the Disabled Services Bureau of the Department of Social Welfare has stated "For the mentally retarded . , the most valuable service that can be provided for those who are able to benefit is a work activity program This helps to reduce institutionalization and possible delinquency and provides a constructive atmosphere and form of activity which is beneficial to the individual and his family In some instances, it results in the transition to gainful employment

"Since 1964, through an agreement between the State Department of Social Welfare and the Department of Rehabilitation, work training center services have been provided for an average of 200 MR's monthly in the State at a cost of a maximum of $50 a month per recipient There is almost universal agreement that this is a very constructive and desirable program and should be expanded because of the increasing numbers of MR's in the caseload The current program is made available through a $30,000 Legislative grant matched by $90,000 Federal money The Legislative appropriation should be doubled or tripled in order to take maximum advantage of existing protected work placements. For many of the retarded, the work training center is a long-term, indefinite placement which has positive values for the individual, the family and the community."

There may also be a limited role for rehabilitation workshops which provide short-term, intensive work training for handicapped clients. This training needs to be oriented toward competitive employment and be established separately from the social service workshops Such a bona fide training program could be part of a rehabilitation program

Spokesmen for the Department of Rehabilitation have warned against classifying any workshop clients as "terminal " They feel that when workshops serve a variety of purposes, no one entirely loses hope of employment As the Deputy Director of the Department of Rehabilitation stated to the Committee: "In the matter of commingling, the question of whether you do better by keeping those with high vocational potential separate from those with relatively low vocational potential, it's my feeling and it's the feeling of many, many people in the rehabilitation profession that it's unfortunate to place a stamp of nonfeasible or hopeless on any individual, because this changes in time This changes with what is happening in the outside world, the job market, pressures for one kind of material advantage and another, with the response that an individual feels to the outside world It changes with the individual and development of maturity, shall we say We get a youngster into a workshop who has never had any work experience before, doesn't even know what a job means and what it

entails, the 8-hour a day routine, the coffeebreak, the lunch hour, etc, and when he comes in there, he may look to be completely hopeless because o fthe fact he has no pattern, no habits aiming toward work. Give him three months. Give him one month Give him X period of time there, working with people who are molding themselves toward an objective and toward a goal, a prospective goal, and a change very often takes place So that I, for one, would balk very seriously and very definitely at saying that we should place a label of terminal on any individual, that this terminal label is a relative thing and can change at any point, and exposing the individual to experiences which affect his motivation is one of the objectives of Rehab "

While this philosophy is commendable, the Committee considers that the placement of a potentially employable young handicapped person in a sheltered shop, with workers who have been there for many years, may well have the negative effect of discouraging rather than encouraging him At the same time, the Chairman pointed out that no one would want to label any individual "nonfeasible."

"We'd have to agree with you maybe philosophically, and if it was not a question of State expenditures. But our concern is that the function of Rehab should be to deal with people who can be rehabilitated for gainful employment, can become self-supporting and be put back into the economic arena And the people who are going to need custodial care should be under Social Welfare The welfare worker in his function can begin to try to encourage these people who will develop and may have a hidden potential, who can then be transferred over to Vocational Rehabilitation We're trying to have a more straight-line function here "

SECTION IV

CONCLUSION

The ultimate aim of rehabilitation is the achievement of gainful employment When he becomes competitively employed and self-supporting, a disabled individual enters the mainstream of society But many disabled persons are denied this opportunity because rehabilitation services have been so limited. "Hire the Handicapped" is a slogan heard one week of the year, but is quickly forgotten and too often not translated into reality. As an ultimate goal, rehabilitation enjoys universal acceptance. The Committee is concerned with transforming this ultimate, abstract goal into something immediate and concrete

The public has a great investment, both financial and humanitarian, in disabled citizens Considerable amounts are spent for special education programs for handicapped children, and additional funds are expended on welfare payments and institutional care. The public cannot afford to default on these investments in the disabled A slightly greater effort, which turns tax consumers into tax producers, will bring a higher return on the total investment

California has, up to now, had a low rate of return on its investment in the disabled In 1964–65, out of 54 states and territories, California ranked 54th in the number of rehabilitants per 100,000 population (See Appendix 15.) In 1965–66, California again ranged 54th. In considering these figures, it must, of course, be recalled that the Department of Rehabilitation has a stated policy of concentrating on the relatively more difficult cases Even granting this, California has a poor record as the Nation's largest and, presumably, most progressive state.

The Department of Rehabilitation has not questioned some of its methods, such as the use of sheltered workshops, which have failed to produce results. It also has not devoted sufficient attention to "selling" the capabilities of the handicapped to employers The Legislature, for its part, has failed to give policy direction and, because it has had no clear formulation of rehabilitation goals, has been reluctant to authorize additional State funds As Appendix 15 shows, California is 37th in per capita expenditures for rehabilitation purposes It ranks 25th among the states in the rate of increase in state rehabilitation expenditures over the past 10 years If the Legislature adopts the framework recommended by this Committee, it can proceed more confidently in authorizing additional State expenditures in the rehabilitation field. The Committee regards the improvement of California's rehabilitation record as one of the greatest challenges confronting State Government As has been pointed out in the body of this report, the peripheral service functions of the Department of Rehabilitation are of great importance to the persons being served. The Committee recognizes this importance and would like to see such functions transferred out of the Department, in order that more people may be assisted In transferring these peripheral func-

tions, the Department of Rehabilitation would be able to fully concentrate its efforts in the area of skilled training

By having the Department of Rehabilitation responsible only for job training and placement, measures of its success would be more valid Prevocational programs would be shifted to Social Welfare, the primary social service agency, which would continue to work with the clients toward increased independence The Department of Rehabilitation would concentrate on economic rehabilitation.

There are, of course, some difficulties with measuring the Department of Rehabilitation's success in terms of number of placements, since this may lead to rejection of difficult or long-term cases As long as there is a good rehabilitation potential, any person should be accepted for service Statistical measures of success could differentiate between persons with initially more severe handicaps (from a physical, mental, and educational standpoint) and persons with less severe handicaps

The narrowing of the Department of Rehabilitation's goals to a focus on training in marketable skills and employment placement will allow a broadening in another way Increased funds already authorized should permit a more liberal interpretation of what constitutes an employment disability, something the Department is already contemplating

One of the most important trends is the liberalization of the definition of employment disability by the Department of Rehabilitation which should have the corresponding effect of decreasing the Department of Social Welfare's responsibility for employment counseling, training, and placement of the handicapped Social Welfare has justified much of its employment training efforts on the basis that welfare recipients are so often rejected by both the Department of Employment and the Department of Rehabilitation. The Department of Employment frequently considers a recipient too disabled for placement, or too unskilled and uneducated The Department of Rehabilitation may reject a person on the grounds that he does not have a sufficient mental or physical disability to constitute an employment handicap or, conversely, that because he is so severely limited, the likelihood of placement is remote

If Rehabilitation expands its clientele to include those whose physical or mental disability itself is slight, but whose disability *together* with a lack of skills produces a bona fide employment handicap, *and* those severely disabled persons who have some chance of success with long and intensive effort, then the Department of Social Welfare should be relieved of much of the training responsibility it has assumed by default There would appear to be no necessity for having the Department of Social Welfare establish duplicate rehabilitation programs. That Department already has a sufficient range and variety of functions.

In speculating on the effect on Social Welfare of a redefinition of the Department of Rehabilitation's aims, the Committee recognizes that no agency operates in a vacuum. The Committee is well aware that in the immediate future, it must devote equal study to the goals and functions of the other social agencies and to the proper relationship among those agencies.

Because this report is concerned principally with the Department of Rehabilitation, it is like the completed portion of a puzzle whose other components will be added later The recommendations made here regarding the Department of Rehabilitation must be viewed in this light, recognizing that the Committee is not unmindful of the broader effects of its proposals on all social programs.

APPENDIXES

All Rehabilitants

APPENDIX 1

FORM R-305
(June 1960)

FORM APPROVED
BUDGET BUREAU NO 83-R045

U S DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

OFFICE OF VOCATIONAL REHABILITATION

OUTCOME OF REHABILITATION

Year ending June 30, 1965 — Vocational rehabilitation agency, State of California

Check type of agency: General agency ☒ Agency for the blind ☐

Part 1.—Number of rehabilitants, grouped by type of occupation at closure, with the blind shown separately from other rehabilitants (Items 13a(1), 11, 15) [a]

(a) Types of occupation	(b) All disability groups combined [b]	(c) Blind in both eyes	(d) Other disability groups combined
(1) Total (Lines (2) + (11) + (12))	3,462	155	3,307
(2) Occupations (for pay or profit), except in sheltered workshops (lines (3) through (10)) [c]	3,127	128	2,999
(3) Professional occupations (Codes 0-0 through 0-3)	147	18	129
(4) Semiprofessional, managerial, and official occupations (Codes 0-4 through 0-9)	300	35	265
(5) Clerical and sales occupations (Code 1)	823	23	800
(6) Service occupations (Code 2)	608	17	591
(7) Agricultural, fishery, forestry, and kindred occupations (Code 3)	74	3	71
(8) Skilled occupations (Codes 4, 5)	615	14	601
(9) Semiskilled occupations (Codes 6, 7)	406	14	392
(10) Unskilled occupations (Codes 8, 9)	154	4	150
(11) Work in sheltered workshops [c] (Item 11, Code 2)	154	15	139
(12) Homemakers (own home) and other unpaid family workers (own family) (Codes 000, XXX)	181	12	169

[a] Item numbers refer to Form R-300 Code numbers refer to the USES "Dictionary of Occupational Titles", Volume II major occupational groups and divisions, and OVR's "Vocational Rehabilitation Manual", Chapter 13 Section 2, pages 13-2-0/9 through 13-2-87

[b] Disability classification is on the basis of client's condition at time of acceptance If, *at acceptance*, a rehabilitant was blind in both eyes he should be included in column (c) If, *at acceptance*, a rehabilitant was blind in only one eye or had a visual defect less than blindness, he should be included in column (d)

[c] Regardless of occupation, all rehabilitants working in sheltered workshops should be omitted from lines (3) through (10) and included in line (11)

All Rehabilitants

APPENDIX 2

FORM R-305 (June 1960)

Part 2—Number of rehabilitants, grouped by total earnings in week before closure (Item 16) [d]

(a)	(b)
Earnings group	Number of rehabilitants
(1) All rehabilitants (Lines (2) through (9))	3,462
Rehabilitants with earnings of	XXXXXXXXXXXXXXXX
(2) Zero [e]	178
(3) More than zero but less than $10	15
(4) $10–19	56
(5) $20–39	306
(6) $40–59	524
(7) $60–79	873
(8) $80 and over	1,410
(9) Amount not reported (Code XX)	0

[d] Item number refers to Form R-300
[e] This line should include homemakers (own family), unpaid family workers (own family), and farmers (if self-employed), but no one else

All Rehabilitants

APPENDIX 3

FORM R-304 (July 1, 1963)

(a)	(b)
Time measured	Number of rehabilitants
Part 6.—Length of time from employment to closure (Item 4b(2)) (Cont'd)	XXXXXXXXXXXXXXXXX
(6) 7 months or more	735
(7) Time not reported (Code X)	0

Part 7.—Number of rehabilitants, grouped by source of case services, specified types of services received, cost of those services (Item 18) [d]

(a)	(b)	(c)	(d)	(e)
	Number of rehabilitants			
Source and type of service	Total	With cost to VR agency	Without cost to VR agency	Cost to VR agency (dollars)
Case services provided				
1. By rehabilitation or adjustment centers	180	177	3	35,230
2 By workshops	197	189	8	50,058
3 By other sources (Lines A through H) [e]	XXXXXXXX	XXXXXXXX	XXXXXXXX	2,371,928
A Diagnostic procedures	3,420	3,293	127	180,500
B Surgery and treatment	623	614	9	185,440
C Prosthetic appliances	620	617	3	102,461
D Hospitalization and convalescent care [f]	173	162	11	73,140
E Training and training materials	2,446	2,329	117	988,760
F Maintenance and transportation	1,837	1,837	0	714,253
G Tools, equipment, and licenses	378	378	0	98,204
H Other (Items 3-H, Form R-300) [e]	137	116	21	29,165
I No services reported in Item 18, Form R-300	32	XXXXXXXX	XXXXXXXX	XXXXXXXX

[d] This item number and the letters at left margin refer to Form R-300
[e] Line H does not include vocational guidance or placement.
[f] Other than for diagnosis

All Rehabilitants

APPENDIX 4

FORM R-303
(June 1960)

Form approved
Budget Bureau No 83-R043 1

U S DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

VOCATIONAL REHABILITATION ADMINISTRATION

DISABILITY OF REHABILITANTS

Year ending June 30, 1965 — Vocational rehabilitation agency, State of California

Check type of agency: General agency ☒ Agency for the blind ☐

Part 1.—Number of rehabilitants, grouped by major disabling condition (Item 13a(1)), cost of specified types of services (Item 18) for each disability group [a]

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Disability group				Number of rehabilitants		
Telescoped OVR code no	Detailed OVR code no	Description	Cost of specified services (dollars) [b] (see footnote)	Total	Those receiving specified services, with cost to V R agency [a]	All other rehabilitants [a]
00-24, 29	--	All groups	2,371,928	3,462	3,433	29
		Amputation or absence of upper extremities	XXXXXX	XXXXXX	XXXXXX	XXXXXX
00	02, 09	Group A	12	1	1	0
01	00, 01, 03-08	Group B	37,618	61	61	0
		Amputation or absence of lower extremities	XXXXXX	XXXXXX	XXXXXX	XXXXXX
02	12, 17	Group A	8,602	10	10	0
03	10, 11, 13-16	Group B	70,433	91	91	0
04	18, 19	Amputation or absence of upper and lower extremities	4,601	3	3	0
		Orthopedic deformities or impairments (except amputations) of upper extremities	XXXXXX XXXXXX	XXXXXX XXXXXX	XXXXXX XXXXXX	XXXXXX XXXXXX
05	21, 26, 28, 33, 35, 40	Group A	7,109	11	11	0
06	20, 22-25, 27, 29-32, 34, 36-39	Group B	98,421	159	159	0
		Orthopedic deformities or impairments (except amputations) of lower extremities	XXXXXX XXXXXX	XXXXXX XXXXXX	XXXXXX XXXXXX	XXXXXX XXXXXX
07	42, 45, 46, 48, 51, 53, 56	Group A	123,855	133	132	1
08	41, 43, 44, 47, 49, 50, 52 54, 55	Group B	199,463	251	250	1
		Orthopedic deformities or impairments (except amputations) of upper and lower extremities and trunk	XXXXXX XXXXXX XXXXXX	XXXXXX XXXXXX XXXXXX	XXXXXX XXXXXX XXXXXX	XXXXXX XXXXXX XXXXXX
09	57-59 61-63, 65-67, 69	Group A	504,007	749	747	2
10	60, 64, 68	Group B	6,889	7	7	0

FORM R-303 (July 1, 1963)

All Rehabilitants

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Disability group				Number of rehabilitants		
Telescoped OVR code no	Detailed OVR code no	Description	Cost of specified services (dollars) [b] (see footnote)	Total	Those receiving specified services, with cost to V R agency [c]	All other rehabilitants [a]
		Orthopedic deformities or impairments of other parts of the body	XXXXXX XXXXXX	XXXXXX XXXXXX	XXXXXX XXXXXX	XXXXXX XXXXXX
11	70-73, 77	Group A	13,510	21	21	0
12	74-76	Group B	31,924	39	39	0
13	78	Blind in both eyes	21,982	155	154	1
14	79-82	Other visual impairments	62,041	90	89	1
15	83	Deaf, unable to talk readily	83,232	140	138	2
16	84	Deaf, able to talk readily	53,289	56	56	0
17	85	Other impairments of hearing	69,177	125	125	0
18	87, 88	Impaired speech	22,585	30	29	1
19	89, 90	Psychosis and psychoneurosis	233,957	352	343	9
30	91	Personality, character, and behavior disorders	65,328	110	109	1
20	92	Mental retardation or deficiency	43,890	155	151	4

All Rehabilitants

APPENDIX 5

FORM R-303 (July 1, 1963)

Year ending June 30, 1965 — Vocational rehabilitation agency, State of California

Check type of agency: General agency ☒ Agency for the blind ☐

Part 1 —Number of rehabilitants, grouped by major disabling condition, cost of specified types of services for each disability group (Continued)

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Disability group				Number of rehabilitants		
Telescoped OVR code no.	Detailed OVR code no	Description	Cost of specified services (dollars) [b] (see footnote)	Total	Those receiving specified services, with cost to V R agency	All other rehabilitants [c]
21	94	Cardiac diseases	136,309	200	196	4
23	96	Epilepsy	68,512	77	76	1
23	99	Tuberculosis, pulmonary	82,009	102	101	1
24	93, 95, 97, 98, YY	Disabling conditions NEC	223,174	334	334	0
29	--	Not reported	0	0	0	0

[a] Item number and telescoped OVR code numbers refer to Form R-300
[b] The services are those covered by Form R-304, part 7, except lines 1 and 2 thereof
[c] The distinction between "with cost" and "without cost" is based solely on the services covered by Form R-304, part 7. The cost in column (d) of this table (Form R-303, part 1) was incurred for the rehabilitants in column (f) of this table. Column (g) includes rehabilitants shown in Item 18, Form R-300, as receiving the foregoing services but without cost to the VR agency, plus rehabilitants for whom Item 18 does not report any services

Part 2 —Number of rehabilitants, grouped by mobility at acceptance and at closure (Item 14) [d]

(a)	(b)	(c)	(d)	(e)	(f)
	Number of rehabilitants				
			Capable of activity outside home [e]		
Time	Total (Columns (c) through (f))	Housebound (Code 1)	With help of other person (Code 2)	Without help of other person (Code 3)	Not reported (Code 9)
At acceptance	3,462	7	37	3,418	0
At closure	3,462	2	17	3,443	0

[d] Item number and code numbers refer to Form R-300
[e] With or without help of device

All Rehabilitants

APPENDIX 6

FORM R-303 (June 1960)

Year ending June 30, 1965 — Vocational rehabilitation agency, State of California

Check type of agency: General agency ☒ Agency for the blind ☐

Part 3.—Number of rehabilitants, grouped by primary cause of major disabling condition (Item 13a(2)) [f]

(a)	(b)	(c)	(d)
Primary cause			
OVR code no.	Description	WHO code no	Number of rehabilitants
50–69	All primary causes	--	3,462
50	Poliomyelitis	080–081	106
51	Infective and parasitic diseases except poliomyelitis	001–074, 082–139	116
52	Cancer and related neoplasms except benign	140–205	21
53	Benign neoplasms and those of unspecified nature	210–239	9
54	Diabetes mellitus	260	35
55	Alcoholism	307, 322	8
56	Vascular lesions affecting central nervous system	330–334	2
57	Multiple sclerosis	345	7
58	Cerebral spastic infantile paralysis	351	41
59	Other cerebral paralysis	352	30
60	Refractive errors	380	6
61	Cataract	385	17
62	Glaucoma	387	13
63	Inflammatory diseases of ear and mastoid process	390–394	8
64	Other diseases, injuries, and congenital conditions of ear and mastoid process	395–398	311
65	Arthritis and rheumatism, except rheumatic fever	720–727	146
66	Miscellaneous congenital malformations of nervous system and sense organs	753	31
67	Other congenital malformations	750–752, 754–759	127
68	Diseases and injuries NEC	*	2,428
69	Not reported	9	9

[f] Item number and OVR code numbers refer to Form R-300

* Among these are Codes 240–254, 270–306, 308–321, 323–326, 340–344, 350, 353–379, 381–384, 386, 388, 389, 400–716, 730–749, 760–795, E919, N800–N848, N851–N869, N871, N886–N888, N896–N898, N920–N998

All Rehabilitants

APPENDIX 7

FORM R-302
(June 1960)

Form approved
Budget Bureau No 83-R042 1

U S DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

VOCATIONAL REHABILITATION ADMINISTRATION

ECONOMIC STATUS OF REHABILITANTS [a]

Year ending June 30, 1965

Vocational rehabilitation agency, State of California

Check type of agency: General agency ☒ Agency for the blind ☐

Part 1.—Number of rehabilitants, grouped by OASI disability insurance status at acceptance (Item 3), crossed by age at acceptance (Item 5)

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
			Application allowed		Application denied			
Age in years, at acceptance (Item 5)	All rehabilitants (Columns (3) through (9))	No application for OASI disability insurance (Code 3)	Worker cases (freeze or cash) (Code 4)	Childhood disability (Code 5)	Worker cases (freeze or cash) (Code 6)	Childhood disability (Code 7)	Application still in process (Code 8)	Applicant status unknown (Code 9)
(a) All ages	3,462	3,060	148	18	163	5	55	13
(b) Under 45	2,554	2,421	88	14	88	5	36	12
(c) 45–49	365	310	17	3	28	0	7	0
(d) 50–64	425	324	40	1	47	0	12	1
(e) 65 and over	8	5	3	0	0	0	0	0
(f) Not reported	0	0	0	0	0	0	0	0

[a] Item numbers and code numbers refer to Form R-300.

All Rehabilitants

APPENDIX 8

FORM R-302
(June 1960)

Part 2.—Number of rehabilitants, grouped by primary source of support at acceptance (Item 9)

(a)	(b)	(c)
Primary source of support	Number of rehabilitants	
(1) Total (Lines (2) through (5) and (8) through (14))	3,462	XXXXXXXXXXXX
(2) Current earnings,[b] interest, dividends, rent (Code 00)	260	XXXXXXXXXXXX
(3) Family and friends (Code 01)	1,378	XXXXXXXXXXXX
(4) Private relief agency (Code 02)	6	XXXXXXXXXXXX
(5) Public assistance (Lines (6) + (7))	615	XXXXXXXXXXXX
(6) Public assistance, at least partly from Federal funds (Code 03)[c]	XXXXXXXXXXXX	539
(7) Public assistance, without Federal funds (Code 04)[c]	XXXXXXXXXXXX	76
(8) Public institution—tax supported (Code 05)	81	XXXXXXXXXXXX
(9) Workman's compensation (Code 06)	254	XXXXXXXXXXXX
(10) OASI disability benefits (Code 07)	84	XXXXXXXXXXXX
(11) Other disability, sickness, survivors', or age-retirement benefits (except from private insurance), unemployment insurance benefits (Code 08)	577	XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
(12) Annuity or other non-disability insurance benefits (private insurance) (Code 09)	3	XXXXXXXXXXXX XXXXXXXXXXXX
(13) Disability or sickness benefits (private insurance), savings, other sources (Code 10)	198	XXXXXXXXXXXX XXXXXXXXXXXX
(14) Not reported (Code 99)	6	XXXXXXXXXXXX

[b] Current earnings include wages, salaries, and self-employment income
[c] A client whose primary source of support at acceptance is public assistance belongs in Code 03 if *all* or *some* of his public assistance came from a program or programs having Federal funds. He belongs in Code 04 if *all* of his public assistance came from a program or programs having no Federal funds

All Rehabilitants

APPENDIX 9

FORM R-302
(July 1, 1963)

Year ending June 30, 1965 — Vocational rehabilitation agency, State of California

Check type of agency: General agency ☒ Agency for the blind ☐

Part 3.—Number of rehabilitants, grouped by public assistance received at acceptance, during rehabilitation, and at closure (Item 10)

(a) Public assistance status	(b) Number of rehabilitants	(c) Total public assistance per month (dollars)
(1) At acceptance (Lines (2) + (6) + (7))	3,462	XXXXXXXXXXX
(2) Clients receiving public assistance (Lines (3) + (4) + (5))	721	117,071
(3) From programs with Federal funds (Item 10a)	614	107,152
(4) From programs without Federal funds (Item 10b)	103	9,311
(5) From both kinds of program (Item 10)[d]	4	608
(6) Clients not receiving public assistance (Item 10)	2,741	XXXXXXXXXXX
(7) Clients not reported as to whether receiving public assistance (Item 10)	0	XXXXXXXXXXX XXXXXXXXXXX
(8) During rehabilitation (Lines (9) + (13) + (14))	3,462	XXXXXXXXXXX
(9) Clients receiving public assistance (Lines (10) + (11) + (12))	233	31,406
(10) From programs with Federal funds (Item 10a)	129	21,743
(11) From programs without Federal funds (Item 10b)	103	9,311
(12) From both kinds of program (Item 10)[d]	1	406
(13) Clients not receiving public assistance (Item 10)	3,229	XXXXXXXXXXX
(14) Clients not reported as to whether receiving public assistance (Item 10)	0	XXXXXXXXXXX XXXXXXXXXXX

All Rehabilitants

APPENDIX 10

FORM R-302
(July 1, 1963)

Part 3.—Number of rehabilitants, grouped by public assistance received at acceptance, during rehabilitation, and at closure (Item 10)—Continued

(a)	(b)	(c)
(15) At closure (Lines (16) + (20) + (21))	3,462	XXXXXXXXXXX
(16) Clients receiving public assistance (Lines (17) + (18) + (19))	185	24,735
(17) From programs with Federal funds (Item 10a)	163	22,006
(18) From programs without Federal funds (Item 10b)	21	2,359
(19) From both kinds of program (Item 10)[d]	1	370
(20) Clients not receiving public assistance (Item 10)	3,277	XXXXXXXXXXX
(21) Clients not reported as to whether receiving public assistance (Item 10)	0	XXXXXXXXXXX XXXXXXXXXXX

[d] Each person included in this line received public assistance from at least one program having Federal funds and (at the same time) from at least one program having no Federal funds. Such a person is excluded from the two preceding lines.

APPENDIX 11

Part 4.—Number of rehabilitants, grouped by work status at acceptance and at closure (Item 11)

(a)	(b)	(c)
Work status	Number of rehabilitants	
	At acceptance	At closure
(1) Total (Lines (2) through (9))	3,462	3,462
(2) Wage or salaried workers competitive labor market (Code 1)	255	2,891
(3) Wage or salaried workers sheltered workshop (Code 2)	31	154
(4) Self-employed (except BEP)* (Code 3)	16	207
(5) BEP* (Code 4)	0	33
(6) Homemakers (own home) and unpaid family workers (own family) (Codes 5, 6)	129	177
(7) Not working students (Code 7)	383	XXXXXXXXXXX
(8) Not working others (Code 8)	2,648	XXXXXXXXXXX
(9) Work status not reported (Code 9)	0	XXXXXXXXXXX

* "BEP" means a State-agency-managed *Business Enterprise Program*

All Rehabilitants

APPENDIX 12

FORM R-302
(July 1, 1963)

Year ending June 30, 1965 — Vocational rehabilitation agency, State of California

Check type of agency. General agency ☒ Agency for the blind ☐

Part 5.—Number of rehabilitants, grouped by total earnings in the week before acceptance (Item 12)

(a) Earnings group[1]	(b) Number of rehabilitants
(1) All rehabilitants (Lines (2) through (9))	3,462
Rehabilitants with earnings of	XXXXXXXXXXXXXXX
(2) Zero[2]	3,027
(3) More than zero but less than $10	38
(4) $10–19	61
(5) $20–39	112
(6) $40–59	77
(7) $60–79	72
(8) $80 and over	75
(9) Amount not reported (Code XXXX)	0

[1] As noted, this table covers earnings in the week before acceptance. Form R-305, part 2, shows earnings in the last week before closure.

[2] Among the persons in this line are homemakers (own family), unpaid family workers (own family), and farmers.

All Rehabilitants

APPENDIX 13

FORM R-301
(June 1960)

Form approved
Budget Bureau No 82-R041 1

U S DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

VOCATIONAL REHABILITATION ADMINISTRATION

CHARACTERISTICS OF REHABILITANTS

Year ending June 30, 1965

Vocational rehabilitation agency, State of California

Agency for the blind ☐

Check type of agency: General agency ☒

(a) Code*	(b) Characteristic*	(c) Number of rehabilitants
--	Part 1.—Age in years, at acceptance (Item 5)	XXXXXXXXXXX
--	Total	3,462
--	Less than 20	529
--	20–34	1,253
--	35–44	882
--	45–54	626
--	55–64	164
--	65 and over	8
XX	Not reported	0
--	Part 2.—Number of dependents, at acceptance (Item 6)	XXXXXXXXXXX
--	Total	3,462
--	None	1,523
--	1–3	1,258
--	4 or more	681
X	Not reported	0

* Item numbers and code numbers refer to Form R-300

FORM R-301
(July 1 1963)

All Rehabilitants

(a) Code[a]	(b) Characteristic[a]	(c) Number of rehabilitants
--	Part 3—Sex (Item 7)	XXXXXXXXXXXX
1 + 2	Total	3,462
1	Male	2,335
2	Female	1,127
--	Part 4—Race (Item 8)	XXXXXXXXXXXX
1 through 4, and X	Total	3,462
1	White	3,080
2	Negro	332
3	Indian	9
4	Other	41
X	Not reported	0
--	Part 5—Education Years of schooling completed, prior to acceptance (Item 19)	XXXXXXXXXXX
--	Total	3,462
--	None	11
--	1–4	74
--	5–6	105
--	7–8	453
--	9–10	669
--	11–12	1,704
--	13 and over	446
X	Not reported	0

TWO COPIES OF THE COMPLETED FORMS R-301 THROUGH R-305 ARE TO BE SUBMITTED DIRECTLY TO THE DIVISION OF STATISTICS AND STUDIES, VOCATIONAL REHABILITATION ADMINISTRATION, WASHINGTON 25, D C., AND ONE TO THE REGIONAL OFFICE EARLY ENOUGH TO REACH THOSE DESTINATIONS ON OR BEFORE AUGUST 31 FOLLOWING THE FISCAL YEAR COVERED BY THE REPORT

Authorized signature..... Date ....., 196....

APPENDIX 14

NUMBER OF REFERRALS AND CASES, BY AGENCY, FISCAL YEAR 1964

Agency[1]	Referrals				Cases				
	During fiscal year				During fiscal year				
						Closed from active load			
	Total	Accepted for services	Not accepted for services[2]	Remaining at end of year[3]	Total active load (receiving services)	Rehabilitated	After rehabilitation plan initiated[4]	Before rehabilitation plan initiated[5]	Remaining at end of year[6]
United States, total	313,371	179,132	171,735	162,504	399,852	119,708	15,131	20,962	244,951
Alabama	9,157	4,864	1,563	2,730	10,884	3,537	351	688	6,408
Alaska	527	308	115	204	422	96	22	27	277
Arizona									
General	2,350	880	639	831	1,603	480	71	25	1,027
Blind	119	57	19	43	192	24	13	6	149
Arkansas	9,035	3,937	2,541	2,560	7,004	3,000	245	134	3,625
California	49,024	9,025	25,035	5,964	20,171	4,044	1,246	3,503	12,378
Colorado	4,958	2,103	1,291	1,564	4,632	1,323	313	159	2,837
Connecticut									
General	2,747	1,348	477	922	3,928	971	222	177	2,558
Blind	182	35	51	46	226	4	16	4	152
Delaware									
General	1,435	729	454	252	1,402	662	20	79	750
Blind	56	47	5	4	74	21	6	3	44
District of Columbia	4,548	1,739	1,836	973	3,468	1,201	230	188	1,849
Florida									
General	25,409	8,153	10,512	6,744	16,105	5,172	1,066	1,032	8,835
Blind	3,476	409	1,629	1,438	1,231	238	65	33	895
Georgia	20,806	8,452	5,884	12,470	15,830	6,803	434	483	8,110
Guam	115	35	34	46	76	18	0	2	56
Hawaii									
General	1,979	595	798	586	1,460	325	175	47	913
Blind[7]	89	42	23	21	103	12	8	5	78
Idaho									
General	2,105	471	878	756	1,124	404	27	14	684
Blind	28	16	11	1	52	15	2	2	33
Illinois	13,737	6,695	3,864	3,168	14,632	3,750	564	1,249	9,069
Indiana									
General	4,009	2,123	922	964	5,024	1,533	82	129	3,281
Blind	185	49	49	67	163	21	11	10	126
Iowa									
General	6,272	1,920	1,717	2,635	4,636	1,444	227	162	2,803
Blind	315	79	48	88	252	59	14	11	168
Kansas									
General	2,736	988	749	999	2,642	737	150	238	1,497
Blind	357	87	76	194	279	90	18	10	171
Kentucky	12,927	4,974	4,595	3,358	7,359	2,075	124	178	3,982
Louisiana									
General	4,939	3,245	808	886	8 702	2,128	250	328	6,086
Blind	706	250	100	347	823	130	15	12	666
Maine									
General	2,036	549	623	864	1,204	367	49	90	698
Blind	274	108	64	102	238	57	5	17	158
Maryland	7,205	2,918	2,304	1,983	6,670	1,974	374	408	3,914
Massachusetts									
General	12,672	3,299	5,132	4,241	7,100	2,212	246	397	4,245
Blind	312	173	32	107	469	85	21	7	356
Michigan									
General	10,060	4,104	1,995	3,961	10,523	3,181	393	219	6,740
Blind	376	208	80	88	538	97	45	44	352
Minnesota									
General	7,603	2,170	3,233	2,194	6,075	1,538	346	285	3,906
Blind	1,186	389	490	407	709	157	31	42	479
Mississippi									
General	3,920	2,006	764	1 150	4,179	1,525	116	144	2,384
Blind	1,139	410	486	243	987	325	33	35	604
Missouri									
General	8,880	2 840	3,566	2,474	6,079	2,566	242	179	3,092
Blind	855	252	325	278	524	165	23	11	325
Montana									
General	2,040	815	637	588	2,219	530	29	81	1,579
Blind	235	22	179	34	77	26	3	2	46
Nebraska									
General	1,986	933	425	738	2,958	630	75	185	1 779
Blind	439	133	162	144	267	73	19	2	173

See footnotes at end of table

NUMBER OF REFERRALS AND CASES, BY AGENCY, FISCAL YEAR 1964—Continued

Agency[1]	Referrals				Cases				
	During fiscal year				During fiscal year				
						Closed from active load			
	Total	Accepted for services	Not accepted for services[2]	Remaining at end of year[3]	Total active load (receiving services)	Rehabilitated	After rehabilitation plan initiated[4]	Before rehabilitation plan initiated[5]	Remaining at end of year[6]
Nevada									
General	959	194	581	184	387	113	51	25	198
Blind	36	19	10	7	48	14	3	2	29
New Hampshire									
General	641	344	167	130	878	215	136	32	495
Blind	109	37	23	49	101	19	1	8	73
New Jersey									
General	11,420	4,542	3,199	3,679	8,720	2,890	247	370	5,213
Blind	905	218	206	393	593	170	19	30	374
New Mexico									
General	1,889	587	780	522	1,001	319	57	39	586
Blind	231	64	58	109	142	41	5	4	92
New York									
General	31,752	11,359	10,525	9,868	26,558	7,641	1,113	1,675	16,229
Blind	1,989	805	263	621	1,752	462	35	67	1,188
North Carolina									
General	13,346	7,644	3,919	1,793	16,816	6,214	338	287	9,977
Blind	1,475	617	572	286	1,506	524	17	77	889
North Dakota	2,064	467	504	1,093	1,157	374	27	57	999
Ohio									
General	7,882	3,676	1,975	2,231	8,731	2 642	354	672	5,063
Blind	741	336	169	236	1,150	194	56	97	811
Oklahoma	9,914	3,843	2,942	3,429	10,284	2,258	288	512	7,240
Oregon									
General	6,624	1,624	2,934	2,066	3,274	721	143	270	2,140
Blind	265	51	111	101	160	34	10	3	113
Pennsylvania									
General	47,904	16,799	13,982	16,523	36,325	11,103	1,907	1,441	21,874
Blind	4,235	921	1,446	1,868	1,708	478	46	101	1,083
Puerto Rico	12,775	2,712	1,860	8,203	7,031	1,530	87	215	5,199
Rhode Island									
General	5,502	2,310	1,155	2,037	4,753	1,501	285	21	2,946
Blind	138	98	12	28	280	65	12	29	174
South Carolina									
General	15,996	5,108	6,040	4 848	11,083	3,263	223	331	7,266
Blind	364	168	114	82	435	118	6	18	293
South Dakota									
General	1,449	403	330	715	1,077	294	31	7	745
Blind	517	49	167	301	148	32	7	1	108
Tennessee									
General	10,472	3,791	3,089	3,592	8,357	2,861	261	239	5,006
Blind	1,120	341	327	452	782	309	14	29	430
Texas									
General	17,089	6,012	5 998	5,079	13,156	4,288	366	315	8,207
Blind	1,25o	429	488	339	90s	220	30	33	534
Utah	1,930	998	522	410	2,668	704	151	21	1,792
Vermont									
General	1 614	336	310	968	910	186	50	29	645
Blind	39	15	14	10	40	10	4	1	25
Virginia									
General	18 084	5,449	7,683	4,952	10 838	4 175	232	557	5,874
Blind	930	199	267	464	380	163	11	5	201
Virgin Islands	150	44	5	101	93	40	0	0	53
Washington									
General	6,461	1,504	2,322	2,635	4,017	1,045	178	221	2,573
Blind	343	119	102	122	301	54	14	16	217
West Virginia	19,258	8,129	5,248	7,881	15,326	3,875	134	1,138	10,181
Wisconsin									
General	10,894	4,037	3,854	2,903	9 870	2,627	160	117	6,966
Blind	161	104	25	32	263	57	14	19	174
Wyoming	955	214	106	635	423	88	8	0	332

[1] In States with 2 agencies the State division of vocational rehabilitation is designated as "general" and the agency under the State commission or other agency for the blind is designated as "blind."

[2] Services declined: services not needed, individual not eligible individual needing services other than vocational rehabilitation, referred to other agencies, migratory shifting of the individual, etc

[3] Eligibility for rehabilitation not yet determined

[4] Closed after rehabilitation plan was initiated, received rehabilitation service but never reached the point of employment because of personal factors illness, aggravated disability, etc

[5] Closed prior to initiation of rehabilitation plan because of indifference of individual, increase in degree of disability, loss of contact, etc

[6] In process of rehabilitation on June 30, 1964

? Estimated

APPENDIX 15

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Vocational Rehabilitation Administration
Washington, D C 20201

November 12 1965

ADMINISTRATIVE SERVICE SERIES No. 66-7

TO State Boards of Vocational Education,
Divisions of Vocational Rehabilitation,
Commissions and Other Agencies for the Blind

SUBJECT 1965 Per Capita Expenditure and Rehabilitants per 100,000

The attached table shows the per capita expenditure of funds for vocational rehabilitation for each State for 1965 Ranked highest are those States which spent the most funds for vocational rehabilitation per person in the State Alongside per capita expenditures we show rehabilitants per 100,000 population in 1965, and the rank for each State, again with those rehabilitating the most persons per 100,000 population ranked highest This is an interesting and useful comparison of a measure of financial support for vocational rehabilitation and a measure of production

The usual analysis based on the financial reports will follow later.

JOSEPH HUNT
Assistant Commissioner

Attachment

Copy enclosed for REDISTRIBUTION
to State Accountant

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Vocational Rehabilitation Administration
Washington, D. C. 20201

1965 PER CAPITA EXPENDITURES FOR VOCATIONAL REHABILITATION AND REHABILITANTS PER 100,000 POPULATION

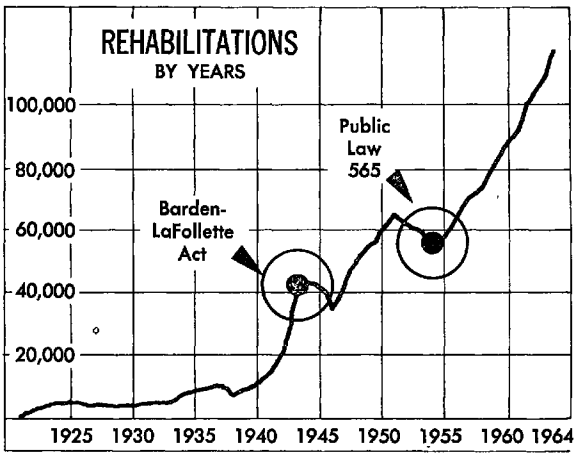
State or Territory	Per Capita Expenditures[1]			Rehabilitants per 100,000 population	
	Total Federal and State	State Funds			
		Amount	Rank	Number	Rank
Total	$ 79	$ 31	--	70	--
I Connecticut	35	18	51	39	48
Maine	60	22	43	47	39
Massachusetts	60	27	31	46	41
New Hampshire	49	13	53	39	50
Rhode Island	1 02	40	10	178	4
Vermont	1 14	38	19	80	36
II Delaware	1 02	52	9	127	9
New Jersey	54	26	36	52	34
New York	76	38	20	51	35
Pennsylvania	1 15	47	11	112	10
III District of Columbia	1 43	67	1	178	2
Kentucky	72	22	44	131	8
Maryland	61	26	33	70	21
North Carolina	1 15	35	22	176	3
Puerto Rico	59	27	32	85	25
Virginia	73	24	42	94	14
Virgin Islands	2 10*	63*	3	88	16
West Virginia	2 06	62	4	218	1
IV Alabama	1 89	54	7	110	11
Florida	91	32	25	108	12
Georgia	1 96	50	5	168	5
Mississippi	1 07	32	26	79	20
South Carolina	1 26	41	15	146	7
Tennessee	86	26	34	99	15
V Illinois	61	20	30	57	37
Indiana	31	12	54	36	49
Michigan	46	19	49	54	29
Ohio	44	18	50	29	52
Wisconsin	80	31	27	80	19
VI Iowa	89	26	38	47	38
Kansas	51	19	48	41	46
Minnesota	80	30	28	52	32
Missouri	64	26	39	65	23
Nebraska	59	19	47	54	30
North Dakota	86	26	35	52	33
South Dakota	1 09	35	23	48	37
VII Arkansas	2 18	65	2	163	6
Louisiana	85	29	40	68	24
New Mexico	60	20	46	46	43
Oklahoma	1 21	40	18	68	14
Texas	49	17	52	47	40
VIII Colorado	1 26	53	8	81	18
Idaho	64	21	45	58	26
Montana	83	30	29	82	17
Utah	72	25	41	68	22
Wyoming	1 35	55	6	46	42
IX Alaska	1 05	51	10	40	47
Arizona	1 15	42	13	41	45
California	82	28	37	19	54
Guam	1 71	40	17	29	51
Hawaii	1 04	45	12	56	28
Nevada	93	42	14	27	53
Oregon	87	25	24	53	31
Washington	78	33	21	42	44

[1] Under section 2 of the Vocational Rehabilitation Act
* Data estimated

Prepared by
State Fiscal Operations Branch
November 9, 1965

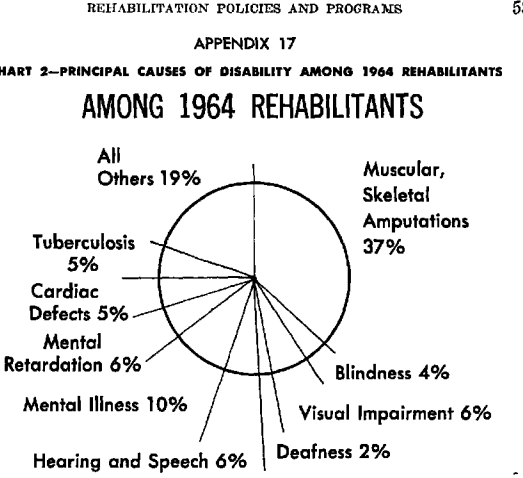
APPENDIX 16

CHART 1—REHABILITATION BY YEARS



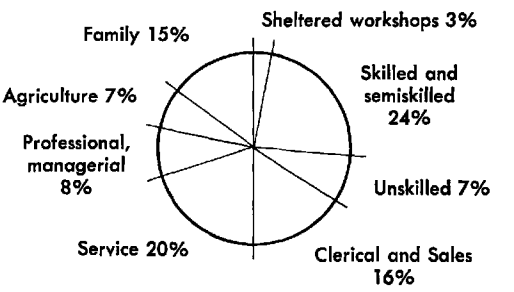
APPENDIX 17

CHART 2—PRINCIPAL CAUSES OF DISABILITY AMONG 1964 REHABILITANTS



APPENDIX 18

CHART 3—MAJOR OCCUPATIONS OF PERSONS REHABILITATED IN 1964



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ASSEMBLY INTERIM COMMITTEE REPORT
1965–67
Volume 21 Number 15
California Legislature

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

REPORT OF THE SUBCOMMITTEE ON FAIRS AND CONCESSIONS on the PROPOSED CALIFORNIA WORLD'S FAIR AT CORONA IN 1969

MEMBERS OF THE COMMITTEE

ROBERT W CROWN, *Chairman*
BURT HENSON, *Vice Chairman*

Hale Ashcraft	Leroy Greene	Carley Porter
Anthony Beilenson	Joseph Kennick	Howard Thelin
Frank Belotti	Frank Lanterman	Jerome Waldie
Carl Britschgi	Charles Meyers	(Resigned)
John L E Collier	James Mills	John Williamson
Charles Conrad	Don Mulford	Gordon Winton, Jr
Pauline Davis	Nicholas C Petris	George Zenovich

COMMITTEE STAFF

LOUIS J ANGELO, *Committee Coordinator*
WILLIAM BARNABY, *Legislative Consultant*
JOHN SIMONS, *Committee Assistant*
KEITH ANTELL, *Legislative Intern*
GAIL VESSELS, *Committee Secretary*
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Published by the
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CARLOS BEE
Speaker pro Tempore

GEORGE ZENOVICH
Majority Floor Leader

ROBERT MONAGAN
Minority Floor Leader

JAMES D DRISCOLL
Chief Clerk of the Assembly

LETTER OF TRANSMITTAL

January 24, 1967

HON. ROBERT W. CROWN
Chairman, Assembly Interim Committee on
Ways and Means

Dear Chairman Crown.

In accordance with House Resolution 710(v), 1965 General Session, the Subcommittee on Fairs and Concessions herewith submits its report on the proposed California World's Fair at Corona

The resolution requesting interim study of this subject matter was H R. 488 (Biddle), 1966 First Extraordinary Session

The subcommittee is grateful to all who participated in the public hearings as well as those who communicated with the subcommittee and its staff.

Respectfully submitted,

HALE ASHCRAFT, *Chairman*

Frank Belotti
Robert W. Crown
Leroy F. Greene
Joseph M. Kennick
James R. Mills
John Williamson
George Zenovich

LETTER OF TRANSMITTAL

Assembly Interim Committee on Ways and Means
California Legislature

January 30, 1967

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Dear Mr. Speaker and Members.

Your Interim Committee on Ways and Means, in accordance with House Resolution 710(v), 1965 General Session, herewith respectfully submits the final report of the Subcommittee on Fairs and Concessions on the subject of a proposed California World's Fair at Corona in 1969

The report was adopted unanimously by the eight-member subcommittee and we, the undersigned, concur in their findings and recommendations.

The chairman is appreciative of the intelligent and energetic leadership provided by Subcommittee Chairman Hale Ashcraft as well as for the diligent application of the subcommittee members and its staff

Respectfully submitted,

ROBERT W CROWN, *Chairman*

Hale Ashcraft
Anthony Beilenson
Frank Belotti
Carl Britschgi
John L E Collier
Pauline Davis
Leroy F Greene
Joseph M Kennick
Frank Lanterman
Charles W. Meyers
James R Mills
Don Mulford
Nicholas C. Petris
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Howard Thelin
John Williamson
Gordon Winton
George Zenovich

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

ROBERT W CROWN, *Chairman*

Report of the

SUBCOMMITTEE ON FAIRS AND CONCESSIONS

on the

PROPOSED CALIFORNIA WORLD'S FAIR AT CORONA, 1969–70

MEMBERS OF THE SUBCOMMITTEE

HALE ASHCRAFT, *Chairman*

Frank Belotti
Robert W Crown
Leroy F Greene
Joseph M Kennick
James R Mills
John Williamson
George Zenovich

STAFF

Louis J Angelo, *Coordinator*
Gail Vessels, *Committee Secretary*
Marin Husum, *Secretary*

INTRODUCTION

The Assembly Interim Committee on Ways and Means was referred the subject matter of House Resolution 488 introduced by Assemblyman Craig Biddle, 1966 First Extraordinary Session, which requested a study of the proposed California World's Fair at Corona, Riverside County, scheduled for 1969–70

The requested study had among its major objectives ascertaining to what extent the state would be called upon to participate, financially or otherwise, in the proposed fair and exploring the possible need for legislation

The Ways and Means Committee chairman referred the subject matter to the Subcommittee on Fairs and Concessions, which conducted two public hearings the first, on September 1, 1966, at Riverside; the second, on December 7, 1966, at Sacramento The report that follows represents the findings and recommendations resulting from those two hearings as well as from supplemental staff research

It should be pointed out that the proposed California World's Fair at Corona does not represent the first such effort to establish a world's fair in southern California

A similar subcommittee was appointed during the 1963–65 interim to investigate and submit a report to the Legislature on the then proposed world's fair at Long Beach (See Assembly Interim Committee reports, Volume 21, No 9, pp 36–37, March 15, 1965)

Following the unsuccessful Long Beach effort, at least two additional attempts were made to locate a world's fair elsewhere in southern California prior to the current effort at Corona.

In submitting its report to the 1965 Legislature on the proposed Long Beach World's Fair, the Ways and Means Subcommittee on Fairs and Expositions concluded, in part·

> "In considering any future authorization of state participation in a similar venture, the committee recommends extremely close scrutiny of the promotional organization and its financial support structure "

The subcommittee was particularly mindful of this suggestion in arriving at its finding and recommendations which follow:

I. FINDINGS

A. During the course of two public hearings conducted on the subject of a proposed world's fair at Corona, there was inadequate justification presented in the testimony that would cause the committee to recommend either official endorsement or participation, financial or otherwise, by the State of California

B. Conflicting testimony concerning the fair's promotional organization and evidence of an inadequate financial support structure lead the subcommittee to question the ability of California World's Fair, Inc., as presently constituted, to succeed in the Corona World's Fair effort.

C Lawsuits filed against the president and management of California World's Fair, Inc, combined with legal steps taken by the principal landowners of the proposed Corona fair site to invalidate land leasing arrangements, add further to the uncertainty of the current fair's promotional effort

D. At least one expert on the feasibility of major fairs and expositions [1] has questioned the ability of the Riverside-Corona area to "sustain a major world's fair at this time"

E The question of the state's "official endorsement" as contrasted with its "unofficial blessing" was the subject of controversy at both public hearings held by the subcommittee Literature circulated and statements made by the fair's promotional staff added to the general confusion

II. RECOMMENDATIONS

A The committee recommends that the state withhold official endorsement of the proposed California World's Fair at Corona and that there be no participation by the state, financial or otherwise, in the fair as presently constituted.

B We recommend that the Legislature seriously explore the enactment of legislation to regulate the promotion of future world's fairs or expositions in California

C. In considering such legislation, the committee recommends that particular attention be given to the conditions and the manner in which the name of the state may be used, the establishment of minimum standards for determining the professional qualifications of a world's fair promotional organization, and the advisability of requiring the posting of a performance bond by the fair's board of directors

D. To preclude the possibility of confusion over the question of official state endorsement of such fairs, the committee recommends consideration of any or all of the following alternatives.

1. Clear definition of the steps to be taken before a promotional organization may use the name of the state or any of its official representatives [2]
2 Requirement of legislative approval of the use of the state's name in connection with any future world's fair or exposition
3 The appointment by the Governor of a commission or committee on world's fairs and expositions, with legislative representation, to grant permission, based upon standards established by the Legislature, to use the state's name in the promotion of a world's fair or exposition

E. The committee recommends continued close scrutiny of the organizational and financial support structure of any future effort to promote a world's fair or exposition in this state.

[1] Harrison A Price, president, Economic Research Associates, letter to Sanford I Collins, president, California World's Fair, Inc, April 14, 1956

[2] The State of California has a "Commissioner General" appointed by the Governor to act as official spokesman for the state in connection with any fair or exposition endorsed by the Bureau of International Expositions in Paris California World's Fair, Inc, did not seek or obtain the Paris bureau's endorsement for the Corona Fair The president and executive manager of California World's Fair, Inc, however, did claim the support of the Commissioner General for the Corona Fair This claim was made on the tenuous basis of the Commissioner General's previous activities in behalf of the proposed Long Beach World's Fair

III. COMMENT

The September 1 hearing at Riverside and the December 7 hearing at Sacramento constitute the basis for the findings and recommendations contained herein However, the following important points merit attention here:

1 Mr Sanford I Collins, president and executive manager of California World's Fair, Inc :

a. Testified that he had no previous experience promoting world's fairs or expositions (To the best knowledge of the committee, no one else on Mr Collins' staff had prior experience)
b Revealed that he used some of the basic assumptions prepared by Economic Research Associates for the proposed Long Beach World's Fair to justify the feasibility of the proposed world's fair at Corona (A spokesman for the E R A told Collins that those assumptions did not apply to the Riverside-Corona area)
c Presented conflicting reports as to the manner, terms and conditions under which a state host pavilion would be constructed

2. A "financial statement" dated November 1966 by Harris, Kerr, Forster & Company, with the notation, "Prepared from the records without audit," in the committee's view revealed an inadequate financial support structure for a world's fair that proposed to open its gates in March of 1969

3. As indicated previously, lawsuits were filed against Mr Collins and California World's Fair, Inc As of the writing of this report the committee is aware of three such lawsuits having been filed in the Superior Court of Los Angeles [3] It is significant that one of these was filed by Business Direction, Inc , a Beverly Hills consulting firm, in the amount of $43 million for alleged breach of contract Business Direction, Inc , according to its President, Mr Al Grace, had an exclusive contract with California World's Fair, Inc , to solicit concessionaires for the proposed fair.

4 The committee has learned that, subsequent to the December 7 hearing at Sacramento, Mr Sanford Collins has resigned as president and general manager of California World's Fair, Inc On the basis of this information, the committee recommends careful scrutiny by the Legislature, the administration, and the Attorney General of the dissolution of California World's Fair, Inc , and the liquidation of its assets or of any reorganized effort to continue promotion of a world's fair at Corona.

5. Finally, the committee's findings and recommendations relative to the proposed world's fair at Corona are not to be construed as opposition to the concept of a world's fair in California We seek only to safeguard the good name and the financial interests of the State of California.

[3] Case Nos 896573, 896579 and 896580.

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ASSEMBLY INTERIM COMMITTEE REPORT

1965–67

Volume 21 Number 16

CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

REPORT OF THE SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT

on

THE CALIFORNIA BUY AMERICAN ACT

ISSUES AND ALTERNATIVES

MEMBERS OF THE COMMITTEE

ROBERT W. CROWN, *Chairman*
BURT HENSON, *Vice Chairman*

HALE ASHCRAFT
ANTHONY BEILENSON
FRANK BELOTTI
CARL BRITSCHGI
JOHN L E COLLIER
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JOHN WILLIAMSON
GORDON WINTON, JR.
GEORGE ZENOVICH

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Majority Floor Leader
ROBERT MONAGAN
Minority Floor Leader
JAMES D. DRISCOLL
Chief Clerk of the Assembly

LETTER OF TRANSMITTAL

Assembly Interim Committee on Ways and Means

February 6, 1967

To the Speaker and Members of the Assembly

Dear Mr Speaker and Members:

Your Interim Committee on Ways and Means, in accordance with House Resolution 710(v), 1965 General Session, herewith respectfully submits the final report of the Subcommittee on Economic Development on the subject of the California Buy American Act.

We, the undersigned, concur with the findings and recommendations contained herein

Respectfully submitted,

ROBERT W CROWN, *Chairman*

Hale Ashcraft*	Frank Lanterman †	Howard Thelin
Anthony Beilenson	Charles Meyers	John Williamson
Frank Belotti	James Mills *	Gordon Winton, Jr *
Leroy F Greene	Nicholas C Petris	George Zenovich
Joseph Kennick		

* With reservations
† Dissenting letter filed (see addendum)

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ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Subcommittee on Economic Development

Report on

THE CALIFORNIA BUY AMERICAN ACT, ISSUES AND ALTERNATIVES

Subcommittee Members

ROBERT W CROWN, *Chairman*

HALE ASHCRAFT
FRANK BELOTTI
ANTHONY BEILENSON
JOHN L E COLLIER
LEROY F GREENE
BURT HENSON
DON MULFORD
JAMES R MILLS
CARLEY V PORTER
JOHN C WILLIAMSON

Staff

LOUIS J ANGELO, *Coordinator*
DR FREDERICK BREIER, *Contract Consultant*
GAIL VESSELS, *Secretary*
MARIA HUSUM, *Secretary*

January 26, 1967

Members, Assembly Interim
Committee on Ways and Means

Gentlemen:

In accordance with H.R. 710(v) 1965 General Session, the Subcommittee on Economic Development herewith submits its report on the California Buy American Act

The subcommittee is grateful to the many individuals and organizations that assisted Dr Breier and the committee staff in the preparation of this report

Respectfully submitted,

ROBERT W CROWN, *Chairman*
Subcommittee on Economic Development

Hale Ashcraft *
Frank Belotti
Anthony Beilenson
Leroy F Greene

James Mills *
John Williamson
George Zenovich

* With reservations

CHANGES IN THE CALIFORNIA BUY AMERICAN ACT, ISSUES AND ALTERNATIVES

Report of the
Subcommittee on Economic Development
ROBERT W. CROWN, *Chairman*

By

DR. F. A. BREIER
Contract Consultant to the Assembly Ways and Means Committee

December 1966

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SUMMARY OF FINDINGS

1 Many purchases by the state and local governments are excessively expensive because of the total elimination of foreign competition. Modification of the California Buy American Act could lead to substantial savings in both levels of government

2 In essence, the act does not protect California economic interests but is of primary benefit to other states

3 California is an important market for foreign products, and the exclusion created by the Buy American Act has been noted with increasing disfavor by our important trading partners

4 The legal status of the act is unclear, and considerable litigation has resulted from this lack of clarity

5 Short-run losses to some economic groups are possible in the event the act is repealed

6 The federal Buy American Act, while enacted in the same year as California's act and for essentially the same reasons, does not provide for an absolute prohibition on foreign purchases California could profit from the federal experience

SUMMARY OF RECOMMENDATIONS

1 The California Buy American Act should be revised to eliminate existing legal uncertainties

2 The act should be liberalized to achieve the many advantages outlined herein, but transitional adversities must be minimized to allow smooth conversion to a more effective employment of resources in California

3 Outright repeal of the Buy American Act is not practicable A gradual approach to the removal of trade restrictions should mitigate the damages forecast by protectionists

4 A graduated domestic percentage preference, beginning with 20–25 percent and ending with an ultimate 10 percent over a five-year period, should replace the existing mandatory and total preference

I. THE ISSUES

The Act

The California Buy American Act was passed in 1933 and provides that public officials charged with the letting of contracts "shall let such contracts only to persons who agree to use or supply such unmanufactured material as have been produced in the United States, and only such manufactured materials as have been manufactured in the United States, substantially or from materials produced in the United States." (Government Code, Sections 4303–4305.)

Repeal or Reform Efforts

Efforts at repeal or substantial reform began soon after passage of the act. Following World War II, movement for repeal or reform of the measure gained momentum and a citizens' group to this end was founded in the California Council for International Trade. Under the guidance of former Assemblymen Thomas Rees and Nicholas Petris and Assemblyman Robert Crown, the California Legislature has carefully examined the domestic and international implications of the California Buy American Act.[1] However, the measure still remains on the statute books without substantial change.

Criticisms of the Act

There appears general agreement that the present measure is outdated. Even those who are supporting retention of the California Buy American Act have admitted that it no longer optimally serves the purposes of maximizing employment, economic activity, and economic welfare of the State of California, the objectives for which it was originally passed.

The criticisms raised against the California Buy American Act are of three general types: The first set emphasizes the high cost of state and local purchases, affected by the measure, due to the total and arbitrary elimination of foreign competition. The ban on foreign suppliers has in some instances created near-monopoly conditions and a notable lack of vigorous price competition among domestic bidders. The repeal or reform of the California Buy American Act would produce substantial savings for both the state and local governmental units and would thus reduce need for either additional burdensome taxes and/or excessive and unnecessary deficit financing. In the search for a solution of the often very serious fiscal problems, this reduction in cost of government purchases must not be ignored.

Out-of-state Protection

At the present time, the California Buy American Act does not require the bidder to show that the materials offered have been produced, even partially, in the State of California. While *detailed* quantitative estimates of the "California content" of the materials involved in

[1] *The California Buy American Act*, a background paper prepared for the Economic Development Subcommittee, Assembly Interim Committee on Ways and Means, by Dr. Frederick A. Breier, for the hearings in San Francisco November 9–10, 1964, in future referred to as *background paper*.

public purchasing in the state are not available, we have gathered evidence to show beyond any doubt that the California "Buy American" measure largely protects the production and high prices realized in *other* states of the Union. Defenders of the present measure have failed to show that it protects essentially *California* economic interests

International Implications

The second set of criticisms of the California Buy American Act involve its international implications California today leads all other states of this country in employment, exports and imports If it were a nation, rather than a state, it would rank fourth among the member countries of the O E C D as measured by "personal income " Representing a most important market for foreign products, California's arbitrary and total exclusion created by the California Buy American Act has been noted with increasing disfavor by our important trading partners The measure was singled out for criticism in the "Kennedy Round" at Geneva, the Japanese government, partly with the California measure in mind, now has the legal authority to discriminate against foreign goods in its governmental purchases, a right which up to now it has not used.

In 1965, California waterborne exports amounted to $2 07 billion while its waterborne imports trailed only slightly with $1 95 billion A substantial share of California's exports are represented by agricultural commodities, notably more affected by governmental intervention than industrial commodities in international trade Continued foreign displeasure over the California Buy American Act in its present form could well lead to open retaliation or hidden chicanery against these California agricultural exports.

Legal Aspects

The last set of criticisms of the California Buy American Act concern its legal status. Litigation in the courts centers on such questions as to whether the act is compatible with sections of the Constitution of the United States and whether the State of California has the right to discriminate against foreign commodities in its public purchases if "commercial resale" is involved. Decisions of the court and opinions of the Attorney General of the State of California have not clarified the complex situation and indeed, in some respects, only created additional confusion.

Purchasing Problems

A survey of public purchasing agents undertaken in the summer of 1966 brought out the legal uncertainties in which the typical California purchasing agent finds himself with regard to foreign bids About half of the units queried do not entertain foreign bids although many of them fear that this constitutes a violation of their duty to buy at the cheapest price Moreover, if it were ruled that the California Buy American Act does not apply to a given purchase, they might be guilty of having paid more than necessary

Among the other units that do purchase foreign materials, the legal defenses for doing so were found to be different in each case Some

used the GATT [2] provision relating to "commercial resale." Others defended their purchases on the grounds that domestic materials were not available, still others used such special legal defenses as "home rule."

In many cases, foreign purchases have brought about legal action on the part of domestic bidders who charged violation of the California code. Litigation in this field appears to be costly and slow and it is unlikely that many of the legal doubts discussed above will be resolved in the near future. The California Legislature has a clear duty to reform the measure and to help remove from the state and its subdivisions the legal existing uncertainties.

Obstacles to Repeal

During the past 33 years, certain California economic interests have become accustomed to the protection afforded by the absolute ban on foreign bids in public purchases. As is often the case, economic arrangements grow up behind artificial protective barriers and become part of the fabric. Against the benefits that would be gained from an outright repeal of the California Buy American Act, a number of industry and labor groups have claimed great losses in production, employment and wage levels that would result from the admission of foreign materials into public purchasing. Some of the damages claimed by these groups are purely imaginary or not related to the act; competition for California labor in many of these instances comes from other American states rather than from foreign countries, a competition which the California Buy American Act does not relieve.

However weak the protectionist arguments for the retention of the measure in the long run may be, short-run losses to some economic interest groups from its repeal are not unlikely.

A Revised Buy American Act

A revised Buy American Act should aim to maximize a combination of the following two objectives:

a. Obtain the long-term advantages of liberalization outlined above.

b. Minimize the transitional adversities to allow a smooth transfer into a more effective and more profitable employment of California resources.

The following paragraphs outline some of the alternatives in which these objectives could be achieved.

[2] General Agreement on Tariffs and Trade.

II. THE ALTERNATIVES

Percentage Preference vs. Repeal

The elimination of a hard and absolute ban on foreign purchases in the procurement of the State of California and its subdivisions as contained in the present California Buy American Act poses two distinct logical problems

a What should be the ultimate margin of preference for domestic as compared to foreign products? A margin of preference of 0 percent would be tantamount to a repeal of the present California Buy American Act The abandonment of a complete ban on foreign purchases implies that the margin of preference would have to be less than infinite Under Executive Order 10582 of 1954, the Buy American Act of the United States government provides substantially for a domestic preference of 6 percent

b Once the ultimate margin of preference has been established, there is a choice as to whether it should be achieved immediately or after a delay in time, also, whether the ultimate margin of preference should be reached in one step or in several

The U S. Buy American Act

On the problem of determining the ultimate preference, experience with the United States Buy American Act might be valuable in guiding the California Legislature in the modernization of the present California measure

The Buy American Act of the federal government [3] was enacted on March 3, 1933, about the same time as the California measure and for similar reasons Under it, United States government agencies are required to procure only domestic materials unless

a The head of the procuring agency determines their purchase would be inconsistent with public interest,

b He determines their cost would be unreasonable, or

c They are not produced in the United States in sufficient and reasonably available commercial quantities of satisfactory quality [4]

The major difference between the California and the United States Buy American measures is contained under b, the California measure provides for an infinite preference of domestic over foreign products or, to put it differently, an absolute ban of foreign materials in public purchases The United States measure instructs the purchasing agent to buy foreign materials if the cost of the competitive domestic merchandise "would be unreasonable "

[3] 41 U S Code 10-a-d
[4] Bureau of the Budget, Staff Study on the Foreign Procurement of the United States Government, 1963, p 4

The 25-percent Formula

While the act itself contained no criteria to define when domestic cost was to be considered "unreasonable," the Treasury Department's General Procurement Bureau ruled in 1934 that a domestic bid or cost was not to be considered "unreasonable" unless it exceeded the corresponding foreign bid by 25 percent [5] The protection actually afforded the domestic supplier is greater than this apparent differential because the foreign bid price on which the differential is based commonly includes the amount paid for United States import duties

This "25-percent formula" remained in effect until 1951 when the Department of Interior became dissatisfied with the level of prices resulting from bids by "the small, powerful and closely knit groups of domestic power equipment manufacturers that constituted its only source of supply" [6] It modified its procurement regulations authorizing the secretary to determine the domestic cost was unreasonable if a foreign bid afforded a total saving greater than $50,000, even though the differential was less than 25 percent [7]

Progressive Steps

The greatest progress in this field came during the administration of President Eisenhower when in 1954 he issued an order which among other things determined that a domestic bid price was unreasonable and that purchase at that price was inconsistent with the public interest if the domestic price exceeded the foreign price by 6 percent.[8]

Under the order, procurement agencies, however, did accept a domestic bid even if it exceeded the 6-percent differential under the following five conditions:

a Reasons of national interest.[9]

b If the domestic bid was tendered by a small business firm, then additional 6-percent differential for a total of 12 percent was now permissible [10]

c. If the domestic supplier produced the materials in an area of "substantial unemployment" as determined by the Secretary of Labor [11]

d Protection of essential national security interests [12]

e Whenever the head of an agency considers the domestic price "reasonable," or domestic production "in the public interests" [13] Under this section the TVA, for example, has accorded domestic manufacturers a 20-percent preference justifying the additional allowance on the ground that the agency would incur excessive design and inspection cost whenever it purchased foreign materials

[5] Laurence A Knapp, "The Buy American Act, a review and Assessment," Columbia Law Review, Vol 61, March 1961, p 431
[6] Knapp, *op cit*, p 432
[7] Department of Interior, Order No 2289, Amendment No 1, September 26, 1951
[8] Executive Order No 10582, paragraph 2, 19 Federal Register 8723 (1954)
[9] Executive Order No 10582, paragraph 2a, 19 Federal Register 8723 (1954)
[10] Executive Order No 10582, paragraph 3b, 19 Federal Register 8723 (1954) and *Bureau of the Budget Staff Study, op cit*, p 5
[11] Executive Order No 10582, paragraph 3c, 19 Federal Register 8723 (1954)
[12] Executive Order No 10582, paragraph 3d, 19 Federal Register 8725 (1954)
[13] Executive Order No 10582, paragraph 5, 19 Federal Register 8725 (1954)

Lessons From the Federal Experience

The lessons to be learned from federal experience toward reform of the California Buy American Act are summarized

a If an ultimate level of preference of domestic over foreign materials in public purchases has to be adopted, the range of from 5 to 10 percent might prove acceptable to various economic interests of this state

b A permanent margin of preference higher than 10 percent may well produce a level of animosity equal to that shown against the absolute prohibition contained in the current measure [14]

c The 25-percent margin of preference maintained by the federal government between 1933 and 1954 was attacked with great vigor by our allies and trading partners in the Mutual Security Program and the North Atlantic Treaty Organization It is partly due to this pressure that the Executive Order of 1954 came about with the reduced margin of preference of 6 percent [15]

Although the maintenance of a 6-percent preference is not likely to prove popular with our major trading partners, it seems to have become accepted as a "necessary evil of American protectionism" Foreign powers and certain economic interest groups in California might feel that this is a margin of preference they can live with and abandon costly judicial litigation

A 10-percent Margin

A margin of 10 percent, somewhat above the United States Buy American preference, might be advisable in view of the fact that major competition to domestic bidding in California public purchases comes from Japan, often considered more capable than any other of the industrialized trading partners of underbidding important sectors of United States industry Japan's industrial structure, her unquestioned lower wage level and her geographical location in relation to California would appear to justify this higher protective margin

The Gradual Approach

In view of what has been said above about the short-run impact on California industries, it does not appear practicable to move at once for outright repeal of the Buy American Act. Recent economic history has shown that in the lowering of tariffs and removal of nontariff restrictions between countries seeking common markets and trade blocs, the gradual approach has indeed mitigated the damages often gloomily forecast by the protectionists In the case of the European Economic Community, the removal of "inner" tariffs and the adjustment of the "national" to the new average "outer" tariff was achieved smoothly in five stages of about two years each The EFTA [16] has had similarly

[14] See above, paragraph 5
[15] Knapp, *op cit*, pp 432 ff
[16] European Free Trade Association

fortunate experiences with a five-step removal of "inner" tariffs, over a somewhat shorter period [17]

Initial Margin of Preference

Another problem is presented by the choice of the *initial* margin of preference for domestic versus foreign commodities under a modified Buy American Act Here too, lessons might be applicable from the formation of common markets and trade blocs In the initial stage a high margin of protection is retained, allowing domestic producers time for adjustment, but putting them on notice that they will lose this protection over a scheduled number of stages Unless the difference between domestic and foreign bid prices in California procurement were to widen considerably, an initial margin of 20–25 percent would afford for most commodities virtually the same degree of protection as the present complete ban This is derived from a sample of "bid sheets" of public purchasing agents [18] submitted for the past three years and from estimates made by the State Purchasing Agent in late 1963 [19] for the year 1962 For 38 commodities, significant in state purchases, foreign prices were lower than domestic prices by the following percentages

0%– 5%	cheaper	6 items
6%–10%	cheaper	17 items
11%–15%	cheaper	3 items
16%–20%	cheaper	6 items
21%–25%	cheaper	1 item
26%–30%	cheaper	5 items
	Total	38 items

No differentials above 30 percent were reported

Applied to the above estimates, an initial margin of preference of 25 percent would have affected five of 38 items, a margin of preference of 20 percent, six This assumes that domestic bidders would not have responded to the change in bidding climate by lowering their prices

Adjustment Steps

Once the initial margin and the ultimate margin have been set the remaining problem is the number of adjustment steps between them and the length of time each such adjustment allowed to take From an administrative point of view, the steps should be fairly steep and as few as possible avoiding the need to adjust the margins frequently and by small amounts Also, they should not be permitted to last long enough to allow for new economic arrangments to grow up behind the declining walls They should be sufficient to allow domestic industry to adjust prices and production of commodities affected by the change of preference margin In the case of the European Economic Community and the EFTA, steps of five years were found to be unnecessarily long and the adjustment periods were shortened to about two years by unani-

[17] Don D Humphrey, *The United States and the Common Market* Ch 2, and the Seventh, Eighth and Ninth *General Report on the Activities of the European Economic Community*, Brussels, 1964–66

[18] Details of these differentials will be supplied in a later, more complete report

[19] Statement from B R Cheyney to Assembly Committee on Ways and Means, October 14, 1963, pp 1–4

mous consent of the member countries involved.[20] A similar period might be desirable in the adjustments of a modified California Buy American Act.

Models for Adjustments

Assuming that the act was adopted by the California Legislature in 1967 and the arrangements outlined above could become effective in January of 1968, the following "models" could emerge:

Model I

Initial margin of preference (Step I)	25% applicable Jan. 1968–Dec. 1969
Step II preference	20% applicable Jan. 1970–Dec. 1971
Step III preference	15% applicable Jan. 1972–Dec. 1973
Step IV preference (ultimate)	10% from January 1974 on

Model II

Initial margin of preference (Step I)	20% applicable Jan. 1968–Dec. 1970
Step II preference	15% applicable Jan. 1971–Dec. 1973
Step III (ultimate preference)	10% applicable from Jan. 1974 on

Conclusion

It is believed that the adoption of this course of action would eliminate the objectionable legal uncertainties of the present California Buy American Act, it would reduce the cost of government of the State of California by a substantial amount and help to enhance the real economic welfare of the state. At the same time it would provide sufficient time for adjustment and allow affected firms more productive and profitable reemployment of resources.

[20] *Sidney Dell, Trade Blocs and Common Markets* pp. 37 ff., see also General Reports of the European Economic Community.

ADDENDUM

SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO CALIF 95814

DISTRICT OFFICE
1084 SOUTH LOS ROBLES
PASADENA CALIFORNIA

COMMITTEES
REVENUE AND TAXATION
TRANSPORTATION AND COMMERCE
WATER
WAYS AND MEANS

Assembly
California Legislature

FRANK LANTERMAN
MEMBER OF ASSEMBLY FORTY SEVENTH DISTRICT

February 15, 1967

Honorable Robert W. Crown, Chairman
Assembly Ways and Means Committee
Room 2140
State Capitol

Dear Bob:

My position in support of the California "Buy American" Act remains as firm as it was two years ago when I signed a minority report objecting to any attempts to modify or repeal this essential Act.

At that time I stressed that the Act does not increase the cost of government because a governmental purchase of domestic material generates 36% of the dollar amount of the purchase in taxes.

I also pointed out that foreign practices, such as trade cartels, government subsidation, dumping, price fixing and artificially low shipping rates were certainly unfair competition to domestic producers operating under the free enterprise system.

The crisis concerning the United States in its imbalance of international gold payments is still critical. In fact, it worsened slightly in 1966 over 1965.

We must do everything possible to end this drain in order to retain confidence and stability in the dollar. Any modification or repeal of the "Buy American" Act would only aggravate this drain.

I view the proposal by the Subcommittee on Economic Development as merely another attempt to do away with this Act. The end result of the new percentage proposal would be to expose our domestic producers to the same unfair competition that they would face under outright repeal of the Act.

Very truly yours,

FRANK LANTERMAN
VICE-CHAIRMAN
WAYS AND MEANS COMMITTEE

FL:fmm

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ASSEMBLY INTERIM COMMITTEE REPORT
1965–67

Volume 21 Number 17

CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

REPORT OF THE SUBCOMMITTEE ON FAIRS AND CONCESSIONS

on

LEASING OF THE DEL MAR RACE TRACK

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GEORGE ZENOVICH

COMMITTEE STAFF

LOUIS J. ANGELO, *Committee Coordinator*
WILLIAM BARNABY, *Consultant*
JOHN SIMONS, *Consultant*
KEITH AXTELL, *Legislative Intern*
GAIL VESSELS, *Committee Secretary*
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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

February 3, 1967

To the Speaker and Members of the Assembly

Dear Mr. Speaker and Members

Your interim Committee on Ways and Means, in accordance with House Resolution 427, First Extraordinary Session of 1966, herewith respectfully submits the final Subcommittee on Fairs and Concessions report on the leasing of the Del Mar Race Track

The chairman is appreciative of the outstanding efforts of the Subcommittee, especially Chairman Hale Ashcraft and the Consultant, William Barnaby, in this difficult and complex matter

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Hale Ashcraft
Anthony Beilenson
Frank Belotti
Carl Britschgi
John L. E Collier
Charles Conrad
Pauline Davis
Leroy Greene
Joseph Kennick
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Charles Meyers
James Mills
Don Mulford
Nicholas C Petris
Carley Porter
Howard Thelin
Jerome Waldie (Resigned)
John Williamson
Gordon Winton, Jr.
George Zenovich

Hon Robert W Crown
Chairman, Assembly Interim
Committee on Ways and Means

Dear Mr. Chairman·

Transmitted herewith is the report of your Subcommittee on Fairs and Concessions regarding the leasing of the Del Mar Race Track.

The valuable assistance of the Subcommittee members and other persons cooperating in the study is greatly appreciated

Sincerely,

HALE ASHCRAFT, *Chairman*

Frank Belotti
Robert W. Crown
Leroy F. Greene
Joseph Kennick
James R. Mills
John C Williamson

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

Hon. Robert W. Crown, *Chairman*

Subcommittee on Fairs and Concessions

Report on

LEASING OF THE DEL MAR RACE TRACK

SUBCOMMITTEE MEMBERS

HALE R ASHCRAFT, *Chairman*

FRANK BELOTTI
ROBERT W CROWN
LEROY F GREENE
JOSEPH KENNICK
JAMES R. MILLS
JOHN C WILLIAMSON

Staff

WILLIAM BARNABY, *Consultant*
GAIL VESSELS, *Committee Secretary*
MARIA HUSUM, *Secretary*

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INTRODUCTION

The Del Mar Race Track, located on the San Diego County Fairgrounds, has been in operation since 1937 The track is owned by the 22nd District Agricultural Association, a state agency, which has leased the facility to several different organizations over the years

The initial lease, executed on December 8, 1936, has been extended and amended several times and will expire on December 31, 1969 Legislation enacted in 1963 set the stage for the first complete revision of the lease and its award through competitive bidding procedures

Preparation of a new master lease aroused great interest and strong feelings in the San Diego area An important economic factor in the community, it held out prospects of substantial public revenues and private profits In this context, House Resolution 427 (Ashcraft) was adopted during the 1966 first extraordinary session

The legislation called for a study of "Del Mar Race Track leases, and matters related thereto, including, but not limited to, lease changes, persons and parties, and terms and conditions, with specific emphasis on the regulation and use of the Del Mar Track in the best interests of the public " H R 427 was referred to the Interim Committee on Ways and Means where, in turn, it was assigned to the Subcommittee on Fairs and Concessions

The Subcommittee held public hearings on this subject in San Diego on August 17 and 18, 1966 Additional information was developed through staff investigation and numerous interviews with personnel connected with the many governmental agencies and private organizations involved

FINDINGS

1. Undue secrecy surrounded the preparation of the new Del Mar master lease and the conduct of bidding procedures. Expert advice was not sought as is customary when government agencies undertake a task for which they have little experience While the leasing of a publicly owned facility certainly is a matter of public business, the public was systematically excluded from all deliberations prior to the advertising for bids, as well as from how the bid process was proceeding once underway. In this case, with high community interest and strong feelings in clear evidence, the exclusion of the public from timely information served to help stimulate rumors and undermine confidence in the bidding process

2. Unless Del Mar's crowd capacity is increased, neither the State Treasury nor the 22nd District Agricultural Association will realize maximum benefits from the track The proposed new master lease does not provide adequate safeguards that the necessary expansion will occur The public interest certainly would not be served if the present facility is returned in 1990, at the lease's expiration, in its existing size Safeguards against this eventuality are absent from the lease

3 The failure of the new lease to assign responsibility either to the lessor or to the new lessee for future capital outlay expenditures led to an unclear bidding situation in which the two highest bids were based on varying financial considerations

4 District Agricultural Associations were established to operate and conduct local fairs. Because of its unique ownership of a race track, the 22nd District became engaged in affairs far greater in importance than the normal business of conducting fairs Policy decisions of the 22nd District Board of Directors can encourage or lessen the prospects of earning increased millions for the State Treasury from racing at Del Mar.

These decisions affect taxpayers throughout the State while the 22nd District, as all district agricultural associations, is entirely local in composition. In this case, a more active role in making key policy decisions by higher State agencies could well have proved helpful.

5. The planned execution of the new master lease prior to the 1967 session would have precluded the Legislature from considering relevant proposals. No essential purpose was served by this arbitrary deadline and, moreover, is proved impossible to meet.

6. Annual budgets of district agricultural associations escape the normal item-by-item review by the Legislature. A thorough review is needed to determine whether tighter controls are feasible within the limitations of the current financial support structure.

RECOMMENDATIONS

1. Existing laws and procedures governing the leasing of state property, the awarding of franchises and concessions, be reviewed with the aim of strengthening the availability of timely information. Transactions involving millions of dollars in state revenues and private profits must be unscrupulously open and fair.

2. Consideration be given to placing increased responsibility for transacting the Del Mar lease with top level state agencies such as the Department of Finance or General Services The needs and interests of the 22nd District certainly must be protected, but increased emphasis is needed concerning the track's capacity to earn revenues for the State Treasury.

3 Consideration be given to enacting more specific guidelines to which any lease beyond 1970 must conform. Capital improvements or expansion, the lease term, possessory period, and maintenance are some of the more important areas which warrant re-examination and more precise provisions Study should be given to alternative methods of financing the track's expansion, including the issuance of revenue bonds At a minimum, the new lease should clearly indicate whether the State or the new tenant will be expected to finance any expansion projects.

BACKGROUND

Exceptional as one of the very few publicly-owned "major league" horse race tracks in the nation, Del Mar has had a colorful and, in recent years, a controversial history

The track grew out of a Works Project Administration project to construct the San Diego County fairgrounds When the WPA funds for the project ran out, a group headed by singer Bing Crosby advanced the 22nd District Agricultural Association $600,000 to include a horse racing track and complete the facility

The loan, interest free, was to be repaid out of the Del Mar Turf Club's rental for the track—12½ percent of the track's share of the parimutuel wagering handle.

Racing began at the track in 1937 and through 1941 the annual meets steadily increased in attendance and amounts wagered. The facility was devoted to wartime uses from 1942 until racing was resumed in 1945 Since then, the steady growth has continued with 1966 showing almost $47 million bet during 42 racing dates, with more than $3.4 million being paid to the State in parimutuel taxes and $466,525 in rent paid to the 22nd District

Over the years, the master lease changed hands several times In 1946, after recouping his investment, Crosby disposed of his interests Several sets of owners gained control for short periods until 1954 when Texans Clint Murchison and Sid Richardson took over the master lease in the name of Boys, Incorporated, a non-profit charitable organization

When Boys, Inc., gained control, the master lease was renewed for a 15-year period to expire December 31, 1969 Under a contractual arrangement, operation of the track was turned over to the Del Mar Turf Club with 90% of the net profit going to Boys, Inc., and the other 10 percent to the Turf Club

Legislative inquiries regarding the track in recent years have produced considerable controversy In 1960, the Senate Fact Finding Committee on Governmental Administration issued a report[1] charging many irregularities in management of the track including that the State was not receiving its due benefits A legal analysis[2] by the Committee's Special Counsel, Albert E Sheets, held that the initial 1936 lease of the track was invalid, that there was no legislative way to validate the agreement, and suggested that the 22nd District initiate "proceedings for damages and trespass against the various unauthorized occupiers of the fairground site" Del Mar Turf Club President Donald B Smith filed a point-by-point rebuttal with the Committee

To clear the air, a meeting subsequently was held in San Diego attended by Attorney General Stanley Mosk, Director of Finance John Carr, and representatives of the 22nd District, the Del Mar Turf Club and Boys, Inc. Attorney General Mosk reportedly expressed his view

[1] *Examination of the 22nd District Agricultural Association*, Senate Fact Finding Committee on Governmental Administration, March 1960
[2] *Supplement to the Examination of the 22nd District Agricultural Association* See Note 1

that the lease was valid and would remain in effect To serve the State's best interests, the parties to the lease were urged to resolve various operating problems and to discontinue their disputes which had produced much unfavorable publicity

Sound, cooperative and businesslike relationships between the 22nd District and the Turf Club were not to be realized, however, and friction continued to exist practically up to the present time There is little usefulness in trying to place the blame for the friction but there seems little doubt that it was not conducive to the best operation of the track For the record, Turf Club President Smith filed copies of correspondence beginning in 1961 concerning various operating problems and the need for repairs and improvements

Legislation authored by Assemblyman James R Mills was enacted in 1963 with the general aim of permitting competitive bidding on a new master lease once the existing agreement expired Section 87 of the Agricultural Code, as amended by the 1963 legislation, established three requirements for a new lease First, its terms must be more favorable to the District and, secondly, it must be approved by the California Horse Racing Board Finally, any new lease "is not to become effective until at least three years after it is signed "

PREPARATION OF THE NEW MASTER LEASE

The 22nd District Board of Directors set up an executive committee, which began its work in the summer of 1965, to formulate terms for the new lease At the District's request for legal counsel, Deputy Attorneys General Conrad Klein and Jay Shavelson were assigned to assist in drafting the new agreement Klein was then also serving as counsel for the California Horse Racing Board and Shavelson had actively participated in drafting the State's tidelands oil leases Klein resigned from State service in November 1965 and Deputy Attorney General Sanford Gruskin took over the major legal duties in the matter

At no time during the many months of drafting and rewriting the lease were the views sought of persons connected with horse racing regarding the particular problems of that industry and how a lease might take them into account Deputy Attorney General Klein's work for the Horse Racing Board represented the greatest source of experience and expertise in this area during the limited time he participated in drafting the lease

It is not uncommon governmental practice to seek expert advice in matters outside of normal governmental functions or in areas not covered by established procedures Unquestionably, the preparation of a new lease for Del Mar was a unique endeavor for which virtually no experience or expertise existed within the State agencies having statutory responsibilities for carrying out this task. The failure to seek expert advice in this case, as candidly admitted in testimony to the Subcommittee, represents a major defect in the procedures used

In addition to the 22nd District and its counsel furnished by the Attorney General's Office, other agencies represented in the drafting process were those having statutory responsibilities in this regard The District's parent agency, the Department of Agriculture, was represented by its counsel and officials of the Division of Fairs and Expositions. Legal staff of the Department of General Services, with whom final approving authority rests, also were active participants in formulating the new lease.

Since the original lease was executed on December 8, 1936, it had been extended and amended by several sub-franchise agreements, the last being a 15-year extension ending December 31, 1969 Drawing a new master lease provided a singular opportunity to review the experience under the original lease and its extensions and to remedy past defects

This novel chance to redefine basic lease policy for Del Mar and the widespread interest in the new agreement, not only among persons connected with the horse racing industry but among the Southern California public as well, combined to present a situation calling for an open and free exchange of information on progress of the drafting process Instead, the several state agencies involved released practically no information until the terms of the lease were announced in their final, unalterable form.

While the new lease was a matter of great public interest, and while it certainly was public business, the public and outside experts were systematically excluded In this context, it is not surprising that rumors and unfounded charges were plentiful

On June 13, 1966, the completed 40-page proposed lease was made available by the District for a $5 fee along with an invitation for bids, which explained the conditions under which bids would be considered, and a questionnaire requesting financial, business, and biographical background information on participating bidders.

Bidding on the 20-year lease was limited to a single factor—the annual rental, computed as a percentage of each year's gross receipts

Each bid proposal was required to be accompanied by a $195 processing fee and a $250,000 performance bond in the form of a cashier's check payable to the 22nd District The deposit was to be returned to unsuccessful bidders, and, in the case of the new master lease holder, applied to the first year's rental.

The bid invitation notice indicated that the State's financial return would not be the sole criteria under which the District's selection would be made Also to be considered were·

"a Ability of proposer to undertake and fulfill the Lessee's obligations under the racing facilities lease agreement

b. Ability of proposer to produce the highest possible financial return to the State and to operate the leased facilities in the public interest.

c Financial responsibility of proposer.

d Business and race track operating experience of proposer

e. Character, morality, integrity, and reputation or proposer."

INFORMATION WITHHELD

In response to inquiries, the 22nd District Board of Directors adopted a policy not to disclose the names of persons or organizations who acquired the bidding documents The non-disclosure policy was justified to the Subcommittee as a safeguard against collusion between bidders should they know each others' identities It was also seen as a device to protect prospective bidders from the entreaties of a non-profit cultural fund raising organization, COMBO, formally Combined Arts of San Diego

Although not challenged by the District's parent agency, the Department of Agriculture, the policy was brought into question by a Legislative Counsel's opinion which cited Section 84 2 of the Agricultural Code.

> "84 2 All records of the board, except entries in events scheduled for judging and for overnight entries in races on which there is parimutuel wagering prior to such events, judging times, or races, shall be open to inspection by the public during regular office hours "

Much discussion focused on this point during the August 17–18 hearing but the policy remained unchanged until September 12, the scheduled bid-opening date

As it turned out, all but one of the proposals came from expected bidders although the group which submitted the high bid had organized very quietly and took practically everyone connected by surprise.

ANTICIPATED BIDDERS

Up to the time of bid-opening, several groups had expressed an interest in the new master league They included:

. Del Mar Associates, a group of about 50 San Diegans, whose leadership generally was attributed to Mr. John S Alessio, a prominent local business and operator of the Caliente Race Track in Tijuana for the Mexican Government for many years

. Hollywood Turf Club, the organization which currently operates Hollywood Park in Inglewood At one point in early 1966, the Hollywood Turf Club submitted an offer to Boys, Inc to take over the remaining four racing seasons of the existing lease period A vote to accept this offer reportedly carried at a meeting of the Boys, Inc Board of Directors but, for some never disclosed reason, the matter was not pursued further Late in 1966, racing news media reported efforts by the Hollywood Turf Club to gain control of the Golden Gate and Tanforan racing meets in northern California

Combined Arts of San Diego, popularly known as COMBO. Following a very successful cultural fund drive, COMBO became interested in channeling some of Del Mar's profits into local non-profit activities It promptly ran into a legal snarl Subsequent to Boys, Inc gaining control of Del Mar, state law [1] was amended in 1959 to prohibit involvement of non-profit organizations in race track operations At that time, Boys, Inc was "grandfathered" in When the Attorney General ruled that COMBO was ineligible to bid on Del Mar's new lease, a court fight was threatened but has yet to materialize.

Del Mar Race Track, Inc., a group which filed its incorporation papers only August 9, 1966. Shortly thereafter, plans to issue $10 million of stock were announced This group also was locally based.

The chief surprise of the bid opening ceremony was the authorship of the high bid—18 21 percent—by a quietly organized group of professional people calling themselves the San Diego County Turf Club.

Under the escalator feature of the new lease, the base percentage would constitute the rental share of the first $1,000,000 in gross receipts, increasing to 120 percent of the base percentage on the next $1 million On all gross receipts over $2 million, the escalator feature would boost the rental to 150 percent of the base figure or 27 22 percent under the San Diego Turf Club proposal

The second highest bid was submitted by Del Mar Associates at a base percentage of 11 42 The Hollywood Turf Club proposed 10 25 percent and the final bid accepted came from Del Mar Race Track Inc. at 8 26 percent

Boys, Inc had informed the Subcommittee at the August 18 hearing that it did not plan to participate in bidding on the new master lease A change occurred, however, and by letter to the District of September 7, Boys, Inc expressed a desire to renew its lease for 20 years be-

[1] Section 19482, California Business and Professions Code

ginning January 1, 1967. The Texas based non-profit group offered to negotiate an annual rental with $600,000 as a guaranteed minimum, and promised to begin expansion of the track facilities in the first year of the new lease term The 22nd District Board of Directors rejected the Boys, Inc. proposal, holding that it did not follow bid form requirements and was not accompanied by a $250,000 performance bond

Following opening of the bids at the San Diego County Fairgrounds Administration Building, Conrad Klein, Counsel for the Hollywood Turf Club, asked to inspect the financial statements and background materials submitted by other bidders Deputy Attorney General Gruskin, present at the meeting, thereupon ruled the information was confidential until action was taken to award the lease.

Shortly after receipt of the bids, the lowest bidding organization, the Del Mar Race Track Inc., requested that its bid be rejected in order to permit return of its $250,000 performance bond This request was granted Checks for similar amounts from the remaining three bidders were endorsed by the District and deposited in the State Special Deposit Fund By this method, the interest on $750,000 accrued to the State General Fund

TIMING OF THE BID AWARD

The announced bid processing plan was timed to permit execution of the lease by December 31, 1966 With the three-year statutory delay prior to the lease's taking effect, the January 1, 1970 commencement would provide an uninterrupted transition following expiration of the current lease on the last day of 1969

However, testimony before the Subcommittee clearly indicated that execution of the lease could be held off well into 1967 and still produce a lease to take effect before the 1970 racing season While the difference of a few months in executing the lease would cause no financial harm to the 22nd District or to the track's operators, it would greatly affect the authority of the Legislature to deal with the situation.

Had the lease been executed prior to the convening of the 1967 legislative session, Constitutional [1] safeguards against impairment of contract by legislation would have stopped further action However, since execution has been delayed, legislation can be enacted to provide additional guidelines or conditions which the lease must meet

Despite many requests to afford the Legislature an opportunity to act further in this matter, the agencies concerned disclosed no intention to deviate from planned execution of the agreement before the end of 1966 Events overtook the artificial deadline, however, and it proved impossible to meet.

In the weeks immediately after the bid opening ceremony, very little information was released as to how the bid processing was proceeding. At a hearing on the lease by the Joint Legislative Committee on Fairs and Allocations in San Diego on October 25, Arthur Martin, counsel for the San Diego County Turf Club, indicated that the high-bidding group had been requested to furnish additional data on its cost analysis and projections This information was being supplied, Martin assured, but he said he knew of no similar requests of the other bidders

On November 28, a special meeting of the 22nd District Board of Directors was called for the purpose of receiving a report from the Board's Executive Committee At the outset of the meeting, Board President R R Richardson stated that because of the special nature of the meeting, no one would be allowed to participate other than Board members

The Executive Committee report found that the "proposed operations of the high bidder leave sufficient doubt as to the ability of the high bidder to satisfy its obligations pursuant to its proposal" and recommended award of the new lease to the second highest bidder, the Del Mar Associates Directors Richardson, Lipton and McCormick signed the report.

A minority report was filed by Director Robert O Curran, who stated that "under our American system a person is permitted to risk his capital if he so desires" Curran went on to note that a greater return to the District would be realized from the high bid and con-

[1] State Constitution Art I Sec 16
U S Constitution Art I Sec 10

cluded, "I see no reason why the high bidder should not be given the opportunity to show that it can produce the results which it anticipates."

After the reports were read, Director Sugarman moved adoption of the Executive Committee report and was seconded by Director Moeser. The roll call vote on the motion was 8 to 1 in favor, with only Director Curran dissenting.

A similar roll call vote authorized Board President Richardson and District General Manager Welch to sign the new lease.

During the course of the 40-minute meeting, representatives of the Hollywood Turf Club and the San Diego County Turf Club attempted to be heard. Board President Richardson denied these requests because of the special nature of the meeting.

Press accounts of the meeting said that both remaining unsuccessful bidders, the Hollywood and San Diego County Turf Clubs, indicated they intended to pursue the matter further through the courts.

The District's action in approving the proposal of Del Mar Associates, and by-passing a bid roughly 60 percent higher, kept the controversy over the new lease very much alive. The Del Mar situation became a daily news item as events followed rapidly.

Assemblyman Charles Chapel asked the Attorney General's Office to investigate the District's action. A thorough review was promised.

General Services Director Harkness said that material the District had disclosed to him the previous week "was not sufficient to throw out the highest bid." But he noted the possibility of later information which he had yet to see.

Governor-elect Ronald Reagan expressed concern over the lease at a November 30 press conference. William Clark, Jr., soon to take office as cabinet secretary, was assigned the task of gathering relevant data and advising the new chief executive.

On December 1, the Los Angeles Times editorially called for suspension of all action on the lease until a "thorough investigation" of the matter could be completed.

The next day, a long-time member of the 22nd District Board of Directors, Harry B. Sugarman, issued a press release defending the Board's action. "On the basis of projections developed from figures obtained from other leading California tracks", the release stated, "it was obvious . . . that not only was the extremely high bid of the San Diego County Turf Club unrealistic, but it also precluded the possibility of survival." Sugarman cited an analysis made by District General Manager Roy Welch which concluded that the SDCTC would be a bankrupt tenant within a few years.

Sugarman's charges were promptly denied by SDCTC Chairman Paul Carter, who pointed out that his group had filed partnership statements approaching $20 million in net worth.

Meanwhile, plans for a $30 million construction program in connection with the track were revealed by Del Mar Associates leader John S. Alessio. Rebuilding of the grandstand and clubhouse at a cost of $6 million was planned to increase the number of seats from 6,900 to 12,612. Using the normal rule of thumb for measuring race track crowd capacity—the number of seats times three—the new facility would ac-

CRITICIZED LEASE PROVISIONS

Many of the provisions of the new master lease came under heavy fire from prospective bidders, horse racing and breeding interests and track operators

Most frequently assailed was the absence of provisions for capital outlay improvements or expansion of the track Constructed some 30 years ago, Del Mar's facilities will be more than 50 years old at the expiration of the new master lease Some safeguards are needed, critics felt, that the track not be returned in 1990 in virtually its present condition, only older

At the same time, there was general agreement that expansion of the track's crowd capacity is necessary if the full benefits of the facility are going to be realized.

The lease's silence on this point was defended on the grounds that it would leave the District free to work out a mutually satisfactory arrangement with the new tenant Additionally, officials who assisted the drafting process argued that requiring a new lease to finance a major track expansion would have "chilled the bidding" or seriously discouraged participation.

Testimony to the Subcommittee on this point cited the probable difficulty in obtaining substantial state funds for a Del Mar expansion project, but the high-bidding group, within a few weeks after bid-opening, disclosed to the press that its bid was based to some extent on the assumption that the state would spend at least $8 million in expanding the track

In contrast on this same point, Del Mar Associates announced plans for a $30 million capital outlay program including construction of a new grandstand and turf club Private financing was planned for much of this development, but the group seemed to look to the State for the capital to build a new grandstand The bidding process would have been helped, and the State's best interests better protected, it was contended, had a more precise commitment or statement of future plans been included in the lease.

The 20-year period of the lease was criticized as too long and use of a shorter term with options was one alternative raised.

Until the present, the Del Mar Turf Club has been using executive offices and equipment shops on the premises Continued use of these facilities was not provided in the new master lease and this also drew some criticism

In testimony before the Subcommittee, representatives of the current track operator emphasized the need for year-round maintenance of the racing strip and pointed out that the new lease provided for possession of the premises only 10 days before and 15 days after the annual racing meet.

The new lease was also cited as precluding the annual yearling sale which the current operators conduct and which has become recognized

as a major Southern California Social event, much to the enhancement of the track's reputation.

Another provision drawing criticism was Article XIV which would allow termination of the lease if the District finds that operation of the track is bringing "discredit" and "disrepute" to horse racing in California No action is required by the Horse Racing Board in this connection, a factor which led critics to question why the District should involve itself in the regulation of horse racing, a function specifically assigned to the Horse Racing Board.

Lengthy discussion at the Subcommittee hearing centered on the possibility of amending or modifying the new lease after it has been awarded Testimony by the District's representatives was somewhat unclear. Operating problems stemming from some of the lease's terms could be resolved through negotiations, according to 22nd District President R R Richardson, but no major changes were contemplated or felt proper subsequent to lease execution. At the same time, Deputy Attorney General Gruskin advised that technically almost any provision of the lease could be modified subject to agreement by the parties to the lease and approval by the agencies whose consent is required by law

The failure of the new lease to waive the rent on the three charity days each racing season was contrasted in testimony before the Subcommittee with provisions of leases involving Hollywood Park and Golden Gate Fields

The lease was also faulted for failing to establish some mechanism for rapidly dealing with the many operational problems that will arise and to coordinate necessary planning.

This listing does not exhaust the criticisms of the lease presented in testimony to the Subcommittee and in statements reported in the press. But is an indication of the type and extent of critical comment that the proposed agreement prompted

FINANCIAL ISSUES

Two separate sources of revenues are generated by horse racing at Del Mar, the track rental collected by the 22nd District and the pari-mutuel tax which goes into the State General Fund and the Fair and Exposition Fund

The rental fees collected by the District are deposited directly to that agency's bank accounts Expenditure of these funds may be made only for purposes authorized in the District's approved annual budget The 1966 rental, $466,565, was up 3 9 percent over the previous year. Of the District's revenues in recent years, the track rental has accounted for more than 40 percent of the total. See Table I in the Appendix for a more detailed revenue statement

Existing law [1] delegates to the Department of Finance the final approving authority for agricultural associations' budgets In practice, officials of the Fairs and Expositions Division (within the Department of Agriculture) technically serve as Finance personnel for the purpose of reviewing these budgets After receiving the budget requests, Fairs and Expositions Division staff frequently meet with fair managers to examine supporting information in detail. The decisions reached through this process usually constitute the final budget action

The usual item-by-item budget review by the Legislature is avoided by district agricultural associations mainly because of the nature of their financial support Their own revenues provide the primary operating funds In addition, Section 19627 of the Business and Professions Code provides a continuing annual appropriation, on a basis of need, of up to $65,000 to each district association Because of its substantial revenue earnings, the 22nd District is one of the two agencies of its kind that does not receive an allocation of Section 19627 funds

District revenues from the track are certain to increase substantially under the new master lease The annual rental will be based on gross receipts, with a $600,000 minimum, rather than on the betting handle as under the existing lease. In this manner, the District will gain new sources of revenue from items such as parking and concessions.

Plans for spending this increased revenue have never been made clear by the District At the August 17 hearing of the Subcommittee, District representatives advised that master planning for the future awaited the acquisition of an additional 48 8 acres The additional land, being acquired through condemnation, is to be financed by a 5-year $250,000 General Fund loan made under item 396 of the 1966 Budget Act The loan is repayable at 4¾ percent interest

More detailed statements of operating expenditures and financial condition of the 22nd District may be found on Tables II and III in the Appendix

According to audit reports examined by the Subcommittee, profits under the existing lease have not been unusually large either for the Del Mar Turf or Boys, Inc For 1965, the last year for which complete

[1] Section 92, Agriculture Code

financial information exists, the main figures for the Del Mar Turf Club were as follows:

Parimutuel Handle	$45,113,303
Parimutuel tax	3,302,837
Rent to 22nd District	440,012
Returned to bettors	28,218,338
Total earnings	4,602,108
Total expenses	4,564,853
Payment to Boys, Inc.	364,817
Federal admission tax*	148,716
Local admission tax	60,322
Net after federal income taxes	25,755

The other, and more substantial, form of revenue produced at Del Mar consists of the pari-mutuel tax From all tracks, the State collected $48 7 million in fiscal 1965–66 of which $3 3 million was derived from Del Mar Most horse racing revenues find their way into the General Fund ($40 3 million in 1965–66) with lesser amounts going to the Fairs and Exposition Fund ($7 7 million in 1965–66) to aid in the support and capital outlay expenditures of district and county fairs. Also, a fixed annual amount of $750,000 is deposited in the Wildlife Restoration Fund.

State parimutuel taxes come from two sources:

1 A 14 percent "take out" on the total amount bet at a racing meet distributed thusly:

	State share	*Tract share*
First $10 million	5%	9%
$10 million to $20 million	6	8
$20 million to $75 million	7	7
$75 million to $125 million	7.5	6 5
$125 million and over	8	6

2. Half of the "breakage" on the first $24 million bet and all of the breakage over that amount Winning bets are paid off in multiples of 10¢, the excess cents becoming "breakage". Example—$2 win bets that mathematically should pay $3 80 with 7 cents breakage on each $2 bet.

The "take out" and "breakage" average 15 3 percent of the total amount wagered.

Expansion of Del Mar's current 19,000–20,000 crowd capacity is the key to increasing revenue both for the State General Fund and for the 22nd District Escalator features both of pari-mutuel tax rates and the rental formula contained in the new lease would produce substantially increased revenues as crowd capacity and betting expands at Del Mar.

While none of the State agencies involved in preparation of the lease disputes the importance of track expansion, there is no assurance in the lease that such expansion will take place The failure to require a capital outlay program led to an uncertain bidding situation.

* Federal admission tax discontinued in 1965.

District Agricultural Associations were created essentially to operate and conduct local fairs Over the years, a few of these agencies have become engaged in other enterprises The ownership of a "major league" race track provides the 22nd District with a unique and highly valuable source of revenue It also gives the District a major voice in policy matters affecting the prospects of earning increased millions for the State Treasury from pari-mutuel taxes

In this framework, it would appear that higher State agencies, more removed and disinterested, might well have taken a stronger role in determining basic policies incorporated into the lease. By their very nature, agricultural associations are entirely local in composition.

Instead of providing leadership and direction in this matter, the major State agencies involved—The Departments of Justice, General Services and Agriculture limited their activity to "servicing a client".

In this instance, millions of tax dollars are at stake while tax revenue sources are almost desperately sought The diligent attention and active efforts of top level state officials are warranted to help insure that the maximum public benefit is derived.

REVENUE SUMMARY, 1956–65
22ND DISTRICT AGRICULTURAL ASSOCIATION

Year	Admissions	Ind and commercial space	Concessions	Miscellaneous fair	Exhibits	Horse show	Attractions	Nonfair	Prior year adjustments	Total	Del Mar rent	Rental percentage of total
1965	186,680	35,521	175,847	60,786	7,048	57,593	28,161	517,445	605	1,068,476	449,012	42 02
1964	164,245	34,710	159,563	55,924	6,340	45,506	35,610	514,674	715	1,015,917	442,532	43 56
1963	190,403	38,020	162,046	59,678	5,786	43,193	33,886	496,804	--	1,029,816	418,578	40 65
1962	167,133	38,690	143,120	58,389	9,998	39,270	17,695	499,559	--	973,854	426,732	43 83
1961	172,477	35,804	148,530	53,686	9,019	39,717	24,121	459,222	8,924	951,500	402,982	42 36
1960	169,212	41,231	131,248	46,922	9,193	32,866	--	412,910	769	844,360	378,035	44 54
1959	161,452	39,137	123,626	33,354	7,408	36,540	--	403,924	228	810,701	391,795	48 37
1958	150,976	35,745	116,600	31,630	7,151	33,506	--	407,684	25	783,272	376,932	35 36
1957	126,397	29,521	106,677	30,832	5,736	25,453	--	401,889	--	726,508	383,107	55 32
1956	118,793	39,907	75,062	32,833	5,592	21,233	--	380,841	240	674,501	363,436	54 80
										average for 10 yrs		45 4

Source Annual *Report on Operations, California Fairs,* Audits Division, Dept of Finance

SUMMARY OF OPERATING EXPENDITURES 1956–65
* 22ND DISTRICT AGRICULTURAL ASSOCIATION

Year	Administration	Maint and general operation	Temp structures	Publicity	Attendance operations	Premiums	Exhibits	Horse show	Attractions	Int event expense	Equipment	Prior year adjustments	Total
1965	128,305	234,537	57,591	76,519	109,291	109,121	72,289	39,872	109,395	1,958	34,362	206	973,446
1964	103,767	203,535	70,004	62,247	107,063	102,729	83,231	35,353	92,657	1,688	12,693	2,728	877,695
1963	99,688	291,143	66,040	61,875	91,115	94,828	68,753	39,438	100,128	1,035	4,224	4,668	922,935
1962	108,336	242,592	60,740	52,469	80,184	85,005	45,239	39,639	83,076	79	--	930	796,429
1961	108,668	196,465	75,951	46,515	83,880	84,969	59,598	37,750	95,216	3,914	8,465	937	802,428
1960	67,708	159,446	78,191	44,911	77,936	98,183	65,440	44,903	57,186	310	10,389	22,744	727,047
1959	77,859	130,819	78,674	36,823	78,994	98,296	37,192	17,615	69,718	807	--	30	626,710
1958	53,570	149,719	76,425	38,421	74,239	98,042	35,376	13,027	54,280	3,991	--	11,580	582,513
1957	48,505	128,516	64,034	39,109	63,446	83,230	33,063	13,866	51,876	3,639	--	735	528,554
1956	48,205	117,701	63,129	37,055	71,482	79,000	28,721	12,107	58,936	3,441	--	2,200	517,577

* Does not include Capital Outlay Expenditures
Source Annual *Report on Operations, California Fairs,* Audits Division, Dept. of Finance

NET FINANCIAL SUMMARY

22ND DISTRICT AGRICULTURAL ASSOCIATION

	Total operating expenditures	Total operating revenues	Net operating revenues	Capital outlay expenditures
1965	$973,446	$1,068,476	$95,030	$62,728
1964	877,695	1,015,917	138,222	249,422
1963	922,935	1,029,816	106,881	313,179
1962	796,429	973,854	177,425	87,005
1961	802,248	951,500	149,072	61,093
1960	727,047	844,360	117,313	162,980
1959	626,710	810,701	183,991	63,839
1958	582,513	783,272	200,758	267,363
1957	528,554	726,508	197,954	78,039
1956	517,577	674,501	156,924	103,197

SOURCE: Annual *Report on Operations, California Fairs,* Audits Division, Dept of Finance

DEL MAR ATTENDANCE AND PARI-MUTUEL HANDLE HISTORY

Year	Number of days	Total attendance	Daily average	Total handle	Pari-mutuel tax	Rent to 22nd District	Money returned to bettors	Daily average handle
1966	42	487,329	11,603	$46,788,769	$3,438,081	$466,525	$39,618,375	$1,114,018
1965	42	480,283	11,435	45,113,303	3,302,837	449,012	38,218,338	1,074,126
1964	42	480,968	11,451	43,886,012	3,214,144	442,532	37,138,972	1,044,905
1963	42	473,086	11,264	41,383,677	2,993,867	418,578	35,066,069	985,326
1962	42	476,616	11,348	42,205,993	3,065,210	426,732	35,751,479	1,004,905
1961	42	445,819	10,686	39,535,242	2,871,613	402,982	33,466,578	941,315
1960	42	440,439	10,486	36,322,978	2,589,692	376,035	30,724,954	864,832
1959	42	462,838	11,019	38,182,498	2,733,312	391,795	32,314,369	909,107
1958	42	439,052	10,454	36,068,605	1,927,766	376,631	31,124,773	858,769
1957	41	457,597	11,161	36,764,560	1,976,028	383,106	31,723,678	896,696
1956	40	432,373	10,809	34,407,242	1,816,496	363,435	29,683,259	860,181
1955	40	435,377	10,884	33,427,055	1,748,588	351,572	28,865,389	835,676
1954	41	426,181	10,395	34,545,888	1,772,753	455,772	29,768,599	842,583
1953	41	426,691	10,407	34,589,771	1,828,501	571,495	29,830,527	843,653
1952	41	427,767	10,433	31,162,410	1,603,218	333,652	26,889,979	760,058
1951	40	392,893	9,822	25,061,087	1,203,665	288,791	21,627,127	626,527
1950	41	356,138	8,686	22,348,365	1,040,901	254,496	19,271,466	545,082
1949	41	404,543	9,866	24,677,243	1,189,547	275,542	21,198,764	599,445
1948	41	371,079	9,051	23,528,270	1,111,696	278,322	20,270,267	573,860
1947	41	372,945	9,096	22,938,913	1,076,335	272,074	19,936,859	559,486
1946	35	335,260	9,636	23,806,005	1,128,360	278,727	20,768,423	680,171
1945	40	342,498	8,055	23,846,789	1,130,807	282,390	20,536,861	596,170
1941	32	242,308	7,572	7,852,745	314,109	103,997	6,786,658	245,393
1940	23	163,279	7,099	4,417,733	176,709	62,961	3,871,335	192,075
1939	24	134,599	5,809	3,469,965	138,798	51,831	2,996,518	144,581
1938	25	161,485	6,473	3,920,251	156,810	56,893	3,388,663	156,810
1937	22	102,402	4,654	2,224,301	88,972	37,388	1,916,225	101,104

Source: Del Mar Turf Club

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ASSEMBLY INTERIM COMMITTEE REPORT

1965–67

Volume 21 Number 18

CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
REPORT OF THE SUBCOMMITTEE ON HEALTH, EDUCATION AND WELFARE SERVICES

on

DRUG PRICES

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LETTER OF TRANSMITTAL

Assembly Interim Committee on Ways and Means
California Legislature

February 3, 1967

To the Speaker and Members of the Assembly

Dear Mr Speaker and Members

Your Interim Committee on Ways and Means, in accordance with House Resolution 710(v), 1965 General Session, herewith respectfully submits the final report of the Subcommittee on Health, Education, and Welfare Services on the subject of drug prices

The report was adopted by 9 of the 10-member subcommittee and we, the undersigned, concur in their findings and recommendations

The chairman is appreciative of the skillful leadership provided by Subcommittee Chairman Nicholas C Petris and the diligent application of the subcommittee members and its staff

Respectfully submitted,

ROBERT W CROWN, *Chairman*

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* With reservations

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

ROBERT W. CROWN, *Chairman*

Report of the Subcommittee on Health, Education, and Welfare Services

NICHOLAS C. PETRIS, *Chairman*

on

DRUG PRICES

Members of the Subcommittee

ANTHONY BEILENSON
FRANK BELOTTI
CHARLES CONRAD
LEROY GREENE
JOSEPH KENNICK
CHARLES MEYERS
DON MULFORD
HOWARD THELIN
GORDON WINTON

Staff

JOHN H SIMONS, *Consultant*
GAIL VESSELS, *Committee Secretary*
MARIA HUSUM, *Secretary*

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LETTER OF TRANSMITTAL

HON. ROBERT W CROWN, *Chairman*

Assembly Interim Committee
on Ways and Means

Dear Chairman Crown

In accordance with House Resolution 710(v), 1965 General Session, the Subcommittee on Health, Education, and Welfare Services herewith submits its report on drug prices

The resolution requesting interim study of this subject was HR 559 (Mills), 1965 General Session

The subcommittee is grateful to all who participated in the public hearing as well as those who communicated with the subcommittee and its able consultant, Mr John Simons

Respectfully submitted.

NICHOLAS C. PETRIS, *Chairman*

Anthony Beilenson
Frank P Belotti
Charles J Conrad
Leroy F Greene
Joseph Kennick
Charles W Meyers
Howard J. Thelin
Gordon Winton

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RECOMMENDATIONS AND FINDINGS

I. THE PROFESSIONAL FEE

The subcommittee recommends that the Health and Welfare Agency change the method of reimbursing pharmacists under the Medi-Cal program from the present "cost plus 50 percent plus $1.15" formula to a "cost plus fixed professional fee" per prescription filled as one method of reducing total pharmaceutical expenditures without reducing incomes of pharmacists.

The professional fee system of reimbursing pharmacists has two attractive features First, it enhances the professional status of pharmacists by emphasizing that it is a professional service which the pharmacist renders to the public, just as the physician and dentist are reimbursed for their professional services and that this professional service is the same for every prescription filled regardless of the cost of the drug product dispensed. Second, it can be a source of significant savings to the purchaser of pharmaceuticals in that it removes the economic incentive to stock and dispense only higher priced drug products.

Under the present combination mark-up and filling fee formula, the pharmacist's return is clearly greater when a higher priced drug is dispensed Often a prescribed drug is produced by more than one manufacturer, and the resulting wholesale cost may vary considerably For example, one manufacturer's drug may cost the pharmacist $1, the price of a second manufacturer's equivalent product may be $3 Using a 50-percent markup plus a $1.15 filling fee, the resulting prices to the purchaser are $2 65 (a margin of $1 65), and $5 65 (a margin of $2 65) The pharmacist clearly has an economic incentive to stock and dispense the higher priced product producing for him the greater margin

The professional fee, however, removes this incentive For the same drugs illustrated above, when a fixed professional fee of, say, $2 per prescription is used, the cost to the purchaser is $3 and $5 respectively, but the pharmacist's margin is the same in both cases ($2) Gone is the financial incentive to dispense the higher priced product, and the purchaser has saved $2

It would appear, then, that the State of California could save considerable money by converting to the professional fee system Recalling the earlier distinction between cost of the drug product and cost of the services of pharmacists, the professional fee would likely lead to the dispensing of more lower priced drug products of acceptable quality to pharmacists, and hence reduce state expenditures for drugs alone, without reducing incomes of pharmacists

The savings to be effected by use of the professional fee system constitute the major reason for its growing support by the federal government, including the prestigious General Accounting Office It is noteworthy too that the American Pharmaceutical Association supports vigorously the professional fee concept

While it is difficult to estimate the amount of money which the professional fee would save the state, one pharmacist, Mr Morris Boynoff, representing the Alameda and Contra Costa County Pharmaceutical

Associations, reported to the subcommittee that since his conversion to the professional fee concept for his predominantly private clientele, he has "doubled or tripled" the number of less expensive drug products of acceptable quality now stocked and dispensed regularly in his pharmacy, and that his clients (and their prescribing physicians) seemed "well satisfied" by the economies achieved

In his testimony before the subcommittee, Mr Boynoff explained the effect of the professional fee on relationships between pharmacists and drug manufacturers

> The separation of earnings from wholesale cost causes an important shift in the pharmacist's relation to the drug manufacturer. Pharmaceuticals lose all the attributes of merchantable commodities and become merely supplies requisite to one's practice The manufacturer is no longer an important "teammate," and is relegated to what appears to me to be his proper position, that of supplier. No longer is the fee-pharmacist little brother to an industry, a link in its distributive chain. His fortunes are not tied to the vicissitudes faced by the large corporations engaged in drug manufacturing, and he acquires the economic independence from his suppliers which encourages adoption of a critically objective view of their products and of their behavior. The cumulative effect of this alone can contribute significantly to lowered drug costs

The possibility of reimbursing pharmacists according to "their usual and customary" charges has been suggested to the subcommittee It is significant, however, that AB 5 (Casey, 1965) does not direct the Health and Welfare Agency to use this method of reimbursement It does state that in determining reimbursement rates of physicians "there shall be taken into consideration the customary charge for similar services generally made by the *physician,* as well as the prevailing charges in the locality for similar services" (Article 3, 14104c). "Payment for services to *hospitals and other facilities and professional services* shall be predicated on the basis of reimbursement for reasonable cost based on standards, determined by the director with the advice of the Medical Advisory Committee" (Article 3, 14104b) In short, AB 5 may permit the Health and Welfare Agency to use the usual and customary fee method for pharmacists, but it does not direct the agency to do so.

The subcommittee doubts whether use of the usual and customary fee method of reimbursement for pharmacists at this time would be either practical or sound public policy It would have none of the advantages of the professional fee concept, and it would make difficult the control of expenditures under the program, largely because of the wide disparity in pricing practices by pharmacists for identical prescriptions Table I documents the tremendous range in retail prices prevailing in the San Francisco Bay area for identical prescriptions, all of which are for drugs manufactured by only one manufacturer For example, 50 Donnatal tablets can be purchased for $1 29 at one pharmacy and $3.40 at another, and the price of 12 Empirin with codeine tablets varies from $ 94 to $3 50 Moreover, there is a great variation of prices within the ranges cited As an example, the 45 prescriptions for Phenergan expectorant with codeine include 22 different prices, and the 24 Donnatal prescriptions include 13 different prices

II. LEVEL OF PROFESSIONAL FEE

The subcommittee recommends that in converting to the professional fee, average service charges by pharmacists under the present formula ($2.05) should not be reduced, nor should pharmacists' service charges be increased, without an extensive study by the Health and Welfare Agency in conjunction with the Department of Finance as to what constitutes a reasonable rate of reimbursement for pharmacists.

The present formula (cost plus 50 percent plus $1.15) was set in 1957, and has remained unchanged for nearly a decade On the average Medi-Cal prescription filled, it provides the pharmacist a gross return of 110 percent on the average cost of the drug dispensed (or $2 05 when converted to a straight fee) The California Pharmaceutical Association has suggested that increases in the cost of living and in pharmacists' salaries since 1957 are valid reasons for increasing the Medi-Cal allowance by at least $0 40 per prescription Such an increase would raise the present average gross margin of pharmacists per Medi-Cal prescription filled from 110 percent to 133 percent (or to a professional fee of $2 45) It would increase total Medi-Cal expenditures for pharmaceutical goods and services from $40 million annually to over $44 million at a time when the total Medi-Cal program is expected to incur a sizeable deficit For fiscal reasons alone, the request of the California Pharmaceutical Association should be analyzed very carefully before any increase is granted

While the subcommittee believes there is a need for a study of pricing practices of pharmacists in order to determine a just compensation level for pharmacists, it also believes on the basis of the limited data now available that the present Medi-Cal allowance may well be reasonably adequate for a large percentage of the pharmacies in California

TABLE I

RETAIL DRUG PRICE RANGES
SAN FRANCISCO BAY AREA
(August 1, 1964–July 31, 1966)

Qt	Drug	Total range	No Rx's
30	Diuril (5 gm)	$3 30–$5 05	66
50	Donnatal Tabs	1 29– 3 40	24
12	Empirin with codeine (½ gr)	94– 3 50	49
36	Gantrisin (5)	3 25– 4 40	10
60	Gantrisin (5)	3 06– 4 50	8
100	Gantrisin (5)	4 00– 6 45	8
12	Nembutal (1½ gr)	95– 2 85	16
30	Nembutal (1½ gr)	1 20– 3 25	30
50	Ornase (5 gm tablet)	5 00– 6 75	43
100	Ornase (5 gm tablet)	9 50– 12 80	59
4 oz	Phenergan expectorant with codeine	1 33– 4 00	45
	Total		358

SOURCE Joint Council 7, Dairy Industry Trust Fund, Oakland, California See the discussion relating to Table III for a description of the drug insurance program and of the method of obtaining these figures

The Bureau of Vendor Investigation, Health and Welfare Agency, conducted a study during September 1966, of private prescription prices of 253 pharmacies throughout California The bureau compared these retail prices for 13 prescription drugs with the maximum Medi-Cal allowance for these same prescriptions Before discussing the findings, it is necessary to stress that the 253 pharmacies surveyed were not systematically selected and thus may not constitute an accurate cross-section of either all pharmacies in California or those pharmacies which serve a high proportion of welfare recipients Recognizing this limitation, the data obtained still provide an indication of how the state allowance compares to retail drug prices The findings, summarized in Table II, reveal that 35 percent of the retail prices surveyed were equal to or less than the maximum state allowance On the other hand, 65 percent of the prices surveyed were above the state allowance, but by how much was not reported A more revealing finding was that if the pharmacies in question had used the Medi-Cal pricing formula for all of the drugs surveyed, they would have received 92 5 percent of what they would normally receive using their regular private prices (See Table II-a)

Another recent study conducted by the Assembly Ways and Means Committee staff surveyed retail drug prices for eight commonly prescribed drugs for the San Francisco Bay area during the period August 1, 1964–July 31, 1966 The pharmacies surveyed were those patronized by union members of the Joint Council 7, Dairy Industry Trust Fund, whose self-insured drug insurance program allowed their beneficiaries a free choice of pharmacy Again, the pharmacies patronized may or may not be an accurate cross section of all pharmacies located in the geographic region bounded by Santa Rosa on the northeast, Salinas on the southeast, and the Pacific Ocean on the west But the prices obtained are an indication of prevailing pricing practices in this area The trust fund has received over 20,000 prescription claims, and of these, every claim for certain quantities and strengths of specified drugs was selected for analysis The results, summarized in Table III, show that more than 25 percent of the prescriptions were less than or equal to the usual Medi-Cal allowance, while nearly 75 percent were above the state allowance Perhaps a more significant finding is that for all the prescriptions surveyed the Medi-Cal allowance was approximately 86 4 percent of the total private prices surveyed, that is, using the Medi-Cal allowance for the 415 prescriptions analyzed, pharmacists would have received $1,515 20 rather than the $1,752 94 actually charged private customers This survey suggests, then, that the Medi-Cal allowance is reasonably adequate, even if slightly below all private retail prices

Aggregate data from the total experience of the drug insurance program of the Joint Council 7, Dairy Industry Trust Fund, also suggests that the Medi-Cal allowance is reasonable Of the more than 20,000 claims filed during a two-year period, the trust fund allowed nearly 92 percent of pharmacist's retail charges, using a reimbursement formula that parallels the Medi-Cal formula After purchasing prescribed drugs at pharmacies of their choice, trust fund beneficiaries are reimbursed for their pharmaceutical expenses, and there is no interference with

TABLE II

PRIVATE PRESCRIPTION PRICES COMPARED TO MEDI-CAL ALLOWANCE

(253 Pharmacies)

Quantity	Drug	Private average prescription price [a]	Maximum Medi-Cal allowance	Percent at maximum of Medi-Cal allowance [b]	Percent below [b]	Percent above [b]
100	DBI tablets (25 mg)	$7 54	$7 15	9 59	28 78	61 63
100	Diabinese (250 mg)	12 58	12 25 (Usual)	5 33	33 98	60 69
100	Furandantin (100 mg)	46 18	46 15	0	57 71	42 29
100	Mellaril (50 mg)	14 69	13 90	3 66	14 65	81 69
100	Orinase (5 gm)	11 04	9 95	9 75	9 75	80 50
16	Declomycin (150 mg)	6 07	5 65	2.47	35 53	62 00
16	Ilosone (250 mg)	6 18	6 40	30 00	27 59	42 41
1	Synalar cream 01% (45 gm)	5 73	5 50	23 68	20 17	56 15
100	Diuril (5 gm)	10 10	8 35 (Usual)	2 47	7 44	90 09
100	Rautrax	11 96	11 65	7 62	28 57	63 81
100	Hydropes "50"	14 14	12 85	3 56	17 64	78 99
	Average totals			8 92	25 61	65 47

SOURCE Bureau of Vendor Investigation, Office of Health Care Services, Health and Welfare Agency, State of California

[a] When each of the average private prices and the Medi-Cal allowances are multiplied by 253 (the number of pharmacies surveyed), and when the resulting products are again multiplied by weighted figures (which account for the frequency with which each of the particular drugs were prescribed and dispensed to Medi-Cal recipients in June, 1966), the pharmacies surveyed would have received $195,219 86 using the Medi-Cal pricing system and $209,979 88 using the usual private prices reported to the Health and Welfare Agency in Sept 1966 The weighting formula was as follows DBI (1 9), Diabinese (4 9), Furadantin (2 8), Mellaril (5 0), Orinase (12 0), Declomycin (9 0), Ilosone (12 5), Synalar Cream (7 5), Diuril (16 0), Rautrax (0 3), and Hydropes (5 5)

[b] There was no weighting of these percentages

TABLE III

PRIVATE PRESCRIPTION PRICES COMPARED TO MEDI-CAL ALLOWANCE

Quantity	Drug	Usual Medi-Cal allowance	Private average	No. Rx's	Percentage of retail prices		
					Below Medi-Cal allowance*	Same as allowance†	Below Medi-Cal allowance‡
30	Diuril (5 gm)	$3 30	$4 31	66	0 0	4 5	95 4
12	Empirin with codeine (½ gr)	1 75	2 24	49	18 3	0 0	81 6
30	Nembutal	1 85	2 91	30	3 3	0 0	96 7
50	Ormase	5 55	6 21	43	4 7	4 7	90 7
100	Ormase	9 95	11 00	59	0 0	28 8	71 2
4 oz	Phenergan expectorant with codeine	2 15	2 55	45	24 4	0 0	75 6
100	Phenobarbital (¼ gr)	1 90	1 95	44	27 3	11 4	61 4
100	Phenobarbital (½ gr)	1 90	1 96	79	27 8	26 6	45 6
	Totals	$1,515 20	$1,752 94	415	48§	57§	310§
	Percentage			100	13 7	11 6	74 7

* More than 5 percent below the state usual allowance
† 5 percent below to 5 percent above the state usual allowance
‡ Greater than 5 percent above the state usual allowance
§ These figures are numbers of prescriptions, not percentages

SOURCES Joint Council 7, Dairy Industry Trust Fund, Oakland, California and Bureau of Vendor Investigation, Office of Health Care Services, Health and Welfare Agency, State of California

the fee charging practices of pharmacists The beneficiaries simply bill the trust fund, which reimburses them according to the following formula.

> For drugs with a cost of 75 cents or less (according to Blue Book or Red Book, which is the drug manufacturers' wholesale listing), reimbursement of up to $1 50 is allowed, for drugs with a cost of $0 75 to $5, an amount of up to twice the cost is allowed; for drugs with a cost of $5 to $5 99, $10 is allowed, for drugs with a cost of $6 or more, the allowance is cost plus 50 percent plus $1 15

For drugs costing the pharmacist up to $2 25, the Medi-Cal allowance is greater than the fund allowance For drugs costing the pharmacist $2 26 to just under $6, the fund allowance is greater than the state allowance For drugs costing more than $6, the union and Medi-Cal allowances are identical However, one difference in the two formulas is that the state requires pharmacies to use their acquisition cost of drugs when billing the state. Often, pharmacists purchase drugs at lower than listed wholesale costs, but the fund allows for the higher listed cost Even so, when nearly 92 percent of the total charges by pharmacists are met by a formula which approximates the Medi-Cal formula, there is ample reason to believe that the Medi-Cal formula is reasonably adequate

Moreover, even granting that some pharmacies have price schedules somewhat higher than the Medi-Cal allowance, it is also true that the state, by financing prescription costs for welfare recipients since 1957, has increased significantly the demand for prescription drugs from retail pharmacies The indigent population without governmental assistance in the financing of their health care undoubtedly could not purchase the amount of pharmaceuticals that are now provided them under the Medi-Cal program Legislative Analyst A Alan Post stated this point strongly in his testimony before the subcommittee·

> While the propriety of a policy of paying less for the same service and merchandise when a welfare recipient is the customer can be questioned, it can also be defended on the basis that the total volume of drugs dispensed is undoubtedly increased by the availability of public funds in the program in excess of the amounts which would otherwise be sold and the merchant therefore can reasonably be expected to accept a smaller margin of profit on these added sales

There are two important questions left unanswered by the data presented First, how does the Medi-Cal allowance for pharmacists compare to the retail prescription prices of those pharmacies whose clientele includes a high percentage of welfare recipients? Because neither study determined the percentage of Medi-Cal prescriptions dispensed by the pharmacies surveyed, it is not possible to obtain an answer But it may well be that pharmacies doing the bulk of the Medi-Cal prescription business find the state allowance quite adequate, and probably more adequate than do certain pharmacies located in affluent residential areas who dispense only an occasional Medi-Cal prescription In evaluating Medi-Cal reimbursement policies for pharmacists, the Health

and Welfare Agency might properly seek an answer to the question posed.

A second question in need of an answer relates to the varying levels of efficiency of retail pharmaceutical operations, including varying profit levels It is well known that some pharmacies fill relatively few prescriptions, while others fill many more. Some pharmacies employ only one pharmacist who may spend part of his time selling perfume, while others have four or five pharmacists who work full time as pharmacists Some low-volume pharmacies have little purchasing power, other high-volume pharmacies have substantial purchasing power. The point is that for some pharmacies, which perhaps operate more efficiently than others, the present state allowance is adequate, as Tables II and III suggest, while for other less efficient pharmacies, a higher margin per prescription is desired Thus one practical effect of an increased state allowance for pharmacies might well be the subsidy of less efficient pharmacies Whether this is in the public interest is certainly questionable, and the subcommittee recommends that the Health and Welfare Agency and the Department of Finance give adequate consideration to this issue when evaluating the present formula

The adequacy of the present formula can also be considered in terms of formulas used by other states in their medical assistance programs. California leads the nation with the highest allowable margin for pharmacists filling welfare prescriptions California's formula amounts to a 110-percent markup (or $2 05 professional fee) in contrast to Connecticut's 66⅔ percent, Illinois' 30 percent plus $1, Massachusetts' 50 percent, New Jersey's professional fee of $1 50, New York's 60 percent, Ohio's 50 percent. Pennsylvania's 50 percent, and Washington's 66⅔ percent [1] Even granting that the costs of operating a pharmacy in California may be somewhat greater than in other states, still the present average return to California's pharmacies per prescription filled appears to be quite generous when compared to reimbursement rates used in other states for their medical assistance programs

In summary, the evidence presented to the subcommittee suggests that in converting to the professional fee, the state ought to maintain the present rate of reimbursement to pharmacists which on the average amounts to a margin of 110 percent, or when converted to a straight professional fee, a sum of $2 05 per prescription filled Any departure from this amount ought to be preceded by an extensive study by the Health and Welfare Agency and the Department of Finance, that takes into consideration some of the issues raised herein

III. DETERMINATION OF DRUG COST

The subcommittee recommends that in determining the reimbursement to pharmacists for the cost of the pharmaceutical product dispensed, the Health and Welfare Agency should consider the feasibility of reimbursing upon a fixed wholesale cost basis, rather than the present variable acquisition cost system.

When the medical assistance program began in 1957, pharmacies were reimbursed on the basis of standard wholesale cost Several years later, the requirement was imposed of reimbursement for acquisition

[1] These figures were supplied by the Pharmaceutical Manufacturers Association, based on an analysis of H E W data

cost, the theory being that if pharmacies obtain drugs at an acquisition cost that is cheaper than standard wholesale cost, the state should only pay for the lower price The desire of the state to realize these savings is commendable, but the policy has two undesirable ramifications First, it penalizes those pharmacies that operate more efficiently by purchasing in sufficiently large quantities to obtain discounts from standard wholesale prices Such pharmacies are willing to invest more money to buy a larger inventory but are then penalized for the savings effected when the state insists on paying acquisition cost. Under the acquisition cost system the less efficient pharmacy buying in smaller quantities and paying a higher wholesale price has some incentive to remain less efficient

A second problem of using acquisiton cost is that of enforcement It is difficult for the state to discover whether a given pharmacy actually is purchasing drugs at standard wholesale prices, or at some lower rate Nor are efforts to enforce the acquisition cost policy productive of harmonious relations between the state and pharmacies

While converting to a system of pricing based on standard wholesale cost may inflate slightly total pharmaceutical expenditures under the Medi-Cal program, the slightly higher expenditures probably will be offset by conversion to the professional fee (see recommendations 1 and 2), and may be justified in light of the undesirable consequences of pricing based on acquisition cost

In his testimony before the subcommittee, Dr Morris Wolfred, representing the California Pharmaceutical Association, pointed out

> Three major drug wholesalers in California have offered to provide electronic data processing printouts of wholesale prices for every drug in the formulary and they would be willing to furnish price changes on a monthly basis These prices could be programmed into E D.P machines, which would eliminate the necessity of auditing for price This, in turn, would greatly reduce auditing costs The pharmacist would be reimbursed on the basis of wholesale cost plus a professional fee for each claim submitted

The subcommittee believes that Dr Wolfred's recommendation warrants serious consideration by the Health and Welfare Agency

IV. TRADE NAME AND GENERIC DRUGS

The subcommittee recommends that the present Medi-Cal regulation allowing physicians to authorize or prohibit the dispensing by pharmacists of less expensive generic equivalent drugs be continued as another means of effecting economies consistent with the professional judgments of physicians and pharmacists.

The underlying issue is that for certain drugs now on the Medi-Cal formulary there are more than one manufacturer, each of which produces drugs that are chemically or generically equivalent Often drugs dispensed under the generic designation are substantially cheaper in price than their brand or trade name counterparts The Medi-Cal prescription form contains a clause, which, unless crossed out by the prescribing physician, authorizes the dispensing pharmacist to use a generic equivalent product if the pharmacist stocks one In some cases, the

program has set maximum allowable wholesale prices in order to take advantage of the lower prices of certain generic equivalent products The economies stemming from this requirement warrant attention For example, the wholesale price of reserpine 0 25 mg purchased under its generic designation is about $0 65 per 1,000 tablets, while the most popular brand name of reserpine (Serpasil) sells for $38 50 per 1,000 0 25-mg tablets [2] Use of the professional fee for pharmacists (Recommendation 1) should facilitate the use of more generic equivalent products insofar as it removes the economic incentive to stock and dispense only higher priced drugs and insofar as there are cheaper generic equivalent drug products available of acceptable quality

V. MULTIPLE PRICING PRACTICES

The subcommittee recommends that the Legislature consider ways of eliminating the alleged multiple pricing practices of certain drug manufacturers, which inflates the wholesale costs of drugs to community pharmacies through which the vast majority of state pharmaceutical expenditures are channeled.

It has been brought to the subcommittee's attention that certain drug manufacturers have one price schedule for hospitals and clinics, and a higher price for community pharmacies The practice of linking price differentials to quantity purchased appears to be not unusual, nor unfair, provided all buyers have an equal opportunity to obtain discounts based on large quantity purchasing But it has been reported to the subcommittee that certain drug manufacturers charge hospitals and clinics a lower price regardless of quantity purchased than they charge community pharmacies [3]

Aside from wanting to redress any economic inequities imposed on community pharmacies, the state has an important financial interest in the multiple-pricing problem because it is through community pharmacies that Medi-Cal funds are channeled To the extent that such pharmacies are forced to pay higher prices for the products they later supply to Medi-Cal recipients, state pharmaceutical expenditures are thereby inflated

Because the state is such a large-scale purchaser of drugs, it is in a powerful bargaining position to bring about more uniform pricing practices of drug manufacturers On grounds of both equity and economies, therefore, the subcommittee believes that the Legislature should consider ways to eliminate this practice

VI. QUALITY OF DRUGS

The subcommittee recommends that the Legislature explore means of providing the public greater safeguards against the manufacture and distribution of drug products of questionable quality and efficacy.

While this investigation focused on drug prices, the subcommittee also received important testimony to the effect that there are drugs of questionable quality and efficacy now being distributed Dr Lester Breslow, Director, State Department of Public Health, stated·

[2] These prices were supplied the subcommittee by Frederick H Meyers, M D , Professor of Pharmacology, University of California Medical Center, San Francisco, November 22, 1966

[3] Testimony of Morris Wolfred, Ph D , California Pharmaceutical Association, November 22, 1966

The State Department of Public Health recently conducted a survey of the California drug industry One hundred sixty-five firms out of a total of 538 registered with the Federal Food and Drug Administration were randomly sampled. Our findings indicated that 25 percent of those sampled were operating under conditions which are in violation of the "good manufacturing practice" requirements.

Dr Breslow recommended an augmented state inspection program as one means of providing the public greater safeguards against the dangers of poor quality drugs

Dr Jere Goyan, associate dean, School of Pharmacy, University of California Medical Center, San Francisco, cited examples of inefficacious drug products and contended that "the prescribing of generic equivalents without some knowledge of therapeutic equivalency can result in situations not in the interest of best patient care " Dr Goyan pointed out that the "large manufacturer is also occasionally guilty of inefficacious products," and he recommended the establishment of an industry-financed "impartial central testing facility for purposes of determining which products are acceptable " Concluding, Dr Goyan stated "To require each manufacturer to clear his products through such a central agency before they could be sold in this state would not be unreasonable "

The subcommittee believes that a legislative consideration of ways to provide the public greater safeguards against the dangers of inefficacious drug products is in order.

VII. ADMINISTRATIVE REFORMS

The subcommittee recommends that the Health and Welfare Agency, working with the fiscal intermediary (California Physicians Service) and others, should institute improved administrative procedures to alleviate certain undesirable practices affecting the pharmaceutical aspects of the Medi-Cal program.

The subcommittee has uncovered several disturbing findings In one instance, a pharmacist in Fresno had $19 291 71 in back claims owed to him by the State of California dating from March 1, 1966, through November 1966, for Medi-Cal prescriptions filled at this one pharmacy [4] Such administrative delays in payment pose a heavy burden for a Medi-Cal vendor to shoulder In the subcommittee's opinion, steps to eliminate such practices should be implemented immediately

In a second instance, a pharmacist in Baldwin Park received on November 21, 1966, 62 checks for 62 Medi-Cal prescriptions mailed in 62 different envelopes [5] As the pharmacist in question pointed out to the subcommittee, "The postage alone amounted to $3 10 for the 62 letters This represents over 1 percent of the remittance in addition to the fantastic cost of issuance of each check " Again, the subcommittee feels that it is a waste of public funds to operate in this inefficient manner, and appropriate administrative steps to rectify the situation clearly are in order

Third, it was learned that the fiscal intermediary, California Physicians Service, audits by hand (and human eye) each of the 10,000,000

[4] Rudy's Elm Pharmacy, 2102 Elm Avenue, Fresno
[5] K & W Pharmacy, Inc, 4299 N Maine Street, Baldwin Park

pharmaceutical claims expected to be processed during 1966–67 Given today's electronic data processing technology, it would appear that the auditing of so many claims could more efficiently be handled by the use of computerized equipment

A fourth problem reported to the subcommittee is that of eligibility determination In order to become eligible for Medi-Cal benefits, an eligibility determination is necessary Such determinations are made by county welfare departments, reported to the State Department of Social Welfare in Sacramento, and subsequently transmitted to the fiscal intermediaries before payment can be made to the Medi-Cal vendors that provide services to the recipient Delays and errors in this process are believed to account in part for delays in paying vendors It is apparent that confusion and unnecessary delays result due to the inefficient data transmission system The subcommittee believes that the bottlenecks created need corrective action

VIII. STATE BOARD OF PHARMACY

The subcommittee recommends that the State Board of Pharmacy should establish a subcommittee to consider the equity of existing regulations relating to the operation of hospital pharmacies, so that interested parties, such as the California Hospital Association, hospital pharmacists, and others, together with the state board, might consider problems of mutual concern on an ongoing basis.

The California Hospital Association presented to the subcommittee testimony on problems regarding hospital pharmacy licensure requirements, hospital pharmacy construction requirements, and utilization of hospital pharmacy services After considering testimony presented by the State Board of Pharmacy, the subcommittee believes that it would be appropriate for the interested parties to meet periodically and to consider problems of mutual concern The subcommittee notes that the present composition of the State Board of Pharmacy does not include any representatives of hospitals, and for this reason periodic discussions between the board and hospital representatives might well be productive

CONCLUSION

On the basis of its investigation and testimony received, the subcommittee has made eight specific recommendations The first two recommendations, dealing with ways of reimbursing pharmacies for the professional services rendered to Medi-Cal recipients, endorse the use of a reasonable fixed professional fee per prescription filled rather than the present markup and filling fee formula The third recommendation, dealing with the method of reimbursing pharmacies for the cost of the pharmaceutical products dispensed, suggests that the standard wholesale cost rather than the acquisition cost to pharmacies is a more practical method of reimbursement

The fourth and fifth recommendations deal with costs of the pharmaceutical product itself The present flexible Medi-Cal policy regarding the use of trade name and generic equivalent drug products is supported, and the need for legislative consideration of the multiple-pricing practices of certain drug manufacturers is cited, as such practices increase drug costs to the State of California by forcing pharmacies to pay inflated prices

The sixth recommendation, dealing with the quality and efficacy of drug products sold in California, urges the Legislature to consider ways of providing the public greater safeguards against the dangers of poor quality drugs The solution to this problem appears to involve greater state inspection of drug manufacturing firms based in California and in the development of an independent drug testing program

The seventh recommendation, dealing with the administrative aspects of the Medi-Cal program, urges the implementation of badly needed reforms to correct poor management practices on the part of state agencies and the Medi-Cal fiscal intermediary

The eighth recommendation urges the State Board of Pharmacy to meet periodically with representatives of hospitals to discuss problems relating to the operation of hospital pharmacies

The subcommittee believes that appropriate action on these matters will be in the public interest

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ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

REPORT OF THE

SUBCOMMITTEE ON HEALTH, EDUCATION AND WELFARE SERVICES

on

SERVICES FOR HANDICAPPED CHILDREN

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James Mills
Don Mulford
Nicholas C Petris
Carley Porter
Howard Thelin
Jerome Waldie (Resigned)
John Williamson
Gordon Winton, Jr
George Zenovich

COMMITTEE STAFF

Louis J Angelo, *Committee Coordinator*
William Barnaby, *Consultant*
John H Simons, *Consultant*
Keith Axtell, *Legislative Intern*

Gail Vessels, *Committee Secretary*
Maria Husum, *Secretary*

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ON WAYS AND MEANS
ROBERT W. CROWN, *Chairman*

Report of the

SUBCOMMITTEE ON HEALTH, EDUCATION AND WELFARE SERVICES

NICHOLAS C. PETRIS, *Chairman*

on

SERVICES FOR HANDICAPPED CHILDREN

Members of the Subcommittee

Anthony Beilenson	Charles Meyers
Frank Belotti	Don Mulford
Charles Conrad	Howard Thelin
Leroy Greene	Gordon Winton

Staff

John H. Simons, *Consultant*
Gail Vessels, *Secretary*

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LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS
January 30, 1967

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Dear Mr. Speaker and Members:

Your Interim Committee on Ways and Means, in accordance with House Resolution 710(v), 1965 General Session, herewith respectfully submits the final report of the Subcommittee on Health, Education and Welfare Services on the subject of services for handicapped children.

The report was adopted by 9 of the 10-member subcommittee and we, the undersigned, concur in their findings and recommendations.

The chairman is appreciative of the intelligent and energetic leadership provided by Subcommittee Chairman Nicholas C. Petris as well as for the diligent application of the subcommittee members and its staff.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Anthony Beilenson
Frank Belotti
Carl Britschgi
Charles J. Conrad*
Leroy F. Greene
Burt H. Henson
Joseph M. Kennick
Frank Lanterman*
Charles W. Meyers
Nicholas C. Petris
Carley V. Porter
Howard Thelin
Gordon Winton*
George Zenovich

* With reservations

LETTER OF TRANSMITTAL

January 12, 1967

HON. ROBERT W. CROWN
Chairman, Assembly Interim Committee on Ways and Means

Dear Chairman Crown:

In accordance with House Resolution 710(v), 1965 General Session, the Subcommittee on Health, Education, and Welfare Services herewith submits its report on services for handicapped children.

The resolution requesting interim study of this subject was H R 180 (Unruh-Waldie), 1965 General Session.

The subcommittee is grateful to all who participated in the public hearing as well as those who communicated with the subcommittee and its staff

Respectfully submitted,

NICHOLAS C PETRIS, *Chairman*

Anthony Beilenson
Frank Belotti
Charles Conrad*
Leroy Greene
Joseph Kennick
Charles Meyers
Howard Thelin
Gordon Winton, Jr.*

* With reservations

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House Resolution 180 (Unruh-Waldie, 1965) calling for a study of health, education and welfare services for children, was assigned to the Assembly Interim Committee on Ways and Means The Subcommittee of Health, Education and Welfare Services conducted an investigation, including one public hearing on September 15, 1966. The subcommittee wishes to extend its appreciation to the many individuals and organizations that provided assistance during the study

SUMMARY OF RECOMMENDATIONS

The subcommittee recommends·

1 That present state institutional licensing functions be consolidated and that the Legislature consider creating a unified state licensing service linked with the responsibility for setting rates;
2 That additional development centers for severely handicapped minors be established and that basic changes in the method of financing these centers be implemented, including:
   a. Elimination of the parental surcharge;
   b An increased transportation allowance,
   c Provision of state building aid,
   d Conversion to the special education method of financing the centers with provision for a, b, and c above;
3 That the Coordinating Council on Programs for Handicapped Children be phased out of existence with an expanded Mental Retardation Program and Standards Advisory Board assuming the council's responsibility;
4 That the Mental Retardation Regional Diagnostic Center Program be expanded during the next two fiscal years, creating a regional network of eight centers by 1969, and that initial planning be started by the Mental Retardation Coordinator and Program and Standards Advisory Board concerning the broadening of services under the program so as to serve people with handicapping conditions other than mental retardation, and
5 That a master plan for handicapped children be developed

THE PROBLEM

The problem is twofold· (1) gaps and deficiencies in existing services for handicapped children and (2) poor coordination of these services In the first category, examples abound: inadequate community services for both emotionally disturbed and neurologically handicapped children, and the general paucity of programs for children having multiple handicaps In the second equally important category, there are many, often more difficult, problems, most of which involve fragmentation of services and poor coordination of total program efforts Again examples are easy to cite· Six state departments operate programs for handicapped children, and many more county and municipal agencies do likewise In the voluntary sector, there are a multitude of organizations —most representing children having a particular disability—and often

these compete with one another for public support and resources Some results of this fragmentation are: multiple-licensure activities by three different state agencies leading to occasional duplication of efforts and the implementation of varying standards, research-planning functions are performed by different agencies leading to needless duplication of effort and occasional efforts in opposite directions Both the deficiencies in existing services and their poor coordination are the rationale behind H R 180

H R 180 also envisaged the possibility of establishing a Children's Bureau in California to cope with the problems already mentioned in a more systematic fashion. Support for this proposal came from the parent of a handicapped youngster, Mr Niall E Tabor, in the form of an important document entitled *A Proposal for a Responsive Program for Handicapped Children in California* (1964). Among other things, Tabor's document advocated a major reorganization of present state services for handicapped youngsters, including the establishment of a Director of Handicapped Children's Services (with fiscal control and policy direction for handicapped children's programs) This proposal strikes at the heart of existing state departmental organization, because the state executive branch is organized more by broad subject matter function (e g , education, social welfare, rehabilitation, public health, etc) than on a client-need basis (e g , children services, the aged, etc.). One result of the present organizational scheme is that those state officials responsible for programs dealing with handicapped children are fragmented into six different state departments (Education, Social Welfare, Public Health, Mental Hygiene, Rehabilitation and Youth Authority) with little centralized planning, evaluation, or coordination taking place [1] Instead, California's more than one-half million handicapped children are all too often viewed as though they have only educational needs, or only social needs, or only economic needs or only health needs, instead of being perceived as total human beings with a multitude of interrelated needs

Because of these problems, the subcommittee had hoped to obtain a federal research grant from the Department of Health, Education, and Welfare to study in a systematic fashion the totality of services for handicapped children in California, with the view in mind of developing remedial legislation to rationalize the organization of existing programs and to develop new programs to fill unmet needs Unfortunately, the research application was denied, and the subcommittee's efforts had to be restricted Nevertheless, the subcommittee did study selected problems brought to its attention by more than 40 officials from public and private agencies vitally concerned with handicapped youngsters. A discussion of these issues, with the subcommittee's recommendations, follows

[1] Recent changes in the organization of services for the mentally retarded are an important exception to this statement

LICENSING OF INSTITUTIONS

The subcommittee notes that there are three basic problems associated with the licensing of institutions providing various types of services to individuals

I. There are certain institutions for which there are no state licensing provisions whatsoever For example, handicapped persons age 16–65 who reside in various types of institutions are not assured that the institutions meet any kind of licensing requirements Moreover, licensing codes do not apply to such institutions as day care centers and workshops that serve the handicapped population Although the subcommittee investigation did not explore the full extent of the gaps in licensing of institutions in California, the subcommittee does believe that the gaps cited need corrective action, including remedial legislation where necessary The subcommittee recommends that the Health and Welfare Agency, which is currently analyzing state licensing activities, submit to the Legislature in 1967 a report of proposed changes in the licensing codes to fill the gaps in existing licensing legislation.

II. The responsibility of licensing institutions is fragmented into three different state departments (See Table I)

TABLE I

STATE DEPARTMENTAL LICENSING RESPONSIBILITIES

Department of Mental Hygiene

(P)	Psychiatric hospital	(short term)
(D)	Day treatment hospital (psychiatric)	(day care only)
(L)	Long-term facility	(skilled nursing)
(H)	Family home (mentally ill)	(6 beds or less)
(E)	Children's treatment center (emotionally disturbed)	(7 beds or more)
(C)	Day center (emotionally disturbed)	(children; day only)
(A)	Alcoholism hospital	(short term)
(X)	Facilities for admission of drug addicts	

Mental Retardation group

(S)	Resident school (MR)	(educable and trainable MR)
(R)	Resident facility (MR)	(7 beds or more)
(F)	Family home (MR)	(6 beds or less)
(M)	Day center (MR)	(day only)
(N)	Nursery (MR)	(crib)

Department of Public Health

General hospital	
Specialized hospital	
Maternity hospital	
Tuberculosis hospital	
Nursing and convalescent home	(divided into 6 size categories with differing staff requirements 1–6, 7–10, 11–25, 26–59, 60–99, and 100+)
Maternity home	
TB nursing home	
Infirmary	
Clinic	
Establishment for handicapped persons (EHP)	

Home health agency
Laboratory
Radiological laboratory

Department of Social Welfare

Private institutions for aged persons.....(16 beds or more)
Boarding homes for aged (BHA)
Foster family home—aged persons.....(1 to 4 beds)
Small group care home—aged persons.....(5 to 15 beds)
Institutions for children.....(16 or more beds)
Boarding homes for children (BHC)
Foster family home for children.....(1 to 6 beds)
Special boarding home for children.....(7 to 15 beds)
Parent-child facilities
Parent-child boarding home.....(1 to 4 family units)
Parent-child institution.....(5 or more family units)
Day nurseries.....(more than 10 children)
Maternity home.....(girls under 16)
Child placing agencies
County
Private

Source Health and Welfare Agency, State of California

There are many problems attendant to this tripartite division of licensing responsibility

(a) The institutions licensed do not necessarily fit into only one of the previous categories so that sometimes more than one department may license a given institution.

(b) Licensing standards and administrative procedures often vary by licensing department or by type of institution licensed (sometimes justifiably and sometimes questionably), so that unnecessary problems from the standpoint of vendors and users often result

(c) It is questionable whether existing licensing staff personnel are being utilized as effectively as possible

(d) The present fragmentation of licensing responsibility inhibits the development of more uniform standards and procedures insofar as such standardization does not conflict with different program objectives It is significant that these criticisms of the present licensing system have emerged during past legislative inquiries and by self-criticisms by department heads themselves [2]

Assembly Bill 2280, added to the Health and Safety Code in 1965, authorizes the department heads of Social Welfare, Mental Hygiene, Rehabilitation and Public Health to "enter into an agreement under the provisions of Chapter 5 of Division 7 of Title 1 of the Government Code, whereunder any such department may administer all or any portion of the licensing function of any or all of the other departments" In light of testimony presented to the subcommittee, it is disturbing to learn that no reorganization of licensing responsibility in the direction of unification has yet been effected by the departments involved

Mr Bela L Clark, vice president of the Northern California Association of Residences for the Retarded, emphasized to the subcommittee that facilities serving the retarded should have to deal with only one licensing department or agency

[2] Hearing of the Subcommittee on Institutions, Assembly Committee on Ways and Means, October 5, 1964, and "Statement of Purpose, Objectives, and Responsibilities of the Joint Licensing Service," Departments of Mental Hygiene, Public Health and Social Welfare, and the Health and Welfare Agency (February 1964)

Mrs Esther E Smith, executive director, Easter Seal Society, stated to the subcommittee:

> " . . because of the multiple handicaps which affect many of these youngsters in varying degrees as well as diagnostic difficulties, licensing sometimes becomes a stumbling block rather than an aid to the provision of optimum care for a given child "

In a letter written to the subcommittee, Mr. Richard O Pancost, president, California Association of Executives of Children's Institutions, pointed out the licensing problems members of his organization have had with the fragmentation and duplication of state licensing responsibility Many of these children's institutions are licensed by both the Department of Social Welfare and the Department of Mental Hygiene Mr. Pancost concluded

> "It is our belief that further study and consideration should begin to having one licensing body, which could establish standards and provide licensing supervision across the board to children's institutions regardless of the children's services, programs operated, and the source of funds used to operate the programs "

Mr George Argys, executive director of the California Association for Mental Health, also vigorously supported the unification of state licensing activities·

> "For many years we have followed the problems inherent in separate licensing functions of the Departments of Public Health, Social Welfare, and Mental Hygiene, and we have concluded that in the interests of uniformity, quality, and coordination, we wish licensing functions would be placed in a separate unit directly under the direction of the Health and Welfare Agency, and that it should have whatever resources it requires to set the necessary standards and to insure that those standards are lived up to "

Criticism of fragmented state licensing practices came from one of the important departments vitally involved in institutional licensing Dr. William B Beach, Deputy Director, Division of Local Programs, Department of Mental Hygiene, stated

> "The solution of these licensing problems is to develop a single licensing unit in the Health and Welfare Agency which will have responsibility for licensing the institutions now licensed by the Department of Mental Hygiene, Department of Public Health, and the Department of Social Welfare . . . If a single licensing unit is not established, the Department of Mental Hygiene would propose a reassignment of several of the categories that are now licensed by the Department of Mental Hygiene to other more appropriate licensing agencies "

The subcommittee believes that executive action to provide greater unification of state institutional licensing responsibilities is long overdue Since the Legislature has already granted the executive branch power to effect such a reorganization, the key question is will the Legislature also have to compel it to do so?

III There is a third basic issue that vitally deserves attention—what is the purpose of licensing? And how can this purpose best be achieved? The subcommittee believes that the following principle should be the basic underpinning of all state institutional licensing practices the setting of standards required of the institutional licensee that promote and insure that clients served will receive a service of high quality in a safe environment geared to the satisfaction of client needs The subcommittee believes, however, that mere consolidation of state licensing responsibility, desirable as this may be, will not by itself lead to the realization of high-quality institutional services for clients served It has been reported to the subcommittee that present licensing standards place considerable emphasis on the institutional physical plant, rather than on quality of service rendered as well The subcommittee believes that a matter of top priority in the future is the development of governmental standards that will raise the quality of service provided clients Insofar as consolidation of state licensing responsibility will lead to the more efficient use of existing licensing personnel, and insofar as it will facilitate a thorough evaluation of all licensing standards for different programs, consolidation doubtless will have a beneficial effect on improving state licensing programs

Nevertheless, if the State of California is to expect to achieve high quality institutional services, the subcommittee believes that consideration must be given to two additional matters The first relates to state reimbursement rates. Presently, there are a wide variety of client groups for whom the state is purchasing services in the private marketplace Not only does the state pay different rates for different groups of clients, but also there are different licensing standards applicable This creates confusion on the part of vendors and users alike The subcommittee believes that along with the consolidation of licensing responsibility, there is a need for some consolidation of reimbursement rates paid to vendors under different programs for comparable services rendered Further, the subcommittee believes that consolidation of licensing and standards with the rate-setting function may be a worthwhile reform, in that the two functions are intimately connected Although adequate reimbursement rates do not guarantee high quality services, they are an essential ingredient to achieving high-quality services, and are a requisite to the setting of high standards

It was also reported to the subcommittee that there is a shortage of state licensing personnel. The subcommittee believes that consolidation of licensing is likely to lead to a more efficient use of existing manpower, but that staff increases may still be necessary subsequent to consolidation

The subcommittee is disturbed that so little progress has been made toward an improved state licensing service since legislative concern developed several years ago, and that further legislative attention to this problem is imperative in light of the apparent inability of the departments involved to institute the necessary changes

The subcommittee, however, does not believe that staffing the council would contribute in a meaningful way to the solution of the problems of handicapped children due to three considerations

A. The council is not vested with any power to coordinate its component sectors It is thus difficult to envisage how any major changes that might affect adversely one or more of the departments involved could emerge from the deliberations of such a body, even if staff were provided

B The composition of the council is limited to department heads or their representatives, with no representation given to interested voluntary organizations Because of the constructive role played by voluntary groups in the development of public policy, this appears to be a distinct weakness of the council.

C The council to some extent duplicates the composition and activities of another council, the Mental Retardation Program and Standards Advisory Board

In light of these considerations, the subcommittee does not believe that staffing of the council is called for. However, the possibility remains that the Mental Retardation Program and Standards Advisory Board can evolve into a board that serves people of all handicaps, not simply the retarded. The subcommittee believes that this is the appropriate direction for the Mental Retardation Program and Standards Advisory Board to be moving toward, and that as this development takes place, the Coordinating Council on Programs for Handicapped Children should be abolished.

THE MENTAL RETARDATION REGIONAL DIAGNOSTIC CENTER PROGRAM

The Legislature in 1965 approved AB 691 (Waldie), which established two regional diagnostic centers for the mentally retarded.[7] One serves the San Francisco Bay Area, the second—Los Angeles County To be eligible for diagnostic services and, when appropriate, various kinds of outpatient or residential care, clients must first be on the state hospital waiting list The regional center concept is a radical departure from established patterns of service in which the state traditionally has not assumed responsibility for care until the affected individual was admitted to a state hospital Administrative responsibility for the program is vested in the Department of Public Health, which, in turn, has contracted with the two regional centers for the provision of services.

Also established was a coordinator of Mental Retardation Services within the Health and Welfare Agency, and a Program and Advisory Standards Board consisting of representatives of State departments and interested public members.

[7] For background information, the following two documents are essential Assembly Ways and Means Committee, Subcommittee on Mental Health Services, *A Redefinition of State Responsibility for California's Mentally Retarded* (1965) and State of California Study Commission on Mental Retardation, *The Undeveloped Resource, A Plan for the Mentally Retarded in California* (January 1965)

Although the two regional centers have been in operation for only six months, present indications are that the centers are making a positive contribution to the health and welfare of the retarded population who have been served to date

Moreover, the subcommittee did receive considerable testimony advocating:

A That additional diagnostic centers be established in order to create the regional network envisaged by AB 691 [8], and

B That the centers be broadened in scope to serve all handicaps, not simply the retarded [9]

The subcommittee believes that the basic concepts of the diagnostic program are sound and that unless actual experience under the program during fiscal year 1966–67 demonstrates major problems, the Legislature ought to expand the number of diagnostic centers by three centers during 1967–68 and another three centers during 1968–69, creating a regional network of eight centers by 1969

The subcommittee further believes that as the program develops during the next three years, the Mental Retardation Program and Advisory Standards Board, and the Coordinator of Mental Retardation Programs in the Health and Welfare Agency, should begin efforts to analyze the feasibility of broadening the scope of services provided by the diagnostic centers to include all handicapping conditions Such efforts should include discussions with representatives of voluntary associations vitally concerned with services for the handicapped population, and a progress report with recommendations to be submitted to the Legislature by January 5, 1968.

A MASTER PLAN FOR THE HANDICAPPED CHILDREN OF CALIFORNIA

Assemblyman Leroy Greene, a member of the subcommittee, has recommended that there be developed a Master Plan for the Handicapped Children of California Although the details of Assemblyman Greene's proposal have yet to be worked out, presumably the master plan would use existing mechanisms, or establish additional ones, (1) to determine the actual numbers of handicapped children in California, the nature of their disabilities and the total array of services required to meet these needs; (2) to analyze in terms of these benchmarks the effectiveness of existing programs; (3) to recommend both new programs and reorganization of existing ones, and (4) to pinpoint administrative responsibility at every level for the implementation and evaluation of programs for handicapped children

The subcommittee believes that the master plan proposal has very definite merits. Not only would it likely lead to improved services for

[8] Mrs Walter Dunbar, California Council for Retarded Children, and Dr Lester Breslow, Director, State Department of Public Health

[9] Dr Robert A O'Reilly, president, California Association for Neurologically Handicapped Children, Mrs Marybelle R Dole, The Belle Curtis Foundation, Mrs Esther E Smith, executive director, Easter Seal Society, Mr George Argys, executive director, California Association for Mental Health, and Mrs Gene Greenleaf, president, California Association of Parents of Deaf and Hard of Hearing Children

handicapped children, but also it would lead to a more efficient use of public monies Programs for handicapped children have grown in a piecemeal fashion, and no overall analysis of the effectiveness of these programs in California has ever been made The issues analyzed in this report are only pieces of a larger picture that involve the expenditure of millions of tax dollars. The subcommittee believes that the subject clearly warrants the thorough overall analysis inherent in the master plan concept.

ADDENDUM

ASSEMBLY, CALIFORNIA LEGISLATURE
January 20, 1967

MEMORANDUM

TO Nicholas C. Petris, Subcommittee Chairman

FROM: Charles J. Conrad

RE. Reservations on the Report "Subcommittee Report on Services for Handicapped Children"

While I am in general agreement with the report and especially the concept of a master plan for the handicapped children of California, I do not believe it is feasible to either add additional diagnostic centers or broaden their scope in the next fiscal year because of the serious fiscal problems facing our state in the 1967–68 fiscal year.

Respectfully submitted,

CHARLES J. CONRAD

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1965–67

Volume 21 Number 20

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ASSEMBLY INTERIM COMMITTEE ON WAYS AND MEANS

REPORT OF THE SUBCOMMITTEE ON HEALTH, EDUCATION AND WELFARE SERVICES

on

THE COSTS OF MEDICAL EDUCATION

Members of the Committee

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JOHN H SIMONS, *Consultant*
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KEITH AXTELL, *Legislative Intern*
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WAYS AND MEANS

Robert W. Crown, *Chairman*

REPORT OF THE SUBCOMMITTEE ON HEALTH, EDUCATION AND WELFARE SERVICES

Nicholas C. Petris, *Chairman*

on

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HOWARD THELIN
GORDON WINTON

Staff

LOUIS J ANGELO, *Coordinator*
JOHN H SIMONS, *Consultant*
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2—L-3116

LETTER OF TRANSMITTAL

Assembly Interim Committee on Ways and Means

February 6, 1967

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Dear Mr. Speaker and Members:

Your Interim Committee on Ways and Means, in accordance with House Resolution 710(v), 1965 General Session, herewith respectfully submits the final report of the Subcommittee on Health, Education and Welfare Services on the subject of costs of medical education.

The report was adopted by nine of the 10-member subcommittee and we, the undersigned, concur in their findings and recommendations.

The chairman is appreciative of the intelligent and energetic leadership provided by Subcommittee Chairman Nicholas C. Petris as well as the diligent application of the subcommittee members and its staff.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Anthony Beilenson *
Frank Belotti
Carl Britschgi
Charles Conrad
Leroy Greene
Burt Henson
Joseph Kennick
Charles Meyers

James Mills *
Nicholas C Petris
Carley V. Porter
Howard Thelin
John Williamson
Gordon Winton, Jr.
George Zenovich

* With reservations

LETTER OF TRANSMITTAL

January 6, 1967

Hon. ROBERT W. CROWN
Chairman, Assembly Interim Committee on Ways and Means

Dear Chairman Crown:

In accordance with House Resolution 710(v), 1965 General Session, the Subcommittee on Health, Education and Welfare Services herewith submits its report on the costs of medical education.

The resolution requesting interim study of this subject was H.R. 526 (Petris), 1965 General Session.

The subcommittee is grateful to all who participated in the public hearing as well as those who communicated with the subcommittee and its staff.

Respectfully submitted,

NICHOLAS C. PETRIS, *Chairman*

Anthony Beilenson *
Frank Belotti
Charles Conrad
Leroy Greene
Joseph Kennick
Charles Meyers
Howard Thelin
Gordon Winton, Jr.

* With reservations

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BACKGROUND

On the occasion of the assignment of the subject matter of H.R. 526 (1965) to the Committee on Ways and Means for interim study, the topic of medical education costs was referred to the Subcommittee on Health, Education and Welfare Services chaired by Assemblyman Nicholas C. Petris. The general charge to the subcommittee was to consider the desirability and alternative designs of a comprehensive study of medical educational costs in California.

In October of 1965, the consulting firm of Alfred Baxter was asked by the chairman to undertake certain staff assignments for the subcommittee under a more general contract of the firm with the Assembly Rules Committee On approval of this request by the Rules Committee and the Office of the Speaker, work was begun.

INITIAL RECOMMENDATIONS

Following meetings with cognizant staff members of the several medical schools in California, with officials of local medical societies and of the American Association of Medical Colleges, the consultants recommended to the subcommittee chairman that the scope of the study be broadened slightly to cover the design of a general review of the adequacy of medical and paramedical services to Californians In-state training of physicians would then be placed in a larger and more strategic context.

Upon authorization of the subcommittee chairman to proceed with the development of this line of attack, the contractors were led to the belief that a full and comprehensive study of the large topics proposed would very likely prove more elaborate, costly, and technically demanding than appropriate for an Assembly interim investigation. In addition, certain crucial limitations on data and on judgments regarding appropriate levels of medical services made it most unlikely that results and findings might be obtained of sufficient persuasiveness to ground major legislative policies. The arguments and considerations which led to this recommendation against proceeding with an earlier and tentative line of attack were summarized in Job Memorandum 65-35-002 (Appendix A) The subcommittee chairman accepted the recommendations and authorized the continuation of staff work with a significantly different focus.

MARKET ENLARGEMENT

The revised focus of staff work was derived from two considerations. First, that the question of how many doctors should there be in California was not answerable in any reasonable way. And second, that the marginal costs of training additional doctors and paramedical specialists might vary significantly among existing institutions and combinations of institutions currently training physicians It was argued that if no one knows or can determine how many physicians California needs, it might still be possible to design a minimum cost program for providing any *specified* increase to the state's capacity for training doctors

The essentials of this "minimum cost" strategy were summarized in a memorandum which was quite widely circulated for comment among interested medical school staffs, hospital associations, and other groups (Appendix B)

The basic notion was that the Legislature might solicit carefully developed plans from medical schools (large, small, public, private, etc.) which might wish to seek public funds to *expand* the size of their classes It was anticipated that the marginal costs associated with such expansions might vary significantly depending upon the degree of saturation of existing facilities (laboratories, classrooms, hospital space, boiler plants, etc) and upon the exact size of the proposed increase in capacity Should institutions or combinations of institutions be interested in developing such plans and marginal cost proposals in a form which would permit effective comparisons, the Legislature could then determine the least expensive combination of expansions required to produce any specified level of training capacity.

It was anticipated that technical evaluations and qualitative questions could be considered, in part, with the aid of a specially convened technical advisory committee of prominent, out-of-state medical education experts.

This basic plan was distributed to potentially interested institutions and used as a basis for discussions at a hearing in Sacramento on May 23, 1966, attended by subcommittee members, legislative staff and representatives of interested institutions and organizations.

POST HEARING ACTIVITIES

Following the hearing, five institutions indicated a positive interest in further discussions of the plan and of possible variations of it: Stanford University Medical School, the Presbyterian Medical School in potential collaboration with San Francisco State College or the University of the Pacific (or both), the Medical School of the University of Southern California, the University of Santa Clara, and the Kaiser Foundation Medical Care Program

Staff discussions were held with senior officials of each of these organizations with the result that each of the institutional staffs proposed to develop tentative proposals for review and action by their several governing boards This process is currently in progress

NEXT STEPS

While it is not possible to know which, if any, of the interested institutions will obtain board approval to proceed with the formulation of detailed proposals, it is unlikely that any actual proposals will be submitted to the Legislature until 1968 at the earliest Should such proposals be submitted, it will probably prove necessary to maintain staff liaison during the design of the proposals (to insure a minimum basis for comparability) and to convoke a technical advisory committee to assist the Legislature in reviewing the submittals

Further, it would seem prudent to consider parallel action to place before the Constitutional Revision Commission the question of framing amendments of sufficient strength unambiguously to permit the granting of public funds to private or semiprivate institutions to carry out expansions in training capacity to serve the public interest in increasing the locally trained supply of physicians and related health personnel Commentary on constitutional problems is attached in an opinion of the Legislative Counsel, dated March 25, 1966 (Appendix C)

APPENDIX A

TO: The Hon Nicholas C Petris

FROM: Alfred Baxter & Associates

SUBJECT Progress Report on the Design of a Study of Medical Education Costs in California

DATE December 14, 1965

JOB MEMORANDUM 65-35-002

The following notes summarize and record the results of our meeting on November 19 regarding the design of the study relating to the costs of medical education in California.

1. *Recapitulation of Earlier Recommendations*

At our last meeting in Sacramento, I recommended that the scope and horizons of the study be broadened considerably from the original intent In particular, we agreed that the following topics should be given preliminary consideration

a How many physicians might be required in California, given changes in effective demand resulting from Medicare and related programs? What kind of physicians should these be, and what would be a desirable geographic distribution?

b. What is the present and potential mix of sources for new physicians (e g , import, train locally, keep more of the locally trained, increase efficiency by provision of paramedical staffs)?

c Answers to the questions suggested under (a) and (b) above were thought to lead to the design of a rational and efficient mix of programs to obtain in the short and long run the quantity of additional physicians thought to be required.

As a result of further reading in the relevant literature, and particularly after talking with medical officials at the University of California and the American Association of Medical Colleges in Evanston, Illinois, it is clear that there is no useful way of answering "How many doctors is enough?"—let alone identify an optimal mix among medical specialties or among physicians and paramedical assistants. Accordingly, although I still believe the larger study to be an ideal way to proceed, I should like to rescind my earlier recommendations and suggest instead a return to the more modest focus which was originally embodied in your resolution.

2. *Outline of Current Recommendations*

On the hypothesis that the marginal costs of accommodating additional students will vary among California medical schools, and on the further assumption that some of these marginal costs for some student increments will be lower than the average student cost at a hypothetical new medical center, I would propose that the following steps be taken:

a Write, and then meet individually with the deans of California medical schools (public and private) and with representatives of their boards to determine whether or not these schools would be interested in receiving contributions from the state equal to the marginal capital and operating costs of additional students The key questions here are whether any of California's private medical schools would accept state funds to finance an *increase* in their student bodies; and, given their willingness, would their "asking price" be lower than the cost of building all-new facilities?

b For those schools interested in pursuing such possibilities, request that they undertake a study, with possibly a $15,000 contribution from the study committee, to determine for, say, 5, 10, 15, 20, etc additional students per year the marginal capital and operating costs

c. During the preparation of these cost calculations, and upon their receipt, cause a technical advisory committee to the Assembly to be formed to review the work of the participating institutions This technique should help damp the effects of errors in fact or omissions, as well as of unreasonable or disingenuous assumptions

d In tandem with the above efforts, the technical advisory committee, or a staff under its direction, should be asked to develop cost estimates for a new "public medical center."

At the conclusion of these four steps, the committee should be in possession of an edited and annotated chart of the following format:

		Marginal costs in thousands of dollars—additional students			
		5/yr	10/yr	15/yr	20/yr
School A	Cap Op				
School B	Cap Op				
School C	Cap Op.				
Hypothetical New Public Medical School*	Cap. Op				

* Comparison entries for the hypothetical new school would be adjusted to permit direct comparison with other entries

Given that reasonable entries could be obtained for the chart sketched above, there are existing techniques for selecting the optimal combination of increases at various schools; i e , the combinations at any specified level of increase of medical student production which would result in the lower total marginal costs This approach is essentially an economic one and puts the state in the position of the evaluator in a market composed of public and private institutions

This calculation would identify the most efficient mix of sources for any specified number of new medical graduates It would not consider alternative sources of money The hunt for federal grants and private benefactions would come at a later stage

3. *Collateral Requirements*

a Unless there are special difficulties, it would seem wise to carry out this study under a joint legislative committee structure rather than having it the act of a single house

b The Attorney General has ruled that it will require a constitutional amendment to make possible appropriation of public moneys to private institutions, and without such an amendment, such a process would be illegal even if it were clothed in the form of a contract I should strongly recommend that staff liaison be maintained with the Committee on Constitutional Amendments to the end that a suitable amendment would be in form for processing in 1966

4. *The Next Step*

It was agreed that Mr Baxter would take primary responsibility for the preparation, by January 1966, of a study design along the lines sketched above in paragraphs 2, a–d, and that this report should include estimates of cost and time.

APPENDIX B

OUTLINE OF A PROCEDURE FOR EXPANDING THE PRODUCTION OF PHYSICIANS IN CALIFORNIA

Should the Legislature see fit to encourage an increase in the number of doctors trained annually in California, it is appropriate that the state should consider proposals from public and private schools alike

A possible procedure for considering such proposals would include the solicitation, from potentially interested institutions, of voluntary planning studies containing estimates of the marginal costs (capital and operating) of stated increments of new or additional medical students On the basis of such careful, institutional studies, the Legislature could identify efficient combinations of new institutions and expanded existing ones to produce various levels of increased production On the basis of economic analyses and other relevant considerations, further determinations could then be made in regard to the magnitude and timing of appropriations to the university and/or long-term contracts with individual private institutions or with joint ventures of two or more private institutions

Table A 1 is a possible form in which to collect the incremental capacity and marginal cost information from institutional plans Needless to say, the general approach and the draft data form are quite preliminary and subject to alteration or abandonment in the face of effective criticism and suggestions

Table A.1

ILLUSTRATIVE DATA COLLECTION FORM FOR COSTS OF TRAINING ADDITIONAL PHYSICIANS

Institution or Joint Venture_____

Size of incremental, annual production	Sum of annual operating and capital costs in thousands of dollars				
	Planning and construction years	Operational years			
			18	19	20
5					
10					
15					
100					

Not all rows need be filled out If a row is used, all the columns must be used

Assembly Ways and Means Subcommittee
on the Costs of Medical Education
Nicholas C Petris, Chairman
March 2, 1966

APPENDIX C

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
March 25, 1966

Honorable Nicholas Petris
Assembly Chamber

State Aid: Private Medical Schools

#3916

Dear Mr Petris:

You have asked the several questions which are separately stated and considered below.

QUESTION NO. 1

Are there any serious constitutional problems which would be raised by legislation which would authorize the state to contract with a privetely owned medical school over a 20-year period whereby the medical school would increase its facilities to train 10 more students each year, and the state would pay for the cost of the increased facilities and the additional expenses incurred in the operation thereof?

OPINION NO. 1

We assume that the program contemplated would permit the funds to be used for the operation and maintenance of medical school and hospital buildings including nurses' homes, purchase and maintenance of equipment, payment of instructors' and other employees' salaries, and for such other costs as are normally incurred in the operation of a medical school

We assume also that the program would apply to private medical schools in general and not to specific schools, which would raise questions of special legislation

In our opinion, if the authorization to contract under the proposed legislation permitted the incurring of obligations in excess of $300,000, and no money were appropriated therefor, the legislation would violate Section 1 of Article XVI of the State Constitution unless the legislation were approved by the electorate of the state. Also legislation of a kind under consideration to grant state funds directly to private medical schools for the purposes suggested would probably be held to violate Article IX, Section 8 of the California Constitution. However, indirect aid in the form of tuition grants and scholarships to medical students would be possible

ANALYSIS NO. 1

Since the legislation under consideration would authorize the state to enter into a contract for a 20-year period and to incur obligations thereunder, Section 1 of Article XVI of the State Constitution must be considered The section reads in part:

"Section 1. The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000) . . . unless the same shall be authorized by law [as specified] . . .; but no such law shall take effect until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election, . . ."

The Supreme Court of this state has considered this debt limitation upon a number of occasions It has consistently held that if the liability created, although in excess of $300,000, is covered by an appropriation the constitutional limitation is not applicable. In the early case of *State v. McCauley* (1860), 15 Cal. 429, the Legislature provided for a contract obligating the state to pay $10,000 a month over a five-year period for the rendition of services by the contracting party and appropriated $600,000 therefor The point was made that the $600,000 appropriation created a liability in excess of the constitutional limitation There follows the language of Chief Justice Field in upholding the validity of the legislation in question:

"The eighth article was intended to prevent the State from running into debt, and to keep her expenditures, except in certain cases within her revenues *These revenues may be appropriated in anticipation of their receipt, as effectually as when actually in the treasury.* The appropriation of the moneys, when received, meets the services as they are rendered, thus discharging the liabilities as they arise, or rather anticipating and preventing their existence. The appropriation accompanying the services operates in fact in the nature of a case payment" (15 Cal at page 455; emphasis added)

The effect of this decision is to hold that no debt is created within the meaning of the constitutional limitation if an appropriation has been made that is available to pay the obligation as liability for payment accrues.

Thus, if money were to be appropriated under the legislation in question to cover the payment of the obligations incurred under the contract authorized thereunder, this constitutional prohibition would not be violated. On the other hand, if the obligations to be incurred under the contract for a current fiscal year exceeded $300,000 singly or in the aggregate with any previous debts or liabilities and no appropriation were made therefor, Section 1 of Article XVI of the State Constitution would be violated unless it were submitted to the electorate for approval

It may be observed, however, that in determining whether the $300,000 maximum debt limitation is exceeded under a contract which is in operation over a number of years, a question arises whether the state immediately incurs the total obligation under the contract for its entire life or whether it incurs an obligation in each year of the contract for only that amount due under the contract for that year.

In 1951 the Supreme Court decided the case of *Dean v Kuchel*,* 35 Cal 2d 444, which involved a contract that had been executed by the Director of Finance under the authority of Government Code Section 13114 Under that contract the state leased to a private corporation certain real property in Los Angeles for a term of 35 years for the sum of one dollar The company agreed to erect an office building on the property in accordance with specified plans and to lease the building and the property to the state for a term of 25 years at a specified monthly rental The validity of the agreement was challenged on the basis that it violated the constitutional debt limitation imposed by Section 1 of Article XVI

The Supreme Court upheld the validity of the agreement During the course of its opinion, it stated

> " if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for, but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision, . "

The court then went on to state

> ". If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and it is actually a conditional sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which an immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void "

While it is true that the *Dean* case involved the validity of a long-term lease arrangement, rather than a purchase agreement, we see no reason why the two situations would not be regarded, in principle, in the same light

The State Constitution also prohibits the Legislature from making any gift of public money or thing of value to any individual, municipal or other corporation (Art IV, Sec 31) However, it is well settled that if public funds are expended for a "public purpose" the expenditure does not constitute a gift within the meaning of that section; neither does such expenditure fall within the prohibitions of Section 22 of Article IV of the State Constitution which, among other things, generally prohibits expenditures for the purpose or benefit of private corporations or associations (*Simpson v City of Los Angeles* (1953), 40 Cal 2d 271, 282, *County of Alameda v Janssen* (1940), 16 Cal 2d 276) Therefore, if the Legislature should find that there is a shortage of qualified medical personnel in the state, the courts would probably hold that expenditures reasonably designed to alleviate this condition would serve a "public purpose " Thus, we think that legislation of a kind under consideration would probably serve a "public purpose "

* Other decisions to the same effect are *Vandercamp v Riley*, 16 Pac 2d 734, *McBean v City of Fresno*, 112 Cal 159, *State v McCauley*, 15 Cal 429

There is still another provision of the Constitution which must be considered, however. Section 8 of Article IX provides in part that:

> "No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; ."

Since an appropriation to be used by a private medical school for its normal operating expenditures, such as costs of operating the school and hospital buildings, purchasing supplies, and paying salaries, would appear to be "for the support of" the school, we believe any such appropriation would be held to violate Section 8 of Article IX of the Constitution If the school or hospital were "controlled by any religious creed, church, or sectarian denomination" there would be an additional violation of Section 30 of Article IV, which prohibits use of public funds or property in aid of religious sects or institutions controlled by them *

These constitutional prohibitions, of course, would not prevent state grants to public medical schools.

Legislation which would result in indirect aid to private medical schools through the medium of scholarships or tuition grants to medical students would probably be upheld under some circumstances The courts have sustained some legislation where only a remote, indirect or incidental benefit results to a person or organization coming within the terms of constitutional provisions discussed herein, or where such benefits are offset by some predominate public purpose being served by the legislation Thus, it is accepted that legislation providing for state educational assistance to veterans (M & V C , Secs 981 and following) is valid though the recipient may use the funds received to pay for attendance at private schools (See *Veterans' Welfare Board v Riley* (1922), 188 Cal 607).

We note that the state has also established competitive scholarship programs under which students may attend private institutions of collegiate grade (Ed C Secs 31201–31237 incl)

We believe therefore that properly drafted legislation making scholarships or tuition grants to medical students would similarly be upheld, and would not be invalidated by the fact that the money might indirectly benefit private or parochial schools (see also *Bowker v. Baker* (1946), 73 Cal App 2d 653 approving transportation of pupils to a parochial school by public schoolbuses)

QUESTION NO 2

Would the duration of the proposed contract have any effect on the constitutionality of the legislation described in the first question?

OPINION AND ANALYSIS NO 2

In view of what we have said in our analysis of the first question, it is our opinion that the duration of the proposed contract would not have any effect on the constitutionality of the legislation which would authorize it

* It should be noted that Section 32 of Article IV of the State Constitution does permit state financial aid for the *construction* of hospital facilities by nonprofit corporations

QUESTION NO. 3

Is there any provision of law which specifically authorizes the state to contract for services to be rendered by private organizations for a period of 20 years or more?

OPINION AND ANALYSIS NO 3

We have not found any statutory authority which specifically permits the state to contract for services with private persons or organizations over periods of 20 years or more However, various agencies have general authority to contract, and it may be that under such authority, long-term contracts are executed (see e g W & I C Secs 6300, 12016 and 18650)

Very truly yours,

GEORGE H MURPHY
Legislative Counsel
By EDWARD F NOWAK
Deputy Legislative Counsel

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ASSEMBLY INTERIM COMMITTEE REPORT
1965–67

Volume 21 Number 21

CALIFORNIA LEGISLATURE

ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS

REPORT OF THE SUBCOMMITTEE ON INDIAN PROBLEMS

on the

STATE ADVISORY COMMISSION ON INDIAN AFFAIRS

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Burt Henson, *Vice Chairman*

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ANTHONY BEILENSON
FRANK BELOTTI
CARL BRITSCHGI
JOHN L E. COLLIER
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FRANK LANTERMAN
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DON MULFORD
NICHOLAS C PETRIS
CARLEY PORTER
HOWARD THELIN
JEROME WALDIE (Resigned)
JOHN WILLIAMSON
GORDON WINTON, JR.
GEORGE ZENOVICH

Committee Staff

LOUIS J. ANGELO, *Coordinator*
WILLIAM BARNABY, *Consultant*
JOHN SIMONS, *Consultant*
KEITH AXTELL, *Legislative Intern*
GAIL VESSELS, *Committee Secretary*
MARIA HUSUM, *Secretary*

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ASSEMBLY INTERIM COMMITTEE ON
WAYS AND MEANS
Robert W. Crown, *Chairman*

Report of the

SUBCOMMITTEE ON INDIAN PROBLEMS

on the

STATE ADVISORY COMMISSION ON INDIAN AFFAIRS

Members of the Subcommittee

LEROY GREENE, *Chairman*

HALE ASHCRAFT PAULINE DAVIS HOWARD THELIN

Staff

KEITH AXTELL, *Intern*
GAIL YESSELS, *Secretary*

LETTER OF TRANSMITTAL

Assembly Interim Committee on Ways and Means
California Legislature, March 29, 1967

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Dear Mr. Speaker and Members.

Your Interim Committee on Ways and Means herewith submits its final report on the State Advisory Commission on Indian Affairs.

The committee is indebted to the many persons and agencies who provided information and assistance during the course of the study.

Respectfully submitted,

ROBERT W. CROWN, *Chairman*

Hale Ashcraft
Anthony Beilenson
Frank Belotti
Carl Britschgi
Charles Conrad
Pauline Davis *
Leroy Greene
Joseph Kennick
Frank Lanterman
Charles Meyers
James Mills *
Carley Porter
Howard Thelin
Jerome Waldie (Resigned)
John Williamson
Gordon Winton, Jr *
George Zenovich

* With reservations

LETTER OF TRANSMITTAL

February 15, 1967

HONORABLE ROBERT W. CROWN
Chairman, Assembly Interim Committee
on Ways and Means

Dear Chairman Crown

In accordance with House Resolution 710(v), 1965 General Session, the Subcommittee on Indian Problems herewith submits its report on the State Advisory Commission on Indian Affairs

The resolution requesting interim study of this subject was H R 499 (Veysey), 1966 First Extraordinary Session.

The subcommittee is grateful to all who participated in the public hearing as well as those who communicated with the subcommittee and its staff

Respectfully submitted,

LEROY F GREENE, *Chairman*
Subcommittee on Indian Problems

Leroy Greene
Hale Ashcraft

Pauline Davis *
Howard Thelin

* With reservations

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INTRODUCTION

The Assembly Interim Committee on Ways and Means was assigned the subject matter of House Resolution 499 (Veysey), 1966 First Extraordinary Session, which requested a study of the State Advisory Commission on Indian Affairs

The study requested had among its objectives (1) determining whether there was sufficient participation and representation of Indians in the activities of the commission, and (2) determining the desirability or need for Indians as members of the commission

The Ways and Means Committee chairman referred the subject matter to the Subcommittee on Indian Problems, which was formed specifically for this study. A public hearing was conducted December 16, 1966, at San Diego The report that follows presents the findings and recommendations resulting from that hearing as well as from supplemental staff research

The State Advisory Commission on Indian Affairs was established by the Legislature in 1961, under SB 1007, authored by Senator Stanley Arnold It was originally constituted for a period of three years, and its existence has been extended twice The commission's purpose is to "study the problems of the American Indians residing in California, including, but not limited to, the problems presented by the termination of federal control over Indian affairs, the operation, effect, administration, enforcement, and needed revision of any and all state laws pertaining to the Indians and the three relocation centers in California"

The commission is composed of nine members three members of the Senate appointed by the Senate Committee on Rules, three members of the Assembly appointed by the Speaker, and the State Directors of Education, Public Health, and Social Welfare. The chairman of the commission is designated by the Governor The advisory committee to the commission consists of seven members, three of whom are appointed from among the recognized leaders of the California Indian reservations in the northern, central and southern sections of the state

I. FINDINGS

A. There is considerable dissatisfaction with the State Advisory Commission on Indian Affairs among the Indians of this state, for the following reasons:

1. Indian leaders believe that the Indian people are not sufficiently represented in the commission's decision-making activities. Many hold the opinion that a non-Indian cannot understand and appreciate Indian problems and Indian culture. They are fearful that a commission composed of non-Indians will make recommendations which are not consistent with the needs and interests of Indians.
2. Tribal leaders do not participate in the selection of advisory committee members from their areas. And because terms of office are not limited, there is no mechanism for replacement of an unpopular member of the committee.
3. There are no channels of communication between the commission and the leaders of Indian reservations and rancherias. Many Indians are not familar with the commission; and they do not understand how the commission can speak on their behalf without meeting with them and attempting to understand their problems The executive secretary of the commission had not met with any of the tribal leaders from southern California.
4. Indian leaders were displeased with a series of proposed government programs to serve Indians because it was presented to the Legislature in early 1966 by the commission before Indian leaders and the Indian people were allowed to respond to them through public hearings Only after the adoption of HR 499, which expressed specific concern for the need of public hearings, did the commission publicly hear Indian views.
5. Among many California Indians the commission is considered ineffective. During five years of existence, they state, the commission has presented only one progress report to the Legislature.
6. There have been three executive secretaries of the commission in the space of three years The first two during their tenure collected information for research papers to be submitted for graduate degrees. Some Indian leaders felt that the first executive secretary took all of the commission's research results with him when he accepted a faculty position at an eastern university.

B. A vocal group of Indian leaders wish the commission abolished They are fearful that it will become a State Bureau of Indian Affairs, with control of Indian property and Indian lives, just at the time that they are achieving freedom from federal paternalism and are assuming more responsibility for their own affairs.

C. Many Indians have expressed concern that the commission might be attempting to gain control of the $29 1 million settlement against the federal government of California Indians for lands taken from them This money is now held in trust in the Federal Treasury, awaiting congressional enactment of a distribution plan. Members

of the advisory committee alienated many California Indians by supporting federal legislation to turn a portion of these funds over to the State Department of Education for Indian education (HR 8021, 1965). The following statements represent the fears of some Indians

> " the Legislature or the Governor could not enact legislation and set up a political committee and *hope to grab funds or a court award* belonging to other citizens of the State, as A B. 1007 [*sic*] provides regarding Indian funds
> " . . the current scheme to *grab California Indian-owned funds* in the United States Treasury, and additional millions expected under claims still pending under the Indian Claims Act of December 13, 1946 is the fifth similar plan." [1]

D. Those Indian leaders who support the existence of the State Advisory Commission on Indian Affairs represent a majority of the reservation Indians They appreciate its recommendations but are afraid that little will come of them They would like to insure the implementation of these recommendations by strengthening the advisory commission

E The State Advisory Commission's *1966 Progress Report* indicates that the Indian reservations and rancherias in California, of which there are over 100, are generally enclaves of poverty located in remote areas throughout the state This report shows that about 70 percent of the families earn less than $3,000 annually, that unemployment rates are high, and that few reservation Indians complete high school Existing houses are reported structurally unsound; and if they exist domestic water and sanitary facilities are found grossly inadequate The death rate from disease is several times the national average, and the average lifespan is 42 years

Despite these depressing statistics, the committee has found through its field research a growing interest among reservation Indians in improving their conditions of life. There is a deep concern about better education for Indian children and for utilizing the economic resources of the reservation to improve their own lives Illustrative of this attitude is the recent statement by the tribal chairman of the Rincon Band of Mission Indians:

> "Rincons are determined to make for themselves and their children a better life through development of their resources . . We are not idly waiting around, but have begun to take the steps we could take toward development of what we have." [2]

In spite of these desires for self-improvement, progress has been slow because of a lack of technical assistance and a lack of information on the programs available to assist them in developing economic resources The unique legal situation of reservation Indians has also militated against their assuming greater responsibility for reservation economic development.

[1] Letter to the committee by Mr Furl Willis, counselor, Mission Indian Federation, Inc , of California

[2] Statement by Mrs Patricia Duro at the Tribal Leaders Conference, Las Vegas, Nevada, December 12, 1966 (pp. 3–4).

II. RECOMMENDATIONS

A. The committee recommends that the State Advisory Commission be assisted by an all-Indian advisory committee, rather than by the present advisory committee which includes only three Indians

The advisory committee should consist of nine members three from northern California, three from southern California, two from central California, and one to represent rural Indians never relocated on reservations or rancherias No two members of the committee should be from the same tribe. In addition, the California area director for the Bureau of Indian Affairs should be invited to serve as an ex officio member of the committee

The commission should appoint the advisory committee members after consultation with, and insofar as is possible, consistent with the wishes of the Indians being represented Terms of advisory committee members should be not more than four years

B Communication between the State Advisory Commission and the Indian people should be improved through the following

1 Each member of the advisory committee should meet regularly with tribal and rancheria leaders in his district to discuss the commission's activities and to learn about reservation problems so that these can be considered by the committee for discussion with the commission

2. A newsletter should be distributed by the commission to inform tribal councils and rancheria leaders about its activities.

3. The Advisory Commission should continue the program of public hearing by meeting whenever possible in various parts of the state so that Indian leaders can attend and discuss their problems

4 The executive secretary of the commission should actively solicit the attitudes and opinions of Indian tribal leaders

C The commission should hold public hearings before recommendations and proposed legislation are submitted to the Legislature

D The State Advisory Commission should make clear to the Indian people that it neither has nor seeks authority or control over the Indian Claims Judgment Funds

E The State Advisory Commission on Indian Affairs should be strengthened so that it may:

1. Cooperate with any other governmental agencies and private organizations to insure that commission recommendations are implemented.

2. Seek out federal and other funds to be used by state and local governmental agencies in implementing these recommendations

3. Provide information to Indian reservations, rancherias, Indian organizations, and individual Indians about grant and loan programs, and other government services and programs for which

they are eligible, if such information is not available from other sources

4 Advise reservations and rancherias, upon their request, as to methods of improving the economy of Indian lands, and coordinate state and local government agencies which are called upon to assist with the economic development of these lands In turn these activities should be coordinated with those of the U S Bureau of Indian Affairs

F. The committee further recommends that a legislative inquiry be conducted in two years to determine the commission's record of achievement.

III. COMMENTS

A. Defining the commission's purpose

The committee believes that the State Advisory Commission on Indian Affairs should be revised and strengthened in line with the foregoing recommendations However, the commission's scope should not be broadened to include program responsibilities toward urban Indians. Despite many requests for representation of urban Indians on the advisory committee, it has not been satisfactorily demonstrated that the problems of urban Indians are different from the problems of other urban ethnic minorities Consequently urban Indians should be served by government on a basis of equality with all other citizens

It is the long-range policy of the federal government to terminate its remaining authority over Indian reservations The commission should be continued for the purpose of clarifying state and local government responsibilities in the event that this should occur However, a complementary purpose should be to assist the residents of California reservations in accepting responsibility for their own affairs so that they will be capable of competing in the general society should termination occur A psychology of self-respect and self-reliance must be substituted for the psychology of dependence upon government

One major problem in Indian affairs is overcoming the lack of coordination and poor utilization of existing government programs Agencies at all levels of government have neglected their duties to these citizens The commission's major purpose should be to advise agencies on better means of serving Indians, and to advise Indians on how to better utilize government services and programs The commission should serve as a liaison rather than conducting administrative programs of its own. Consequently, a large staff is unnecessary All attempts to control Indian affairs without Indian consent, or to reinstitute a paternalistic relationship, must be studiously avoided

A growing interest in self-help should be encouraged and assisted by the state in as many ways as possible Better education and better employment opportunities seem the best keys to improvement of the Indian condition The state is in a unique position to assist with these matters, but assistance at the county level is also important.

B. Composition of the Advisory Committee

A nine-member advisory committee to the commission is recommended to allow district representation and better communication between tribal leaders and members of the advisory committee. It is hoped that greater involvement of Indians in the commission's affairs will help build enlightened leadership within the Indian community. This in turn would provide a strong stimulant to the movement toward self-help

An all-Indian advisory committee is not the only alternative. Other states, with good records of achievement in solving Indian problems, have Indian representatives serving directly on the state commission Further attention should be given to consideration of Indian membership on the Advisory Commission itself.

C. Commission Effectiveness

Indian advisory commissions of other states have been quite effective while receiving smaller appropriations than the California State Advisory Commission The Arizona commission's appropriation is 60 percent of California's, yet it maintains seven advisory committees and hires 13 consultants. There is considerable sentiment among the Indians of California that the commission should cease making studies and begin implementation of the recommendations included in the progress report "Indians in Rural and Reservation Areas."

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ASSEMBLY INTERIM COMMITTEE REPORTS

VOLUME 22 1965–67 NUMBER 9

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

on

NARCOTICS CONTROL

MEMBERS OF THE COMMITTEE

PEARCE YOUNG, *Chairman*
W. CRAIG BIDDLE, *Vice Chairman*

E. Richard Barnes
Anthony C. Beilenson
Robert W. Crown
George Deukmejian
John T. Knox
Howard J. Thelin
Gordon H. Winton, Jr.

January 1967

Clyde M. Blackmon, *Consultant*
Edward H. Juers, *Special Consultant*
Sue Johnson, *Secretary*
Robert L. Monk, *Legislative Intern*
(September 1965–June 1966)
Donald C. Green, *Legislative Intern*
(September 1966–January 1967)

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GEORGE ZENOVICH
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JAMES D. DRISCOLL
Chief Clerk

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LETTER OF TRANSMITTAL

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Your Interim Committee on Criminal Procedure, in accordance with your instructions, herewith respectfully submits a report on narcotics control, a study conducted by the committee in accordance with House Resolution No. 710 of the 1965 Regular Session.

Respectfully submitted,

PEARCE YOUNG, *Chairman*
W. CRAIG BIDDLE, *Vice Chairman*

E. RICHARD BARNES
ANTHONY C. BEILENSON
ROBERT W CROWN
GEORGE DEUKMEJIAN
JOHN T. KNOX
HOWARD J. THELIN
GORDON H. WINTON, JR.

PREFACE

The Assembly Committee on Criminal Procedure conducted a study during the 1965–1967 interim period on the subject of drug control. The results of that study are reported in the following pages.

Unfortunately, the 1965 and 1966 General and Extraordinary Sessions of the Legislature curtained the length of time available for interim study and as a result the committee was unable to conduct as intensive an investigation as the subject matter warrants. Nevertheless, we feel that we can look with satisfaction on the work completed and hopefully to the successful passage of the recommended bills Assemblyman Biddle, on behalf of the interim committee has introduced legislation based on the recommendations in this report. Copies of the bills and resolutions introduced are reproduced in the Appendix.

Members of the committee wish to express gratitude to those who participated in the work during sessions and interim. They provided us with valuable assistance in the gathering of material for our studies. We would also like to give special acknowledgment to the contribution of Edward H Juers, who served as the special consultant to the committee for this study.

Information regarding hearing transcripts and the names of witnesses appearing before the committee can be obtained from the office of the chairman of the Criminal Procedure Committee.

SUMMARY OF RECOMMENDATIONS

1. The committee recommends that the State Department of Public Health be given the responsibility to develop and carry out an extensive program of education about drug use and abuse.
2. The committee recommends that the State Department of Public Health be given the specific responsibility for reviewing proposals for research on drugs
3. The committee recommends establishing pilot dial-for-help centers in some of the metropolitan counties under the auspices of the Department of Public Health
4. The committee recommends that a study be conducted to determine the feasibility of establishing a state institution for the treatment of people who abuse drugs other than the opiates.
5. The committee recommends that the Assembly immediately begin an in-depth study of the penalty provisions of the law with particular reference to the deterrent effect, minimums and maximums, indeterminate sentences and coordination with the work of the Joint Committee for the Revision of the Penal Code.
6. The committee recommends that continued effort be made to effect closer cooperation between all agencies concerned with the drug traffic across the Mexican border.

INTRODUCTION

"Superior Court Judge Francis McCarty, in his plea for revision of what he calls 'our sick narcotics laws': 'How fine it is that so many find inspiration in the ruins of an old church, an old building or an ancient civilization, but how strange and sad it is that so few discern anything of value in the ruins of a human being.'" [1]

The first large-scale attempt at controlling the use of mind-altering drugs came in 1914 in the form of the Harrison Act [2] Since that time, the issue of drug use and control has been a hot coal in the political arena Despite the fact that the issue of drug control has generated widespread debate and opinion the trends and manner in which we have sought to control drugs in this country have been steady and consistent

The drug-control policies have been firmly anchored by the basic philosophical assumption that strong punitive laws serve as an effective deterrent to the use of drugs which alter one's state of consciousness In spite of the adherence to that basic doctrine, the rate of illegal use of mind-altering drugs has apparently continued to rise in California (as well as nationwide) The effectiveness of the law as a deterrent, then, is open to speculation

The fact that in 1965 there were 24,135 arrests [3] for the illegal use of various drugs stands as proof positive that the deterrent notion has some severe limitations (at least 24,135 of them) But, on the other hand many persons who may have otherwise used drugs may have chosen not to do so because of the law At least to a certain extent the deterrent notion as an effective operational principle is a failure, but the extent of its failure forms the essence of the debate about the issue of drug control

Whether or not there should be any controls over drug use is a question that is hardly considered these days Most concede that some form of control is necessary It is the manner in which the control is exercised and by whom and to what degree the control is exercised that opens the issue to lively debate

The committee attempted to assess the present situation in California in respect to illegal drug use Three public hearings were held during which the committee inquired about (1) the nature and extent of illegal drug use in California and the economic and distributional patterns of illegal drugs in this state, (2) the effectiveness and adequacy of private and public treatment programs for drug abusers in California, and, (3) suggestions for ways in which the state's approach to the drug problem could be changed and made more effective

[1] Herb Caen's column, San Francisco *Chronicle*, August 15, 1966

[2] Mind-altering drugs in this report refer to the opiates (heroin, etc.), the so-called dangerous drugs (barbiturates, amphetamines LSD, etc.), and marihuana The concept, as used in this report, does not include alcohol, tobacco, coffee, etc., although they all have mind-altering properties We are concerned in this report only with the drugs that are controlled by the so-called drug laws

[3] *Drug Arrests and Dispositions in California*, 1965, California Bureau of Criminal Statistics, p 27

SECTION I

COMMITTEE FINDINGS

1) Patterns of Illegal Drug Use

The pattern of illegal drug use in California is changing

In the past six years there has been a shift in the type of drugs that are prevalently used in the illegal marketplace In 1960, about half of the drug arrests were for possession, sale or use of heroin From 1961 through 1963 the arrests for illegal use and sale of dangerous drugs and marihuana began to increase rapidly, and by 1965 only one-fourth of the total adult arrests were for heroin-type offenses [4] In addition, the past year or two has seen a rapid increase in the use of the so-called hallucinogenic drugs.[5]

There are probably several reasons for this shift in the types of drugs used and sold in the illegal marketplace, but there is no substantial evidence which supports any one of the reasons that was offered to the committee One suggestion was that the decreased rate of heroin use and abuse reflects the effectiveness of the harsh sentences that are in effect for the violation of the narcotic laws But this conclusion ignores the fact that marihuana penalties are also harsh, or that the penalties for illegal sale and use of dangerous drugs were increased recently and still the rate of use of these drugs has climbed significantly

Others suggest that the dangerous drugs and marihuana are more available on the market, and are therefore used as a substitute until heroin becomes more available This conclusion, however, contradicts evidence heard by the committee that the price of heroin is down because the demand for heroin is down [6] It seems that many people are using other drugs as a matter of choice, rather than as a result of lack of availability.

Some people familiar with the illegal drug market indicate that there is a difference in the types of people who are using the illegal drugs It was felt that more and more middle- and upper-class adults and children are using illegal drugs and are looking for a different type of drug experience than one gets from using heroin Again, the available data only suggests that such a shift is taking place and much more detailed information is necessary before any definite conclusions can be drawn

The committee was interested in exploring the manner in which illegal drugs are distributed in California to see if changes in the drug use pattern reflected changes in a distributional pattern California's proximity to the Mexican border has always served as a deterrent to the establishment of a syndicated illegal drug distribution network Individuals who want drugs can, with comparative ease, cross the border and obtain the drugs in Mexico Therefore, a large-scale supply and price-control organization has not developed in this state.

It appears that the shift in types of drugs used has not interfered with the distributional patterns to any significant extent A majority of the illegal drugs sold in California still come from Mexico, and are purchased and resold by individuals or small groups of individuals At

[4] *Id* at 1

[5] A rate of illegal use of these drugs is not indicated in the arrest statistics since the control laws affecting these drugs (LSD and DMT) went into effect only recently The statement that there is an increased use of these drugs is based on opinions of police, school officials and others who are familiar with the illegal drug market

[6] This statement is based on testimony given by John Storer, Chief, State Bureau of Narcotics, during the committee hearing held in Sacramento on June 21 and 22, 1966,

this time there still does not appear to be any centralizing and controlling of the illegal drug market in the state

2) Treatment Facilities and Programs

There is a shortage of facilities and programs which help people overcome drug dependency

In light of the state's continuing interest in the problem of drug abuse, the extreme shortage of programs for the treatment of those who abuse drugs is appalling. The state operates one facility, the California Rehabilitation Center at Corona, for the treatment of persons addicted to opiates For all practical purposes that is the only specialized state-operated treatment program for persons involved in the illegal use of drugs.[7]

The most obvious gap in services occurs in respect to the illegal use of the dangerous drugs and marihuana The state has no programs that are designed to address that portion of the drug abuse problem. This occurs in spite of the fact that the most significant portion of the drug abuse problem is the misuse of these substances, rather than the misuse of the opiates

Some local and private programs have developed which attempt to provide services where the state fails to Examples of such efforts are the City and County of San Francisco's Center for Special Problems and the privately operated Synanon Foundation

But organizations such as these can, at best, only provide help for a small proportion of those who need and want help Representatives of the Synanon Foundation testified before the committee and indicated that Synanon has to turn away as many as 10 to 15 people a day who want help [8] Since Synanon is not a big enough organization to absorb everyone who comes to them for help, many people are turned away, and the state provides no adequate services to take up the slack

3) Public Education

There is a need to educate people at all levels and walks of life about drug-related problems.

We do not know a great deal about the problems of drug abuse First of all, we have only a vague and inaccurate notion about who uses drugs The statistics on drug use are based primarily on statistics about people who are arrested for illegal drug involvement To have some kinds of drugs in one's possession is illegal, and can lead to arrest. Most drug arrests are, in fact, for possession of one or more illegal substances.[9] In spite of the fact that over half of the drug-related arrests are for possession of drugs, and not related specifically to use of the drugs, inference about the patterns and nature of drug use are drawn from these

[7] The criteria for acceptance into the CRC program limit its availability as a treatment resource for many About 88 percent of the felon narcotic offenders are addicts, but only a small proportion of these go to the CRC program

[8] The representatives from Synanon who testified before the committee were Mr John Ciampa and Mr Arnold Ross The committee wishes to commend the Synanon Foundation for its fine efforts to provide a service for people in need of help The committee also wants to express the hope that the departments of state governments will adopt a cooperative attitude towards private organizations, such as Synanon

[9] In 1965, over 55 percent of adult drug arrests and over 66 percent of juvenile drug arrests were for possession. *(Drug Arrests and Dispositions in California)*

arrest statistics The inferences thus drawn are highly speculative and open to grave error, but unfortunately many policy decisions are based upon these unsubstantiated inferences.

Most people do not know much about drugs They have only vague, and often inaccurate, conceptions of the hazards and the benefits of using various types of drugs.[10] In spite of this lack of knowledge, programs in public education tend to be limited

One reason for the limited nature of educational programs about drug use is the limited nature of the source materials for teaching about drugs Before an adequate educational program can be developed, much more has to be known about the good and bad effects of using various kinds of drugs The need for an increased research effort on the subject of drugs and their effects was consistently mentioned as a prime need as the first step in an adequate educational program Most people who are involved in the business of trying to control drug use or help drug users seem to comment on the need for a more effective public education and information system.

4) Penalties

There is a need to review the penalty provisions of the law.

There is concern expressed by many that the penalties for the illegal use of drugs are too rigid and too long in proportion to the seriousness of the problem The move in the direction of tougher and tougher penalties has been slow, but steady and consistent since the Harrison Act was passed by the federal government in 1914. These penalties have generated much of the debate that exists relative to the control of the drug problem

The nature of the debate about penalties has taken on an unusual dimension. The genesis of the debate seems to lie in a basic conflict in how the law relates to and either helps or hinders the ability of those responsible for drug control to do their job There are two types of responsibility in the drug control field, namely, the responsibility to apprehend those who sell and use drugs, and the responsibility to treat those who use drugs The "catchers" are usually the police and the "treaters" are usually the medical and paramedical professionals. The law, as a tool, can affect one's ability to carry out this responsibility.

The police are totally dependent upon the law in their job. The law defines their responsibility and sets limits on their actions Since their responsibility is to apprehend people who use and sell drugs, the police are interested in laws which will help them apprehend people and will keep those apprehended from returning to the marketplace of illegal drugs As a result, and logically so, the police tend to support laws which outlaw any type of activity connected with illegal drug use and sale, are sufficiently severe to remove from the community for an extended period of time those who violate the drug laws, and which contain sufficiently severe penalties to deter non-drug-involved persons from becoming drug involved.

The professions given the responsibility for treating the drug-involved persons are not as directly dependent upon the law as the police,

[10] See testimony given by Dr. Richard Blum at a public hearing held by the committee in San Francisco on September 7 and 8, 1966

but find that the law is a tool which can hinder their treatment efforts For example, the mandatory minimum aspect of some of the drug laws requiring a person to be incarcerated for a long period of time without possibility of parole negates treatment efforts. In addition, the law hinders treatment of some types of drug involvement by prohibiting the furnishing of the drugs as part of the treatment process. The rigidity of the laws limits the resources and the methods the "treaters" can use

So the battle wages But the interesting, yet unfortunate and false, aspect of the debate is the implication of taking sides in the debate If one argues for stricter penalties one is immediately branded as "pro-cop" and "anti-people." If one argues for more lenient penalties and more flexible laws one is branded "anti-cop" and "soft-on-narcotics." The truth of the matter is that both sides are concerned with finding a solution to a problem of human misery There is a difference of opinion on how the law helps or hinders the effort to find that solution But the nature of the debate has become so hysterical and emotion charged that there has been little rational discussion about how the law can be changed to achieve that end

If there is to be a solution to the problem of drug abuse, and we do not mean a solution in the sense of totally eradicating people's use of drugs, there has to be a careful review of the penalty provisions of the law and how they relate to the total problem.[11] To continue the present debate at the existing intensity with the present lack of knowledge would be a disservice to the state

[11] An example of the kind of review that is necessary is the kind of review done for the committee during this study by the Department of Corrections The department reviewed the case histories of all felons committed under the mandatory minimum provisions of the law and the results of that review raise some grave questions about the effectiveness of those provisions That study should be followed up, additional questions should be asked, and new studies relative to the effectiveness of other provisions of the law should be requested

SECTION II

COMMITTEE RECOMMENDATIONS

1) Introduction

The following recommendations are made by the Criminal Procedure Committee in an attempt to move in the direction of a solution to the drug problem in light of the findings of the present study. The committee members recognize that the solutions to the problem will not be outlined below, but at the same time feel that some progress has been made in that direction Continued investigation of the issues in the control-of-drug-abuse debate is necessary, and the lack of a solution at this time stems directly from a lack of adequate information which, we hope, will be developed in the near future through more and better research

2) Public Education

The committee recommends that the State Department of Public Health be given the responsibility to develop and carry out an extensive program of education about drug use and abuse.

One of the most apparent deficiencies in the present attempts to deal with the drug problem is the lack of information that people have about drugs, their use and abuse Schools are presently required to teach about drugs, but the amount that is taught and the quality of the information varies significantly In spite of the present requirement, some schools teach nothing about drugs

Part of the problem of education has been the lack of adequate data about drug use There is a need to develop better data But beyond that, most teachers have little background from which they can develop an adequate course which will explore all of the facets of the problem

The Department of Public Health is an organization which is in the best position to develop a broad-based curriculum and draw upon the knowledge of all the participants responsible for drug control. The department is experienced in working in the community and dealing with a variety of community agencies Also, they have diverse professional resources at their disposal that can contribute toward developing a curriculum which will examine all aspects of the problem In addition, they are an agency which has ties that go beyond the borders of the state enabling them to gain a wider perspective of the problem than is often possible in a locally based agency such as a school.

Initially, the Public Health drug education program should be focused on three levels

a. Junior High School and High School Level. It is necessary to give children an adequate understanding of the role that drugs can play in their life Basic information about drugs and their use should be taught in an objective, factual manner.
b. Community Education Level It would be desirable to develop a community education program which could be used as a springboard for rational discussion about the issue of drug control. The biggest myths and misconceptions about drug use exist in the adult community, and this ignorance is passed on to the children. Final action and decisions are going to be made on this issue by adults, and the decisions will be better if they are adequately informed.

c Seminars for College Health Center Personnel Apparently one of the places where illegal drugs are being used with increased frequency is on college campuses Those responsible for administering the health needs of the student body should be among the best informed about all aspects of the drug abuse problem. This will enable the health center personnel to not only attend to the physiological aspects of the problem, but will enable them to give the students adequate advice and counseling.

These educational programs that are to be developed by the Department of Public Health should be funded by state funds Drug abuse is not the problem of just a few communities, it represents a problem to the entire state Since decisions about the control of drugs are made on a statewide basis, the educational programs, designed to inform the citizens, should also be set up on a statewide basis

3) Research Coordination

The committee recommends that the State Department of Public Health should be given the specific responsibility for reviewing proposals for research on drugs.

One of the ironies in the whole area of drug use and control is the disparity between the need for adequate data and the lack of research being done The amount of good data about the effects of drug use, especially when related to a social context, is nil There have been some studies about the physiological effects of drugs on the human organism, but there is almost no data on the effects that the drugs have on behavior in various social situations This is indeed unfortunate, for it is the social situation that legislation seeks to control. In essence, social control legislation relative to drug use has been passed with almost no knowledge of the true relationship between drug use and social behavior.

Federal agencies control, to a certain extent, the amount and type of research to be done on many kinds of drugs. One of the present problems seems to be a lack of coordination between the state and federal agencies, and one reason for that lack of coordination seems to relate to the fact that there is no agency within the state that has been designated specifically to review drug-related research proposals. The State Department of Public Health would be the most suitable agency in the state to oversee this responsibility

Designating the Department of Public Health as the agency responsible for reviewing and recommending on research proposals should establish some order to the present picture This department can serve as a natural liaison between local and federal agencies Public Health is in tune with the needs of the state, and at the same time can relate the state and local needs to the federal agencies responsible for making the final decisions about some of the research.

Much research is needed, but it should be good research that meets the needs of the state Questions need to be asked, but they should be asked in a way that will provide answers The sooner that good research is undertaken, the sooner that we will have answers to some of the problems that plague the issue of drug control

4) Dial-for-Help Centers

The committee recommends establishing pilot dial-for-help centers in some of the metropolitan counties under the auspices of the State Department of Public Health.

These centers should be located in general or emergency hospitals and should be staffed by medical personnel who have received special training in how to handle drug problems They would be operated on a 24-hour-a-day basis, and would accept calls from any person concerned about drug abuse

In addition to giving information on drug effects and reactions, the centers would refer sick abusers to doctors on call or to special services, and could dispatch police and medical aid in emergency cases Such centers have proved valuable in aiding alcoholics, in helping potential suicides, and are helpful in poison control

As the public becomes better educated about drug abuse, the need for such centers should decrease But at this point in time drug abuse is increasing, most people know little or nothing about drugs and have no way to find out about them, and medical personnel are generally not adequately informed about the problem. Until the educational programs are developed, the centers could serve the dual function of information resources and coordinators of emergency service.[1]

5) Treatment Facilities

The committee recommends that a study be conducted to determine the feasibility of establishing a state institution for the treatment of people who abuse drugs other than the opiates.

Presently, the only institution operated by the state especially for treating drug abusers is the California Rehabilitation Center at Corona That institution, however, treats only those persons addicted to the opiate drugs such as heroin

A substantial majority of the people using illicit drugs do not use the opiates, but rather, use marihuana or some of the other dangerous drugs such as the barbiturates, amphetamines or LSD. At this time the state has no facility to deal specifically with the problems people have as a result of the use of these drugs If incarcerated, these people usually go to jail or to prison and receive only limited treatment

A specialized treatment facility to provide help for these people may be necessary. Most of those who testified indicated that the dangerous drug users should not be treated in the CRC facility, that that institution should continue to deal exclusively with opiate addicts, but many felt that an institution similar to CRC might be valuable in the overall approach to control of the problem Before such an institution is built, however, it is necessary to do a feasibility study to determine the costs and to explore, if possible, the effects that such an institution might have

The feasibility study should take into consideration the question of which department of state government should operate the new facility, if it is built One of the reasons that witnesses felt that dangerous drug offenders should not be admitted to the CRC program was that, by com-

[1] Mr Deukmejian dissents

parison, dangerous drug offenders tend to be much less criminally involved than opiate addicts If this is the case, and since the focus of the institution will be upon the rehabilitation of the offenders, it may be desirable to place the facility within the Department of Mental Hygiene, rather than the Department of Corrections. This question, however, can only be resolved by careful study.

Once the feasibility study is completed, the results and recommendations should be submitted to the Legislature for consideration.[2]

6) Penalties

The committee recommends that the Assembly immediately begin a detailed review of the penalty aspects of the law.

One of the central points of debate in the issue of drug control relates to the subject of penalties Some claim they are too long and too rigid, others feel they are adequate and necessary No systematic study has been done which would shed light on the real impact of penalties on drug control. Opinions are abundant, but facts are nearly nonexistent

Such a study will take time and will involve some detailed and skilled research. The study could best be done by a contract, or series of contractual agreements, with individuals or organizations who have extensive access to research talent and facilities (such as a university). The project should be done under the auspices of the Legislature with the Legislature actively involved in the development and interpretation of the data as it is gathered.

Because the Penal Code is in the process of undergoing extensive revision, it may be desirable to go beyond the notion of the penalties imposed by laws relating to narcotics and include in the study a review of all of the penalty provisions of the law An extensive review such as this is timely, and in light of the importance of the revision of the Penal Code would be worth the time and expense

Because the problem of the abuse of drugs is growing, and because the revision of the Penal Code has already begun, it is felt that this study should be started at the earliest possible date.[3]

7) Cooperation Between Enforcing Agencies

The committee recommends that continued effort be made to effect closer cooperation between all of the agencies that work in connection with the Mexican border.

Some concern has been expressed in recent years about a lack of cooperation between policing agencies The committee heard testimony from federal, state, county and local police agencies, and the general feeling was that cooperation is good and continually improving

The problem of controlling the flow of drugs over the border goes well beyond the issue of cooperation between agencies, at least agencies affected by state legislative policy Much of the problem lies in the nature of the culture of Mexico, and testimony indicated that even some of the cultural differences are being worked out through cooperative

[2] Mr Deukmejian dissents
[3] Mr Deukmejian dissents

agreements between the United States and Mexico. The Legislature strongly recommends that continued effort be made to effect closer cooperation between state, local and federal agencies as well as increase the cooperation between those agencies and the agencies of the Mexican government.

APPENDICES

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION

ASSEMBLY BILL No. 1399

Introduced by Assemblyman Biddle

March 30, 1967

REFERRED TO COMMITTEE ON PUBLIC HEALTH

An act to add Section 210 to the Health and Safety Code, relating to drug use research.

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

SECTION 1 Section 210 is added to the Health and Safety Code, to read

210. It shall collect, and act as a repository of, information on research projects completed or in progress relating to drug abuse and shall provide, to any person, institution or public agency proposing any research project on such subject, advice with respect to the areas in which research is needed and with respect to methods of research No state agency shall conduct any research project on drug abuse until it has submitted its proposal for the project to the State Department of Public Health for review and has received the department's recommendations

LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as introduced. Biddle (Pub H.) Drug use research

Adds Sec 210, H & S C

Requires Department of Public Health to collect, and act as a repository of, information on research projects relating to drug use, to provide advice with respect to methods of research and areas in which research is needed Provides that state agency shall not conduct research project on subject of drug abuse until department has reviewed proposal and given its recommendations.

Vote—Majority; Appropriation—No; State Expense—Yes.

O

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION

ASSEMBLY BILL No. 1400

Introduced by Assemblyman Biddle

March 30, 1967

REFERRED TO COMMITTEE ON PUBLIC HEALTH

An act to add Section 209 5 to the Health and Safety Code, relating to drug abuse.

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

SECTION 1 Section 209 5 is added to the Health and Safety Code, to read

209 5 It shall develop and carry out programs of education on the subject of drug use and abuse, including programs for high school students, college health center personnel, and the community at large

LEGISLATIVE COUNSEL'S DIGEST

AB 1400, as introduced, Biddle (Pub H) Drug abuse.

Adds Sec 209 5, H & S C

Requires Department of Public Health to develop and carry out education programs on drug use and abuse, including programs for high school students, college health center personnel, and the community at large

Vote—Majority, Appropriation—No, State Expense—Yes

O

CALIFORNIA LEGISLATURE—1967 REGULAR SESSION

ASSEMBLY BILL No. 1401

Introduced by Assemblyman Biddle

March 30, 1967

REFERRED TO COMMITTEE ON CRIMINAL PROCEDURE

An act to amend Section 11718 of the Health and Safety Code, relating to narcotics offenses.

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

SECTION 1. Section 11718 of the Health and Safety Code is amended to read

11718 In any criminal proceeding for violation of any provision of this division no allegation of fact which, if admitted or found to be true would change the penalty for the offense charged from what the penalty would be if such fact were not alleged and admitted or proved to be true may be ~~dismissed by the court or~~ stricken from the accusatory pleading except upon motion of the district attorney *or by the court on its own motion and in the interest of justice*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1401, as introduced, Biddle (Crim Pro). Narcotics offenses.

Amends Sec. 11718, H & S C.

Permits court on its own motion and in the interest of justice to strike from the accusatory pleading allegations of prior offenses in criminal actions for violations of narcotic laws, rather than permitting dismissal or striking only upon motion of district attorney.

Vote—Majority; Appropriation—No; State Expense—No

O

House Resolution No. 162

Relative to a study of the feasibility of establishing an institution for treatment of nonopiate drug users

WHEREAS, Presently, the only institution operated by the state especially for treating drug abusers is the California Rehabilitation Center at Corona; and

WHEREAS, That institution, however, treats only those persons addicted to the opiate drugs such as heroin; and

WHEREAS, A substantial majority of the people using illicit drugs do not use the opiates, but rather, use marihuana or some of the other dangerous drugs such as the barbiturates, amphetamines or LSD, and

WHEREAS, At this time the state has no facility to deal specifically with the problems people have as a result of the use of these drugs, and if incarcerated these people usually go to jail or to prison and receive only limited treatment; and

WHEREAS, A specialized treatment facility to provide help for these people appears to be necessary, and

WHEREAS, Before such an institution is built it is necessary to do a feasibility study to determine the costs and to explore the effects that such an institution might have; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is requested to refer for study to an appropriate committee of the Assembly the subject of the feasibility of establishing a state institution for the treatment of people who abuse drugs other than opiates, including, but not limited to, the question of which department of the state government should operate such facility, and be it further

Resolved, That the Committee on Rules is requested to direct the committee to which such subject is referred to report its findings and recommendations to the Legislature not later than the fifth legislative day of the 1968 Regular Session of the Legislature

House Resolution No. 163

Relative to a study of the penalty aspects of drug control laws

WHEREAS, Many persons claim that the penalties for violation of the drug control laws are too harsh and too rigid, while others feel that they are adequate and necessary; and

WHEREAS, Since no systematic study has been done which would shed light on the real impact of penalties on drug control, opinions are abundant, but facts are nearly nonexistent, now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is requested to refer for study to an appropriate committee of the Assembly the subject of the penalty aspects of drug control laws, and be it further

Resolved, That the Committee on Rules is requested to direct the committee to which such subject is referred to report its findings and recommendations to the Legislature not later than the fifth legislative day of the 1968 Regular Session of the Legislature

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ASSEMBLY INTERIM COMMITTEE REPORTS

Volume 22 1965–67 Number 10

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

on

DELINQUENCY CONTROL

MEMBERS OF THE COMMITTEE

Pearce Young, *Chairman*
W. Craig Biddle, *Vice Chairman*

E. Richard Barnes
Anthony C. Beilenson
Robert W. Crown
George Deukmejian
John T. Knox
Howard J. Thelin
Gordon H. Winton, Jr.

January 1967

Clyde M. Blackmon, *Consultant*
Edward H. Juers, *Special Consultant*
David Matza, *Special Consultant*
Sue Johnson, *Secretary*
Robert L. Monk, *Legislative Intern*
(September 1965–June 1966)
Donald C Green, *Legislative Intern*
(September 1966–January 1967)

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ASSEMBLY

OF THE STATE OF CALIFORNIA

JESSE M. UNRUH
Speaker

CARLOS BEE
Speaker pro Tempore

GEORGE ZENOVICH
Majority Floor Leader

ROBERT T. MONAGAN
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LETTER OF TRANSMITTAL

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Your Interim Committee on Criminal Procedure in accordance with your instructions, herewith respectfully submits a report on delinquency control, a study conducted by the committee in accordance with House Resolution No 710 of the 1965 Regular Session

Respectfully submitted.

PEARCE YOUNG, *Chairman*
W CRAIG BIDDLE, *Vice Chairman*

E RICHARD BARNES
ANTHONY C. BEILENSON
ROBERT W CROWN
GEORGE DEUKMEJIAN
JOHN T. KNOX
HOWARD J. THELIN
GORDON H WINTON, JR

PREFACE

The Assembly Committee on Criminal Procedure conducted a study during the 1965–67 interim period on the subject of delinquency control The results of that study are reported in the following pages

The 1965 and 1966 General and Extraordinary Legislative Sessions curtailed the length of time available for interim study and as a result the committee was unable to conduct as intensive an investigation as the subject matter warrants

Our accomplishments, we feel, however, were considerable, and the committee can look back with satisfaction on the work completed and to successful passage of the recommended legislation.

The committee held public hearings on this subject in San Francisco on August 30 and 31, 1966. Testimony presented at those hearings by judges, agency representatives and interested citizens contributed greatly to the committee's accomplishments. Information regarding that hearing can be obtained in the office of the Criminal Procedure Committee chairman

Members of the committee wish to express gratitude to those who participated in the work during sessions and interim, and who provided valuable assistance in the gathering of material for our studies. The committee would like to give special acknowledgment to Edward H Juers and Dr David Matza, who served as special consultants to the committee for this study. Sincere appreciation is also given for the diligent work and efforts of the committee staff.

SUMMARY OF RECOMMENDATIONS

1) The committee recommends that a pilot program be established in the Youth Authority to specifically deal with the problems of identification and treatment of the neurologically handicapped delinquent.
2) The committee recommends that Section 707 of the Welfare and Institutions Code be revised to allow a minor to be remanded to the adult court at age 16, regardless of the type of offense
3) The committee recommends that a notice procedure be established where the district attorney's office is notified of the time and place of all juvenile hearings involving a 602 petition, and if the juvenile judge consents, the district attorney be allowed to come into the hearing, but where the petition alleges an act by the parent against the minor, the district attorney has the right to represent the minor in the juvenile court proceedings
4) The committee recommends revision of Section 628 of the Welfare and Institutions Code to allow for a hearing on the issue of release from protective custody in selected cases.
5) The committee recommends that the principles present in the Work Furlough Act for adult prisoners be extended to juvenile offenders
6) The committee recommends that privately supported agencies be encouraged to provide public agencies with supplemental casework services or resources.

I.

REPORT ON DELINQUENCY CONTROL

A. INTRODUCTION

Resolutions adopted by the Assembly pertaining to the study of programs for delinquency control in California were predicated on two concerns.

a) A concern with the rate of delinquency in the State of California; and
b) A desire to seek ways in which the state's overall approach to the problem might be improved.

Present programs for delinquency control are costly.[1] If the rate of delinquency remains constant, the rapid increase in the size of the adolescent population will still send the cost of the existing programs soaring to new heights.[2] Legislative concern about the problem arises not only out of a concern for those we call delinquents, but also, out of a concern for those who must bear the burden of the cost of delinquency control programs.

This interim was broken by several events which limited the amount of time that the Criminal Procedure Committee could devote to the study of delinquency related problems. As a result, the study had to be limited to deal with that portion of the control system which appeared to promise the greatest results in terms of understanding and productivity.

The decision was made to have the interim study effort focus on the law regulating the operation of the juvenile court. It is through the vehicle of the law that a child becomes a delinquent. One is not a delinquent, that is to say does not become a part of the delinquency statistics, and therefore a contributor to the rate of delinquency, unless one is arrested by the police.

But arrest is not the sole criterion for achieving the label of delinquent. Many children are arrested, counseled by the police, and then released to never appear again as "official delinquents." Although these persons become a part of the statistic which is known as the delinquency rate, many of them probably never think of themselves as delinquents nor are thought about by other as delinquents.

Those who go further along in the process of juvenile justice are the ones upon who the most money is spent and about whom most people

[1] In this instance "programs for delinquency control" refers to all types of programs related to the problem. Included are such things as policing costs, court costs, the cost of probation services, as well as the cost of running the Youth Authority operation. The total budget for the Youth Authority alone is approximately $35,000,000.

[2] For the past year the rate of delinquency as measured by juvenile arrests has remained fairly stable. There was a 3-percent decrease in the arrest rate for law violations which was partially offset by a 1-percent increase in the arrest rate for delinquent tendencies.

think when they talk about juvenile delinquents These are the children that the police refer to probation departments for possible filing of petitions for appearance in juvenile court, and those who subsequently go to juvenile court and are placed on probation, in one or another community based programs, or are incarcerated in county or state facilities

It is the law which defines the route from arrest, to probation, to incarceration and back to the community via parole. It is the law that defines a delinquent Since the law is the vehicle of definition, an examination of the manner in which the law works would give the most insight into the process by which one becomes "officially" delinquent

A second reason for reviewing the juvenile court law was to enable the committee to investigate the manner in which the present law works. In 1961 the Legislature made extensive revisions in the laws relating to delinquency, and it was felt that the committee should inquire of those who are operating within the framework of the 1961 revisions their views of the present law and their proposals for change Thus, the committee inquiry was directed primarily to juvenile judges, probation officers, police officers, and spokesmen from the Department of the Youth Authority. In addition to the above, others who were interested in different aspects of the problem of delinquency definition and treatment supplied the committee with valuable information and ideas

B. ISSUES

The literature in the field of criminology in the past several years has more and more frequently pointed out the critical nature of the act of officially defining a youngster a delinquent Lombroso first postulated a theory of criminality which changed the direction of the search for answers from "how much pain is necessary to convince people to forego the pleasures of crime" to "how are criminals different from noncriminals" Since Lombroso, researchers and philosophers have been looking for ways to differentiate criminals from noncriminals The research and literature leads one to the inescapable conclusion that there presently is only one known variable among the vast universe of possible variables which separates people we call criminals from people we call noncriminals That variable is the variable of official definition of "delinquent" or "criminal"

The preponderance of evidence forces one to conclude that there probably is no such thing as a "delinquent type" Delinquents are like other people in all respects save one, they have been officially deemed delinquent through the mechanism of the law Not even the variable of commission of offenses separates delinquents from those we call nondelinquents Studies indicate that probably everyone has broken the law Most have committed offenses which are serious enough to be classed as felonies[3] If there is such a thing as a delinquent type, the variables which separate the delinquent type from the nondelinquent type are yet to be discovered

Since there apparently is no such thing as a delinquent type, and since the only variable which separates those we call delinquent from those we call nondelinquent is the official label which results from being caught and brought into contact with the control system of courts, supervision, and incarceration, it is imperative in a study of the problem of delinquency to be concerned first and foremost with how a person gets the label "delinquent" One must ask what the child did, and what made it necessary to put the label of delinquent upon him, and not upon others Also, one should always try to be aware of the consequences to the child for having to carry the label

In light of the above considerations the committee reviewed the 1961 revisions of California law pertaining to the juvenile court by asking two questions

1) Is the content of the law adequate?

This question deals with whether the law adequately defines those we should officially label as delinquent. Maybe the present law allows the definition of too many people as delinquent, or maybe some people who should be labeled delinquent cannot be labeled as such under the law.

2) Is the law fair?

This question deals with whether the law adequately provides protection for those who may be incorrectly labeled as delin-

[3] A study by Wallstein and Wile indicated that of 1,600 randomly selected adults in New York, 91 percent admitted to crimes A study by Short found that only 1 percent did not admit to crimes Surprisingly, kids in high school who were in the middle and upper class committed more crimes than did the kids in the reformatory Toch, in a study of police recruits, found that the average recruit reported he owed the state 2½ years on the basis of the felonies admitted to

quent and who would then have to unjustly bear the consequences of the delinquent label

Interviews with judges, probation officers, police, and those defined as delinquents, coupled with observations of court procedures and information in a public hearing indicated that the California law may be deficient in both areas of content and fairness There is extreme diversity of opinion on this issue, but there is evidence of feeling on the part of some responsible for administering the law that it is too easy to define a child as delinquent under the present law.

The following is an example of testimony which questions the adequacy of the content of the law[4] The question to which the following remarks were being addressed was the question of whether or not the present Section 601 of the Welfare and Institutions Code may contain too broad a definition of delinquency which results in too many children receiving the label of delinquent[5]

Dr. Matza: Given the almost necessarily vague definition of offenses like incorrigibility, do you think there is any problem created for the courts in issuing findings in those kinds of cases?

Judge Gardner: Definitely 601 is a nightmare I ask those members of the committee who are attorneys, how would you like to defend someone who is charged with the following offense · from any reason being in danger of leading an idle or immoral life? I couldn't defend myself against that in 12 hours Sometime during the next 12 hours, something's going to happen which will bring me within that It's a rather broad and terrifying power that a juvenile court judge has . . . I think history has shown the necessity of limiting those of us in authority, including judges of the juvenile court That's why I feel so strongly on the 602

Now when you get down to the 600's, we have to have the power to move and move fast We have to do this for the protection of the child The 601 is a continuing nightmare I sometimes think the only results we get from 601 is that eventually both parent and child get so mad at us that they combine as a common enemy and we get some results that way. We force them back together But, seriously, I wonder if anybody really ever thought about taking 601 out of the law

Dr. Matza: That was the next question I wanted to ask you

Judge Gardner: I suggested that one time at a meeting of the California Parole, Probation and Correctional Officers Association and they thought that the earth was going to open up and swallow me Really, if, when the irate parent comes in and says my child is a complete incorrigible, you would say, "All right, this child was not born incorrigible. If you want to file on this child, file under Section 600. You say to me, Mrs. So and So, that I want you to take jurisdiction over this child

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[4] This testimony given by Judge Robert Gardner of the Superior Court of Orange County at a public hearing of the committee in San Francisco on August 30 and 31, 1956

[5] Section 601 of the Welfare and Institutions Code reads as follows "Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable or proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of this state, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court"

because he has no parent willing or capable of exercising proper parental control " That would take care of part of 601

I have indicated my worries about the last sentence of 601 and the middle sentence, the one about schools I guess it's necessary, but I've never been very happy over the results of taking a kid who refuses to go to school. and so to keep him from becoming a criminal we take him into juvenile court and lock him up, because he refuses to go to school I don't think it makes a very good student out of him. I doubt that we improve his surroundings I just wonder if somebody might someday say let's really be honest about this If we're honest about this compulsory public education, let's make it a crime not to go to school And when the kid says I don't want to go to school, let's either forget it, or treat it as a crime and step into the thing and give him all the rights that anyone else would have who is charged with a criminal offense The end of the school year we find juvenile hall bulging with kids who won't go to school I don't know that we've ever proven very much by that We have all kinds of little girls in there who are in danger of leading immoral lives I doubt that I've changed the moral standard of very many of them by taking them into juvenile hall I have grave questions about the results of 601 handling I guess it has to be there. I'm not going to be that much of a radical to say that we take 601 out I just have some questions of myself.

Judge Gardner is by no means alone in his concern about Section 601 of the Welfare and Institutions Code Conversations with other judges, as well as with probation officers and others, revealed that there is a concern about the all-encompassing aspect of this portion of the code[6] But for each person concerned with the broad aspects of Section 601 and the potential for abuse there is a person who defends this section as necessary in order to get the juvenile into the treatment system before he commits a serious offense.

Further testimony reveals concern about the other question of interest to the committee, the question of the fairness of the law. The following are examples of statements which reflect this concern and which raise the issue of due process in the juvenile courts[7]

Assemblyman Winton: One of the questions that has arisen now is the fact that the juvenile is entitled to counsel and sometimes brings counsel in I know you say that it hasn't happened very often in your court, but the question on the other side as law enforcement looks at it is why shouldn't there be someone there as a counsel for law enforcement? In effect, for the prosecution Would you have any comment upon that?

Judge Carkeet: Yes, I have ideas on that. I think probably Judge Gardner can do more justice to it than I, because it was while he was chairman of the conference committee last year that we did submit a proposal to the Legislature to add or amend the act which would permit

[6] In 1965, over 50 percent of the arrests of juveniles were under the delinquent tendencies section and over 50 percent of the initial referrals to probation were for delinquent tendencies So cases handled under this section of the code represent a significant proportion of the workload of the delinquency control system

[7] Testimony from public hearing of the Criminal Procedure Committee on August 30 and 31, 1966 Judge Carkeet is the superior court judge in Tuolumne County, Judge Gardner is from Orange County, Referee Harris is from Los Angeles County, and Mr Carl Goldin, high school student from Sacramento

a judge, upon request of the probation department, to appoint counsel. Now, we very advisedly used the word counsel, rather than district attorney or public defender or anything else, because you've got a different situation in every county and you have the problem of the attorney general's opinion that district attorneys don't belong in the juvenile court and don't have to go You also have the question of philosophically whether a district attorney belongs in a juvenile court, since he represents the people and indicates prosecution And that is related to criminal work With all of those thoughts we concluded and recommended that the courts be empowered to appoint counsel If this were private counsel, then it could be so, and he would be reimbursed to conduct the interrogation We had this problem before the 1961 revision, so this isn't really new, except that we are confronted more often with attorneys now than we were then But judges still have the problem of who is going to conduct questioning What happens is the probation officer brings the case in, hands you a probation report and, of course, if the minor admits it there is no problem But if the minor comes in and says, "I deny this," and he has counsel, and this man is trained in cross-examination and so on, why of course the probation officer is no match for him In very few counties is the probation officer an attorney, and, anyway, we don't think that is the probation officer's role, to question the minor He's supposed to be in the minor's corner.

Assemblyman Winton: I would think it would be a serious drawback if you put the probation officer in the position of being the prosecutor

Judge Carkeet: Exactly Personally, I don't let my probation officer ask a single question in court But this dumps it in the judge's lap and this means the judge sits there and does the questioning and puts the defense counsel in the uncomfortable position of having to object to the judge's questions I always tell them to go ahead and object and I will rule But it's a difficult situation for the judge, because it makes the minor wonder how a judge can sit up there and be fair and still be the one that's asking the $64 questions that are hanging him It's a mean situation.

Assemblyman Biddle: One of the witnesses we had this morning, Mr Keldgord, was talking about this possibility and he raised the question of the immature 13-year-old or 14-year-old or 15-year-old. He is of the opinion that they should not be handled in an adversary proceeding That it would be better to handle them in the informal manner that we do in the juvenile court Now if this individual is charged with a crime, and is the immature 15-year-old, and has the maturity of an 8-year-old, then he is going to be treated just like an adult under your system

Judge Gardner: Remember, we have now just gotten to the jurisdictional phase If this boy says, "I didn't do it," I don't care whether he is 60 years old or whatever I think that when a person says, "I didn't do it," he has a right to have his rights protected exactly the same as his father at age 54

Assemblyman Biddle: Even if he's eight years old?

Judge Gardner: If he's eight years old, even more so

Assemblyman Biddle: Tell me what happens then when they come in.

Mr. Harris: Well, if they are in custody they come from the detention area through one door and they are brought into the courtroom where they are seated in chairs that are before the bench Some of the referees prefer to have a desk for counsel They are joined by their parents and their attorney, if they have an attorney The probation officer is seated over to one side, at one end of the bench, and probably the legal statement reporter would be present at the opening to get the names of those appearing There would be a bailiff, according to the court rules, present at all times

The procedure would begin by having the referee read the petition to the youngster, advise the parents of their constitutional rights, the general nature of his presence in the court, and the possibilities of what are in store for him in the event the petition is found to be true Then they would hear the evidence, if the petition was denied If it was admitted at the time, the matter would go to disposition Our hearings are rigidly bifurcated We follow, very religiously, the bifurcation procedure Now, the referee does not see, as I indicated before, the file. The file is brought to him after he sustains a petition The social study is then introduced in evidence and read by the referee at that point If the petition is found not to be true, that's the end of it He probably doesn't see the social study and probation officer's report and recommendation for disposition

Assemblyman Biddle: When he is making the decision on the first part of the bifurcated portion, at that time he doesn't have the police report before him?

Mr. Harris: He has nothing but the petition and jurisdictional service of process, the notice to parent, and citation, if it has been issued, and subpoenas if they have been served

Assemblyman Biddle: And a list of witnesses

Mr. Harris: And a list of witnesses

Assemblyman Biddle: Let's say that the minor denies the robbery charge, the referee then calls the first witness?

Mr. Harris: After having advised the minor and his parents of his right to cross-examine

Assemblyman Biddle: Who interrogates the first witness?

Mr. Harris: The referee

Assemblyman Biddle: The probation officer does not interrogate at all?

Mr. Harris: Not in our courts, no, sir

In my particular court I don't permit the probation officer to interrogate the witnesses I do permit him to suggest questions to the referee. But I ask the questions in order to play down the situation that Mr Muntz described, so that the kid doesn't feel "here is this guy that has solicited all this information from me and my friend on my behalf, theoretically, now he is turning around and using it against me" We try to avoid that wherever possible

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Chairman Young: What you're really saying, aren't you, is that minors, like adults, are different people They have different ways of looking at life and other things, and that by treating them all one way you're really getting a problem

Mr. Goldin: Yes, sir, this is what I'm saying.

Chairman Young: Go ahead; continue.

Mr. Goldin: Thus the minor is usually protected in the juvenile court, but he loses the right of being innocent until proven guilty beyond reasonable doubt In the informal juvenile court hearing most of the rules of evidence are not followed closely Thus hearsay testimony, irrelevant and immaterial testimony, opinions by unqualified persons, and other forms of improper and biased testimony are allowed in an attempt to find the best solution for the delinquent's problem Often it is assumed that the juvenile is guilty before trial and they always ask the juvenile, they don't ask him how he pleads, but they ask him if he denies the charges. It is usually just a formality, because oftentimes when the juvenile does deny the charges, especially in an incorrigible case, the judge will say to you, "Now don't be silly You're not going to say your parents are lying They say this is what you did" And so, he is assumed to be guilty.

The above testimony clearly points out some of the problems that the existing law can present to those concerned with the notion of fairness. The legal guidelines and procedures are not precise nor mandatory in many instances Judges disagree and practices differ from court to court.[8] The law apparently allows for a degree of variability which could be, and is, interpreted as potentially unfair by some people.

The severe limitation of time and the lack of adequate data prevented the committee from arriving at any recommendations relative to large scale content and procedural changes in the code. The committee recognizes the relevancy of the issues, but felt that adequate data was not developed or presented to compel recommendations for extensive revision of a code section which was extensively revised only five years ago. Although many persons expressed concern about the present form of the law as many or more felt that the law was basically adequate.

Recent Supreme Court decisions indicate that juveniles may be entitled to constitutional rights not presently accorded to them under the present law. The committee recommends that the Legislature continue to review this important area, and further recommends that individual superior court judges voluntarily adopt procedures which comply with the court decisions

The committee also received testimony from many persons indicating a desire to remove wards of the court as defined in Section 600 of the Welfare and Institutions Code from the jurisdiction of the juvenile court to another court jurisdiction A family court was suggested The committee felt that such a recommendation at this time would be premature and that the issue should be reviewed again when and if a family court has been established in California

[8] An excellent case in point is the portion of the proceeding at which the social history is allowed to be introduced for consideration In some courts it was observed that the judge had read the social history prior to the hearing In other courts, Los Angeles County for instance, the social history is not seen by the judge (or referee) until after a determination is made on the question of whether or not the child is guilty of the alleged offense

C. RECOMMENDATIONS

1. The committee recommends that a pilot program be established in the Youth Authority to specifically deal with the problems of identification and treatment of the neurologically handicapped delinquent.

Evidence given to the committee indicates that many neurologically handicapped children exhibit behavioral characteristics which result in violations of the law Many such children are especially in jeopardy of being defined as delinquent under Section 601 of the Welfare and Institutions Code as a result of being incorrigible or beyond control. If the neurological condition is not diagnosed, and it seldom is, the child is treated the same way as a child whose problem stems from a psychogenic origin.

The type of treatment necessary to compensate for a neurological deficiency is totally different from the treatment approach to a problem of psychogenic origin Some studies show that as many as two-thirds of those in penal institutions may have some degree of neurological impairment which renders them less capable of reacting to their environment without special education and treatment. Almost all corrections programs for delinquents are predicated on the assumption that the roots of the problem are sociogenic or psychogenic If, in fact, a significant percentage of delinquents' problems stem from neurological impairments, then traditional correctional programs are doomed to monumental failure from the start

It seems imperative that the state initiate a pilot program for the identification and treatment of neurologically handicapped persons who are committeed to the Youth Authority Presently the state supports a community based screening program designed to diagnose neurologically handicapped children at an early age, but the program is new and not fully operative, so some of the neurologically handicapped children do not get diagnosed as such and are committed to the Youth Authority As a result, we need a program in the Youth Authority which can effectively deal with this type of delinquency.

2. The committee recommends that Section 707 of the Welfare and Institutions Code be revised to allow a minor to be remanded to the adult court at age 16 regardless of whether the offense would have been a felony or a misdemeanor.

Presently the law allows that a juvenile may be remanded to the adult courts if he "would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court" at age 16 if the alleged offense is a felony, but not until age 18 if the alleged offense is a misdemeanor This provision sets a somewhat arbitrary limitation upon the juvenile judge which prevents him from dealing with a problem in the way he considers most effective

Age alone tends to be an arbitrary standard, and the distinction between felony and misdemeanor is also arbitrary The present form of the law is doubly arbitrary by limiting the alternatives available to the court differently for different ages as well as for different types of offense

a. COMMITTEE-RECOMMENDED LEGISLATION

An act to amend Section 707 of the Welfare and Institutions Code, relating to crimes of minors

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

SECTION 1 Section 707 of the Welfare and Institutions Code is amended to read

707 At any time during a hearing upon a petition alleging that a minor is, by reason of violation of any criminal statute or ordinance, a person described in Section 602, when substantial evidence has been adduced to support a finding ~~that the offense alleged is punishable as a felony under the general law and~~ that the minor was 16 years of age or older at the time of the alleged commission of such offense, ~~or that the offense alleged is punishable as a misdemeanor under the general law and that the minor was 18 years of age or older at the time of the alleged commission of such offense,~~ and that the minor would not be amenable to the care, treatment and training program available through the facilities of the juvenile court, or if, at any time after such hearing, a minor who was 16 years of age or older at the time of the commission of an offense and who was committed therefor by the court to the Youth Authority, is returned to the court by the Youth Authority pursuant to Section 780 or 1737 1, the court may make a finding noted in the minutes of the court that the minor is not a fit and proper subject to be dealt with under this chapter, and the court shall direct the district attorney or other appropriate prosecuting officer to prosecute the person under the applicable criminal statute or ordinance and thereafter dismiss the petition or, if a prosecution has been commenced in another court but has been suspended while juvenile court proceedings are held, shall dismiss the petition and issue its order directing that the other court proceedings resume

A denial by the person on whose behalf the petition is brought of any or all of the facts or conclusions set forth therein or of any inference to be drawn therefrom is not, of itself, sufficient to support a finding that such person is not a fit and proper subject to be dealt with under the provisions of the Juvenile Court Law

3. The committee recommends that a notice procedure be established where the district attorney is notified of the time and place of juvenile hearings involving a 602 petition, and if the juvenile judge consents, that the district attorney be allowed to participate in the hearing, but where the petition alleges an act by the parent against the minor, the district attorney has the right to represent the minor in the juvenile court proceedings.

There are some juvenile court cases where the offense is of such a nature or the circumstances of the case are of such a nature that there is a likelihood that the child may be remanded to the adult court for prosecution The introduction of the district attorney to the facts and circumstances of the case at the earliest possible stage of the process is desirable in such cases Since concern for the juvenile as well as concern for the community is at stake, it is felt that the judge is in the best position to make the ultimate decision as to when the district attorney should enter the case

A routine notification procedure from the juvenile court to the district attorney's office would serve as a means of alerting the district attorney to possible cases of this nature and give him the opportunity to request permission to enter the case or observe the proceedings in those instances where the court may overlook extending an invitation

a. COMMITTEE-RECOMMENDED LEGISLATION

An act to amend Section 658 of, and to add Section 681 to, the Welfare and Institutions Code, relating to juvenile court proceedings

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

SECTION 1 Section 658 of the Welfare and Institutions Code is amended to read

658 Upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he shall cause the same to be served upon the minor, if the minor is 14 or more years of age, and upon each of the persons described in ~~subsection~~ *subdivision* (e) of Section 656 whose residence addresses are set forth in said petition and thereafter before the hearing upon all such persons whose residence addresses become known to the clerk. *If the petition alleges that the minor comes within the provisions of Section 602 in that there has been a violation of any law of this state, the clerk shall also issue a notice, with a copy of the petition, to the district attorney conforming the time, date, and place of the hearing.*

SEC. 2 Section 681 is added to the Welfare and Institutions Code, to read

681 In a juvenile court hearing, including those hearings which are the result of cases certified pursuant to Section 604, where there is a contested issue of fact or law and the minor who is the subject of the hearing is represented by counsel, and it is alleged in the petition that the minor is a person who has violated any law of this state, the district attorney may, with the consent of the juvenile court judge, appear and participate in the hearing to assist in the ascertaining and presenting of the evidence. If the court finds the minor to be a person who has violated any law of this state, the district attorney may present his views to the court on the question of the proper disposition to be made of the minor

Where the petition in a juvenile court proceeding alleges that a minor is one described in subdivision (b) of Section 600 whose home is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian, or other person in whose custody or care he is, and either of the parents, or the guardian, or other person having custody or care of the minor, or who resides in the home of the minor, is charged in a pending criminal prosecution based upon unlawful acts committed against the minor, the district attorney may represent the minor in the interest of the state at the juvenile court proceeding

4. The committee recommends revision of Section 628 of the Welfare and Institutions Code to allow for a hearing on the issue of release from protective custody in selected cases.

This proposed revision serves the purpose of protecting the interests of the state in cases where juveniles are the victims of crimes. In some

instances such juveniles, after being placed in protective custody pending investigation of the crime, are placed back in the home or community situation where the crime occurred during the pendency of the criminal prosecution This places undue pressures on the child, often renders him incapable of serving as a witness in the criminal action, and can pose a danger to the safety and welfare of the child.

The proposal is not designed to give the district attorney the power to keep the child in custody, but is an attempt to set up a review process whereby both the interests of the child and the state can be determined before the child is released The juvenile court judge will have the responsibility of deciding when and to whom the child shall be released in cases that are open to question

a. COMMITTEE-RECOMMENDED LEGISLATION

An act to amend Section 628 of the Welfare and Institutions Code, relating to care and custody of minors.

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

SECTION 1. Section 628 of the Welfare and Institutions Code is amended to read

628. Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless *one or more of the following conditions exist* .

(a) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(b) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(c) The minor is provided with a home which is an unfit place for him by reason of neglect, cruelty, or depravity of either of his parents, or of his guardian or other person in whose custody or care he is.

(d) ~~it appears that further~~ *Continued* detention of ~~such~~ *the* minor is a matter of immediate and urgent necessity for the protection of ~~such minor or~~ the person or property of another ; ~~or unless it appears that such~~ .

(e) The minor is likely to flee the jurisdiction of the court ; ~~or unless it appears that such~~

(f) The minor has violated an order of the juvenile court.

The probation officer may not release a minor if the delivering officer alleges that the minor is the victim of an unfit home as described in condition (c) without first notifying the district attorney. If the district attorney makes an objection to the release of the minor, the probation officer must refer the matter immediately to the judge of the juvenile court who shall review the facts and decide the matter.

5. *The committee recommends that the principles present in the Work Furlough Act for adult prisoners be extended to juvenile offenders.*

Presently the law allows for work furlough programs for adult offenders, but not expressly for juveniles. The concept is operating in some adult institutions in California where institutional programs have developed that allow the inmate to work at a job or participate in apprentice training during the day, but return to the institution or halfway house at night and on weekends. It would seem logical to allow delinquents to work under the provisions of this act

Utilization of a work furlough notion could result in savings through more complete utilization of existing facilities and personnel. It could eliminate some costly duplication of training facilities and staff by enabling institutions for youth to send the wards to training programs that already exist in the community, rather than having to develop special institutional training programs In addition, the work furlough practice helps the inmate to bridge the gap between institution and community

a. COMMITTEE-RECOMMENDED LEGISLATION

An act to add Article 17 (commencing with Section 925) to Chapter 2 of Part 1 of Division 2 of, and to add Article 8 (commencing with Section 1830) to Chapter 1 of Division 2 5 of, the Welfare and Institutions Code, relating to work furloughs.

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

SECTION 1 Article 17 (commencing with Section 925) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read

Article 17. Work Furloughs

925 The provisions of this article shall be operative in any county in which the board of supervisors by ordinance finds, on the basis of employment conditions, the state of juvenile detention facilities, and other pertinent circumstances, that the operation of this article in that county is feasible. In such ordinance the board shall prescribe whether the probation officer or any official in charge of a county juvenile detention facility shall perform the functions of the juvenile work furlough administrator The board of supervisors may also terminate the operativeness of this article in the county if it finds by ordinance that, because of changed circumstances, the operation of this article in that county is no longer feasible.

926. When a minor is adjudged a ward of the juvenile court and committed to a county juvenile home, ranch, camp, or forestry camp, the juvenile work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his regular employment, if that is compatible with the requirements of Section 928, or may authorize the person to secure employment for himself in the county, unless the court at the time of commitment has ordered that such person not be granted work furloughs.

927 If the juvenile work furlough administrator so directs that the minor be permitted to continue in his regular employment, the adminis-

trator shall arrange for a continuation of such employment so far as possible without interruption If the minor does not have regular employment, and the administrator has authorized the minor to secure employment for himself, the minor may do so, and the administrator may assist him in doing so Any employment so secured must be suitable for the minor Such employment must be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area In no event may any such employment be permitted where there is a labor dispute in the establishment in which the minor is, or is to be, employed

928 Whenever the minor is not employed and between the hours or periods of employment, he shall be confined in a juvenile detention facility unless the court or administrator directs otherwise

929 The earnings of the minor shall be collected by the juvenile work furlough administrator, and it shall be the duty of the minor's employer to transmit such wages to the administrator at the latter's request Earnings levied upon pursuant to writ of attachment or execution or in other lawful manner shall not be transmitted to the administrator If the administrator has requested transmittal of earnings prior to levy, such request shall have priority When an employer transmits such earnings to the administrator pursuant to this subdivision he shall have no liability to the minor for such earnings From such earnings the administrator shall pay the minor's board and personal expenses, both inside and outside the juvenile detention facility, and shall deduct so much of the cost of administration of this article as is allocable to such minor If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the minor, pay, in whole or in part, the preexisting debts of the minor Any balance shall be retained until the minor's discharge and thereupon shall be paid to him

930 In the event the minor violates the conditions laid down for his conduct, custody, or employment, the juvenile work furlough administrator may order termination of work furloughs for such minor.

SEC 2 Article 8 (commencing with Section 1830) is added to Chapter 1 of Division 2 5 of the Welfare and Institutions Code, to read:

Article 8 Work Furloughs

1830 The Director of the Youth Authority may, with approval of the Youth Authority Board, conduct or discontinue a work furlough rehabilitation program, in accordance with the provisions of this article, for appropriate classes of wards at one or more Youth Authority institutions He may designate any officer or employee of the department to be the Youth Authority work furlough administrator and may assign personnel to assist the administrator

1831 When a person is committed to a facility under the jurisdiction of the Youth Authority, the Youth Authority work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue in his regular employment, if that is compatible with the requirements of Section 1833,

or may authorize the person to secure employment for himself in the county, unless the court at the time of commitment has ordered that such person not be granted work furloughs

1832 If the Youth Authority work furlough administrator so directs that the ward be permitted to continue in his regular employment, the administrator shall arrange for a continuation of such employment so far as possible without interruption If the ward does not have regular employment, and the administrator has authorized the ward to secure employment for himself, the ward may do so, and the administrator may assist him in doing so Any employment so secured must be suitable for the ward Such employment must be at a wage at least as high as the prevailing wage for similar work in the area where the work is performed and in accordance with the prevailing working conditions in such area In no event may any such employment be permitted where there is a labor dispute in the establishment in which the ward is, or is to be, employed

1833. Whenever the ward is not employed and between the hours or periods of employment, he shall be confined in a detention facility unless the court or administrator directs otherwise.

1834. The earnings of the ward shall be collected by the Youth Authority work furlough administrator, and it shall be the duty of the ward's employer to transmit such wages to the administrator at the latter's request Earnings levied upon pursuant to writ of attachment or execution or in other lawful manner shall not be transmitted to the administrator If the administrator has requested transmittal of earnings prior to levy, such request shall have priority When an employer transmits such earnings to the administrator pursuant to this subdivision he shall have no liability to the ward for such earnings From such earnings the administrator shall pay the ward's board and personal expenses, both inside and outside the detention facility, and shall deduct so much of the costs of administration of this article as is allocable to such ward If sufficient funds are available after making the foregoing payments, the administrator may, with the consent of the ward, pay, in whole or in part, the preexisting debts of the ward. Any balance shall be retained until the ward's discharge and thereupon shall be paid to him.

1835 In the event the ward violates the conditions laid down for his conduct, custody, or employment, the Youth Authority work furlough administrator may order termination of work furloughs for such minor

6. The committee recommends that public agencies be encouraged to increase their utilization of the treatment and rehabilitation resources offered by private agencies or organizations.

It is the committee's impression that public agencies are reluctant to fully utilize the service potential that exists in various sectarian and nonsectarian private agencies interested in the treatment and rehabilitation of youthful offenders Part of this reluctance evidently stems from the fact that public agencies are hesitant to become involved in a situation where they might share supervision over a delinquent child with a private agency However, it is the committee's view that state and local agencies could materially increase the flexibility of their treat-

ment and rehabilitation programs through increased cooperation with such organizations as Big Brothers, Incorporated; the Salvation Army; the Northern California Service League; the American Friends Service Committee, the Catholic Youth Organization, and similar private groups or organizations.

This cooperation should be formalized through contractual agreements wherein the public agency sets standards for the performance of the services offered by the private agency Such contractual agreements would then hold the private agency or organization to the same level of responsibility as the law requires of public agencies

The use of the resources and talents available through private agencies and organizations could result in an extension of public agency programs to those wards who are in need of specialized treatment methods

D. CONCLUSION

During the past year the Criminal Procedure Committee has retained Mr. Ed Juers and Dr. David Matza as special contract consultants to help develop and carry out the present study. The committee wishes to thank them for their valuable services.

The following statements of this report are *suggestions* for further legislative inquiry made by the above named consultants These suggestions are made to help guide the Legislature in its attempts to resolve some of the issues which were developed during the present study

1) There is a need to consider in greater detail the issue of the kinds of behavior which constitute delinquency. A good look at this issue will require a careful analysis of the present portion of the law relating to "delinquent tendencies" (Section 601 of the Welfare and Institutions Code) including an analysis of the effect on the future behavior of children who are found to be delinquent under this section.

   There should be several elements to this analysis·

   a) A representative sampling of 601 cases to determine the frequency with which petitions are filed under 601 as a result of an inability to sustain the charges of a 602 petition.
   b) A determination of the frequency with which those initially found delinquent under Section 601 are subsequently found to be delinquent under Section 602.
   c) A determination of the frequency with which a filing under Section 601 occurs where there is animosity between the child and parents
   d) A request to those working with delinquents to develop data indicating 1) how the child was helped, or; 2) how the community was protected by filing a petition of delinquency for "delinquent tendencies" Exclude truancy from consideration in this portion of the inquiry.

2) There is a need to consider in greater detail the notion of the fairness of the juvenile court procedure. The Supreme Court may force the Legislature into dealing with this problem directly in the near future This portion of the inquiry will inevitably lead to a discussion of "the juvenile court philosophy."

   a) The present study revealed that there may again be a need to reexamine the notion of the juvenile court philosophy by asking what is the philosophy, is it consistent with the times, and is there a need to reformulate the basic notions of a court for juvenile offenders
   b) The key word in the juvenile court philosophy is treatment. But what, practically, constitutes treatment these days? Is there such a thing and, if so, how effective is it? Is the limiting of the freedom of juveniles without due process justified in the terms of the effectiveness of the treatment programs?
   c) There is a need to establish criteria of effectiveness of programs for treating delinquents. These criteria have to be explicit and

concise before statements can be made relative to whether a given program is, or is not, effective

3) There is a need to carefully consider the whole matter of record-keeping The notions of sealing of records and accessibility to records needs comprehensive review

   a) There is a need to determine precisely the possible negative ramifications of having a record with the court

   b) The Legislature should define more precisely the notion of what constitutes an arrest for juveniles In addition, a decision must be made as to when in the legal process an individual's record should begin This is necessary if record sealing provisions are going to be effective.

   c) The limits on the keeping of juvenile records need to be related to the state's shift to computerized data gathering.

APPENDIX

WITNESSES WHO APPEARED AT SAN FRANCISCO HEARINGS ON AUGUST 30 AND 31, 1966

Honorable Ross Carkoet, Judge, Juvenile Court, Sonora
Mr Lynn Compton, Assistant District Attorney, Los Angeles County
Mr. Elmer Gaetjen, Acting Chief, San Francisco County Probation Department
Honorable Robert Gardner, Judge, Superior Court, Santa Ana
Mr Carl Goldin, citizen, Sacramento
Dr Keith Griffiths, California Youth Authority
Lt Charles R Gross, California State Juvenile Officers Association
Mr. Irving Harris, Supervising Referee, Los Angeles County Juvenile Court, Los Angeles
Mr Robert Keldgord, California Council on Crime and Delinquency
Mr Archie Moore, American Savings & Loan Company
Mr. Harold Muntz, Chief Deputy, Los Angeles County Probation Department
Dr. Lester Tarnopol, California Association on Neurologically Handicapped Children
Dr A Lamont Smith, President, Northern California Service League
Honorable Richard Vaughn, Judge, Superior Court, San Diego County Juvenile Hall

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CALIFORNIA LEGISLATURE

REPORT OF THE ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE

on

SEARCH AND SEIZURE
PREEMPTION
WATTS
FIREARM CONTROL

Members of the Committee

Pearce Young, *Chairman*
W. Craig Biddle, *Vice Chairman*

E. Richard Barnes
Anthony C. Beilenson
Robert W. Crown
George Deukmejian
John T. Knox
Howard J. Thelin
Gordon H. Winton, Jr.

January 1967

Clyde M. Blackmon, *Consultant*
Sue Johnson, *Secretary*

Robert L. Monk, *Legislative Intern*
(September 1965–June 1966)
Donald C. Green, *Legislative Intern*
(September 1966–January 1967)

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LETTER OF TRANSMITTAL

TO THE SPEAKER AND MEMBERS OF THE ASSEMBLY

Your Interim Committee on Criminal Procedure, in accordance with your instructions, herewith respectfully submits a report on Search and Seizure, Preemption, Watts, and Firearm Control, studies conducted by the committee in accordance with House Resolution No. 710 of the 1965 Regular Session.

Respectfully submitted,

PEARCE YOUNG, *Chairman*
W. CRAIG BIDDLE, *Vice Chairman*

E. RICHARD BARNES
ANTHONY C. BEILENSON
ROBERT W. CROWN
GEORGE DEUKMEJIAN
JOHN T. KNOX
HOWARD J. THELIN
GORDON H. WINTON, JR.

PREFACE

The Assembly Committee on Criminal Procedure conducted a series of studies during the 1965–1967 interim period on the subjects of search and seizure (procedural aspects in criminal proceedings), state preemption, riot control (Watts), and firearms control. The results of these studies are reported in the following pages

Unfortunately, the 1965 and 1966 general and special extraordinary sessions of the Legislature curtailed the length of time available for interim study and as a result the committee was unable to conduct as intensive an investigation as the subject matters warranted Nevertheless, we feel that we can look with satisfaction on the work completed and hopefully to the successful passage of the recommended bills.

Members of the committee wish to express gratitude to those who participated in the work during sessions and interim. They have provided us with valuable assistance in the gathering of material for our studies.

Information regarding hearing transcripts and the names of witnesses appearing before the committee can be obtained from the office of the chairman of the Criminal Procedure Committee.

I

SEARCH AND SEIZURE

PROCEDURE FOR CHALLENGING EVIDENCE OBTAINED BY SEARCH AND SEIZURE

PROCEDURE FOR CHALLENGING EVIDENCE OBTAINED BY SEARCH AND SEIZURE

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized [1]

INTRODUCTION

The provisions of the Fourth Amendment juxtapose two concepts which are fundamentally important to a democratic society The amendment grants to the people a right to be free from unreasonable governmental intrusion into their personal affairs However, the grant of privacy is necessarily a limitation upon law enforcement officers in crucial aspects of their efforts to apprehend and convict those responsible for crime Recent judicial decisions dealing with the interpretation and enforcement of the amendment have resulted in continuing controversy and debate between law enforcement officers, judges, attorneys, and legal scholars Such controversy is not surprising The Fourth Amendment seeks to balance liberty against order in society and any attempt to decide which of these two concepts should have the greater weight is bound to create controversy.

The question of the manner in which evidence is obtained is not actually relevant to the ultimate issue in a criminal proceeding Evidence seized in violation of the Fourth Amendment is not any the less reliable merely because it is obtained unlawfully But the use of unlawfully seized evidence to obtain a conviction reduces the constitutional guarantee against unreasonable searches and seizures to an empty phrase Judicial recognition of this fact resulted in the development of the rule that evidence obtained in violation of the Fourth Amendment is inadmissible in criminal cases

This exclusionary rule was first enunciated by the United States Supreme Court in 1914 when it held that evidence unlawfully seized by federal officers could not be used in a federal criminal proceeding [2] But the rule applied only to federal courts and the states were left free to admit or reject evidence as they saw fit Illegally obtained evidence continued to be admitted in California courts until 1955 In that year the California Supreme Court adopted the exclusionary rule as a rule of evidence saying that it was forced to do so because "other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers with the attendant result that the courts under the old rule have been constantly required to participate in, and in effect condone, the lawless activities of law enforcement officers." [3] Then in 1961, in the case of *Mapp v Ohio*,[4] the United States Supreme Court held that the Constitution prohibits the admission of unlawfully seized evidence in state courts Therefore, the exclusionary rule is no longer merely a rule of evidence

[1] U S Const amend IV
[2] Weeks v United States, 232 U S 383
[3] People v Cahan, 44 Cal 2d 434, 445, 282 P 2d 905, 911
[4] 367 U S 643

in California; it is now a rule mandated by the United States Constitution.

But the exclusionary rule alone is not sufficient to enforce the guarantee against unreasonable searches and seizures As with any substantive provision of law it is necessary that there be an adequate procedure leading to the application of the exclusionary rule. If the procedure for invoking a substantive provision of law is inadequate then the substantive provision itself becomes meaningless. In this sense the procedure through which the legality of a search and seizure is tested is as important as the rule which excludes unlawfully obtained evidence

During the 1965 General Session of the Legislature, Assemblyman George Deukmejian sought to streamline the California procedure for challenging searches and seizures His proposal, contained in Assembly Bill 1651, was to establish a single pretrial motion and allow both the defense and the prosecution to take an appeal from an adverse decision The proposed legislation was referred to the Assembly Committee on Criminal Procedure and considered in committee on May 4, 1966 The bill was referred to interim study to give the committee time to assess the need for changing the present law and to study particular provisions of the proposal

On September 21–22, 1966, the committee held a public hearing on Assembly Bill 1651 in Anaheim at the annual meeting of the State Bar of California Witnesses who appeared at the hearing were asked to critically analyze the measure and to express their views on the need for changing the present law The following persons appeared before the committee:

Mr Warren Ettinger, *Attorney at Law*, Los Angeles
Mr William B Enright, *Attorney at Law*, San Diego
Hon Evelle J Younger, *District Attorney of Los Angeles County*
Mr Lynn Compton *Assistant District Attorney*, Los Angeles
Mr Paul Breckenridge, *Chief Trial Deputy*, Public Defender's Office, Los Angeles
Hon Arthur L. Alarcon, *Judge of the Superior Court*, Los Angeles
Hon J Frank Coakley, *District Attorney of Alameda County*

In addition to the testimony of witnesses the committee was assisted in its study by an article which appeared in a recent issue of the *California Law Review*.[5] The author, Mr. Carl J. Seneker II, was a legislative summer intern on the staff of the Criminal Procedure Committee during the summer of 1965.

THE PRESENT LAW

A distinguishing feature of the present law is that it allows a criminal defendant many opportunities to assert his constitutional right to have illegally obtained evidence excluded.[6] In general, there are two procedural devices available to challenge the methods used by the police to gather evidence However, these may be employed at various times within the criminal proceedings Moreover, if a defendant

[5] Comment, *Methods of Challenging Searches and Seizures in California*, 54 Calif L Rev 1070 (1966)

[6] The discussion here is primarily concerned with the procedure available in felony cases The procedure in misdemeanor cases is similar to that followed in felony prosecutions initiated by indictment

raises a search and seizure issue and it is decided against him, he may nevertheless raise the same issue at a later point in the process.

If the material seized is not contraband, the defendant may move for its return on the ground that its seizure was unlawful If the material is contraband, it will not be returned but he may move for its suppression as evidence in the case. The latter motion is more frequently used since the bulk of cases wherein the legality of a search is at issue involve contraband materials such as narcotic drugs or gambling paraphernalia.

1. *Motion to quash a search warrant and return property.*

Sections 1539 and 1540 of the Penal Code provide a special procedure to attack the lawfulness of a search made pursuant to a warrant Although these sections pertain to the return of property which has been illegally seized the procedure is also used as a device to quash a warrant. Thus, the procedure is available to test the seizure of property which cannot be returned because of its contraband nature.[7]

A motion made pursuant to sections 1539 and 1540 tests the truthfulness of the facts supporting the issuance of a search warrant [8] and it is usually made before the issuing magistrate [9]

Prior to the case of *People v. Butler* [10] a defendant's failure to pursue the remedy provided by sections 1539 and 1540 resulted in a waiver of his right to controvert the facts underlying a warrant.[11] But *Butler* held that facts in the affidavit supporting a warrant may be attacked at the preliminary examination or at trial even though the procedure provided by sections 1539 and 1540 has not been followed.[12] The effect of *Butler* was to make the rule governing the timing of a motion to quash a warrant and return property conform to the rule pertaining to the timing of a motion to suppress evidence seized without a warrant [13]

Denial of a Sections 1539–1540 motion may not be appealed [14] and a defendant's remedy is to seek a writ of prohibition or mandamus [15] However, failure to seek the extraordinary writ is not considered a waiver of the right to attack the warrant and the objection may be renewed at the preliminary examination or at trial.[16] If the defendant's motion is granted it is probable that the prosecution may appeal that ruling.[17]

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[7] Dunn v Municipal Court, 220 Cal App 2d 858, 34 Cal Rptr 251 (1963)
[8] People v Keener, 55 Cal 2d 714, 12 Cal Rptr 859, 361 P 2d 587 (1961)
[9] However, People v Peterson, 233 Cal App 2d 481, 43 Cal Rptr 457 (1965), indicates that the magistrate conducting the preliminary examination may hear the motion and this is evidently not an infrequent practice Comment, 54 Calif L Rev, *supra* note 5, at 1073
[10] People v Butler, 64 Cal 2d 842, 52 Cal Rptr 4, 415 P 2d 819 (1966)
[11] People v Marion, 197 Cal App 2d 835, 18 Cal Rptr 219 (1961), People v Prieto, 191 Cal App 2d 63, 12 Cal Rptr 577 (1961)
[12] People v Butler, 64 Cal 2d 842, 52 Cal Rptr 1, 415 P 2d 819 (1966)
[13] "The rule allowing the defendant to object for the first time at the preliminary hearing or at the trial to the introduction of evidence illegally obtained without a warrant has proved workable We see no reason to adopt a different rule merely because evidence was obtained under a warrant" *Id* at 846, 52 Cal Rptr at 7, 415 P 2d at 822
[14] People v Keener, 55 Cal 2d 714, 12 Cal Rptr 859, 361 P 2d 587 (1961)
[15] Dunn v Municipal Court, 220 Cal App 2d 858, 34 Cal Rptr 251 (1963).
[16] People v Keener, 55 Cal 2d 714, 12 Cal Rptr 859, 361 P 2d 587 (1961)
[17] Alarcon, *Search and Seizure Problems*, in Continuing Education of the Bar, California Criminal Law Practice 179, 213 (1964) (hereinafter cited as Alarcon)

2. *Preliminary motion to suppress evidence.*

Prior to the preliminary examination, in cases initiated by information, or prior to the presentation of evidence to the grand jury in cases where an indictment is sought, a defendant may attack the legality of a search by making a motion to suppress the evidence [18] The motion is optional and failure to make it will not preclude an objection to the introduction of the evidence at the preliminary examination or at trial.[19]

This motion may be used regardless of whether the search was made with or without a warrant If it is granted then the evidence cannot subsequently be used to obtain an indictment or information [20] An order granting or denying this motion is not subject to review either by way of appeal [21] or petition for a writ of mandamus.[22]

3 *Objection to the introduction of evidence at preliminary examination*

Even through the preliminary motion to suppress is available most attorneys prefer to make the first attack on a search and seizure at the preliminary examination. In many instances the attorney lacks sufficient familiarity with the case to mount an attack prior to that time. If the defendant wants to preserve the possibility of raising the search and seizure issue later in a motion under Penal Code section 995 it is essential that he object to the introduction of the evidence at the preliminary examination when the prosecution seeks to use it against him [23]

4. *Motion to set aside accusatory pleading.*

At his arraignment in the trial court a defendant may move to set aside the indictment or information on the ground that he has been indicted or committed without probable cause [24] Search and seizure issues may be raised by this motion because an indictment or commitment based solely on inadmissible evidence is not based on probable cause [25] If there is other admissible evidence sufficient to support a finding of probable cause the motion will not be granted merely because some unlawfully obtained evidence was presented to the Grand Jury or introduced at the preliminary examination.

Failure to make this motion results in a waiver of the right to object to the sufficiency of the accusatory pleading [26] If the motion is made and denied then the defendant may petition for a writ of prohibition to restrain the court from proceeding with the trial.[27] Moreover, granting of the motion does not preclude the district attor-

[18] Id at 190, See People v Gershenhorn, 225 Cal App 2d 122, 37 Cal Rptr 176 (1964)
[19] People v Gershenhorn, *supra* note 18, People v Berger, 44 Cal 2d 459, 283 P 2d 509 (1955)
[20] Alarcon, *supra* note 17, at 190
[21] People v Gershenhorn, 225 Cal App 2d 122, 37 Cal Rptr 176 (1964)
[22] People v Justice Court, 185 Cal App 2d 256, 8 Cal Rptr 176 (1960) But if the property seized is not contraband a defendant may move, either as an alternative or in conjunction with a motion to suppress, for its return Denial of a motion to return is reviewable by way of a petition for a writ of mandamus People v Gershenhorn, *supra* note 21, Gershenhorn v Superior Court, 227 Cal App 2d 361, 38 Cal Rptr 576
[23] Hollopeter, *Preliminary Examination*, in California Continuing Education of the Bar, California Criminal Law Practice 233, 247 (1964).
[24] Cal Pen Code sec 995
[25] People v. Valenti, 49 Cal 2d 199, 316 P 2d 633 (1957).
[26] Cal. Pen. Code sec. 996
[27] Cal. Pen. Code sec. 999a.

ney from seeking a new indictment or information and the court's determination that the evidence was illegally obtained is not binding in any subsequent prosecution [28]

5 *Objection to the introduction of evidence at trial.*

Despite the availability of pretrial motions to attack the validity of a search and seizure a defendant may forego these and raise the issue for the first time in the trial court A ruling by the trial judge excluding the evidence cannot be appealed by the prosecution because the defendant is placed in jeopardy by the start of the trial [29] Therefore, if a defendant has a strong case on the search and seizure issue his best tactical move may be to wait until the case goes to trial to raise the point.

6. *Raising the issue on appeal.*

A defendant who has not attacked a search and seizure in the trial court generally may not raise that issue for the first time on appeal [30] However, there is some possibility that the search and seizure issue may be urged on appeal, even though it is not raised at trial, if the defendant has raised the issue at some point prior to trial [31] From the defendant's point of view the best practice is always to raise the point at trial and thereby assure its preservation on appeal.

PROBLEMS IN THE OPERATION OF THE PRESENT LAW

As a result of its study the committee has concluded that the existing law governing the procedure for challenging the legality of a search and seizure is defective in three major respects

1 Unnecessary expenditure of time and effort

The existing procedure results in an unnecessary expenditure of time and effort because it allows search and seizure questions to be raised repeatedly within the context of criminal proceedings

It has already been pointed out in this report that it is possible for a criminal defendant to make repeated attacks upon the legality of a search and seizure. An adverse decision at one point in the process does not prevent him from litigating the same question at another point in the proceedings In short, the law does not now provide for a final determination of search and seizure questions prior to the trial of the case.

The committee has no evidence to indicate that defendants have taken advantage of the present procedure to delay the criminal process through the making of dilatory motions. But the procedure is susceptible to that abuse.

The important point is that a considerable amount of time of the courts and district attorney's offices is spent litigating search and seizure questions. In his testimony before the committee Mr Evelle J.

[28] Cal Pen Code sec 999 , See People v Van Eyk, 56 Cal 2d 471, 15 Cal Rptr 150, 364 P 2d 326 (1961) See also Cal Pen Code sec 1238
[29] People v Valenti, 48 Cal 2d 199, 316 P 2d 833 (1957)
[30] People v Silva, 54 Cal 2d 115, 4 Cal Rptr 509, 351 P 2d 781 (1960).
[31] See Comment, 54 Calif. L Rev , *supra* note 5, n 40 at 1077.

Younger, District Attorney of Los Angeles County, stressed this aspect of the problem.

> Mr Younger: Conceding that it is a difficult thing to measure precisely the amount of time which is spent on certain operations of the administration of justice, we have concluded from information presently available to us that approximately 12 percent, or one-eighth of the time of our deputy district attorneys is devoted to the handling of search and seizure issues at all stages of the proceedings. Based upon our complement of approximately 220 deputy district attorneys, this means that the time of approximately 26 deputies is consumed daily with this problem This necessarily means a comparable amount of court time is also consumed in the handling of this issue

Due to the greater number of cases handled by the district attorney's office in Los Angeles the problem is probably more serious in that city than in other prosecutors' offices around the state However, it would appear that on a statewide basis the total time expended both by the courts and by prosecutors in handling search and seizure questions is significant.

2 Disadvantageous use of jury time

The present law allows search and seizure issues to be raised during trial and this results in a waste of jury time since questions regarding the admissibility of evidence are determined out of the presence of the jury

The committee does not have precise information on the number of cases wherein search and seizure questions are argued in the trial court Therefore, we cannot determine with any certainty how much jury time is actually lost in this manner But there does appear to be general agreement that the arguing of these questions at trial breaks up the continuity of the trial proceedings and results in unused jury time. The following exchange between Assemblyman George Deukmejian and Mr. Lynn Compton, Assistant Los Angeles County District Attorney, at the committee's hearing in Anaheim indicates the nature of this problem.

> Mr. Deukmejian · The question was raised earlier as to the amount of time that it takes to decide these issues out of the presence of the jury. Is it possible that sometimes on these issues it takes as much as a day or two to take testimony or hear argument?
>
> Mr. Compton: Yes I have been involved in cases where it took that much time.
>
> Mr. Deukmejian · So for a couple of days you have the jury out sitting around and getting aggravated, I suppose.
>
> Mr. Compton: Yes I think that many times this works against the defendant. I think that when juries are held out of these proceedings conducted in their absence they get some suspicion that there is something that they are not going to get to hear or know. I think defendants probably suffer more than the prosecution suffers from these interruptions.

3. Undue restrictions on the prosecution's opportunity for appeal.

The present law unduly restricts the prosecution's opportunity to obtain appellate review of an adverse decision on a search and seizure issue.

A prosecutor is limited in his ability to obtain appellate review of a decision holding that property has been unlawfully seized. One commentator has indicated that the people might be able to appeal a judgment quashing a search warrant and ordering the return of property.[32] But the law on this point is not clear. The only instance in which the prosecution is clearly permitted to seek appellate review is when the defendant chooses to attack a search and seizure by means of a motion to set aside the accusatory pleading. In that situation Penal Code Section 1238 expressly authorizes an appeal by the prosecution.

This lack of adequate opportunity for appellate review can have an adverse effect upon the administration of criminal justice. If a lower court judge or magistrate erroneously rules that evidence must be excluded the result will probably be that the district attorney will lose a case he should have won and a person who should have been convicted will go free. District Attorney Younger has proposed that both the defendant and the prosecution be permitted to take an appeal from an adverse decision on a search and seizure question He gave the following testimony in support of his proposal:

> Mr. Younger: Let me indicate that this is not just an academic problem as far as we are concerned. We lose a lot of cases that we should not lose. Mr. Crown asked if this [Mr. Younger's proposal] will increase the percentage of convictions. Yes, it will. And I think we can all agree that this would be good so long as we only increase our conviction rate at the expense of those people who are admittedly guilty The cases we are concerned about here are cases, for the most part, where there has never been a question about the guilt of the defendant. As you know, the *Cahan* decision came down because the Court in its wisdom felt that the police should be disciplined and that has been the whole theory behind this search and seizure problem Usually the item of evidence, a half a million dollars' worth of uncut heroin, for example, is the very thing that clearly establishes the guilt of the defendant. So we are really talking about people who are guilty in fact but who can't legally be prosecuted because there was some deficiency so far as the search and seizure was concerned.
>
> . . . It's going to increase convictions at the expense of guilty people who thus far have avoided convictions in some cases where judges have been mistaken There is no question that judges can be mistaken in this area We had, for example, just after the *Cahan* decision, a very distinguished judge who had a good deal of experience in the criminal field and we reversed him seven successive times on search and seizure questions I cite this example to show how reasonable minds can differ on these things. Fortunately, he ruled against us at the 995 stage where we have an

[32] Alarcon, *supra* note 17, at 218.

> appeal. If . . . he had saved these rulings until the trial stage we would have been dead on all seven cases.

Moreover, the lack of sufficient opportunity for appellate review by the prosecution has another less obvious impact on the system of criminal justice. It is the defendant who usually initiates appellate proceedings. This means that the bulk of cases which go before appellate courts for review are those least favorable to the prosecution Therefore, the law of search and seizure tends to be made on the basis of cases in which the activities of the police appear in their worst light. If the prosecution had greater latitude to seek appellate review the courts would be presented with a more balanced view of law enforcement activities.

PROPOSALS PRESENTED TO THE COMMITTEE

In addition to Assembly Bill 1651 the committee has considered two other proposals for revision of the present law. One of these was presented to the committee by Mr Evelle J Younger, District Attorney of Los Angeles County, and the other proposal was made by Mr. Carl J. Seneker II in an article which appeared in the *California Law Review*.[33]

Although the three proposals differ in important respects, they are basically similar. In general, all three proposals seek to establish an exclusive procedure for the pretrial determination of search and seizure issues. In cases where a felony prosecution is initiated by complaint the Deukmejian proposal would require the issue to be raised by motion prior to the preliminary examination; the Younger and Seneker proposals would require the motion to be made at the preliminary examination. All three proposals would require the motion to be made in the trial court prior to trial in misdemeanor cases and felony prosecutions initiated by indictment.

Each of the suggested revisions would limit the defendant's right to raise search and seizure questions for the first time in the trial court. The Younger and Deukmejian proposals would allow the issue to be raised for the first time at trial only if (1) the defendant was not aware of the grounds for the motion at the time he should have made it, or (2) the opportunity for the motion did not exist at the time it should have been made Seneker suggests that in addition to allowing the motion to be made under those circumstances the judge should have discretion to hear the motion for the first time at trial if it appears that the defendant's failure to make it earlier is excusable.

All three proposals would permit both the defendant and the prosecution to seek appellate review of an adverse decision.

These three proposals pertain only to the pretrial determination of search and seizure issues Two witnesses who appeared before the committee, Mr. Warren Ettinger and Judge Arthur L Alarcon, endorsed the general approach taken in the Deukmejian, Younger, and Seneker proposals but suggested that there is a need to establish a pretrial procedure for the determination of other questions concerning the admissibility of evidence. They pointed out that the new Evidence Code

[33] Comment, 54 Calif L Rev , *supra* note 5 Assembly Bill 1651 and the draft statutes proposed by District Attorney Younger and Mr Seneker are included as appendixes to this report.

requires that the court, at the request of any party to a criminal proceeding, determine the admissibility of a defendant's confession or admission out of the presence of the jury [34]

Judge Alarcon indicated that since the United States Supreme Court's decision in the case of *Jackson v. Denno* [35] most judges hear arguments outside the presence of the jury on such questions as the admissibility of a confession or the reasonableness of a search and seizure. This factor coupled with the effect of recent Supreme Court decisions dealing with confessions has resulted in prolonging the trial of criminal cases.

> Judge Alarcon: Since *Escobedo* [36] we have found in Los Angeles that the average jury trial now lasts at least half a day longer because of the necessity for a hearing outside the presence of the jury to lay a foundation for the admission of each of the defendant's statements. I have even had some trials where we have had the necessity of having a hearing which lasted from two to three days solely on the question of admissibility and this hearing had to take place outside the presence of the jury

Judge Alarcon suggests that all questions concerning the admissibility of evidence should be decided prior to the trial of a case. He outlined the following procedure to implement this suggestion:

> 1 A hearing on admissibility of evidence should be held by the trial judge prior to the selection of a jury. In effect, this would be the first step in the trial of a criminal case.
>
> 2 At this hearing the prosecution would be required to establish the foundation for the admission of the evidence involved, e g., that a search was reasonable or that a confession was voluntary and obtained in full compliance with the defendant's constitutional rights
>
> 3. The defendant should have the right to cross-examine the prosecution's witnesses and present his own evidence to controvert the foundation laid by the state.
>
> 4 The decisions rendered by the judge at this hearing would be the law of the case and the issues involved could not be litigated again at trial unless in the court's discretion the interests of justice require it.
>
> 5. Both the prosecution and the defendant should have the right to take an appeal from an adverse decision at this hearing.
>
> 6. At trial the defendant should be allowed to exercise a peremptory challenge against the judge who ruled in favor of admitting evidence. At the pretrial hearing on admissibility the judge may be required to make a judgment of the defendant's credibility and he would be likely to carry that judgment over into the trial of the case. The defendant could be protected from this possibility if he were allowed a peremptory challenge at trial.

[34] Cal Evid Code sec 402(b).
[35] 378 U S 368 (1964)
[36] Escobedo v Illinois, 378 U S 478 (1963)

COMMITTEE RECOMMENDATIONS

1 Search and seizure

The committee recommends that the procedure for challenging the legality of a search and seizure be changed (1) to provide for final determination of these questions prior to trial and (2) to allow the prosecution greater latitude in initiating appellate review of an adverse decision on a search and seizure issue

The committee approves the concept embodied in Assembly Bill 1651 and the draft statutes proposed by District Attorney Younger and Mr Seneker. The law is in need of legislative revision to provide a more orderly procedure for challenging searches and seizures However, it must not be forgotten that we are dealing here with a procedure for implementing a constitutional right and every effort must be made to maintain the fullest possible measure of protection of that right for criminal defendants

In recommending a change in the present law and approving the broad outlines of a statute the committee is not unmindful of the difficulties involved in developing legislation in this area To assist in the drafting of legislation we make the following comments and recommendations.

A *Nature of the procedure* If a new procedure is to be established it should be available to attack seizures made with or without a warrant The same procedure should also be capable of being used to effect the return of property wrongfully seized, if it is not contraband, and to suppress seized property as evidence in a case. Therefore, the basic procedural device should be a motion to return property or suppress it as evidence.

B *Timing of the motion* It is the committee's view that the pretrial determination of search and seizure issues should be encouraged. But the time at which the defendant is required to make his attack on a search and seizure may have an important bearing upon his chances for success or the operation of his business if the seized property is part of his inventory or consists of business records

In felony prosecutions initiated by complaint Assembly Bill 1651 would require the defendant to challenge a search and seizure by motion prior to the preliminary examination, the Younger and Seneker proposals provide for the motion to be made at the preliminary hearing However, there is a major problem involved in requiring the motion to be made at either of these points in the proceedings.

In many instances the defense attorney does not have sufficient knowledge of the case to challenge a search and seizure either before or at the preliminary examination In public defenders' offices that have a particularly heavy workload it may be impossible to do the investigation necessary to determine all of the issues in a case prior to the preliminary examination Moreover, the preliminary examination itself may not produce enough information to warrant making the motion at that time Mr William B. Enright of San Diego pointed out this problem to the committee.

> Mr Enright . . . . For example, when I was a prosecutor I attempted to limit the evidence I presented at the preliminary hearing as much as possible In my judgment, a prosecutor should try as much as he can to present only a minimum case at the preliminary hearing, not only for the convenience of the court, but also for the better presentation of his case in superior court I don't think that he would necessarily present all of the evidence bearing on the question of admissibility of evidence and so I don't think you would get the whole case at the preliminary hearing.

Thus, it would appear that the best place for the motion to be made would be in the trial court prior to the trial of the case. It would be at that point in the proceedings that the defendant would be in the best position to challenge the validity of a search and seizure

However, a defendant should not be precluded from making the motion at the preliminary examination If the defendant has sufficient information at his disposal to raise the issue at the preliminary examination he should not be required to wait until the case reaches the trial court The purpose of the preliminary examination is to determine if there is probable cause to bind an accused over to trial If vital evidence has been obtained through an illegal search, and the defendant can prove that, then it is likely that there can be no finding of probable cause In such a situation it would be ridiculous not to allow him to end the case at the preliminary examination stage

It should also be possible for a defendant to move for the return of property at a very early point in the proceedings If the seized property is not contraband its continued possession by the police may have an adverse effect upon the operation of the defendant's business For example, if the property consists of business records the defendant may be irreparably harmed if he cannot secure its quick return Therefore, he should be permitted to move for the return of property soon after its seizure.

C *Who should hear the motion?* Assembly Bill 1651 and the draft statute proposed by District Attorney Younger would require an attack upon the validity of a search made pursuant to a warrant to be made, when possible, before the magistrate who issued the warrant The Seneker proposal, on the other hand, would allow the motion to be made before a magistrate other than the one who issued the warrant. His reasoning is that the issuing magistrate may be unlikely to overrule himself and hold that there was no probable cause for the issuance of the warrant in the first place The counterargument is that magistrates do in fact overrule themselves when they are presented with additional facts and there is no need to, in effect, place two judicial officers between the defendant and the police

It is the committee's opinion that a challenge of a search and seizure should be heard in the trial court prior to trial The matter of who should hear the motion seems rather unimportant However, to assure defendants maximum protection of their constitutional right to have illegally obtained evidence excluded it might be wise to permit a preemptory challenge of the judge who hears the motion if it develops that he is the magistrate who issued the search warrant.

D. *Burden of proof.* It was suggested to the committee that the burden of proving that a search was reasonable should always be on the people regardless of whether the search was made with or without a warrant. Under the present law the prosecution has the burden of proving reasonableness of a search when it is made without a warrant [37] and the burden is on the defense when the search is pursuant to a warrant.[38] Changing this aspect of the law to place the burden of proof on the prosecution in all cases might decrease the use of search warrants. If the police are required to justify the issuance of a warrant twice—once before the issuing magistrate and again in court when the search is challenged—they may not bother with obtaining a warrant in the first place.

E. *Raising the issue at trial* Assembly Bill 1651 and the draft statute proposed by District Attorney Younger would both permit a motion to suppress to be made during trial only if the opportunity for making it did not exist earlier or the defendant was not aware of the grounds for the motion at the time he should have made it. On the other hand, the Seneker proposal, in addition to permitting the motion under these two conditions, would give the court discretion to entertain the motion during trial if the interests of justice require it In this respect the latter proposal is similar to the procedure followed in the federal courts.[39]

While the right to raise search and seizure issues for the first time at trial should be limited, the committee feels that the conditions set out in Assembly Bill 1651 and the Younger proposal are too restrictive Under those proposals a defendant could have an excusable reason for not raising the issue earlier and yet be precluded from making a motion to suppress at trial because he could not show that he lacked the opportunity for making it earlier or was unaware of the grounds for the motion This result could be avoided if the court is given discretion to hear the motion even though the defendant cannot meet the two express conditions for raising the issue during trial. A due regard for the constitutional nature of the right involved would seem to require that the court have such discretionary power.

F. *Appeal.* We have already stated our recommendation that both the defendant and the people should be permitted an appeal from an adverse decision on a pretrial motion to suppress evidence or return property. However, there are a number of details concerning the appellate procedure which require consideration.

It is our view that the preferred place for exercising a challenge of a search is in the trial court just prior to trial However, as we have indicated, we can see the necessity in felony cases initiated by complaint of also allowing the motion to be made at the preliminary examination; and, there is a need to permit a motion for the return of property to be made soon after it is seized. In these instances, and in misdemeanor prosecutions, where the motion would be made in the municipal or justice court any appeal should be taken to the appellate department of the superior court. When the motion is made in superior

[37] Badillo v Superior Court, 46 Cal 2d 269, 294 P 2d 23 (1956)
[38] People v Phillips, 163 Cal App 2d 541, 329 P 2d 621 (1958).
[39] Fed R Crim P 41(e).

court prior to the trial of a felony the appeal should be taken to the district court of appeal Thus, appeals from a decision on a motion to return property or suppress evidence would conform to the rules governing appeals in general.

In some cases a preliminary appeal—that is, an appeal prior to a judgment of conviction—might work a hardship on the defendant For example, he might not be able to bear the additional expense or, if the case is handled by the public defender, there may not be sufficient staff to adequately provide for preliminary appeals. Therefore, an appeal from the pretrial motion should be optional If a preliminary appeal is not taken the defendant should be required to object to the introduction of the disputed evidence at trial and thereby preserve the issue for appeal from the judgment of conviction.

The suggestion made here would mean that at least in some cases there would not be a final determination of search and seizure issues prior to trial. However, the right of the prosecution to appeal an adverse decision on a pretrial motion would not be affected by this suggestion and a mandatory preliminary appeal could place an unwarranted burden on criminal defendants or those who represent them.

Consideration should also be given to the question of whether a defendant should be bound by an adverse ruling on a preliminary appeal. The Seneker proposal specifically provides that a preliminary appeal would not be binding and that the defendant could raise the issue again in an appeal from a judgment of conviction. Assembly Bill 1651 and the Younger proposal also appear to permit a second appeal by the use of language which states that the proceedings they authorize shall constitute a sole and exclusive remedy "and further review can be had only on appeal from a conviction in the criminal case." Such a second appeal would enable the appellate court to consider the search and seizure issue in the context of the entire case and ensure the defendant of maximum protection for his constitutional rights.

If the prosecution elects to seek appellate review the defendant should be released from custody without the necessity of providing any form of security for a later appearance Moreover, to protect the defendant's right to a speedy trial the prosecution should be required to file its appeal within a short time after an adverse decision on the pretrial motion If they are successful on appeal then they should reinstitute the criminal proceedings within a specified period of time These requirements would tend to mitigate the impact of the prosecution's appeal upon the defendant.

2. Feasibility of pretrial procedure for all questions of admissibility

The committee recommends that a study be undertaken to determine the feasibility of establishing a pretrial procedure for the resolution of all questions concerning the admission of evidence in criminal cases.

One of the major defects in the present law is that it permits, if not encourages, search and seizure issues to be raised during the trial of a criminal case As we have pointed out, the determination of these questions during trial breaks the continuity of the proceedings and results in lost jury time. The same thing may be said about the resolution of questions concerning the admissibility of other forms of evi-

dence, e g., confessions, admissions, and dying declarations, during trial

Judge Alarcon pointed out to the committee that the new Evidence Code requires questions concerning the admissibility of a confession or admission to be decided by the court outside the presence of the jury [40] and that these proceedings can result in a significant interruption in the trial process He suggested that the proposed procedure for resolving search and seizure issues be expanded to cover these and other questions pertaining to admissibility of evidence

The committee believes that this suggestion has merit and that it should be studied to determine what impact its implementation would have on the administration of criminal justice Such study should cover the following points:

A. How much time is spent in the resolution of questions pertaining to admissibility of evidence?

B How would the suggested procedure affect the operation of district attorney's and public defenders' offices?

C. What are the views of the bench and bar concerning such a procedure?

D If the prosecution is permitted to take an appeal from these proceedings would that result in a significant delay in the final determination of criminal cases?

Mr Beilenson concurs in part.

[40] Cal Evid Code secs 310, 402

APPENDICES

ASSEMBLY BILL 1651

YOUNGER DRAFT STATUTE

SENEKER DRAFT STATUTE

54 CALIF. L. REV. 1070

AMENDED IN ASSEMBLY MAY 11, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL No. 1651

Introduced by Assemblyman Deukmejian

March 8, 1965

REFERRED TO COMMITTEE ON CRIMINAL PROCEDURE

An act to add Section 1538.5 to, and to amend Section 1539 of, the Penal Code, relating to unreasonable searches and seizures.

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

SECTION 1. Section 1538.5 is added to the Penal Code, to read:

1538.5. (a) A defendant aggrieved by an unreasonable search or seizure conducted by a government agent may move for the return of property or to suppress as evidence anything so obtained on the ground that:

(1) The search and seizure without a warrant was unreasonable; or

(2) The search and seizure with a warrant was unreasonable because the warrant is insufficient on its face; the evidence seized is not that described in the warrant; ~~or~~ there was not probable cause for the issuance of the warrant *; or the method of execution of the warrant violated federal or state constitutional standards*.

(b) The motion shall be in writing and state facts showing wherein the search and seizure was ~~unlawful~~ *unreasonable*. When possible, the motion should be heard by the magistrate who issued the search warrant if there is a warrant. The judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion. The burden of proving that the search and seizure was ~~unlawful~~ *unreasonable* shall be on the defendant if the search is by warrant and the burden of proving that the search and seizure was ~~lawful~~ *reasonable* shall be on the people where the search is without warrant. If the motion is granted, the property shall be restored, unless

otherwise subject to lawful detention, and it shall not be admissible in evidence against the movant at any trial. Such return shall not be made until available appellate remedies have been exhausted or the time for such proceedings has passed

(c) If the property seized relates to a felony offense initiated by a complaint, the motion shall be made in the municipal or justice court before preliminary hearing except that if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion prior to preliminary hearing, the defendant shall have the right to make this motion for the first time during the course of trial. If the property seized relates to a felony offense initiated by an indictment, the motion shall be made in the superior court before trial except that if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion prior to trial, the defendant shall have the right to make this motion for the first time during the course of trial. If the property seized relates to a misdemeanor offense, the motion shall be made in the municipal or justice court before trial except that if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion prior to trial, the defendant shall have the right to make this motion for the first time during the course of trial

(d) If the property seized relates to a felony offense initiated by a complaint or to a misdemeanor offense and the defendant made a motion for the return of the property or its suppression as evidence in the municipal or justice court prior to preliminary hearing or misdemeanor trial, both the people and the defendant shall have the right to appeal any decision of that court to the superior court of the county in which such inferior court is located, in accordance with the California Rules of Court provisions governing appeals from municipal and justice courts in criminal cases If the property seized relates to a felony initiated by an indictment and the defendant made a motion for the return of property or its suppression as evidence in the superior court prior to trial, both the people and defendant shall have the right to appeal any decision of that court to the appellate courts of California by means of an extraordinary writ of mandate or prohibition

(e) All proceedings in a criminal case relating to the material seized shall be stayed pending the termination of these proceedings and of any appeal therefrom.

(f) These proceedings shall constitute the sole and exclusive remedy to test the validity of a search and seizure *in a criminal case*, and further review can be had only on an appeal from a conviction in the criminal case.

(g) Nothing contained in this section is applicable to, or shall prohibit a person from making, a motion to return property brought on the ground that the property held in the possession of a government agent is not obscene as defined in Penal Code Section 311.

SEC. 2. Section 1539 of said code is amended to read:

1539 If a hearing be held pursuant to Section 1358.5, the judge or magistrate must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in Section 869.

DRAFT STATUTE PROPOSED BY EVELLE YOUNGER

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

SECTION 1 Section 1538 5 is added to the Penal Code, to read:

1538 5 (a) A defendant aggrieved by a search or seizure conducted by a government agent may move for the return of property or to suppress as evidence anything so obtained on the ground that:

(1) The search or seizure without a warrant was unreasonable; or

(2) The search or seizure with a warrant was unreasonable because the warrant is insufficient on its face, the evidence seized in not that described in the warrant; there was not probable cause for the issuance of the warrant; or the method of execution of the warrant violated federal or state constitutional standards

(b) When possible and consistent with the procedures set forth in this section, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant

(c) Whenever a motion is made in the municipal, justice or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion The burden of proving that the search or seizure was unreasonable shall be on the defendant if the search is by warrant and the burden of proving that the search or seizure was reasonable shall be on the people where the search is without warrant If the motion is granted, the property shall be restored, unless otherwise subject to lawful detention, and it shall not be admissible in evidence against the movant at any trial unless further proceedings authorized by law are utilized by the people Such return shall not be made until such proceedings have been exhausted or until 10 days after defendant's motion is granted, whichever occurs last.

(d) If the property seized relates to a felony offense initiated by a complaint, the motion shall be made in the municipal court or justice court at the preliminary hearing, except that if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion at the preliminary hearing, the defendant shall have the right to make this motion for the first time in the superior court prior to trial as provided in subsection (e) hereof If the property seized relates to a felony offense initiated by a complaint, and if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion prior to trial, the defendant shall have the right to make this motion for the first time during the course of the trial If the property seized relates to a felony offense initiated by an indictment, the motion shall be made in the superior court either as part of any motion that may be made pursuant to Penal Code Section 995 or at a special hearing relating to the validity of the search or seizure held prior to trial, except that if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion prior to trial, the defendant shall have the right to make this motion for the first time during the course of trial. If the property seized relates to a misdemeanor offense, the motion shall be made in the municipal or justice court before trial except that if opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion prior to trial, the defendant shall have the right to make this motion for the first time during the course of trial.

(e) If the property seized relates to a felony offense initiated by complaint and the defendant made a motion for the return or suppression of the property at the preliminary hearing at which he was held to answer, or if opportunity for this motion did not exist or he was not aware of the grounds for the motion at the preliminary hearing at which he was held to answer, or if the property seized relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court either as a part of any motion that he may make pursuant to Penal Code Section 995 or at a special hearing relating to the validity of the search or seizure held prior to trial After either of these proceedings is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition. If the property seized relates to a felony offense initiated by complaint and the defendant's motion for the return or suppression of the property at the preliminary hearing is granted, the people may file a new complaint or seek an indictment within 10 days after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding if a new complaint is filed or an indictment sought within such period of time If the property seized relates to a felony offense initiated by complaint or by indictment, and the defendant's motion in the superior court is granted prior to trial, the people shall have the right to appeal such a ruling in accordance with Penal Code Section 1238, or may initiate a new complaint or seek a new indictment within 10 days after the granting of defendant's motion If a new complaint is filed or a new indictment is sought within such period of time, the ruling at the earlier hearing held pursuant to Penal Code Section 995 or at the special hearing in the superior court shall not be binding in any subsequent proceeding If the property seized relates to a misdemeanor offense, and the defendant made a motion for the return of property, or its suppression as evidence, in the municipal court or justice court prior to trial, both the people and defendant shall have the right to appeal any decision of that court to the superior court of the county in which such inferior court is located, in accordance with the California rules of court provisions governing appeals from municipal and justice courts in criminal cases.

(f) If the defendant's motion to return property or suppress evidence is granted, the defendant shall be released from custody pending the outcome of any review sought by the people in an appellate court unless the people elect to continue the criminal proceedings, or initiate new proceedings, without seeking appellate review.

(g) All proceedings in a criminal case relating to the material seized shall be stayed pending the termination in the courts of the State of California of the proceedings provided for in this section and of any appeal therefrom

(h) The proceedings provided for in this section shall constitute the sole and exclusive remedies to test the validity of a search or seizure when the person aggrieved is a defendant in a criminal case at the time the motion for the return of property or the suppression of evidence is heard, and further review can be had only on an appeal from a conviction in the criminal case.

(i) Nothing contained in this section is applicable to, or shall prohibit a person from making, a motion to return property brought on the ground that the property held in the possession of a government agent is not obscene as defined in Penal Code Section 311.

SEC 2 Section 1539 of said code is amended to read:

1539 ~~If the grounds on which the warrant was issued be controverted, he~~ *If a hearing be held pursuant to Section 1538 5, or if the grounds on which the warrant was issued be controverted by a person aggrieved by a search or seizure who is not a defendant in a criminal action at the time the hearing is held, the judge or magistrate* must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in Section 869

SEC 3. Section 1238 of said code is amended to read:

1238 An appeal may be taken by the people:

1 From an order setting aside the indictment, information, or complaint;

2. From a judgment for the defendant on a demurrer to the indictment, accusation, or information;

3 From an order granting a new trial;

4 From an order arresting judgment,

5 From an order made after judgment, affecting the substantial rights of the people;

6 From an order modifying the verdict or finding by reducing the degree of the offense or the punishment imposed;

7. From an order granting defendant's motion to return or suppress property made at a hearing held pursuant to Penal Code Section 995 or at a special hearing as provided in this code

DRAFT STATUTE PROPOSED BY CARL SENEKER

54 Calif. L. Rev. 1070, 1094

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

SECTION 1. Section 1538 5 is added to the Penal Code, to read.

1538 5 (a) A defendant aggrieved by an unreasonable search or seizure conducted by a government agent may move for the return of property or to suppress as evidence anything so obtained on the ground that:

(1) The search and seizure without a warrant was unreasonable; or

(2) The search and seizure with a warrant was unreasonable because the warrant is insufficient on its face; the evidence seized is not that described in the warrant; there was not probable cause for the issuance of the warrant; or the method of execution of the warrant violated federal or state constitutional standards.

(b) The motion shall be in writing and state facts showing wherein the search and seizure was unreasonable. Where possible, the motion should be heard by a magistrate other than the magistrate who issued the search warrant if there is a warrant The judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion. The burden of proving that the search and seizure was unreasonable shall be on the defendant if the search is by warrant and the burden of proving that the search and seizure was reasonable shall be on the people where the search is without a warrant. If the motion is granted, the property shall be restored, unless otherwise subject to lawful detention, and it shall not be admissible in evidence against the movant at any trial Such return shall not be made until available appellate remedies have been exhausted or the time for such proceedings has passed.

(c) If the property seized relates to a felony offense where prosecution is initiated by a complaint, the motion shall be made in the municipal or justice court at the preliminary examination. At the preliminary examination the magistrate shall inform the defendant that he may challenge the legality of a search and seizure on any of the grounds set out in subsection (2) of this section. And if the defendant is not then prepared to make a motion under this section, but he indicates a desire to do so, the magistrate shall order a continuance of the preliminary examination to allow the defendant a suitable time to prepare his motion.

(d) If the property seized relates to a felony offense where prosecution is initiated by an indictment, or to a misdemeanor offense, the motion shall be made in the superior court, or in the justice or municipal court if a misdemeanor offense, before the trial At the arraignment the judge or magistrate shall inform the defendant that he may, before the trial, challenge the legality of any search and seizure on the grounds set out in subsection (a) of this section.

(e) But in any case under this section the trial court must entertain the motion for the first time at trial·

(1) If it appears that opportunity for the motion did not exist or the defendant was not aware of the grounds for the motion at the preliminary examination if a felony offense where prosecution is initiated by a complaint, or prior to the trial if the prosecution is by indictment or if the offense is a misdemeanor; or

(2) If, in the exercise of sound judicial discretion, taking account of the interests of justice to the defendant and the orderly administration of criminal procedure, the trial court finds that the defendant's failure to make the motion earlier is excusable.

(f) If the defendant makes a motion as provided for in subsections (c) or (d), the municipal or justice court magistrate at the preliminary examination or before the trial if the offense is a misdemeanor, or the superior court judge before the trial, may rule on the motion when it is made or may require the defendant to postpone his motion until the trial if the magistrate believes that the motion is frivolous, is being made solely for dilatory purposes, or can be fairly determined only after all the relevant facts have been exposed at the trial If the magistrate or judge determines that the motion should be postponed until trial, neither the people nor the defendant may appeal that ruling

(g) Appellate review.

(1) If the property seized relates to a felony offense where prosecution is initiated by a complaint or to a misdemeanor offense and the defendant made a motion for the return of the property or its suppression as evidence in the municipal or justice court at the preliminary hearing or prior to a misdemeanor trial, both the people and the defendant shall have the right to appeal any decision of that court to the superior court of the county in which such inferior court is located, and from there to the appellate courts of California, in accordance with the California Rules of Court provisions governing appeals from municipal and justice courts in criminal cases In the case of a felony offense where prosecution is initiated by indictment, if the defendant made a motion for the return of property or its suppression as evidence in the superior court prior to trial, both the people and the defendant shall have the right to appeal any decision of that court to the appellate courts of California by means of an extraordinary writ of mandate or prohibition

(2) The appeal provided in (1) above is not mandatory and if the defendant does not take an appeal, he may preserve his right to raise the issue on appeal from a judgment of conviction by objecting to the admission of the evidence that was the subject of his pretrial motion when that evidence is sought to be introduced at the trial and the trial judge shall determine the motion on its merits If an appeal is taken, and the appellate court's judgment is in favor of the prosecution, the ruling is not final and the defendant may urge error on an appeal from a judgment of conviction The trial judge, however, may rule on an objection made at the trial to the admission of the same evidence that was the subject of the pretrial motion only if at the trial new facts regarding the search and seizure appear which were not presented or available to the appellate court in the earlier appeal.

(3) If an appeal is taken to the appellate department of the superior court under (1) above, the procedure for and presentation at such an appeal shall be as informal as possible while still insuring a full and comprehensive review of the municipal or justice court's determination Written briefs or memorandums of points and authorities may be required at the option of the individual appellate department.

(h) These proceedings shall constitute the sole and exclusive remedy to test the validity of a search and seizure in a criminal case. All proceedings in a criminal case relating to the material seized shall be stayed pending the termination of these proceedings and of any appeal therefrom.

SEC 2. Section 1539 of said code is amended to read:

1539 ~~If the grounds on which the warrant was issued be controverted, he~~ *If a hearing be held pursuant to Section 1538.5, the judge or magistrate* must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in Section 869.

II

PREEMPTION

STATE PREEMPTION IN THE FIELD OF CRIMINAL LAW

STATE PREEMPTION IN THE FIELD OF CRIMINAL LAW

INTRODUCTION

During the 1965–1967 interim period the Assembly Interim Committee on Criminal Procedure conducted a study into the problems posed by the concept of state preemption as it applies to the field of criminal law. As part of its study the committee held public hearings in both the northern and southern portions of the state. Transcripts of those hearings are available through the office of the Assembly Committee on Rules.

The law of preemption deals with the extent to which local governments may exercise legislative powers. In general, the powers of local lawmaking bodies are restricted by the terms of Article XI, Section 11, of the California Constitution, which provides that "any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with the general laws." The present controversy over preemption centers primarily upon the interpretation of the word "conflict" in that constitutional provision. When it is determined that a conflict exists between a state statute and a local ordinance then the state regulation prevails and the local ordinance is void.

The courts have established that a conflict exists between a state statute and a local ordinance when the statute expressly allows that which the ordinance prohibits or expressly prohibits that which the ordinance allows. The courts have also found a conflict where an ordinance duplicates state law. Moreover, when the Legislature has expressly stated its intention to occupy a given field of law to the exclusion of additional local regulation the courts have upheld this intention and found a conflict where local government seeks to legislate in that field. Generally speaking, the judicial development of these concepts has not been particularly controversial.

COMMITTEE FINDINGS

The problems in this area of law revolve around the concept of implied preemption under which the courts may find a legislative intent to prohibit local regulation in a given field even though there is no direct conflict and the Legislature has not expressly stated an intention to preempt or occupy the field. The leading case on the subject is *In re Lane*, 58 Cal. 2d 99 (1962). There the California Supreme Court held that a Los Angeles city ordinance was void because the state had impliedly preempted the law pertaining to the regulation of sexual activity. That decision appears to rest upon the extensiveness of state regulation of sexual activity and the need for uniform statewide application of the law governing sexual relations.

The committee has found that local lawmaking bodies and their legal advisors are confused by the doctrine of preemption by implication. They point out that under the doctrine they are unable to determine when a given area of law is or is not preempted. Therefore, they are unable to enact legislation with any assurance that it will be valid. However, it is the committee's view that local governmental

officials are primarily concerned with the development of effective laws to deal with the problems they perceive and it is immaterial whether these laws are enacted at the state or the local level. Therefore, favorable legislative response to local governments' requests for legislation, coupled with an expression of legislative intent to preempt or not to preempt the field, would solve the problem now confronting local lawmakers.

COMMITTEE RECOMMENDATION

We are convinced that it is the Legislature's responsibility to determine whether an area of law should be preempted by the state and to make that determination known through the expression of its intent. This should be done on an area by area approach as bills in various areas of law are presented for its consideration. We believe that there is no satisfactory way to achieve an overall solution to the preemption problem. Rather, each area of law must be considered separately in light of the factors peculiar to the activity involved to determine whether the state should preempt the field to the exclusion of local regulation.

Mr. Thelin dissents.

III

WATTS

LAW ENFORCEMENT AND CRIMINAL LAW ASPECTS OF THE LOS ANGELES RIOT

LAW ENFORCEMENT AND CRIMINAL LAW ASPECTS OF THE LOS ANGELES RIOT

INTRODUCTION

In a paper entitled "Proposals for State Action—A Response to the Los Angeles Riots," Assembly Speaker Jesse M Unruh outlined new programs in the fields of education, housing, employment, and law enforcement to alleviate the conditions which breed social unrest. The paper, issued approximately one month after the riot in Watts, suggested that these proposed programs should be implemented in those "priority areas" of California where high rates of unemployment, substandard housing, illiteracy, school dropouts, and criminal activity are the indicia of serious social malfunction.

As the first step toward conversion of his proposals into legislation the Speaker asked a number of Assembly committees to study them and make recommendations to him He called upon the Interim Committee on Criminal Procedure to consider the proposals pertaining to improvement in law enforcement and changes in the criminal law. Pursuant to this request the committee held hearings in Los Angeles on November 5, 1965, and again on November 18–19, 1965 [1] At those hearings the committee took testimony on the following proposals:

(1) To improve community surveillance and rehabilitation efforts, the number of parole officers should be increased in communities which have a high incidence of criminal activity

(2) Gun and ammunition laws should be reviewed to determine the need for greater control over dangerous weapons

(3) Rifles and shotguns should be required to be broken down when transported in a vehicle

(4) Additional Highway Patrol officers should be assigned to areas which have high crime rates so that local policemen may be freed from traffic duties to spend more time "walking the beat" and familiarizing themselves with the people and problems in the community.

(5) The number of minority group police officers should be increased in minority group neighborhoods

(6) Needy students should be provided with subsistence pay while they are pursuing an approved program of peace officer vocational training.

(7) The penalty for the crime of arson should be increased to a minimum of three years in prison

COMMITTEE ACTION

This committee did not undertake a general inquiry into the causes of the Los Angeles riot. On the contrary, the scope of our study was limited to assessing the need for the Speaker's proposals and testing their feasibility. Testimony was taken from many witnesses including law enforcement officers, interested citizens, civil rights leaders, and representatives of both state and local goverment [2] While the primary

[1] Copies of the hearing transcripts are available through the Assembly Rules Committee
[2] See the appendix to this report for a list of witnesses who appeared before the committee

focus of the hearings was upon the Unruh proposals the committee also heard and considered many other worthwhile suggestions directed toward strengthening and improving criminal justice in California.

In January 1966, the committee chairman submitted his personal recommendations to Speaker Unruh in a report entitled "Riot and the Criminal Law."[8] It should be emphasized that this report represented Chairman Young's personal evaluation of the testimony taken by the committee and the recommendations contained in the report were not those of the full committee. This departure from normal committee procedure was necessitated by Speaker Unruh's request that a report be submitted prior to the 1966 First Extraordinary Session of the Legislature. However, copies of the report were made available to each member of the committee, and their statements and recommendations were forwarded to the Speaker.

Two bills which originated in the committee's hearings on the Unruh proposals were enacted during the 1966 First Extraordinary Session of the Legislature. One measure sought to protect firemen from attack or interference and the other dealt with "Molotov cocktails" and various arson crimes.

Protection of firemen from attack or interference

During the Los Angeles riot there were instances where mob action prevented firemen from performing their duty A representative of the Los Angeles Fire Department told the committee of one situation where firemen were driven from the scene of a fire four times and as a result most of the buildings in an entire block were destroyed That official felt that the fire could have been contained and a substantial portion of the property loss prevented were it not for the harassment by the mob.

Assembly Bill 8 (Stats. 1st Ex. Sess. 1966, Ch 21) by Assemblyman Young, was intended to deter such interference with firemen engaged in the performance of their duties The measure added Section 148 2 to the Penal Code to provide that the following acts are misdemeanors when they are willfully committed at a place where firemen are discharging or attempting to discharge an official duty: (1) interference with the lawful efforts of firemen to discharge their duty; (2) disobeying the lawful orders of a fireman; (3) engaging in disorderly conduct which prevents a fire from being extinguished; (4) forbidding, preventing, or encouraging others, as to whom one has no legal right or obligation to protect or control, from assisting in extinguishment of a fire.

The legislation also amended Penal Code Sections 241, 243, and 245 to provide increased penalties for those who commit assault, battery, or aggravated assault upon firemen engaged in the performance of duty Assault on a fireman was increased from a misdemeanor to a felony punishable by a maximum of two years in prison Battery on a fireman was raised to a felony and made punishable by a term of 1 to 10 years in prison Under this legislation an aggravated assault upon a fireman is punishable by a term of 15 years in prison and if the defendant has a prior felony conviction he may be sentenced to life imprisonment The previous law provided a maximum penalty of

[8] See the appendix to this report for a copy of Chairman Young's report

10 years in prison and allowed imprisonment for 15 years when the defendant had a prior felony conviction.

Arson and "Molotov cocktails."

Assembly Bill 9 (Stats. 1st Ex. Sess. 1966, Ch. 58) also authored by Asssemblyman Young, increased the penalties for various crimes of arson and sought to control the possession of devices used by arsonists The bill contained the following major provisions.

(1) The possession, manufacture, or disposal of a "Molotov cocktail" was made a felony punishable by a term of six months to five years in prison. Prior to enactment of this legislation the possession of a "Molotov cocktail" was only a misdemeanor and their manufacture or disposal was not specifically designated a crime.

(2) Arson committed during and within the area of a riot was made punishable by a term of five years to life in prison The increased penalty becomes applicable only after the Governor has recognized the existence of a riot by proclaiming a state of insurrection, disaster, or extreme emergency.

(3) The bill created the crime of possessing any flammable, explosive, or combustible material or device with the willful and malicious intent to use it for the purpose of burning any building or property mentioned in the arson chapter of the Penal Code. This crime is punishable by imprisonment in state prison for a maximum of five years or in the county jail for not more than one year.

(4) The penalty for burning any commercial or other nondwelling building or structure was increased from 1 to 10 years in prison to 2 to 20 years in prison Thus, the penalty for the burning of commercial buildings was made equal to the penalty for burning a dwelling.

(5) The punishment for attempted arson was changed from one to two years in prison or a fine of $1,000 to a straight felony. Thus, the penalty for attempted arson is now imprisonment for not less than six months nor more than five years.

CONCLUSION

The committee believes that its hearings thoroughly tested Speaker Unruh's proposals and the many other ideas presented to it in testimony Our views were made known to the Speaker prior to the 1966 First Extraordinary Session of the Legislature through the chairman's report and the comments and recommendations expressed by the individual members in response thereto. Moreover, two bills authored by the chairman were approved by the committee during the legislative session and enacted into law.

IV

FIREARM CONTROL

CONTROL OF ARMS AND AMMUNITION

CONTROL OF ARMS AND AMMUNITION

SUMMARY OF COMMITTEE RECOMMENDATIONS

The Assembly Interim Committee on Criminal Procedure makes the following recommendations for legislation pertaining to the control of arms and ammunition

1. That the sale, possession, or transportation of "destructive devices" such as explosive or incendiary shells, bombs, grenades, rockets, missiles, and large caliber arms and ammunition be prohibited.

2. That the regulations applicable to the sale of concealable firearms in California be applied to weapons purchased by mail from an out-of-state seller or imported into this state from another state or country.

3. That hand-held rocket launchers and pistols which fire a projectile through the operation of compressed gas, other than gas compressed by hand, be included with the definition of a concealable firearm.

4. That the possession of machinegun parts be made unlawful and that machineguns or their parts possessed in violation of the law be subject to destruction on the ground that they constitute a public nuisance.

INTRODUCTION

BACKGROUND OF THE REPORT

This committee did not undertake a general study of the subject of firearms control during the 1965–1967 interim period.[1] However, in the course of the committee's hearings on the Los Angeles riot the Attorney General of California and officers of the Los Angeles Police Department pointed out certain defects in the law governing the control of weapons. The committee felt that the problems pointed out by these officials were sufficiently serious to warrant holding a hearing for the purpose of taking additional testimony on the subject.

On October 13, 1966, the committee attended a demonstration firing, arranged by the Attorney General, to observe the operation and effect of certain military-type weapons and new firearms now generally available to private citizens in California. The following day, October 14, 1966, the committee convened in Los Angeles to take testimony from Attorney General Lynch, officials of the Los Angeles Police Department, and private citizens interested in weapons control.[2]

[1] The committee conducted a general study of the subject during the 1963–1965 interim period. See "Regulation and Control of Firearms", Interim Committee on Criminal Procedure, Assembly Committee Reports, 1963–1965, Vol. 22, No. 6, January 1965.

[2] The transcript of this hearing is on file in the office of the committee chairman.

COMMITTEE RECOMMENDATIONS

1. *"Destructive devices."* The committee is concerned over the availability in California of antitank guns, land mines, hand grenades, mortars, and other military-type weapons The tremendous destructive potential of these weapons makes them unfit for use outside the confines of a military reservation but they are nevertheless readily available through mail order houses and retail outlets around the state. While we have extensive provisions in the Penal Code regulating the sale and possession of concealable weapons there are no statutes regulating the sale or possession of military armaments. Therefore, a person who purchases a 22-caliber pistol from a firearms dealer must provide his name, address, occupation, and a physical description of himself, and then wait five days to take delivery of the weapon while the information is checked through the files of the Bureau of Criminal Identification and Investigation in Sacramento On the other hand, if he wants to buy a 20-mm antitank gun all he need do is walk into a dealer and make the purchase

Attorney General Lynch informed the committee that over the past two years law enforcement officers have discovered some 16 caches of military weapons in the Los Angeles area alone. These caches have included antitank guns, hand grenades, land mines, bazookas, rifle grenades, many different types of military rifles, and millions of rounds of ammunition In many instances the officers have had to return the weapons to the owners because there is no law prohibiting the sale or possession of these armaments

There is evidence that persons associated with various paramilitary organizations are in possession of military arms and are training with them in neighboring states. Since the enactment of Penal Code Section 11460 in 1965 these private armies have been prohibited from assembling in California to practice with weapons and engage in instruction in guerrilla warfare or sabotage. Some of these groups now hold their training sessions in other states to avoid the California law.

The Attorney General presented to the committee photographs showing members of a California based paramilitary organization practicing in the Arizona desert with a Finnish-made antitank gun which can be purchased over the counter in California for approximately $125. Some of the members of this group were stopped in California for a minor traffic violation. The police officer observed the antitank gun in their automobile but they were allowed to proceed on their way to the training session since possession of the weapon was not a violation of law.

The committee sees no legitimate reason why antitank guns, cannons, mortars, and similar highly destructive devices should be available to private citizens in an increasingly urbanized state such as California. Their range and power renders them unfit for hunting or target shooting even in remote places. Moreover, their possession by persons associated with private armies or those bent upon fomenting social disorder or committing crime threatens the rule of law in our society For these reasons we recommend legislation prohibiting the sale, possession, or transportation of these devices However, it is not the committee's intention to prohibit the collecting or keeping of these weapons so long as they are rendered inoperative.

The recommended legislation would prohibit the sale, possession, or transportation of all weapons and ammunition which fall within the definition of a "destructive device" That term is defined to include: (1) shells or other projectiles containing explosive, incendiary, or other chemical substances; (2) bombs, grenades, rockets, missiles, or similar devices and the launching devices therefor, (3) fixed ammunition of more than .60 caliber and firearms of more than .60 caliber which fire fixed ammunition. Shotguns and shotgun ammunition are specifically excluded from the proposed statute.

Since the definition of a "destructive device" is written in terms of fixed ammunition of more than 60 caliber and firearms of more than 60 caliber which fire such ammunition, it will not restrict the activities of those who collect or target shoot with large caliber antique weapons. The term "fixed ammunition" refers to ammunition which contains the explosive charge and the ball within the same casing. Powder and ball are loaded separately into antique muskets and rifles Therefore, these weapons and their ammunition would not be included within the proposed legislation

By limiting the definition of a "destructive device" to firearms and ammunition of more than 60 caliber and excluding shotguns and their ammunition the committee intends that the recommended legislation not restrict the sale or use of firearms used for hunting or target shooting The .60-caliber limitation appears to be a reasonable dividing line since that is the distinction which the United States Army draws between small and heavy arms.

The committee does not intend to restrict the lawful business activities of those who may deal in weapons falling within the definition of a "destructive device." For that reason we recommend that the Chief of the Bureau of Criminal Identification and Investigation be given authority to issue a permit, upon a showing of good cause, for the conduct of such a business enterprise. We also recommend that the chief of the bureau be empowered to issue a similar permit to those who may have a legitimate reason for possessing or transporting destructive devices.

COMMITTEE-RECOMMENDED LEGISLATION

An act to add Chapter 2.5 (commencing with Section 12301) to Title 2 of Part 4 of the Penal Code, relating to destructive devices.

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

SECTION 1. Chapter 2.5 (commencing with Section 12301) is added to Title 2 of Part 4 of the Penal Code, to read:

CHAPTER 2 5 DESTRUCTIVE DEVICES

12301. The term "destructive device," as used in this chapter, shall include the following:

(1) Any shell or other projectile containing any explosive or incendiary material or any other chemical substance;

(2) Any bomb, grenade, rocket, missile, or similar device or any launching device therefor;

(3) Any weapon of a caliber greater than 60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun or shotgun ammunition

12302 Nothing in this chapter shall prohibit the sale to, purchase by, or possession of destructive devices by·

(a) Any sheriff, constable, marshal, policeman, member of the California Highway Patrol, or other duly appointed peace officer

(b) Any member of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty

12303 Any person, firm or corporation who, within this state, sells, offers for sale, possesses or knowingly transports any destructive device, other than fixed ammunition of a caliber greater than 60 caliber, except as provided by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the county jail for a term not to exceed one year, or in state prison for a term not to exceed three years, or by a fine not to exceed five thousand dollars ($5,000), or by both such fine and imprisonment

12304 Any person, firm or corporation who, within this state, sells, offers for sale, possesses or knowingly transports any fixed ammunition of a caliber greater than 60 caliber, except as provided in this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the county jail for a term not to exceed six months or by a fine not to exceed one thousand dollars ($1,000), or by both such fine and imprisonment

A second or subsequent conviction shall be punished by imprisonment in the county jail, not exceeding one year or in the state prison not exceeding three years In addition to such imprisonment a fine not to exceed three thousand dollars ($3,000) by both such fine and imprisonment.

12305 Every dealer, manufacturer, importer, and exporter of any destructive device shall obtain a permit for the conduct of such business from the Chief of the Bureau of Criminal Identification and Investigation. Such permit shall be issued upon a satisfactory showing to him that good cause exists for the issuance thereof and after the payment of a fee of fifty dollars ($50). Such permit shall be valid for a period of one year only.

12306 Any person, firm or corporation, other than those included in Section 12305, shall obtain a permit from the Chief of the Bureau

of Criminal Identification and Investigation before possessing or transporting any destructive device The chief may issue such a permit upon a satisfactory showing that good cause exists for the issue of such license, and after the payment of a fee of ten dollars ($10). Such permit shall be valid for a period of one year only

2. *Out-of-state purchases of concealable firearms* California law provides rather extensive regulation of retail sales of concealable firearms. Dealers are required to maintain a register wherein information relative to all transactions concerning such weapons is recorded This record must contain such information as the time of sale, the date of sale, the name of the seller, the place of sale, the make, model, manufacturer's number, caliber and other identification marks of the firearm, and detailed information as to the name, address, and description of the purchaser and the salesman A report of the information recorded in the register must be forwarded on the day of sale to the Bureau of Criminal Identification and Investigation, and to the principal law enforcement officer in the city or county wherein the sale is made

It is unlawful for a dealer to deliver a concealable firearm to a person he has reason to believe has been convicted of a felony, or is an alien, a narcotic addict, or under 18 years of age. Moreover, a dealer may not deliver a concealable firearm to a purchaser until five days after the information concerning the sale has been mailed to the local police authorities and the Bureau of Criminal Identification and Investigation in Sacramento This five-day waiting period allows time for a record check to determine if the prospective purchaser of a concealable firearm is a person to whom a sale may not be made

None of the regulatory provisions applicable to sales by California firearms' dealers cover mail order sales by out-of-State dealers to California citizens or situations where a person buys a concealable firearm in another state and imports it into California. Therefore, a considerable gap exists in our regulatory scheme

To close this gap the committee recommends that those who purchase concealable firearms from out-of-state sellers, either through mail order sales or person-to-person transactions, be required to furnish law enforcement agencies with information similar to that required on in-state sales of such weapons Thus information would include the importer's name, address, date of birth, physical description, his occupation, the name and address of the seller, a description of the weapon, its maker, number, and caliber The proposed legislation would not apply to manufacturers, wholesalers or retailers of concealable firearms

The purpose of the recommended legislation is to prohibit the possession of concealable firearms by those now denied them under provisions of California law The regulation of in-state sales of concealable firearms has been criticized as "useless red tape" However, the committee feels that the present law has provided at least a minimum degree of effective regulation over the sale of such weapons For example, Attorney General Lynch reported to the committee that during 1965 law enforcement authorities were able to prevent 806 sales of concealable firearms on the grounds that the prospective purchaser was a convicted felon, a narcotic addict, an alien, or under the legal age to purchase the weapon. The legislation we now recommend will extend the effectiveness of the existing law by bringing out-of-state purchases within the scope of regulation.

COMMITTEE-RECOMMENDED LEGISLATION

An act to add Section 12079 to the Penal Code, relating to weapons.

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

SECTION 1. Section 12079 is added to the Penal Code, to read:

12079. Any person, firm, or corporation, other than a dealer licensed under the provisions of Section 12071, or a manufacturer or wholesaler of weapons, who brings or causes to be brought into this state any pistol, revolver, or firearm capable of being concealed upon the person shall, within 14 days of the importation of such weapon, file with the chief of police, or other head of the police department of the city, county, or city and county wherein such person, firm, or corporation maintains his residence or principal place of business, a record in duplicate of such importation. When the importer resides or has his principal place of business where there is no municipal police department, then such record, in duplicate, shall be filed with the sheriff of the county where the importer of such weapon resides or maintains his principal place of business. Such record shall be substantially in the following form:

Record of Importation of Concealable Firearm

Name importer _____ Date of birth _____
Permanent address _____
Height _____feet_____inches Occupation _____
Color_____, skin_____, eyes_____, hair_____
Description of arm (state whether revolver or pistol) _____
Maker_____, number_____, caliber_____
Where purchased or obtained (give name and address of seller)
_____
Signature of importer _____

The city, county, or city and county may charge a fee not exceeding one dollar ($1) for filing such record and shall send the duplicate of such record to the Bureau of Criminal Identification and Investigation at Sacramento.

3. *Definition of a concealable firearm.* In the course of its study leading to this report the committee identified two problems pertaining to the definition of concealable firearms. One defect in the present definition of these weapons centers upon the availability of a new weapon which is essentially a handheld rocket launcher. The other area of concern involves the use of gas operated weapons such as CO_2 pistols.

Within the last two years a new rocket weapon has been developed and offered for sale in California. The weapon itself is a 13-mm solid-fuel rocket which may be fired from a handheld launcher about the size of a 45-caliber automatic pistol. The launcher is simple in design and it is estimated that it could be mass-produced for as little as 87 cents. Conceivably the rocket projectile could be launched from a piece of tubing or pipe equipped with a simple firing mechanism.

Penal Code Section 12001 defines a concealable firearm in terms of a "firearm" which has a barrel length of less than 12 inches. The Attorney General has ruled that the hand launcher for this new rocket weapon is a "firearm" within the meaning of the section since the rapid combustion of the rocket propellant is comparable to the force generated by exploding gunpowder in a conventional pistol or revolver. However, the committee recommends that Section 12001 be amended to make absolutely clear that any handheld rocket launchers are included within the definition of a concealable firearm

The committee also recommends amendment of Penal Code Section 12001 to bring CO_2 pistols within the provisions of the Dangerous Weapons Control Law so that they may be regulated in the same manner as concealable firearms Some CO_2 pistols cannot be distinguished from a conventional pistol except upon close examination. Furthermore, they may be as deadly as a conventional firearm, especially when fired at close range. In light of these factors there appears to be no sound reason why these weapons should not be subject to the same controls as concealable firearms.

However, the committee does not intend to restrict the sale or possession of "air" or "pump" guns The suggested amendment to Penal Code Section 12001 is designed to reach those weapons which operate through the release of CO_2 or other gas from a pressurized cartridge Therefore, the proposed amendment would not apply to pistols which are fired by means of air compressed by the operation of a hand pump attached to the weapon.

COMMITTEE-RECOMMENDED LEGISLATION

An act to amend Section 12001 of the Penal Code, relating to concealed weapons.

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

SECTION 1. Section 12001 of the Penal Code is amended to read:

12001. "Pistol," "revolver," and "~~firearms~~ *firearm* capable of being concealed upon the person" as used in this chapter apply to and include ~~all firearms~~ *any device, designed to be used as a weapon, from which is expelled a projectile by the fore of any explosion, or other form of combustion, or the action of any gas compressed by any means other than by hand,* ~~having~~ *and which has* a barrel less than 12 inches in length, *and the frame or receiver of any such weapon.*

4. *Machineguns and machinegun parts.* Penal Code Section 12200 defines a "machinegun" for purposes of the laws regulating their sale, possession, or transportation However, that definition does not include the vital parts of a machinegun within its terms Thus, two or more persons may distribute the parts of a machinegun between themselves and there is no violation of law until such time as the weapon is assembled. The only possible legal control in such a case is to proceed on the theory that a conspiracy is involved But conspiracy is difficult to prove and conspiracy prosecutions are no substitute for tight control over the weapons themselves.

To remedy this defect in the law the committee recommends [1] that Penal Code Section 12200 be amended to include machinegun frames and receivers within the definition of "machinegun."

We also recommend that machineguns or the parts thereof possessed in violation of the law be subject to destruction on the ground that they constitute a public nuisance In one recent case in southern California law enforcement officers seized several hundred illegally manufactured machineguns After pleading guilty and being sentenced, the manufacturer demanded the return of the weapons The authorities are resisting his demand in the courts and in all likelihood they will be successful. But a statute providing for destruction of machineguns determined to be unlawfully possessed would prevent the recurrence of such a situation.

[1] See below Mr Barnes has submitted a separate report

COMMITTEE-RECOMMENDED LEGISLATION

An act to amend Section 12200 of, and to add Section 12251 to, the Penal Code, relating to machineguns.

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

SECTION 1. Section 12200 of the Penal Code is amended to read:

12200. The term "machinegun" as used in this chapter means any weapon which shoots, or is designed to shoot, automatically or semi-automatically, more than one shot, without manual reloading, by a single function of the trigger, *the machinegun frame, or the receiver of any such weapon*.

SEC. 2. Section 12251 is added to the Penal Code, to read.

12251. It shall be a public nuisance to possess any machinegun in violation of this chapter, and the Attorney General, any district attorney or any city attorney may bring an action before the superior court to enjoin the possession of any such machinegun

Any such machinegun found to be in violation of this chapter shall be surrendered to the Bureau of Criminal Identification and Investigation, and the bureau shall destroy such machinegun so as to render it unusable and unrepairable as a machinegun, except upon the filing of a certificate with the bureau by a judge or district attorney stating that the preservation of such machinegun is necessary to serve the ends of justice.

Comments by Assemblyman E. Richard Barnes on control of arms and ammunition

These comments are not a dissent, inasmuch as I believe that the purpose behind each recommendation is sound However, one following technical difficulty may arise in legislation activating these committee recommendations.

Question on Recommendation No. 4· As to parts of machineguns. I believe it is a fact that many types of guns used for sporting purposes are identical to those used in the military service For example, the M-1 carbine is legal under the existing California codes. The same rifle, when it has a device within the connector mechanism, makes it fully automatic, technically known as the M-2 This M-2 rifle would be illegal and properly so.

However, it is true that 90 percent of the parts of these two guns are interchangeable. I am suggesting that, because of these identical parts, the proposed legislation without further modification would be most difficult to administer, and would include a gun in the proscribed area which is now properly legal.

The above example is only one of several used for sporting purposes by law-abiding individuals which would create a very real and undue hardship problem

I recommend that this area of proscribing "parts" be thoroughly researched for a satisfactory solution before the proposed legislation is introduced.

E. RICHARD BARNES

APPENDICES

WITNESSES

The following witnesses appeared before the Criminal Procedure Committee in Los Angeles to discuss problems relating to the law enforcement and criminal law aspects of the Los Angeles riots:

Hearing on
November 5, 1965

Hon F. Douglas Ferrell
Assemblyman, 55th District

Mr. Don R. Sanson, Chairman
California Probation, Parole and
Correctional Association

Mr. Richard A. McGee, Administrator
Youth and Adult Corrections Agency

Mr. Heman Stark, Director
Department of Youth Authority

Mr Milton Burdman, Chief
Parole Division,
Department of Corrections

Mr. Walter Dunbar, Director
Department of Corrections

Mr. Mark Woodward, Parole Agency
Huntington Park District Office

Mr. Charles E Casey
Assistant Director,
Department of Corrections

Mr. C. H. McFarlan, Chief
Division of Parole,
Department of Youth Authority

Hon Thomas C. Lynch
Attorney General,
State of California

Mr Allen Gilmore, Criminalist
Bureau of Criminal Identification
and Investigation

Mr. Charles W. Rumph
Deputy Attorney General,
State of California

Inspector Henry Kerr
Los Angeles Police Department

Sergeant Gonsalez
Los Angeles Police Department

Captain Antone P. Jasich
Los Angeles Fire Department

Mr. Harvey Sharrar
American Wholesale Hardware
Company, Long Beach, California

Mr William T Harrison
Pachmayr Gun Works
Los Angeles, California

Mr. D. E. Schell
Southern Council of Conservation
Clubs, Lynwood, California

Mr Robert M Modisette
California Rifle and Pistol
Association

Mr. Don Flournoy, President
California Wildlife Federation

Colonel E F. "Tod" Sloan
National Rifle Association

WITNESSES

The following witnesses appeared before the Criminal Procedure Committee in Los Angeles to discuss the control of arms and ammunition.

Hearing on
November 18–19, 1965

Mr Arlo Smith, Chief Assistant
Attorney General of California

Mr. Charles W. Rumph,
Deputy Attorney General of
California

Mr. Noel A. McQuown, Deputy Chief
Los Angeles Police Department

Mr John Peper, Supervisor
Peace Officer Training
Department of Education

Mr Leland P. Baldwin, Chief
Junior College Vocational Technical
Education, Department of Education

Mr Robert E Harvey,
Assistant Supervisor
Peace Officer Training
Department of Education

Mr Herbert Carter, Consultant
Los Angeles County Commission
on Human Relations

Testimony by Mr. Norman B. Houston
President of the Los Angeles Branch
of NAACP
Read into the record by Chairman
Young

Dr. Lewis G. Watts, Chief
Division of Planning and Methods
Department of Social Welfare

Mr George H. Puddy, Executive Officer
Commission on Peace
Officer Standards and Training

Mr. William Danielson
Director of Personnel
City of Berkeley

Professor Paul B. Weston
Associate Professor of Government
and Police Science and Administration
Sacramento State College

Professor Douglas Gourley
Professor and Chairman of the
Department of Police Science and
Administration
California State College at
Los Angeles

Mr. C A. Pantaleoni
Coordinator of Police Science at
Rio Hondo Junior College

Officer Daniel Campos
Police Office, City of San Jose

Sergeant Ernest F Vasquez
Sergeant, Juvenile Unit
San Jose Police Department

Mr Arnett L. Hartsfield, Jr.
United Civil Rights Committee

LAWS PERTAINING TO RIOT

Mr. Raymond Momboisse
Deputy Attorney General
State of California

DISPOSITION OF HIGHWAY PATROL FORCES

Inspector Harold Jacobs
California Highway Patrol

Chief H W. Sullivan
Deputy Chief of Police
City of Los Angeles

Mr Don B Shields
Managing Director
Highway Carriers Association

INCREASED PENALTIES FOR THE CRIME OF ARSON

Captain Antone P Jasich
Captain, Arson Unit
Los Angeles Fire Department

Mr. Deane L. Bennett
Law Enforcement Coordinator
California Division of Forestry

Mr C. W. Holmes, Jr.
Law Enforcement Officer
Coordination of Law Enforcement and
Fire Control for Southern California

Mr J S Sacco
Office of the State Fire Marshal

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FINAL REPORT OF THE SUBCOMMITTEE ON FREE PRESS—FAIR TRIAL

A Subcommittee of the
ASSEMBLY INTERIM COMMITTEE ON JUDICIARY
GEORGE A. WILLSON, *Chairman*

MEMBERS OF THE SUBCOMMITTEE
GEORGE A WILLSON, *Chairman*

WILLIAM T BAGLEY
RICHARD J DONOVAN
JOHN F FORAN
HARVEY JOHNSON
JAMES E WHETMORE
JOE FOX, *Special Consultant and Study Director*
ERMA OAKLEY, *Committee Secretary*

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ASSEMBLY
OF THE STATE OF CALIFORNIA

HON JESSE M UNRUH
Speaker
HON CARLOS BEE
Speaker pro Tempore
HON GEORGE N ZENOVICH
Majority Floor Leader
HON ROBERT T MONAGAN
Minority Floor Leader
JAMES D. DRISCOLL
Chief Clerk

LETTER OF TRANSMITTAL

ASSEMBLY INTERIM COMMITTEE ON JUDICIARY

January 5, 1967

HONORABLE JESSE M UNRUH
Speaker of the Assembly,
and Members of the Assembly
State Capitol
Sacramento, California

Gentlemen

In accordance with the provisions of House Resolution No 710 of the 1965 Regular Session, the Assembly Interim Committee on Judiciary herewith submits a final report of its Subcommittee on Free Press—Fair Trial.

Respectfully submitted,

GEORGE A. WILLSON, *Chairman*

Members Subcommittee
Free Press—Fair Trial
WILLIAM T BAGLEY
RICHARD J DONOVAN
JOHN F FORAN
HARVEY JOHNSON
JAMES E WHETMORE

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HOUSE RESOLUTION NO. 710

(ASSEMBLY JOURNAL, JUNE 14, 1965, PAGE 5671)

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:

(1) The Committee on Judiciary is assigned the subject matter in the Civil Code, the Code of Civil Procedure and the Probate Code, uncodified laws relating to civil matters, and other matters relating to the civil law and procedure of the state

PURPOSE AND OBJECTIVES

The purpose and objectives of the interim hearings on the presumed and possible conflict involving the constitutional guarantees of *free press* and *fair trial* are fully delineated in House Resolution No 373 and House Resolution No 523, both authored by Assemblyman George A Willson, Chairman of the Committee on Judiciary.

Assemblyman Willson, a member of the State Judicial Council, was designated by the Speaker of the Assembly to serve as chairman of the select Free Press—Fair Trial Judiciary Subcommittee

On Friday, November 26, 1965, the California Judicial Council voted to bar all photographers and broadcasters from courtrooms while courts are in session or in recess This restriction, classified as Rule 980, was approved by a 17-to-1 majority, Assemblyman Willson cast the dissenting vote.

The reason for his negative vote, Assemblyman Willson declared, was his "lack of conviction that Rule 980 and the restrictions it imposes is truly needed at this time. It has not been demonstrated to me that sufficient news media abuses have occurred to justify this abridgment of press 'freedom '

"Also," Willson added, "the regulation of news media activity in courtrooms has invariably and historically been the sole responsibility of the presiding judge in each courtroom

"The advocates of Rule 980," Willson concluded, "should have full opportunity to establish by clear and convincing evidence that representatives of news media in California have interfered with the constitutional guarantees of *fair trial.*"

CONCLUSIONS

The witnesses who testified before this committee were virtually unanimous in their concern for preservation of dignity and decorum in the courtroom and in their insistence on the right of any litigant to a fair trial They were equally outspoken, however, in their condemnation of Rule 980—and all other attempts to limit by statute the news media's access to information of interest to the general public

Based on the testimony of these 38 witnesses and several experiments and keeping in mind the need for further studies of this issue (see "Recommendations"), the committee has reached the following conclusions

1. Many prejudices against the presence of photographic and recording equipment in the courtroom stem from stereotyped concepts of this equipment—concepts retained from the days when exploding flashbulbs, mazes of wire and loudly whirring cameras were rightfully thought to disrupt any organized proceeding
2. Modern equipment may be operated unobtrusively by trained personnel—so unobtrusively that participants in litigation are oblivious to their presence and are in no way affected by this When the equipment is operated from soundproof booths adjacent to the proceedings, noise is not just unobtrusive—it is nonexistent.
3. Many judges feel their discretionary powers—which still include the right to make rulings affecting the lives of litigants—have been unduly abridged by Rule 980.
4. Some attorneys, jurors and witnesses may, indeed, indulge in theatrics for the benefit of television or may be rendered less effective or more nervous by the presence of cameras The vast majority of persons involved in litigation will either be unaffected by the cameras or, if anything, will act more properly, speak more clearly and operate more effectively if they know their actions are being recorded
5. Televising courtroom proceedings would have the dual beneficial effects of more directly involving the average American citizen with the legal system of his country and of educating him on jurisprudence.
6. Restriction of the photographer or broadcaster in the courtroom could give court proceedings a cloak of secrecy that, however fair and just they were, would leave most citizens feeling something evil was being concealed.
7. Television coverage of the courts could eventually act as a deterrent to crime by showing all Americans—including the potential criminal—the inexorable, inevitable toll justice extracts from lawbreakers
8. To prohibit cameras and recording equipment from the courtroom is to discriminate unfairly against the audiovisual medium If the newspaperman is to be allowed in the court with the tools of his trade—pencil and paper—the television and radio newsman must be allowed inside with the tools of his trade—cameras and tape recorders. To do otherwise is to deprive the audiovisual medium of its right to compete with the printed medium.

9 The single most important finding of this committee—and the single point stressed most often by witnesses from every field involved—is.

> The conflict between fair trial and free press, particularly as this conflict relates to Rule 980, is not a conflict at all Far from mutually excluding each other, they cannot exist without each other A fair trial must, of necessity and according to the Sixth Amendment to the United States Constitution, be a public trial In mid-20th-century America, where sprawling urbanism has replaced concentrated ruralism and where no courtroom in the land could hold even a minute fraction of the people interested in specific cases, a trial is not truly public unless news media are free to bring it to the home of the citizens by newspaper, magazine, radio, television or whatever device they have.

These nine conclusions were arrived at after careful consideration of all testimony offered by the 38 witnesses who voluntarily appeared at the hearings. It must be admitted, however, that the committee was more impressed with practical applications of courtroom coverage than with theoretical defenses of that coverage—no matter how eloquent and logical those defenses were.

The practical applications to which the committee was exposed—either firsthand or by reliable account—were five The most significant by far was the demonstration of unobtrusive radio, newspaper and television coverage of committee hearings themselves in San Diego. Most people present in the hearing room—and there were several dozen there at the time—did not know the proceedings were being filmed and recorded until the sixth witness of the day stepped forward. Said George Whitney, vice president, Columbia Broadcasting System, and general manager, KFMB radio and television stations.

> "The great complaint has been that reporters with their cameras and lights are obtrusive and interfere with the normal conduct of a trial or hearing. This need not be the case. In these chambers, you have not seen a single light glaring in your faces, or the faces of the witnesses. No cumbersome cables or wires. No bulk of equipment. No reporters running around In a word, we of the press have been unobtrusive. And yet, gentlemen, we have been here, covering every second of these proceedings. I'd like to prove it to you."

At that point, Mr. Whitney directed a video tape playback of excerpts from testimony that morning. The film was made, he said, by two cameras in booths at the back of the room. Still pictures were also taken without flashbulbs. His statement that "this demonstration has proven what news media and broadcasters have contended—that court proceedings can be televised without jeopardizing justice or decorum" certainly rang true with the committee

The four other experiments in courtroom coverage to which the committee was exposed are described in the excerpted testimony given elsewhere in this report. They included:

- A report by Supreme Court Justice Otto Moore of Colorado on his state's plan for courtroom coverage.
- An explanation of television and broadcast coverage of United Nations session.
- A report by Municipal Court Judge Roberta Butzbach on the videotape recording of a two-day trial in her court made at the request of Assemblyman Willson, committee chairman.
- A defense of television coverage in Los Angeles Traffic Court by Judge Noel Cannon

These practical applications of television, newspaper and radio courtroom coverage, combined with the expert testimony of more than three dozen witnesses, formed the foundation on which the committee built its nine conclusions and the recommendations presented on the next page.

RECOMMENDATIONS

1—That the Assembly, during the 1967 Regular Session, urge the Judicial Council to extend Rule 981 for a 12-month period

2—That the Assembly, in the event that the Judicial Council does not extend Rule 981, enact legislation designed to amend Rule 980 in a manner that will resore to each presiding judge the authority he formerly possessed to regulate the conduct of news media along with other matters pertaining to the conduct of a trial over which he presides.

3—That the Assembly, with the concurrence of the Senate, initiate a proposal for a joint legislative study of the most appropriate manner to test the "Colorado Plan" in a single California judicial district deemed receptive and conducive by an advisory committee representing members of the *bar, bench, news media* and the *public.*

4—That the Assembly appropriate the funds required to maintain continuing studies of the presumed areas of conflict that may exist between *free press* and *fair trial* constitutional guarantees.

5—That the Assembly advocate the establishment of a permanent Constitutional Rights Committee in California that will contain representatives of news media, the Bar of California, members of the State Judiciary, civilian public officials, law enforcement, prosecution and the citizenry at large.

6—That representatives of the broadcast industry and the news media relating to photography, the principal objects of Rule 980, be encouraged to continue their efforts to develop the most effective tools and techniques for unobtrusive coverage of news events other than courtroom matters in order to achieve more universal acceptance of their unique and distinctive contributions to the areas of public enlightment in a free society.

AN AIRLINE BOMBING IS NATIONAL "NEWS" AND THE "COLORADO PLAN" EVOLVES

Question: "Justice Moore, as the referee in the hearing of the Supreme Court of Colorado and Canon 35, would you tell us your reactions to the demonstrations of courtroom photography and radio recording as presented to the court"

Answer: "Frankly, I was very much surprised that courtroom photography, radio and television cameras could operate in the courtroom and create so little, practically no distraction whatever"

Question: "Now, just as the John Gilbert Graham trial provided the Denver area radio and television stations with their first opportunity to cover a trial following the modification of Canon 35, what was your reaction to that coverage?"

Answer: "I thought the reaction to the coverage of that trial by radio, television, newsreel and photography was very exceptional. It seemed to me to be proved conclusive that the findings which I reached as a result of our hearings up here . at the conclusion of our hearings up here . were amply justified"

Question: "Now, the John Gilbert Graham trial was appealed to the high court Was the fact that the case was televised and broadcast cited as a cause for error at the trial?"

Answer: "No No assignment of error was based upon the claim that the right of the defendant was prejudiced in any way by photography, radio or television coverage."

Question: "Was such coverage mentioned at all in the appeal?"

Answer: "No"

Question: "May we ask you do you see any educational value through the televising and broadcasting of trials?"

Answer: "Yes, I have always been of the belief that the procedures in courtrooms were, as generally understood by the public, not accurate at all, and I think that some very definite benefit is to be derived from an accurate, truthful presentation of what goes on in the courtrooms of America"

Question: "Finally, Justice Moore, do you think that radio and television coverage of trials might conceivably serve as a deterrent to crime?"

Answer: "Well, I asked all the district judges of our state their conclusions in that behalf and received a number of answers from them. Many of them thought that it would have a definite effect upon deterring crime Personally, I think that if one was about to commit some sort of offense if he were to hesitate and understand and realize that crime doesn't really pay and that the culprit is more often brought to justice it would tend to have, over the years, a very definite influence in this realm of deterring crime."

"THE COLORADO PLAN"—IT WORKS IN ONE-FIFTIETH OF THE UNITED STATES

Since that time 10 years ago, the Colorado courts have permitted radio and television coverage and newspaper photography of court

cases. Last week we asked the KLZ-TV news department to contact Supreme Court Justice Moore again, and to ask him to assess the experience of a decade in Colorado This film statement was made by Justice Moore just last week in Denver

"The rule of the Supreme Court of Colorado which permits closely supervised operation of cameras in the courtroom has been in effect for about 10 years The best photographers and operators of television cameras and radio men have never created any problem whatever insofar as the decorum of the courtroom is concerned The cameras are always concealed They are silent. Their output is accurate They create no false impressions. In all the 10 years in which they have been permitted to function no complaint has ever been made to the Supreme Court of this state by any lawyer, defendant, witness or juror that the use of a camera, or a microphone by the press media of this state has in any manner whatever prevented a fair trial, or in any way interfered with any person in performing his duty as lawyer, judge, witness or juror.

"Under our rule, but one concealed television camera is permitted to function. Any station desiring to use the output is entitled to use it under a pooling arrangement voluntarily entered into by the various stations To my knowledge, no more than two press photographers have ever been permitted to cover court proceedings at the same time Their work is also subject to a pooling agreement and is made available to papers desiring to use any picture taken by a press photographer in the courtroom

"In order to guard against possible reversal of cases, following the decision of the Supreme Court of the United States in the Billy Sol Estes case, we amended our rule. We now require that the consent of an accused person must be shown of record before cameras are permitted to function in any criminal case In a civil action, the litigants must affirmatively show by statement in the record that they have objection to cameras in the courtroom

"Following this change in our rule, I know of no case in which a defendant has failed to consent to the use of cameras in his trial where a request was made by the news media to take pictures We are completely satisfied that our rule is a good one The lawyers who practice in the trial courts will agree that cameras properly regulated are in no way offensive, and do not in the least prevent a fair trial At least 90 percent of the trial judges in our state have permitted cameras in court under our procedures, and I don't know of one trial judge who has had an unpleasant experience in connection with the use of cameras in the courtroom.

"We believe our rule fully protects all participants in the trial of any case, and in permitting a regulated use of cameras in court we only give the same recognition to the cameramen which has been afforded the press reporter in our courtrooms since courts were first established in this country. Actually, our experience has been that cameramen function with even less disturbance than do press reporters, and their handiwork is always free from distorted interpretations. We intend to keep our rule and are completely satisfied that we are doing the right thing in doing so."

HOUSE RESOLUTION NO. 373

Relating to "Freedom of Information" study

WHEREAS, The Attorney General of the United States has announced a new policy that forbids the disclosure of pre-trial information in federal criminal cases by all Justice Department employees, including prosecutors and the FBI, in an attempt "to strike a balance between the constitutional guarantees of a 'Free Press' and a 'Fair Trial' "; and

WHEREAS, A Los Angeles County Superior Court Judge has ruled that "a prosecutor has the freedom to comment factually to the press on pending criminal cases"; and

WHEREAS, Controversy and uncertainty prevails in the State of California among the members of the judiciary, bar associations, the Legislature and law enforcement agencies over the multiplicity of proposals submitted to resolve presumed conflict between the constitutional guarantees of "Free Press" and "Fair Trial"; and

WHEREAS, In the State of California representatives of all news media that include press associations, radio and television stations and networks and newspapers as well as periodicals are in contention that constitutional guarantees of "Free Press" are in danger of serious and unwarranted abridgement; and

WHEREAS, A section of the Revised Code of Evidence of the State of California, in its pre-amended form, sought to establish that news reporters could no longer retain established immunity from contempt proceedings for declining to disclose sources of information; and

WHEREAS, The Judicial Council of California has deemed it appropriate to recommend that segments of the news gathering and dissemination profession that are required to utilize sound recording and photographic instruments and devices in the performance of their assigned tasks be denied access to courts, corridors and environs except for "ceremonial" and "educational" purposes; and

WHEREAS, The First Amendment of the Constitution of the United States establishes a continuing and undeniable "Free Press"; and

WHEREAS, The Sixth Amendment to the Constitution of the United States provides a "Fair Trial" guarantee in the "Right to a Speedy and Public Trial"; and

WHEREAS, Article I, Section 9 of the Constitution of the State of California contains a "Free Press" guarantee not unlike the provision established by the First Amendment of the Constitution of the United States; and

WHEREAS, Article 1, Section 13 of the Constitution of the State of California provides a "Fair Trial" guarantee comparable to that contained in the Sixth Amendment of the Constitution of the United States; and

WHEREAS, A sub-committee of the Judiciary Committee of the Senate of the United States has disclosed plans to make a study of the possible areas of conflict that appear to exist between the constitutional guarantees of "Free Press" and "Fair Trial", conduct hearings on the issue and consider the need for possible legislation; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is directed to refer for study to an appropriate interim committee the area of possible conflict between the guarantees of "Free Press" and "Fair Trial" that are established in the constitutions of the United States and the State of California, and be it further

Resolved, That the interim study shall also include the feasibility of establishing a "Freedom of Information" BILL of RIGHTS for all segments of the news gathering and dissemination industry that shall permit unrestricted utilization of tools, implements, equipment and devices deemed essential and appropriate for each distinct news media in the performance of its assigned task and that such interim committee shall report its findings and recommendations no later than the fifth calendar day of the 1967 Regular Session

Resolution read, and referred by the Acting Speaker to the Committee on Rules.

HOUSE RESOLUTION NO. 523

Relative to constitutional guarantees of "Free Press" and "Fair Trial"

WHEREAS, The Rules Committee of the Assembly has approved House Resolution 373 that calls for an interim study by an appropriate interim committee of the Assembly of the area of conflict that might prevail between the guarantees of "Free Press" and "Fair Trial" that are established in the Consitutions of the United States and the State of California, and

WHEREAS, A sub-committee of the Judiciary Committee of the United States Senate has disclosed plans to make a study of the possible areas of conflict that appear to exist between the constitutional guarantees of "Free Press" and "Fair Trial," conduct hearings on the issue, and consider the need for possible legislation; and

WHEREAS, The Judicial Council, the governing body of the courts of California, recently deferred until the November session, the plan to impose regulatory restrictions in this vital area; and

WHEREAS, The District Attorney of Los Angeles County released a series of proposed recommendations on May 20, 1965, that appear to some news media representatives to contain unwarranted restrictions on their ability to secure news and information from the office of the district attorney and law enforcement agencies in areas of criminal matters; and

WHEREAS, It is conceivable that district attorneys and law enforcement officials in other counties of California might be induced to emulate the pattern contained in the recommendations of the District Attorney of Los Angeles County, and

WHEREAS, Constitutional guarantees establishing the provisions of "Free Press" and "Fair Trial" appear to be in danger of unwarranted abridgment in several cities and counties in California; now, therefore, be it

Resolved by the Assembly of the State of California, That until the completion of the interim studies by an appropriate committee of the Assembly and appropriate recommendations from the Judicial Council it is hereby requested of all district attorneys throughout California that no new restrictive regulations be imposed that might conceivably violate constitutional and statutory guarantees of "Free Press" and "Fair Trial", and be it further

Resolved, That the Chief Clerk of the Assembly be instructed to provide copies of this resolution to all district attorneys in the State of California.

Resolution read, and referred by the Speaker pro Tempore to the Committee on Rules.

THE PLAN FOR CALIFORNIA—IS IT NEEDED?

TITLE THREE. MISCELLANEOUS RULES
DIVISION IV. GENERAL RULES APPLICABLE TO ALL COURTS

Rule 980. *Photographing, recording and broadcasting in courtroom*

(a) (Prohibition during sessions and recesses) Photographing, recording for broadcasting and broadcasting shall not be permitted within the courtroom while court is in session or during any midmorning or midafternoon recess except as provided in subdivision (b) hereof

(b) (Exception for ceremonial proceedings) Photographing, recording for broadcasting and broadcasting of judicial proceedings may be permitted by the court and under its supervision if such proceedings are designed and carried out primarily as ceremonial proceedings.

(c) (Subject to court limitation when not prohibited) Photographing, recording for broadcasting and broadcasting within the courtroom when not prohibited by this rule shall be subject to such limitations as the court may prescribe.

AN OPPORTUNITY TO TEST THE "COLORADO PLAN" IN CALIFORNIA

AMENDMENT TO CALIFORNIA RULES OF COURT

Adopted by the Judicial Council of the State of California
Effective June 1, 1966, through December 31, 1966

JUDICIAL COUNCIL RESOLUTION

(Adopted May 7, 1966)

WHEREAS, The Assembly's Committee on Fair Trial and Free Press, a subcommittee of the Assembly Interim Committee on the Judiciary, has indicated its desire to photograph a limited number of actual court trials as part of its interim studies, using modern television and news cameras; and

WHEREAS, The committee has advised the Judicial Council that any photographs and recordings made by it will be used solely for its investigation and not for broadcast or news purposes or for any commercial purpose, and that photographing will be done only with the consent of the court involved, the consent of the judge presiding at the trial and the consent of all parties, attorneys, witnesses and jurors participating in the trial; and

WHEREAS, Rule 980 of California Rules of Court, adopted in 1965 by the Judicial Council after several years of study, now limits courtroom photography to recess periods that do not interfere with trials, but is subject to modification or change by legislative action should the Legislature and the Governor so decide; and

WHEREAS, The Judicial Council recognizes the responsibilities of the coordinate branches of the government in this matter and has been advised by the committee that it can complete its work by the end of 1966;

Now, therefore, be it resolved by the Judicial Council that it does hereby adopt the following temporary rule:

Rule 981. Special photographing and recording (new)

During the period this rule is effective the provisions of Rule 980 shall not apply to the photographing or recording of court proceedings carried on by the Assembly Committee on Fair Trial and Free Press, provided that the court involved and the judge presiding and all the parties, attorneys, witnesses and jurors participating in the trial give their consent thereto, and provided further that any photographs and recordings so made will be used solely for the work of the committee and will not be used for broadcast or news purposes or for any commercial purpose. This rule shall take effect on June 1, 1966, and shall continue in effect to and including December 31, 1966

THE HEARINGS IN LOS ANGELES

Supreme Court Chambers, December 6–7, 1965

MEMBERS OF THE JUDICIARY TESTIFY

Two municipal court judges—both women—addressed the committee in Los Angeles. Roberta Butzbach and Noel Cannon were two of the most outspoken critics of Rule 980, and it is of some significance that both have presided with television cameras present. Judge Cannon on a regular basis in traffic court, Judge Butzbach as part of a special experiment.

The two judges joined in an attack on the theory that televising trials could prejudice potential jurors. Judge Cannon said it is as unfair to postulate this as it would be to postulate that a judge would be prejudiced by reading newspaper accounts of a case. She said judges and citizens "should not live in ivory towers. They must be aware of what's happening around them."

Judge Butzbach voiced similar sentiments and even went one step further. She said television, far from having a detrimental effect on viewers, would have a beneficial effect. Citizens would become familiar with the "operations and language of the law" if they watched actual trials on television, she said.

Both women objected to the discussion of fair trial and free press as a conflict, saying the rights reinforce and guarantee each other. They are inseparable, not mutually exclusive, they said.

> *"Liberties which exist under no other system of government exist because the courts are there to protect them. If these liberties are to endure, the people must again learn the processes of justice."*
>
> ROBERTA BUTZBACH
> Judge, Los Cerritos Municipal Court

Judge Butzbach traced the history of public trials from the days of William the Conqueror through the signing of the Magna Carta to Shakespearean times.

"Only once did England experiment with a court held behind closed doors," she said. "The Star Chamber has ever since been a symbol for injustice. Legal historians tell us the proceedings themselves were not unfair, but the fact of secrecy was so abhorrent to the English people that this alone made the proceedings suspect."

The judge said television enables citizens to "become educated in the concept of a rule of law while being entertained. Must an interest in court proceedings be condemned because it presents the fascination of high drama?"

Assemblyman Willson asked the witness if the use of "unobtrusive television" during one of her court sessions "would so influence you as a judge that you couldn't render a proper verdict in a proper case?"

Judge Butzbach said she "couldn't conceive of what difference it would make having just another piece of equipment there." She said she would not make a different decision than she would make if there were no one there except the litigants and their attorneys.

"The issue has been joined as free press VERSUS *fair trial. I submit free press is not an adversary of fair trial, but, on the contrary, free press is an ingredient of fair trial The press is the watchdog of the public."*

NOEL CANON
Judge, Municipal Court, Los Angeles

Judge Cannon reminded the committee that judges are "answerable to no one—to no one but the public The exclusion from the courtroom of radio, press photography and television, censors the public's view of the judicial process "

This is supportable, she said, "only where free press actually denies fair trial That free press does not deny fair trial in every case is basic "

Judge Cannon stressed the educational value of courtroom television, noting the 47,000 traffic fatalities recorded annually in the United States, "caused primarily by ignorance of the law. Television in the traffic court can prove a powerful and painless educational device in explaining the Vehicle Code to the public "

Television is already being used in the new Los Angeles Traffic Court, "without jeopardizing fair trial," Judge Cannon said "The television art has progressed to the point where entire trials can be televised invisible to courtroom participants

"Should not the courts take advantage of the space age and have the best of all possible worlds?" she asked

The judge's vigorous defense of courtroom photography included—in response to a question from Assemblyman Bagley—the contention that not even the defendant should have the right to exclude cameras.

"Take a defendant that is *guilty, guilty, guilty* and has managed to bribe the judge or jury Naturally, he would not want the evidence coming out," she said

SPOKESMEN FOR THE BAR

More attorneys testified at the Los Angeles hearings than members of any other profession Despite the diversity of their specialties—two men representing newspaper photographers, one representing a bar association, one representing a media association, one representing a civil liberties organization, one representing himself and even one district attorney—the attorneys were virtually unanimous in their condemnation of Rule 980.

Both Edward Shattuck, president of the Los Angeles County Bar Association, and Robert Neeb, Jr , counsel for the Greater Los Angeles Press Club, criticized the dichotomy of fair trial versus free press The assumption of a conflict between the two is, Neeb said, a "false premise"

The only prosecuting attorney among the committee's witnesses was Lawrence Drivon, district attorney in San Joaquin County and president of the California District Attorneys Association Drivon admitted many prosecutors fear television will encourage theatries in the courtroom, but he suggested the decision on the presence of cameras be left to the trial judges "The trial judge is in a much better position than an appellate court, than the Legislature, than the Judicial Council to know what is going to be appropriate and what is going to be inappropriate," he said "He knows the prosecutor, the defense lawyers and the general nature of the case Generally, he also has some idea of the reaction of the public"

"We think the 800 judges of California are quite a group of men, and we say that the matter of photography (in court) should be left with the individual judge"

CARYL WARNER
Chief Counsel, California Press
Photographers Association

Mr Warner said the entire subject matter of Rule 980 should not be decided by the Judicial Council but by the State Legislature itself as a political matter involving the freedom of the people. He suggested the adoption by the Senate and Assembly of a concurrent resolution saying the matter should be left with the trial judge. With this guideline from the Legislature, the Judicial Council might be inclined to rescind Rule 980 which "deprives the public of a closeness to the courtroom."

"Restriction of the photographer or the broadcaster in the courtroom during proceedings, and also during recess, is the first step in total abridgment of what is the basic right to know on the part of the people of California"

PAUL CARUSO
Associate Counsel, California Press
Photographers Association

Mr Caruso warned that logical extension of Rule 980 could enable the banning of photographers and broadcasters from "any place of confinement."

"The county jail could be out of bounds next, and the photographers and broadcasters could take their pictures from the corner of 10th and Broadway or by telephoto lens from Spring Street in front of the Federal Building," he said

Mr. Caruso said photographers have been allowed in courtrooms during recess for "hundreds of years," and "I know of not one case where any irregularity or injustice has resulted "

When asked by Assemblyman Foran to defend this statement in light of the Texas Supreme Court's reversal of Billy Sol Estes' conviction, Mr. Caruso said the "number and mass of equipment was a large contributing factor. If you walked into the Billy Sol Estes courtroom, you saw 12 television cameras and the cables all about the courtroom You must immediately think this had a circuslike atmosphere

"But you walk in that same courtroom and there is one man with a hand camera and a proportionately lower amount of lighting, then I would say, well, this is a matter of public interest . and I can understand the people wanting to know "

With only one camera, Mr Caruso said he not only did not think the courts would have reversed Estes' conviction because of the "circuslike atmosphere," but that "this element would not have been mentioned "

Assemblyman Willson questioned Mr. Caruso about the use of television in the murder of Lee Harvey Oswald making it "impossible, or nearly so, to obtain an unprejudiced or unbiased jury "

Mr. Caruso replied, "If a juror wants to sit on a jury . he will sit on that jury and tell you he has formed no opinion . . I don't think we will ever have a jury that is completely impartial There are always those jurors who are prejudiced when they take that jury box, but I don't think we are ever going to eliminate their prejudice by the avoidance of any photography.

"Every photographer, and, incidentally, every broadcaster, has as basic a right to pursue his occupation as has the man who comes to court with a notepad and a pencil," Mr Caruso contended "The restriction of the photographer or broadcaster in the courtroom during proceedings—and also during recess—is the first step in the possible total abridgment of what is the basic right to know on the part of the people of California.

"The Los Angeles County Bar is unwilling to accept the proposition that a fair trial and a free press are inherently antagonistic, but we have taken the position that if both are to be preserved, voluntary restraints are required in the activities of both the media and the bar We now have Rule 980 which places limitations on photographing, recording, and television broadcasting in the courtroom This rule should be given an opportunity to demonstrate its workability, both by the media and the bar "

EDWARD S SHATTUCK
President, Los Angeles County Bar Association

Because of illness, Mr Shattuck did not appear as a witness but submitted statement for inclusion in the transcript.

Mr Shattuck contended that solutions to the Rule 980 problems are still in the process of being sought by across-the-table discussions between representatives of the media and the bench and bar He advised that the State Legislature "should not close the door to continued exchange of ideas to resolve the problems"

"Rule 980 is based upon the theory that you cannot have the preservation of the balance of fair trial and free press The reasoning is: The taking of one picture in any courtroom during session or during recesses automatically prevents a fair trial Under the rule of logic, if you start from a false premise, you are going to end up with an answer that has a falsity in it Therefore, I submit that the rule that we now have has to be changed, and one of the problems is how to change it"

ROBERT NEEB, JR
Attorney and Counsel, Greater Los Angeles Press Club and Radio and Television News Association of Southern California

Mr Neeb cited the famous California case of *People v. Stroble*, a gruesome murder case involving a little child as the victim, and the wording of the State Supreme Court decision regarding whether television, radio and newspaper photography coverage of the trial in Los Angeles Superior Court was prejudicial to the defendant

"Television was allowed in the courtroom during the proceedings," Mr Neeb recalled, "and in one instance they actually photographed for live television the jurors sitting in the jury box while the court was going on This reached the Supreme Court because Stroble was convicted and sentenced to death, and it went up on the automatic appeal

"One of the questions was: What about this television? It was admitted in all the briefs that TV had been in the courtroom during session, had photographed lawyers, parties, witnesses and the jury. Now keep in mind the base of this rule which says you cannot have a fair trial if you have a picture in the courtroom

"Now, what does the Supreme Court say about that case? They had the case directly before them as to what to do about a case that was widely televised and photographed The defendant complained about this. It was one of his points on appeal, that he didn't have a fair trial.

"The Supreme Court, in 36 Cal 2d at page 621, has in it the part about televising the jury during the session, the same jury that had to decide a man's life or death

"The high court said: 'We can also assume'—now note this word *assume*—'that it was improper' The court doesn't say that it *was* improper, or that there was no fair trial, the justices just say 'we assume that this wasn't quite proper'

"And they go on: 'We assume that it was improper to allow the taking of news photographs or televising of scenes in the courtroom.'

"Then they go on—and listen to the wording of your own Supreme Court 'But there is no indication that the jury's verdict was influenced by the taking of pictures or the televising of courtroom scenes' Your Supreme Court has said the base of the rule now adopted is not that."

Mr Neeb also cited the famous case of *Kirstowsky v. Superior Court* in 1956 as a demonstration of the principle that judges already have complete plenary power to protect the rights of an accused, or any litigants or any witness. In this case the superior judge excluded everybody from the courtroom in the trial of a woman for murder, on the grounds that her defense testimony was so salacious "that I couldn't get it out of me before people."

In the Kirstowsky case, the California appellate court held that you can't have a private trial in California, Mr. Neeb pointed out, adding:

"The court held that no judge has the right to exclude the public or the press It said that the judge could have—and this is the major point—in the interests of justice under the laws of Sections 124, 125, and 128 of the Code of Civil Procedure, excluded everybody to let the defendant testify, *but after the testimony, he had to open it up to everybody.*

"So you see, embodied in the case law of our state is complete plenary power in the judges to act if they think it is necessary in any case to protect the rights of the accused, or any litigants, or any witness"

Mr. Neeb concluded with this analysis. "A lot of people say the issue is, shall television or the newspapers have rights? I say the issue is, shall the public have rights? This case says the right to public trial—contrary to popular belief—is not a defendant's right It's the public's right, yours and mine and everybody else's"

Replying to a question by Chairman Willson as to how a legal review of the judicial rule can be obtained through a test case in the courts, Mr. Neeb said:

"I think judges are supposed to be able to admit a mistake if they make one. The proper precedure—and I have suggested this already to the news media—would be a court test based on the cited cases and code sections to determine whether or not the rule goes beyond the power of a committee or a commission . . . You might end up in the Supreme Court of the United States"

> *"I must say that the right of fair trial has no peer when there is a conflict between freedom of the press and fair trial*
>
> *I don't think that a court ought to have the discretion to decide whether or not the television or mass communication media is going to sit upon a trial—or at least not the absolute and sole discretion. . . . I submit that as long as we have the concept of presumption of innocence, that where the defendant doesn't want publicity, he or she ought to have the right to say to the press, 'Leave my courtroom; I prefer to try this case before the judge and jury only.' I would like this committee to consider a rule that would recognize the principle that a fair trial is the basic whip of liberty There can't be any dispute about the importance of a defendant's liberty as against the importance of selling newspapers."*
>
> HUGH R. MANES
> Hollywood attorney

Several instances of pretrial publication of information prejudicial to defendants he was representing were related to the committee by Mr. Manes.

He urged passage of a statute giving defendants the right to seek damages from prosecutors, police, sheriffs and other law enforcement officers who furnish the press media with prejudicial pretrial information, which, he said, is not made available to defense attorneys

"I am less concerned," Mr Manes said, "about the ability of a newspaper or television station to sell a product, news or commercials that surround the news item, than I am about the right of an accused person to have a jury which does not receive pretrial information that would not be allowed in the courtroom trial itself. What I am asking this body to do is dry up the sources of information The public hasn't any right to know before a trial"

"Insofar as Rule 980 goes beyond prohibiting coverage through television or photography of an actual court proceeding and insofar as it bars photographing or recordings during recesses, I think it goes too far."

A. L. WIRIN, Los Angeles
Counsel, American Civil Liberties Union

Mr. Wirin immediately exposed what he described as "my bias" by testifying that if he had a choice between a free press and a fair trial, he would live in a society which had a free press He said he believes the two great rights—free press and fair trial—can be reconciled, since the public should have the right of access to the administration of justice

"I think one has to balance these rights," he explained, "and I arrive at the valance of barring photography during a court proceeding but allowing it at all other stages Neither right can be absolute, and both have to be reconciled with each other When it's out-of-court coverage, I think the freedom of information should prevail. I draw the line at the door of the court."

"The basic problem appears to be one of an apparent conflict between these two basic constitutional rights I say apparent, because I believe the conflict is more apparent than real There cannot truly be a fair trial without a free press A free press is vital in the administration of justice, particularly of criminal justice It is necessary for the public to know and understand the functions of our judicial processes There is no other complete way for the public to become informed except for the news media I believe that the constitutional right of a public trial in a criminal case is a right belonging to the public as well as to the defendant"

LAWRENCE DRIVON
District Attorney, San Joaquin County; President California District Attorneys Association

Expressing his own personal views and not those of the association, Mr Drivon said the real problem appears to be how to curb or cure the excesses of both the news media and of public bodies like the Judicial Council. He called for exploration of methods of "self-correction."

He cited instances in which it would be the duty of the public prosecutor, "for the protection of the public which he serves," to inform the public of particularly aggravated cases For example, he said that if there is a widespread bunco ring operation in a community, the public should be informed of the modus operandi thereof "so that members of the public can protect themselves through knowledge."

"You have to leave this type of thing up to the judgment of the prosecutor," Mr. Drivon contended. "If he makes a mistake, the electorate at the next election will take care of the situation, I'm quite sure"

Mr. Drivon said most prosecutors "are opposed to photography and certainly to TV in the courtroom during the process of the trial because we are fearful of grandstanding and theatrics" But he said there would be no prejudice to a fair trial if pictures were taken at recesses or before or after the adjournment of court

"This type of thing can be taken care of by the trial judge himself," Mr. Drivon concluded.

BROADCAST INDUSTRY SPOKESMEN

Witnesses from the radio and television industry included a television executive and a working radio newsman Both men called on the Judicial Council to reconsider its action and, in doing so, to keep in mind the significant, longstanding role the press has played in world history—particularly recent American history

As Elton Rule, vice president of the American Broadcasting Co, pointed out, "It was television which brought astronaut Ed White's walk in space into the living room It was television which brought the launching of *Gemini 7* to the people. And, even though only four presidential campaigns have been carried by television, the greatest proportions of our population think of these campaigns solely in terms of television."

No medium capable of exposing so many to so much should be prohibited from entering a courtroom and showing all America how justice operates, he said.

"Let me make clear that we are not criticizing or condemning the structure of our judicial system California has one of the most modern and functional judicial systems of the 50 states Reforms effected during the past 20 years have made it one of the best, if not the best, judicial systems in the nation The role of the State Judicial Council is vital The council has led the way—actually implemented most of the judicial reforms with the cooperation of the Legislature. Why, then, at this critical point, has the council chosen to turn backwards in time by adopting Rule 980?"

ELTON H RULE
Vice President, American Broadcasting Company; General Manager, Station KNBC-TV, Channel 7; President, California Broadcasters Association

As the top official of the organization of the television and radio broadcasting stations and networks operating in California, Mr Rule pointed out that the unilateral action of the State Judicial Council November 26, 1965, in banning all photographic and electronic "tools of modern journalism" from courtrooms in this state has an equal impact upon a large segment of newspapers and magazines and their photographers as it has upon radio recorders and television and motion picture cameras.

"It is our firm conviction," he said, "that the courts of this state and nation belong to the people. Our courts are not the property of judges, district attorneys, lawyers or juries

"This being so, we maintain that the inherent powers of the court are sufficient to deal with individual violations of broadcast newsmen, when and wherever they may occur

"But even more important is the *public's* right to know This right embraces more than simple or complicated news coverage through electronic journalism, or the presence of press photographers in courtrooms

"It is the right which guarantees that our courts will not evolve into chambers of secrecy, that the dignity of our courts shall not be de-

stroyed in a shroud of darkness, that we shall guarantee continuing respect for American justice It is the *public* which ultimately guarantees our concepts of justice through court procedures ''

The Elmo Roper survey of 1963 showed that 53 percent of all Americans look to the newspapers as their basic source of news Another 55 percent look to television for their news and information, and 29 percent turn to radio as their basic news source

''Thus, with the implementation of Rule 980, the public is being deprived of *the best* news coverage,'' Mr. Rule noted ''By qualifying our coverage of courts—through elimination of the tools of our trade—Rule 980 has the effect of depriving half the public of complete and acceptable coverage This is not an action to be taken lightly *There is no reason at this time for Rule 980* ''

Consideration of two main factors should be sufficient to have the rule repealed, Mr. Rule said First, the technology of electronic journalism has made great advance in the last 15 years and still is making rapid strides in the fields of handheld, portable TV cameras, highly sensitive directional microphones, and revolutionary optical developments

Second, the sociological changes of the population explosion and the space age are drying up former personal sources of public information The town forum, as such, has disappeared. The courthouse steps no longer serve as the nerve center of the community ''Main Street'' has all but vanished

''Thus, the expanding obligations of the mass media to provide information are being spelled out in unmistakable terms,'' Mr Rule concluded ''The traditional 'watchdog' role of the press has been expanded to include the electronic areas of journalism Literate Americans look to us for news ''

''A reciprocity is needed between broadcasters and judges, attorneys and law enforcement authorities A schism of misunderstanding exists between the field of electronic journalism and members of the bar. The unfortunate decision by the California Judicial Council on November 26, 1965, is indicative of that gap ''

EDMONDE A. HADDAD
News Editor, KPOL, Los Angeles;
President, Radio and Television News Association of Southern California

Mr Haddad proposed a national conference of top newsmen and influential judges and attorneys to exchange views on ''free press—fair trial'' and to reconcile the divergent approaches of the bar and the broadcast press through compromise and agreement

''Broadcast newsmen simply cannot supinely submit to rulings which clearly abridge the constitutional guarantee of a free press,'' he said.

''First, we would like very much to initiate dialogue on this subject with members of the bar and bench Second, broadcasters would draft a code of behaviour and seek approval of it from other broadcasting and press organizations Third, we are prepared to investigate the possibility of pool coverage of news events where it appears that too much physical equipment would make for serious interference with the coverage of a given story. We will not surrender our freedom to publish or broadcast.''

FOR THE PRINT MEDIA, WIRE SERVICES AND PUBLISHERS ASSOCIATION

Newspapermen who testified before the committee seemed less concerned with the immediate effect of Rule 980 on television cameramen and their own still photographers than with the "dangerous trend" that rule could establish.

"We should not be discussing by what methods we can limit press access to information. Rather we should be seeking new means to destroy the trend toward secrecy in public function from the White House to the smallest police precinct," said John Jopes, editor of the Ontario *Daily Report*

Larry Sisk, managing editor of the San Diego *Tribune*, issued a similar warning "The invoking of these new rules would set the precedent and establish the right for other arbitrary curtailment of the public's access to its own institutions," Sisk said

And Robert Studer, managing editor of the Alhambra *Post-Advocate*, reminded committee members that continued infringement on the rights of the press could lead to a "return to the old-time 'rubber hose' kind of policework. It is the constant scrutiny of the press that prevents our courts from becoming star-chamber sessions where bad justice can be covered up by secrecy "

Lone dissenter among the newsmen was Joe Nevens, managing editor of the Monterey Park *Progress*. He supported Rule 980 and a strict regulation of press coverage of all crime news because, he said, the press has often deprived citizens of a fair trial

Nevens said the presence of cameras in the courtroom might prevent judges from maintaining proper decorum He also warned that television coverage of trials in brief excerpts could "catch the witness or counsel in an embarrassing situation just because it's eye appealing or newsworthy. It would not carry the impact of what is going on."

"Incompetency and dishonesty cherish a mania for secrecy. . . Discriminatory or preferential barring of photographer-reporters from the public's own courthouses, courtrooms and corridors—when there isn't a hint of 'clear and present danger' of interfering with the courts—not only is contrary to the Constitution of the United States and of the state of California and contrary to the intent of state laws but it conflicts with landmark decisions of the State Supreme Court. . . If reporters using cameras and recorders can be barred from performing their duties, the next action by the Judicial Council could be against reporters using pencils . The Legislature must take positive action to nullify this Judicial Council rule, and to clarify beyond all doubt that there is to be no interference with the inherent right of the public to be informed about its own business."

LARRY SISK
Managing Editor, the San Diego *Evening Tribune;* for the Copley Newspapers

Mr Sisk quoted information assembled by the Freedom of Information Center at the University of Missouri, showing that of the estimated 40,000 jury trials involving major crimes in the United States during 1963–64 and until March 1965, appeals were filed in only 101 cases on various grounds of possible community prejudice

Of the 101 cases, he said, there have been only five reversals by the U S Supreme Court, and no writ of relief was granted on the narrow argument that publicity by news media had made a fair trial impossible

Of the five reversals, he said, only two were on the grounds of presumed juror prejudice due to publication by the news media

"Without arguing whether the decisions by the courts in these cases were right or wrong," Mr Sisk commented, "they are mentioned specifically to show how *few* are the instances in which even presumed prejudice is upheld "

Mr Sisk contended that a judge is the master of his court and should have the right to cite for contempt in a specific case where there is interference with the court

> *"I, and most responsible editors everywhere, oppose any proposition to further limit the function of a free and responsible press That is why I oppose the action of the Judicial Council and why I call upon the Legislature of California to override its edict I warn this committee that proposals to handcuff news media and regulate the flow of information to the public will increase in years to come These proposals must be rejected, just as the Judicial Council's ruling must be reversed "*

JOHN JOPES
Editor, the Ontario *Daily Report;*
Chairman, Southern California
United Press Editors

Mr Jopes made the point that in view of the fact that crime is increasing six times faster than the population growth, the whole trend toward secrecy in public function should be reversed

"Every new attempt to tie the hands of journalism, such as the California Judicial Council's edict to ban the use of news cameras in courtrooms during recesses, puts new chinks in our constitutional right to freedom of the press," he said "It brings us closer to the Star Chamber If there ever was a time in history when newspaper should extend their interests in and coverage of major crime, it is now "

> *"We have always conceded the fact that the judge should control his courtroom And perhaps there are circumstances when a judge would, on mutual agreement with the news media, decide not to have a trial televised or photographed "*

BEN MARTIN
General Manager, California Newspaper Publishers Association

For the record, Mr Martin reiterated the association's opposition to Rule 980 He urged the Judicial Council to witness demonstrations by the news media of the modern techniques of covering a trial with photography and microphones

"The press and the bar share tremendous responsibility in keeping the people informed in a society where there is greater freedom than any other place on earth One of the greatest threats to this freedom is complacency Unless the bar, the Legislature, the judiciary and the press are alert, the liberties guaranteed by law will not remain fully protected Whenever there is a dictatorship established, the dictatorship first muzzles the press, then strips the judiciary and the governing bodies of their powers of administering justice by law"

DAVID N. SCHUTZ
Editor, the Redwood City *Tribune;* Secretary and Director, The Associated Press Managing Editors Association

Mr. Schutz said the newspaper profession feels that the allegation of "trial by newspaper" is so oft repeated that the legal profession tends to accept it as fact

"Stated simply," Mr Schutz explained, "it implies that innocent men are being railroaded to jail because of improper pretrial publicity Newspaper men do not believe this to be true. Lawyers have never been able to name even one case. . . .

"The first thing we ought to observe about freedom is that it is not absolute. It must be discharged with responsibility The right of a free press is not freedom of newspapers It is the right of a democratic society to full information The right of a fair trial is not the right to defeat a just punishment"

Mr. Schutz said his association took the position that the Judicial Council's action on Rule 980 "is a violation of the First Amendment"

"The problem of how freedom of the press can be maintained in the face of growing crescendo of attacks upon the basic American freedom is of vital concern to me and to my colleagues in the profession of journalism It is also of vital concern to the readers of my newspaper and those of every other newspaper And to the viewers of every television station And to the listeners of every radio station The problem is whether any pretext, no matter how well intentioned, can serve as the vehicle to deny our society its hard-won right to be freely and fully informed. Certainly the camera has become as basic and important a tool in the reporting of the news as are the pencil and the typewriter. Modern photographic technology has improved to the point where accusations that news photographers, of necessity, must interfere with the orderly conduct of a trial or with the dignity of the court, or that they constitute a threat to the right of the accused to a fair trial, are both unfair and uninformed"

ROBERT STUDER
Managing Editor, The Alhambra *Post-Advocate;* Chairman Southern California Associated Press News Executive Council

Mr. Studer conceded that there have been isolated instances of journalistic irresponsibility, but he contended the press generally is as concerned over the right of an individual to a fair trial as are the courts, the judges, the bar and the Legislature He cited six already existing safeguards for the right of the accused in the event such right is jeopardized.

"Rule 980 seems to me to be like using a bulldozer to weed the garden," he commented "Sure, it does a fine job of weeding, but it's pretty tough on the flowers."

"I think for the most part that newspapermen are responsible, at least as responsible to their profession as lawyers are to theirs . . . I am a working-type newspaperman I am aware of only one study of the number of times it has been contended that the newspapers have violated someone's right to a fair trial This was conducted by the Hoosier State Press Association for the 1963–64 period Of all the hundreds of thousands of criminal trials, from misdemeanors up to felonies, that were prosecuted in this country in that time, 60 contentions were made that someone's rights had been violated by improper news stories Sixty cases were carried to appellate courts on that contention, and of those 60, 11 reversals occurred . . . If these statistics are accurate, there hasn't been any wrong of great consequence . . . I have heard questions and statements about fair trial publicity. If a man is arrested by the police, that is a fact, it is not a contention someone is making. And it has to do with the ability of the police department to get its job done. The arrestee's guilt or innocence is not being argued. But he has been arrested. I think that fact should be reported. If the man is subsequently charged with a crime, that fact should be reported If the man is not charged with a crime and is released, certainly that fact should be reported "

ROBERT SCHMIDT
Court Reporter, Long Beach
Independent Press Telegram

Mr. Schmidt told the committee he is not in favor of Rule 980.

"I feel that it is high time that the press is made to account for its abuses It is a commercial entity, make no mistake about that The press should be brought to the bar of justice just like any other lawbreaker. The concept that the press is above the law should be voided."

JOE NEVENS
Managing Editor, The Monterey Park *Progress*

Mr. Nevens was the only newsman witness to take a stand in favor of Judicial Council Rule 980 on the banning of photographers and television cameras in courtrooms.

"It is not that I have an animosity against my colleagues in TV and radio," he explained, "it's just that I feel that the very nature of their physical equipment and reproduction qualities of their work suggest

the possibility that a witness or participants (in a trial) would quickly join the ranks of actors and so forth, and even the judges and counsels in question could have this feeling altered—they might not be able to continue the decorum the court demands in obtaining justice."

Mr. Nevens said he has attempted for many years—without success—to stimulate the national journalism society, Sigma Delta Chi, to lead the way in drafting a code which the press media would adhere to voluntarily in disputed cases of free press versus fair trial

He cited the Lucille Miller murder trial mistrial and the Billy Sol Estes case as instances in which the press media clearly violated the right of defendants to a fair trial

"The goal of the court is to obtain truth and justice, not to entertain the masses," Mr. Nevens commented in urging support for his proposed federal statute making it a crime to furnish or publish information not already properly filed with the court in a criminal litigation

FOR SIGMA DELTA CHI AND PHOTOGRAPHERS ASSOCIATIONS

Two spokesmen for press photographers associations and one spokesman for Sigma Delta Chi spent considerable time before the committee explaining the feasibility of using modern television and radio equipment in a courtroom without disrupting legal activities.

Charles Waite—speaking as an attorney, a radio newscaster and a member of the Sigma Delta Chi national board—said he has seen demonstrations in which "most of the participants were unaware of a broadcast. This can be done because in the State of California, virtually all courtrooms are equipped for electronics, microphones and public address systems."

Modern techniques and miniaturization equipment could be used effectively in these courtrooms, he said.

Fred Bauman and Nelson Tiffany, both press photographers, charged the Judicial Council with ignoring technical advances made in photography They said trials could be filmed with unobtrusive cameras and existing lighting.

Another "professional" appearing before the committee was Walter Wilcox, professor of journalism at UCLA. Wilcox spoke at great length about his attempts to convince university officials to open Academic Senate meetings to the press Like the newspapermen who testified before him, Wilcox voiced concern for the trend toward secrecy in the conduct of official business, and branded as "specious" contentions that press coverage of faculty meetings would be "superficial and sensationalistic" and would inhibit professors from making "far out and seemingly unrealistic remarks designed to stimulate discussion and not as their own positions."

> *"I think it would be a far stronger and clearer expression of government's preservation of the public's right to know, if nullification of Rule 980 were to be made by the State Legislature Since the Judicial Council's rulemaking powers are limited by the Constitution to those which are not in conflict with existing or future legislative enactments, it would seem to me no substantial legal problem exists in the way of such nullification by the Legislature, if the legislators, in their consideration of the problem, agree that this is a desirable end and, more importantly, a necessary act"*
>
> CHARLES WAITE
> Attorney, Chairman, Freedom Information Committee, Los Angeles Chapter, Sigma Delta Chi; Western States Director of Freedom of Information, SDC's National Board

As both an attorney and a radio newsman, Mr. Waite is uniquely conversant with the problems posed by Rule 980 for the courts and legal profession on the one hand and the various news media on the other.

Mr Waite cited the strong stand taken December 6, 1965, by the board of directors, Los Angeles Chapter, Sigma Delta Chi, the professional journalism society, protesting and opposing Rule 980

"The strength of the SDC feeling," he said, "is that the rule is a genuine step backward in the important area of the right of the people to know what their government is doing We feel the rule was passed with entirely inadequate showing of its supposed need"

"The Judicial Council was extremely prejudiced and entered the hearing (on Rule 980) with preconceived objections and preconceived decisions on the matter"

NELSON TIFFANY
President, California Press Photographers Association

Mr Tiffany complained that Rule 980 is "arbitrary" and was approved "without a fair hearing from the media"

He said the use of photographers during United Nations General Assembly session "demonstrates what might be done in courtrooms in the future in California" United Nations delegates have not objected to the presence of cameras, Mr Tiffany reported

"The California Press Photographers Association is on record as favoring a soundproof booth with perhaps a two-way mirror glass from which to photograph This would certainly do away with the argument . of distractions In many cases, even the judge would not know a picture was being taken," he said

Tiffany, CPPA president, cited the 10-year experience of Colorado courts in giving trial judges the discretion to admit the taking of photographs in the courtroom or the broadcasting by radio or television of court proceedings

"We feel the Colorado rule . should be adopted in this state," Mr Tiffany said "We do not understand this sudden emergency measure by the California Judicial Council to exclude us. The 17-to-1 vote demonstrates, I think, that the Judicial Council was extremely prejudiced and entered into the hearing with preconceived objections and preconceived decisions"

"You ban the cameras today, and tomorrow the world may find itself on the outside, banned by a similar rule . . What are our courts afraid of?"

FRED BAUMAN
West Coast Director, National Press Photographers Association

In adopting Rule 980, the State Judicial Council has failed to recognize the technological advances which permit unobtrusive camera and television coverage with miniaturized equipment, Mr. Bauman contended

"We cannot and must not impede progress," he explained. "The artist's sketchpad of the past has become the television camera and the news photo of today. Why penalize the news media industry for its technological advancement by a code of ethics established years ago in the era of flashpowder?"

VIEWS OF AN EDUCATOR

"Those of us who have studied the matter at UCLA and at other universities are becoming convinced that the dialogue concerning free press and fair trial has come full circle, and that further debate without empirical evidence is pointless Everything has been said that can be said. We are, therefore, undertaking behavioral science research in the hope that we can provide some new facts with which those concerned can illuminate this dialogue At present, we have a modest study underway to determine the initial reaction of a prospective juror when exposed to news of confession, previous criminal record, pretrial evidence and the various combinations thereof. This study, we feel, is a beginning only, but it may well set up guide lines with which we can follow the juror through the trial process."

PROFESSOR WALTER WILCOX
Chairman, Department of Journalism, UCLA

THE SAN DIEGO HEARING / "AN UNOBTRUSIVE DEMONSTRATION OF NEWS COVERAGE"

CITY COUNCIL CHAMBERS, JANUARY 31, 1966

"The great complaint has been that reporters with their cameras and lights are obtrusive and interfere with the normal conduct of a trial or hearing This need not be the case. In these chambers [the council chambers in the City of San Diego Administration Building] you have not seen a single light glaring in your faces or the faces of the witnesses There have been no cumbersome cables or wires, no bulky equipment, no reporters running around. In a word, we of the press have been unobtrusive And yet we have been here, covering every second of these proceedings . . The demonstration you have just seen [a video tape playback] is only one phase of the total coverage. Still photographs also were taken, and without glaring flashbulbs . . . There are other journalistic tools, and most of them have been operating here this morning. Seated at the press table, a radio reporter has recorded on audio tape the voices of all the participants Again, in the glassed-in booth at the back of the room, two sound-on-film cameras have been recording both pictures and sounds of this event, while at the press table another reporter has been taking silent film pictures of witnesses and committeemen. I trust this demonstration has proved what news media and broadcasters have contended—that court proceedings and committee hearings can be televised and broadcast without danger that justice, proper procedures and decorum will be jeopardized . . . We urgently request that a moratorium be declared to stay the execution of Rule 980."

GEORGE WHITNEY
Representative, San Diego County
Chapter, Sigma Delta Chi

SPOKESMEN FOR SIGMA DELTA CHI / NATIONAL AND REGIONAL

"I plead with this committee to encourage the process of evolution in the whole field of communication between the courts and the public. Urge upon your fellow legislators the repeal of Rule 980, and at least restore us to the position where controlled experimentation with newsroom photography, broadcasting and televising of criminal trials may be continued on a progressive and evolutionary basis It is essential, I believe, to good citizenship in the 20th Century"

RAYMOND SPANGLER
Publisher, the Redwood City *Tribune;* President, Sigma Delta Chi

Mr. Spangler quoted the preamble of California's Ralph M. Brown Act on the conduct of the public's business by public bodies, as follows:

"The people of this state do not yield their sovereignty to the agencies which serve them The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know The people insist on remaining informed so that they may retain control over the instruments they have created"

It is fundamental error, Mr Spangler held, to claim that, of the three great branches of public government—legislative, executive, judicial—the judicial is protected from public scrutiny . . . Under present-day technical conditions, the ordinary citizen cannot obtain his information for himself But he can or could at least be given a choice of alternative channels of information To allow broadcasting by radio or television grants alternative sources of information to the public, and this choice should not be further curtailed But it is curtailed by Rule 980.

Commenting on the majority opinion of the U S Supreme Court in the case of *Billie Sol Estes v. the State of Texas,* Mr. Spangler said:

"I venture that none of these Supreme Court justices has had any experience in a courtroom with a televised or broadcast trial. Lacking that experience, the majority opinion reflected a great deal of speculation. . . . The court apparently decided that the pen and pencil are the ultimate in communications and here, as in the Scopes trial in Tennessee, evolution must stop.

"The quotations of the majority indicate the court's confessed lack of knowledge on the critical point involved, to wit. the influence of television cameras and radio microphones on a jury, the witnesses and the court.

"In this connection the court said: 'Still, *one cannot put his finger* on its specific mischief and prove with particularity wherein he was prejudiced. . . . The conscious or unconscious effect that this may have on the juror's judgment *cannot be evaluated* . . . The impact upon a witness of the knowledge that he is being viewed by a vast audience

is *simply incalculable* . . . And even in the absence of sound, the influence of such viewing on the attitude of the witness toward testifying, his frame of mind upon taking the stand, or his apprehension of withering cross-examination *defy objective assessment.'*

"Obviously, the Supreme Court doesn't know the effect of televising upon the juror and the witness"

Asked by Chairman Willson to state Sigma Delta Chi's position on wanting individuals to receive a fair trial, Mr Spangler concluded

"We endeavor to raise the sights of newsmen everywhere. Since the Oswald and Ruby cases we have succeeded in having the major organizations involved in mass communications agree to a code which encourages pool coverage We are making progress in this direction"

> *"We have no punitive measures at all. It's agreements. It's a code of ethics that is being fostered by the various newspaper associations, by Sigma Delta Chi, by the people in the [news media] industry who get together after something like the Dallas affair and agree on measures and ways to cover these stories without having this thing occur again."*
>
> GUY RYAN
> Assistant Managing Editor, the San Diego *Evening Tribune;* Regional Director, Sigma Delta Chi

Despite some "skeletons in the closet" and some "deplorable instances of abuse," the vast majority of newsmen are honorable and high-principled, Mr. Ryan contended.

"Efforts to raise the standards of journalism were going forward a long time before the recent urging by the Warren Commission report on the assassination of President Kennedy," he testified "Self-regulation and constant emphasis on the fair and honest presentation of information will bring greater results and will be more lasting than any possible controls that could be contrived."

Mr. Ryan submitted a number of codes of ethics adopted by the Colorado Press Association, Southern Newspaper Publishers Association, American Newspaper Guild, National Association of Broadcasters, Radio and Television News Directors Association, American Society of Newspaper Editors, and the Richmond (Virginia) *News Leader.*

VIEWS OF ELECTED PUBLIC OFFICIALS

Two public officials, both responsive to the electorate, appeared at the San Diego hearing to offer testimony. The two men indicated they felt the obvious information and educational values to be derived from the broadcasting and photographing of court proceedings would far exceed any possible objections

Joseph O'Connor, the Sheriff of San Diego County and the sole witness from law enforcement, joined County Supervisor Frank Gibson in saying the inclusion or exclusion of photographic and recording equipment should be at the "sole discretion of the presiding judge."

"The judges are men of learning and wisdom," Sheriff O'Connor said. "They were elected by the people on this basis, and being in the courtroom, they can best see when the rights of an individual may be jeopardized by anyone, including news photographers."

Supervisor Gibson said the judges are "solid men trying to administer justice fairly and still carry out their responsibilities to the citizenry." The judges, he said, would "cooperate in every possible way with the news media," but would not endanger the rights of the defendants.

"If there was violent objection [to cameras] on the part of the attorneys and the litigants . . . I would say that decision [to exclude cameras] would have to be the decision of the judge." Supervisor Gibson said in response to a question from Assemblyman Johnson. "He would have the authority to request that there be no coverage."

> *"I think the conduct of any individual, when he knows he is being recorded, is bound to be on the better side rather than on the worse side."*
>
> JOSEPH C. O'CONNOR
> Sheriff, San Diego County

Sheriff O'Connor, a 24-year veteran in law enforcement work, was asked pointblank whether, in his opinion and experience, television in the courtroom would have any adverse effect on the conduct of witnesses or jurors. He replied in the negative.

He also testified he believes judges should be given the prerogative of determining whether news photographers and reporters with electronic equipment should be permitted in courtrooms.

"Judges are men of learning and wisdom," Sheriff O'Connor commented, "and were elected by the people on this basis. Since a judge is present at all times, he can best foresee when the rights of an individual may be jeopardized by the acts of anyone. I feel that the judge should have the final say."

> *"I know of no better means of communication than allowing a complete freedom of on-the-spot observations. We invite the newsmen as well as radio and television media to cover all of our meetings. I do feel strongly that the same courtesies should be extended in our courts, with the understanding that the judge of each court be vested with the authority to*

grant or refuse such coverage by the different media. This has been the practice in the past and, in my estimation, should be continued."

FRANK GIBSON
Member, San Diego County Board
of Supervisors

Mr. Gibson noted that there is television and radio coverage every week of the board of supervisors' meeting, "and it definitely is not a circus and never has obstructed the ascertainment of the truth."

"We find that the reaction from the public after the pictures are shown on television, the reaction of the people to statements that were made and the presentations that were made has always been certainly on a very constructive side," Supervisor Gibson said.

The supervisor said televising board meetings gives the public "A little better understanding, a little better idea of what actually is taking place. We are very much interested in inviting the [news media] people to our board rooms."

JUDGES RECOMMEND:

"RESTORE NEWS MEDIA JURISDICTION TO JUDICIARY" AND "THE COLORADO PLAN"

Perhaps the most provocative and most constructive witness at the committee hearings was almost 1,000 miles away when he testified His name is Otto Moore His importance is based on his position (Supreme Court Justice in Colorado) and his experience (Colorado has permitted television and broadcasting equipment in the courtroom for more than 10 years).

Justice Moore's testimony was presented by Clayton H Brace, vice president of Time-Life Broadcast Inc and general manager of KOGO radio and television stations in San Diego Brace, who spent most of his career in Colorado, brought the committee a partial transcript of a 1956 question and answer session in which Moore defended the use of TV, news cameras and radio in the courtroom Brace also presented a video tape, with sound, of Justice Moore's latest views—recorded the week before the hearings

The rule issued by Justice Moore warns that proceedings in court "should be conducted with fitting dignity and decorum" However, it provides for the presence of newspaper photographers and radio and television newsmen and equipment, in limited numbers, so long as their actions do not "detract from the dignity of the court, distract the witness in giving his testimony, degrade the court or otherwise materially interfere with a fair trial"

Further, Justice Moore stipulated in his special memorandum, "No witness or juror in attendance under subpoena or order of the court shall be photographed or have his testimony broadcast over his express objection"

What did Justice Moore tell the committee about the practical application of this rule? He said he personally was "very much surprised that it created . . . practically no distraction whatever."

The complete texts of Justice Moore's remarks immediately follow this summary and is itself followed by excerpts from the testimony of three other judges

One of these judges, Roberta Butzbach of the Los Cerritos Municipal Court, reported on the experimental use of video-tape recording equipment in her courtroom Like Justice Moore, she said she "detected no differences from the customary behavior" of the witnesses, jurors, litigants or attorneys

The highest ranking local judge to testify, Luther Hussy, President of the San Diego County Municipal Court Judges Association, said he was very impressed with the telecasting and broadcasting equipment demonstrated during the hearing itself

"It shows what can be done," he said "I think it would be unfortunate if we had an inflexible rule which would discourage the further development and refinement of this kind of equipment"

FULL TEXT OF JUSTICE MOORE'S VIDEO-TAPED STATEMENT, RECORDED JUST PRIOR TO THIS HEARING

"The rule of the Supreme Court of Colorado which permits closely supervised operation of cameras in the courtroom has been in effect for about 10 years The best photographers and operators of television cameras and radio men have never created any problem whatever insofar as the decorum of the court is concerned The cameras are always concealed They are silent Their output is accurate They create no false impressions.

"In all the 10 years in which they have been permitted to function, no complaint has ever been made to the Supreme Court of this state by any lawyer, defendant, witness or juror that the use of a camera or a microphone by the press media has in any manner whatever prevented a fair trial or in any way interfered with any person in performing his duty as lawyer, judge, witness or juror

"Under our rule, but one concealed television camera is permitted to function Any station desiring to use the output is entitled to use it under a pooling arrangement voluntarily entered into by the various stations To my knowledge, no more than two press photographers have ever been permitted to cover proceedings at the same time Their work is also subject to a pooling agreement and is made available to papers desiring to use any picture taken by a press photographer in the courtroom

"In order to guard against possible reversal of cases, following the decision of the Supreme Court of the United States in the Billy Sol Estes case, we amended our rule We now require that the consent of an accused person be shown of record before cameras are permitted to function in any criminal case In a civil action, the litigants must affirmatively show by statement in the record that they have objection to cameras in the courtroom

"Following this change in our rule, I know of no case in which a defendant has failed to consent to the use of cameras in his trial where a request was made by the news media to take pictures We are completely satisfied that our rule is a good one The lawyers who practice in the trial courts will agree that cameras properly regulated are in no way offensive, and do not in the least prevent a fair trial

"We believe our rule fully protects all participants in the trial of any case, and in permitting a regulated use of cameras in court we only give the same recognition to the cameramen which has been afforded the press reporter in our courtrooms since courts were first established in this country

"Actually, our experience has been that cameramen function with even less disturbance than do press reporters, and their handiwork is always free from distorted interpretations We intend to keep our rule and are completely satisfied that we are right in doing so"

"At least 90 percent of the trial judges in our state have permitted cameras in court under our procedures, and I don't know of one trial judge who has had an unpleasant experience in the connection with the use of cameras in the courtroom"

OTTO MOORE
Associate Justice, Colorado State Supreme Court

Text of the 1956 television interview with Justice Moore presented to the committee by Clayton Brace:

Question: "Justice Moore, as the referee in the hearing of the Supreme Court of Colorado and Canon 35, would you tell us your reactions to the demonstrations of courtroom photography and radio recording as presented to the court."

Answer: "Frankly, I was very much surprised that courtroom photography, radio and cameras could operate in the courtroom and create so little, practically no distraction whatever."

Question: "Now, just as the John Gilbert Graham trial provided the Denver area radio and television stations with their first opportunity to cover a trial following the modification of Canon 35, what was your reaction to that coverage?"

(NOTE: John Gilbert Graham was executed in Canon City, Colorado, January 11, 1957, for murder. He had put a time bomb in his mother's suitcase when she went on a trip. The bomb exploded, blowing the airplane she was riding out of the sky and killing 44 persons.)

Answer: "I thought the reaction to the coverage of that trial by radio, television, newsreel and photography was very exceptional. It seemed to me to be proved conclusive that the findings which I reached as a result of our hearings were amply justified."

Question: "The John Gilbert Graham trial was appealed to the high court. Was the fact that the case was televised and broadcast cited as a cause for error at the trial?"

Answer: "No assignment of error was based upon the claim that the right of the defendant was prejudiced in any way by photography, radio or television coverage."

Question: "Was such coverage mentioned at all in the appeal?"

Answer: "No."

Question: "May we ask you . . . do you see any educational value through the televising and broadcasting of trials?"

Answer: "Yes. I have always been of the belief that the procedures in courtrooms were, as generally understood by the public, not accurate at all. I think some very definite benefit is to be derived from an accurate, truthful presentation of what goes on in the courtrooms of America."

Question: "Finally, Justice Moore, do you think radio and television coverage of trials might conceivably serve as a deterrent to crime?"

Answer: "Well, I asked all the district judges of our state their conclusions in that behalf and received a number of answers from them. Many of them thought that it would have a definite effect upon deterring crime. Personally, I think that if one were about to commit some sort of offense, one [might] hesitate and pause if he were to understand and know that crime really doesn't pay and that the culprit is very, very, very often brought to justice. I think it has . . . would tend to have . . . over the years a very definite influence in this realm of deterring crime."

"Law is a living thing. It deals with real people in real situations, and no amount of platitudes spoken from a rostrum will make it live. I do not mean to imply that I would approve of any disruption of proceedings for the sake of public information I do say that knowledge of the process of justice is so important that ways must be devised to give society that knowledge. Without knowledge of why and how justice is administered, any slander is believed. The strength of the judiciary comes from the people's confidence in it."

JUDGE ROBERTA BUTZBACH
Los Cerritos Municipal Court,
Bellflower

At the request of Chairman Willson, Judge Butzbach permitted a television taping of an ordinary misdemeanor trial in her courtroom. It was conducted with two unhidden cameras and one hidden one, and the entire proceedings were thereafter reduced to video tape. The purpose was to determine the effect of the presence of the news media upon all participants. It was done with the consent of both sides. The jury panel was informed that any who objected to being televised could be excused None objected.

"The only extraordinary aspect was the presence of the news media," Judge Butzbach said in reporting on the results of the experiment "They were there in profusion—lights, cameras, microphones.

"We each had a duty to perform, and we proceeded to perform it Both counsel had appeared in my court many times I could detect no difference from their customary behavior The jurors had been on the panel for some time. I could detect no difference in their behavior, nor in that of witnesses. The universal comment was that once the trial began, the presence of the news media was simply forgotten

"All the dire predictions and suppositions as to the manner in which people would behave in such a situation simply did not happen There were no attempts to play *Hamlet* or to outdo Bob Hope

"If there was any effect at all, and I am not certain there was, it was in the direction of a slighter degree of restraint and dignity If this was the effect, it was not only contrary to prediction, it was salutary I hope the experiment conducted in my court will be helpful in your evaluation "

Judge Butzbach concluded her testimony with a statement that on what she has seen as a judge over a period of 19 years, she "probably would not" have voted for Rule 980

"I strongly feel that this trend to take away the discretion from the trial judge is detrimental to our judicial process. However, I also feel that a courtroom is a temple of justice, and if there by any factor within that temple that would detract from justice, then I would be the first to refuse to tolerate such invasion "

GEORGE CRAWFORD
Judge, Municipal Court, San Diego

Though Judge Crawford defended the presence of cameras in the courtroom, he strongly advocated their prohibition in cases involving

sexual perversion, because of the effects it could have on children In response to the question from Assemblyman Wilson, "Do you feel that ignorance is better than knowledge in these cases?" Judge Crawford said "This is not the education I would want my children to receive I do not feel I have to bring such filthy, disgusting events in I can warn my children not to have contact with strangers I can tell them that certain things happen without bringing out the sordid details"

Assemblyman Johnson asked Judge Crawford if he thought television cameras might prove as distracting today as they would have several years ago. "Do you think people are a little more sophisticated nowadays and pay less attention to a camera?" he asked

The judge said he agreed—"if the camera were unobtrusive In that way, it would not have any more detracting effect than a shorthand court reporter. He has become a fixture in the courtroom"

In response to questioning by Assemblyman Foran, Judge Crawford said the right to a public trial is a right of the litigant, not the public He said he would not permit the televising of a trial over the objection of a defendant

"I think it is good that the Judicial Council adopted Rule 980 I believe the rule was needed to bring this issue into sharp focus I think also it is equally good that you, Mr Chairman, had the courage of your conviction to take some formal action when you concluded the rule was premature Otherwise we would not be here today and we would not have the opportunity we have had to see all this unobtrusive equipment and these unobtrusive procedures It shows what can be done I think it would be unfortunate if we had an inflexible rule which would discourage the further development and refinement of this kind of equipment"

LUTHER HUSSY
President, San Diego County Municipal Court Judges Association

After witnessing the demonstration of equipment, Judge Hussy said he was "thoroughly satisfied" that every courtroom should have a fixed-focus camera that would record all sounds, motions and colors on tape as a permanent record of the proceedings.

"It would be a shame for us not to take advantage of it," he concluded

SPOKESMEN FOR THE BROADCAST INDUSTRY

Two prominent executives in the mass media brought their views before the committee in San Diego. They were Paul Comstock, vice president of the National Association of Broadcasters, and Clayton Brace, vice president of Time-Life Broadcasting Company, San Diego

Mr Comstock charged that Rule 980 violates the First, Sixth and Fourteenth Amendments to the United States Constitution, and accused the Judicial Council of ignoring a lesson "our forefathers learned from bitter experience—that the greatest ensurance of a fair trial [is] a public trial.

"The courts are a branch of the government, and in a democracy such as ours, government is altogether in the province of the people," he said "While a defendant or civil litigant has important rights in the sanctity of the judicial process, the public has inherent rights in the administration of justice"

Mr Brace joined Mr Comstock in defending "the right of the public to know what goes on in a courtroom" as an "important right" Also, like Mr. Comstock and like the representatives of the electronic media who testified in Los Angeles, Mr. Brace said there was "no demonstrated need for Rule 980," and called for the Judicial Council to "make a real effort to find out whether cameras in the courts . are, in fact, detrimental to anybody's rights."

The results of such a study, he predicted, would show the use of photographic and recording equipment to be "beneficial rather than harmful in the courtroom proceedings of this state."

> *"If we were convinced that radio, television and newspaper photographic coverage of courtroom proceedings would inevitably bring distractions precluding calm judicial consideration of cases, we would not be seeking access to the courts. But we are not convinced that such would be the case On the contrary, we believe that as responsible broadcasters we can work out procedures for courtroom coverage which would be mutually acceptable to those on trial, to the bar, to the bench and to ourselves"*
>
> CLAYTON H. BRACE
> Vice President, Time-Life Broadcast, Inc.; General Manager, KOGO Radio and TV Stations, San Diego

Mr Brace testified he is convinced that no real effort thus far has been made to balance the right to a fair trial with the public right to know.

"We think that when all the facts are in, they will show that cameras and electronic equipment can be used effectively and responsibly in the courts of this state," he said "We believe that the committee's study will show that our equipment can be used in courts not only during the time the judge is off the bench but also during the time the court is actually in operation"

"After all, these [recording and televising equipment] are modern devices. Probably in 20 or 30 years this whole subject [free press—fair trial] will be considered ridiculous for having to fight it . . I think we have appealed and are appealing to them [the bar] with facts of logic With younger men, students coming out of school, we have made a great deal of headway. On the other hand, with fellows our age, it takes a very open-minded man to get him to change."

PAUL COMSTOCK
Vice President, Governmental Affairs, National Association of Broadcasters

The National Association of Broadcasters (NAB) has headquarters in Washington, D.C., and is composed of 400 television stations, 2,600 radio stations, and all the national television and radio networks

Mr. Comstock testified that NAB does not impugn the motives of the Judicial Council in adopting Rule 980, and agrees with the council's concern to preserve the dignity and decorum of the courts.

"But we certainly do not agree with the methods chosen to attain these objectives," Mr. Comstock continued "We do not agree to a total blackout of vital media of information."

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WALTER W. POWERS
CHAIRMAN

COMMITTEE ADDRESS
ROOM 5122
STATE CAPITOL
TEL. 445-4484

ROSE CYPERT
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CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON MILITARY AND VETERANS AFFAIRS

January 3, 1967

HON JESSE M UNRUH
Speaker of the Assembly, and
MEMBERS OF THE ASSEMBLY
Assembly Chamber, State Capitol
Sacramento, California

Gentlemen

Pursuant to House Resolution No 710 of the 1965 Regular Legislative Session, the Assembly Interim Committee on Military and Veterans Affairs submits its final report covering its functions and activities during the 1965–67 interim

Respectfully submitted,

Walter W. Powers

WALTER W POWERS, *Chairman*
NEWTON R RUSSELL, *Vice Chairman*

ROBERT E BADHAM
JOHN L BURTON
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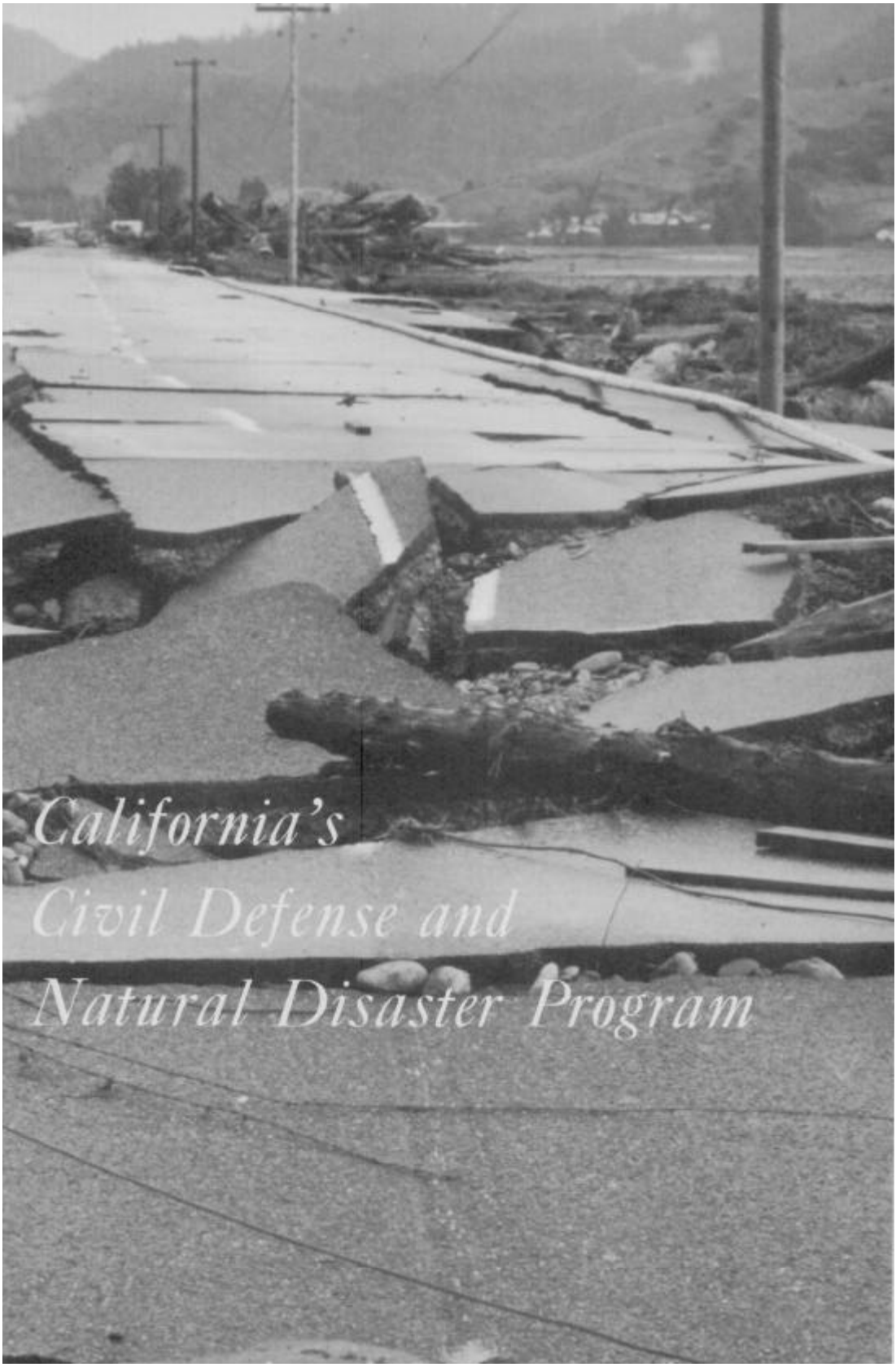

California's
Civil Defense and
Natural Disaster Program



A. INTRODUCTION

1. Preface

California's disaster organization is a complex network of local, state, and federal agencies. Some are constituted solely for civil defense and disaster purposes. Others have civil defense and natural disaster responsibilities assigned to them as an extension of their normal responsibilities. The California Disaster Office is designed as the organizational focus and coordinating agency for the entire network in California.

The problem areas examined in this study are representative of the continuing concern which has accounted for a variety of legislative, administrative and procedural changes in California's disaster organization during the past 5 to 10 years. Indicative of this concern is the fact that the California Disaster Office has undergone three major reorganizations within the past five years.

The first problem area concerns lines of authority during the state's response to a disaster. Is it clear who has the authority to do whatever needs to be done in a disaster situation? Is the authority being exercised according to its formal allocation, or does the exercise of authority tend to follow other lines? Is legal authority sufficiently clear? Is the state disaster program organizationally clear? Is the administrative procedure sufficiently clear?

The second problem area concerns duplication of responsibility and effort in disaster response programs. Does duplication of effort exist in California's disaster program? How does the California Disaster Office's coordinat-



ing function and responsibilities correlate with the disaster responsibilities and functions of other state agencies?

To obtain answers to those questions, the state's response to three disasters was reviewed. Those three disasters were the 1964 Crescent City Tidal Wave Disaster, the 1964–65 Humboldt County Floods, and the 1965 Watts Riot.

The main focus of this study was on what state agencies actually *did* rather than on what they were *supposed to do* under the State Disaster Plan.

Disaster communications systems in California, news media reporting of natural disasters, and the emergency broadcast system were also reviewed. Also included was a general discussion of related subjects by California state and local officials.

Some attention was also given to federal civil defense and natural disaster responsibilities and programs in California, as well as to related programs in other states.

While the approach of this study was essentially factfinding, it has resulted in legislative recommendations for the improvement of the state's disaster program.

The committee held public hearings on this subject area on January 12, 1966, at the State Building in Los Angeles, and on October 5, 1966, at the Los Angeles board of supervisors chambers. Numerous field trips and individual interviews were also conducted by the committee staff.

B. FINDINGS

Summary of Findings

The state agencies with facilities and staff in the area of Crescent City when the tidal wave devastated that city responded to the disaster in a most prompt and commendable manner. Local government agencies and personnel of state agencies located in the disaster area demonstrated a high degree of cooperation. However, the committee finds a lack of a central coordinating agency for all state departments involved in that disaster re-



sponse. Such a coordinating force might have resulted in a more efficient use of the resources and management of state government.

Again, during the Humboldt County floods of 1964–65, state agencies responded promptly and courageously. Many lives were saved and needed relief provided for distressed areas However, the committee finds that no one was in overall command of state agencies with the clear responsibility to coordinate the disaster response efforts of state government

The committee finds that the state's response to the Watts Riot was essentially a law enforcement problem The coordination of state assistance to local police authority was accomplished by staff personnel of the two principal state agencies involved the California Highway Patrol and the State Military Department, along with the Los Angeles Police Department The postriot activities of state government in providing relief and rehabilitation services was prompt

Responsibility

FINDING No 1

Primary responsibility for state disaster plans rests with the chief elected state official, the Governor The people look to the Governor for leadership in mobilizing state resources for protection in the event of natural disasters such as fires, floods, or civil disturbances The Governor, in turn, has delegated some civil defense and disaster responsibilities to the Public Safety Agency, the California Disaster Office, and members of his personal staff Many other state agencies also have disaster responsibilities under the California State Disaster Plan.

The Public Safety Agency is currently headed by the Commissioner of the California Highway Patrol The California Highway Patrol is part of the Transportation Agency The California Highway Patrol Commissioner, therefore, plays two different roles He is a department head in one agency and head of a different agency As Public Safety Agency Administrator, he is a member of the Governor's Cabinet As California Highway Patrol Commissioner, he is not a Cabinet member As Public Safety Agency Administrator, he is responsible for the coordination of the California Disaster Office, the State Military Department, the State Fire Marshal, and the Department of Veterans Affairs However, under the California Disaster Plan, the California Disaster Office is responsible for the coordination of *all* units of government having civil defense and disaster responsibilities The Director of the California Disaster Office is not a Cabinet member The committee finds that the presence of the Public Safety Agency Administrator, and the Governor's personal staff, between the California Disaster Office and the Governor has downgraded the responsibility of the California Disaster Office in disaster operations Consequently, there is a need to clarify the state disaster organization to take full advantage of all the management and operating capabilities which exist in the executive branch of state government

Organization

FINDING No 2

The primary mission of the California Disaster Office is to coordinate state disaster operations How well this mission is accomplished depends on which agencies are to be coordinated, whether they need coordination by another agency, and whether such coordination should be a single or continuing action

Disaster response may be examined by reviewing at least five phases of state action planning, warning, control and rescue, relief and rehabilitation By examining each phase, the committee made a series of findings

A. *Planning* The planning division of the California Disaster Office has been instrumental in designing the State Civil Defense and Disaster Plan and the Mutual Aid Agreements The committee finds that once the Disaster Plan has been developed, presented to the Governor and adopted as part of the Chief Executive's administrative program, then there is no need to continue the planning function on a day-to-day perpetual basis Further, the committee finds that the eight full-time planners on the staff of the State Military Department have been instrumental in planning for military support of local government in civil disturbances or natural disaster The State Military Department establishes direct liaison with local government The Department of Agriculture, the Department of California Highway Patrol, and the Department of Social Welfare have also created full-time civil defense staff positions which can also be used for disaster planning and coordination purposes

The committee also finds that during the Humboldt County floods of 1964–65, the coordination of state disaster response activities was accomplished by the joint efforts of local civil defense officials, the California Highway Patrol, the Division of Forestry, the Department of Fish and Game, the State Military Department, the Department of Social Welfare, the Department of General Services, and the California Disaster Office Collectively these agencies coordinated the channeling of supplies, equipment and manpower for the disaster area

The committee also finds that a two-year period of planning occurred directly between the Los Angeles Police Department and the State Military Department in anticipation of the need for the National Guard to assist local law enforcement officials The committee finds further that a year before the Watts Riots, the Department of Social Welfare alerted state officials that there was a high potential for civil disturbances, such as riots, in several areas of the state This subject had been introduced for discussion to the California Disaster Office However, the committee finds that there had not been any definitive statement of responsibilities or policy to guide state or local government within the general framework of the California Disaster Plan in the event of a civil disturbance Therefore, the committee finds a need for leadership, direction and guidance which can only emanate from a central authority The committee finds further

that although some degree of confusion may be expected during any disaster, there is a need for a more clearly defined planning and coordinating agency for all state and local disaster activities

B *Warning* The technical operations division of the California Disaster Office is primarily involved with this phase The committee finds that this division duplicates the disaster warning systems of the Department of Water Resources, the Department of Conservation, the Division of Forestry, the U S Weather Bureau, and the California Highway Patrol The committee finds that during the flood of 1964–65, the California Highway Patrol, the Division of Forestry, the Department of Water Resources, and the California Disaster Office coordinated the communications systems during the disaster The chief coordinating role was performed by the Division of Forestry The Department of Water Resources effectively operated the Flood Operations Center and established liaison with all other concerned state agencies The committee, therefore, finds a need to develop a single statewide communications network of maximum flexibility for disaster warning and disaster relief or rescue operations

C *Control and Rescue* This activity centers on the Law Enforcement, Fire and Rescue, and the Medical and Health Divisions of the California Disaster Office The committee finds the operational responsibilities for control and rescue also lodged in other state agencies the Justice Department, the Office of the Fire Marshal and the Division of Forestry, and the Department of Public Health Also, the planning staff of the State Military Department duplicates the function of the Law Enforcement Division of the California Disaster Office Further, at the sheriff's request, the Law Enforcement Division furnished approximately 77 law enforcement officials recruited from the San Francisco Bay area to Humboldt County law enforcement officers during the flood The committee finds that the assistance of outside law officers was not needed by the California Highway Patrol, that the Department of Employment was able to recruit guards from the local area as needed, and that the Department of Fish and Game made personnel available to assist police officers when needed Further, because of inclement weather the extra law enforcement officers could not be dispersed so the local sheriff found himself with more help than he needed.

The committee also finds that contrary to the California Disaster Plan, the Department of Justice does not function as the chief law enforcement coordinator during a disaster Therefore, the committee finds a need for better coordination of control and rescue programs during a disaster

D *Relief* The committee finds that several state agencies have operational responsibilities for disaster relief Coordination of such relief has long been a major responsibility of the American Red Cross The Department of Social Welfare and the Department of Public Health in particular have provided valuable emergency relief services for disaster areas The Department of Agriculture and the State Military Department accomplished

the airlift of hay and feed for stranded cattle in the Humboldt County flood disaster area. The Department of Social Welfare and the Department of General Services accomplished the provision of temporary housing and trailers to residents of the disaster area. Several state agencies cooperated in providing relief to the residents of the Watts Riot area under the direction of the Governor's assistant for human rights.

E. *Rehabilitation:* The Support Operations Division of the California Disaster Office is primarily involved with this activity. This division administers all federal assistance programs, including moneys for disaster relief available under the Federal Disaster Act of 1950, as amended. The California Disaster Office also coordinates the assessment of damages resulting from a disaster. The committee finds that the Department of Finance and the Department of General Services also have the capability to process applications for state and federal disaster relief funds and to assess damages. The coordination of assessment of damages, the need for repairs, and providing assistance in the processing of applications for federal and state assistance to repair-damaged areas as a result of the Humboldt County floods was accomplished by the Department of Water Re-



sources, the Department of Public Works, the Department of Finance and the Department of General Services.

The State Disaster Council is generally overlooked by state agencies during a disaster. The State Disaster Council meets about once a year and its advisory committees have not reported on their activities in over four years. Therefore, the committee finds a need to realistically examine the role of the State Disaster Council in state disaster response activities.

The committee finds that contrary to the assigned mission of the California Disaster Office, it does not function as the immediate staff and coordinating agency of the Governor in carrying out the state's responsibility under the California Disaster Act. Rather, the California Disaster Office is primarily engaged in operational activities pertaining to disaster preparedness, emergency systems development and mutual aid, and disaster relief. Some of those operational functions unnecessarily duplicate the day-to-day operations of other state agencies. Therefore, the committee finds a need to clarify the state organizational program of operation to avoid unnecessary duplication of function by state agencies in disaster response activities.



Authority

FINDING No 3

There are three kinds of disaster proclamations "local emergency," which is proclaimed by local government, "state of disaster," which excludes enemy attack, and "state of extreme emergency," which includes enemy attack

The authority of proclaiming a state of disaster belongs ultimately to the Governor Federal relief funds become available only on the basis of a gubernatorial proclamation Since the first proclamation on November 21, 1950, there have been over 50 proclamations dealing with natural disasters, with the exception of the Watts Riot Proclamation, which dealt with a civil disturbance

If the Governor is unavailable, the authority to proclaim a State of Disaster follows the constitutional provision for continuity of government (Article V, Section 16) However, the minutes of the California Disaster Council of December 4, 1961 state that, in the event of an enemy attack, the Public Safety Agency Administrator assumes the responsibility of acting for the Governor Further, authority to proclaim a State of Disaster is vested in the Department of Water Resources and the Department of Public Works without reference to the Governor, the California Disaster Office or the State Disaster Council

A closer examination of the lines of authority during the Watts Riot illustrates a lack of clarity The Law Enforcement Mutual Aid Plan assigns coordinating responsibilities to the Law Enforcement Division of the California Disaster Office during a "state of disaster" This responsibility is assigned to the Attorney General during a "state of extreme emergency" The Watts Riot was declared both a "state of disaster" and a "state of extreme emergency" on the same day, August 14, 1965

The coordination work during the Watts Riot was effectively accomplished by direct liaison among the Los Angeles Police Department, the California Highway Patrol, and the State Military Department Further, it appears that the role of the Attorney General's Office consisted chiefly of compiling statistical information for the McCone Commission after the riot

The request by the Governor's executive clemency and extradition secretary to be kept informed of all developments during the riot placed another party, not in the disaster plan, in the chain of command in addition to the Public Safety Agency Administrator and the California Disaster Office.

The executive secretary to the Governor was assigned the coordinating responsibility of providing the services of the Department of Employment to the disaster area The assignment of this role to the executive secretary

to the Governor diminished the authority of the California Disaster Office as the Governor's coordinating agency in disaster relief operations The Governor also assigned the responsibility of coordinating the distribution of food and drugs to residents of the disaster area to his assistant for human rights, bypassing the California Disaster Office as the Governor's coordinating agency.

Therefore, the committee finds that the lines of authority from the Governor's office to the state operating units during a disaster are confusing and in need of clarification.

Riot Prevention

FINDING No. 4

The committee finds a need to review the California Disaster Plan to include all state agencies which may have a significant contribution to make to state disaster response plans.

Perhaps the Division of Fair Employment Practices, the Division of Apprenticeship Standards, the Division of Labor Law Enforcement, and the Division of Industrial Welfare, all located in the Department of Industrial Relations, should be included in the formal State Disaster Plan The committee finds that the Division of Fair Employment Practices is one statewide agency with the kind of personnel and working knowledge of intergroup relations which can be of great value in helping to solve problems that precipitate riots in our cities.

News Media

FINDING No 5

The committee finds that the *Suggestions for the Reporting of Civil Disturbances* voluntarily adopted by the Radio and Television News Association of Southern California are commendable and a responsible step in the right direction. While the committee does not find a need for legislation concerning news media reporting of civil disturbances, it does encourage all news media to become familiar with the suggested Code of Ethics voluntarily written and adopted by some of the news media.

American Red Cross and Salvation Army

FINDING No. 6

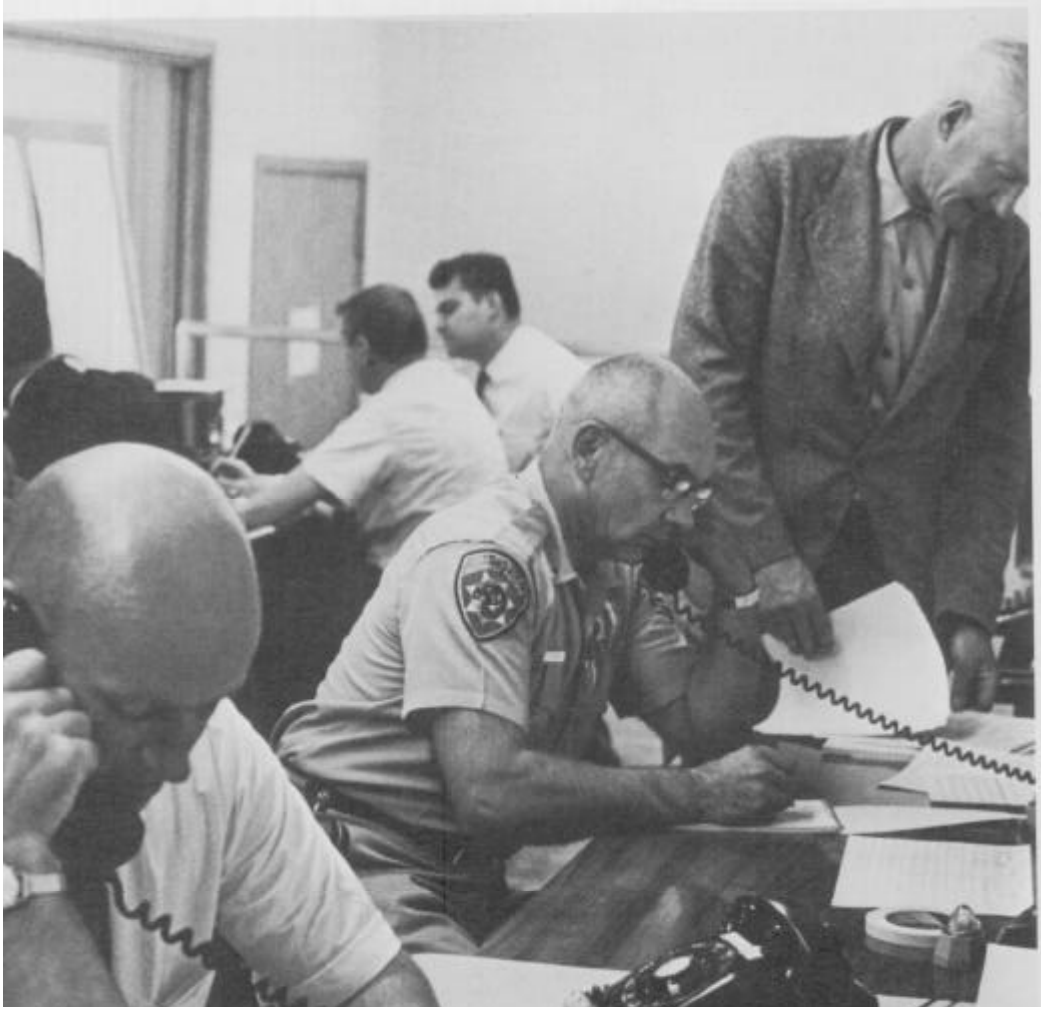
The American Red Cross and the Salvation Army are to be complimented for their swift and effective action in meeting the needs of persons who suffer as a result of a disaster. Both organizations have provided invaluable assistance to residents of disaster areas and have performed liaison and coordinating activities to assist local and state government agencies in disaster response activities.

Military Defense

FINDING No. 7

Disaster response plans may be divided into two basic programs: natural disasters and military disasters. Obviously, a nuclear attack on California would be widespread and cover the major cities, military installations, defense factories, and harbors in the state. Population centers at opposite ends of the state would probably be simultaneously attacked by the enemy. A natural disaster or civil disturbance on the other hand is more localized. A small geographical area is involved in a flood, fire, or riot.

The response to a natural disaster and a military disaster would not be the same. Therefore, the committee finds that military defense of the continental United States, including California, is primarily a federal responsibility necessitating the employment of federal military forces. The response to a natural disaster is primarily a state responsibility calling for the use of state resources.



C. RECOMMENDATIONS

Recommendation No. 1

REORGANIZATION

The committee recommends reorganization of the California Disaster Office along the following lines

The Director of the California Disaster Office should be physically located in the Governor's office so that it is obvious to all that the Director of the California Disaster Office speaks for the Governor in all matters pertaining to the state's disaster response

Further, the California Disaster Office staff should be reduced to a total of not more than 30, including a director, a deputy director, six regional coordinators, six field representatives, clerks and secretaries

The reorganization would consist of eliminating the Support Operations Division, the Medical and Health Division, the Technical Operations Division, the Fire and Rescue Division, and Law Enforcement Division of the California Disaster Office and making a drastic reduction in the management, planning and programming services of the Disaster Office This proposal also envisions a continuation of all the special civil defense contracts between the state and federal government

Much of the personnel currently employed by the California Disaster Office should be transferred to other departments of state government which perform similar day-to-day functions

For example, transfer of personnel and equipment could be made from the Support Operations Division to the Department of General Services, Office of Local Assistance, from the Fire and Rescue Division to the State Fire Marshal and the Division of Forestry, from the Law Enforcement Division to the Justice Department The planning functions should be performed by the California Disaster Office's reduced staff including consultation with civil defense planning officers of other state agencies

The reorganization should also include abolishing the State Disaster Council but retaining its advisory committees to advise the Governor through the California Disaster Office Such citizens' advisory committees may be created by the Governor at any time The Governor's Cabinet, composed of the Governor's closest advisors and chief agency administrators, should be constituted as a *Disaster Control Board* during a disaster The Governor should serve as the chairman of the Disaster Control Board, and the Director of the California Disaster Office should serve as Chief Coordinator for the Governor during a disaster and at meetings of the Disaster Control Board The executive secretary to the Governor, or someone in similar status should be designated as Director of the California Disaster Office

The California Disaster Office should be responsible for maintaining the State Disaster Plan on a current basis with as many regional and local disaster plans as may be adopted The planning should insure that all units

of government having operational responsibilities are able to respond effectively during a disaster In addition, the California Disaster Office should be responsible for the coordination of the deployment of state resources during a disaster

This reorganization plan would vest the California Disaster Office with clear authority during a disaster The California Disaster Office would consist of well-informed generalists rather than technicians that duplicate work of other departments The reorganization plan also provides for the minimum civil defense federal requirements for the establishment of a state disaster agency while allowing the state to devote greater attention to the development of a more effective response to natural disasters

This reorganization would make the California Disaster Office the immediate staff and coordinating agency of the Governor in carrying out the state's responsibility in disaster response It would eliminate unnecessary duplication of function between operational divisions of the Disaster Office and the day-to-day functions of other division of state government It would also provide for more efficient and more rapid mobilization of state resources because authority would emanate from one central location in the Governor's office It would make clear the lines of authority between the state operating units and the Governor through the California Disaster Office

Recommendation No. 2

MILITARY SUPPORT

The Committee recommends that the State Military Department designate certain specific units of the National Guard as "standby" units for each month of the year, so that at least 200 guardsmen could be assembled anytime within *one hour*

Some infantry units could be placed on standby status for the month of January Different units could be so designated for February, and so on

A standby designation would mean that those men would be required to be ready to report in full uniform to the armory within one hour anytime during the month, perhaps even requiring them to keep their uniforms in their cars while at work Unit commanders should have a system to contact their men in ample time to assemble them in one hour

The armory headquarters of the standby units should be stocked for that month with sufficient weapons, ammunition, trucks, tear gas, radios, so that the guardsmen can assist in combating natural disasters as close to the hour as possible

This plan would cost nothing extra It would merely make use of existing facilities and resources However, it would mean an inconvenience to the standby guardsmen to the extent that they would carry their uniforms with them at all times, and they might have to clear any out-of-town trips with the unit commander

The important idea is that the National Guard should be available to assist local government agencies within the *maximum time of one hour.*

The main body of the National Guard can then be assembled and available in about four hours However, those first four hours, when the natural disaster seems to be out of local control, could be very crucial

Recommendation No. 3

TRAFFIC AND CROWD CONTROL

The committee recommends that Section 2812 of the Vehicle Code and Section 409 5 of the Penal Code be amended so that traffic on highways outside a disaster area may be closed or restricted by the California Highway Patrol if such action is essential to the movement of equipment into and out of the disaster area The use of ropes, signs, markers or guards other than police officers to indicate a closure should also be permitted.

The committee also recommends that Section 2409 of the Vehicle Code be amended to give the California Highway Patrol powers of a peace officer in case of riot, civil disorder, flood, or any disaster The California Highway Patrol is now limited to operating on highways

Recommendation No. 4

DISASTER TRAINING

The committee recommends that the state departments with disaster responsibilities should be called together at least annually to evaluate their progress and programs against an overall objective which had been set for that particular year It would be of great assistance in determining where each agency stood and in establishing priorities for future action

The committee also recommends that consideration be given to the assignment of training responsibilities to one agency of state government which would serve all state staff with similar educational and training needs in civil defense and natural disaster relief The problem is that in order to be effective, staff of each department must have knowledge and specialized skills to fulfill emergency assignments Until recently some of these training needs could be met at the Office of Civil Defense, Western Training Center, Alameda With the closing of the center on October 1, 1965, most of state departments face the necessity of developing their own training programs

Recommendation No. 5

PREVENTION OF CIVIL DISTURBANCE

The committee recommends that the California Disaster Office review the State Disaster Plan to insure that all state agencies with disaster related functions are included

The committee further recommends that more emphasis be placed on the planning and warning phases of disaster response, particularly in expanding state programs and warning systems concerning civil disturbances

The Department of Justice and the Bureau of Intergroup Relations of the State Department of Education should be encouraged to detect and solve problems that might precipitate a civil disturbance.

The committee also recommends that the Department of Justice encourage local law enforcement agencies to establish community relations committees to develop better police-community relations.

Recommendation No. 6

COMMUNICATIONS

The committee recommends that state radio communications systems be reexamined for the purpose of unifying all communications systems under one agency responsible for maintaining all systems. The logical agency appears to be the Communications Services Section of the Department of General Services or the state's Emergency Operating Center.

Recommendation No. 7

EMPLOYEES

The committee recommends that the present employees of the California Disaster Office who are transferred to other state agencies as a result of reorganization be permitted to assume all civil service benefits retroactive to the date of their employment by the Disaster Office upon the completion of their transfer.

Recommendation No. 8

PROPOSED LEGISLATION

The committee recommends that legislation be introduced at the 1967 General Session of the State Legislature implementing the recommendations contained in this report.



D. SCOPE

Public Safety Agency

The Public Safety Agency was established on October 1, 1961 by executive order of the Governor It is one of eight agencies created by statute or executive order to promote more effective and economical state government

The agency is composed of the California Disaster Office, the Military Department, the State Fire Marshal, Department of Veterans Affairs, and the United Spanish War Veterans Commission

The agency administrator acts under the authority of the Governor and is responsible to the Governor for the efficient operation and the effective organization of the departments which comprise the agency. He supervises the development of broad departmental policy and long-range programs and insures that these policies and programs are administered effectively at departmental level The administrator reviews the legislative, budgetary, and other administrative programs of the departments in the agency and makes appropriate recommendations to the Governor He also represents the component departments of the agency in the Governor's Cabinet.[1]

It is difficult to see the relatedness between the California Disaster Office and the Department of Veterans Affairs which are both in the Public Safety Agency

It is no criticism of the incumbents to suggest that it does not appear physically possible for a person to function as an agency adminstrator and at the same time serve as a department head with direct responsibility for the day-to-day line operations of one of the departments within the agency In the present Public Safety Agency this concept would be even more difficult to apply because the incumbent agency administrator has a direct responsibility for the day-to-day line operations of a department *outside* the agency

As originally conceived, this agency was to be comprised of the California Highway Patrol, the Department of Motor Vehicles, the Military Department, the California Disaster Office, as well as certain law enforcement functions including the Department of Justice However, the first two of these were assigned by statute to the Highway Transportation Agency, and the final draft of the Governor's committee report, as well as subsequent staff recommendations, left the Department of Justice undisturbed A Governor's committee proposed that the Fire Marshal be affiliated with the Architectural and Building Standards Services and that the Depart-

ment of Veterans Affairs be grouped for administrative purposes with related services of the Health and Welfare Agency. Consideration should be given to the realignment of the remaining departments comprising this agency for there appears little practical likelihood of a logical grouping of these functions into a true public safety agency.[2]

A proposal to establish a Department of Public Safety by combining the California Disaster Office and the Military Department under a civilian director who would be the State Director of Civil Defense in emergency planning was made during the 1965 session of the Legislature (SB 1261). The proposal was prompted by three major considerations: (1) a need to improve the degree of coordination between the two departments in disaster planning and recovery operations, (2) the desirability of placing the employees of the California Disaster Office under the state civil service system and (3) the nominal savings which would accrue as a result of the proposed organization.[3]

The proposal was referred to interim study and subsequently killed for several reasons. One of these is that the changes proposed related only to an attempt to improve cooperation between the California Disaster Office and the Military Department and ignored those agencies having a primary responsibility for disaster operations during a disaster, such as the California Highway Patrol, the Division of Highways, the Department of Water Resources, the Department of Health, and others. In other words, this bill just did not go far enough.

It is significant that the bill was not referred to the State Disaster Council. This council, which includes representatives of state, county and city governments, is specifically empowered by law to "recommend to the Governor the assignment of any service or activity relative to disaster or disaster planning to a state department having duties related to such service or duty."[4]

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[1] Public Safety Agency, *California Blue Book*, 1963, p. 370.

[2] See *Findings and Recommendations Concerning Reorganization of Executive Branch of California's State Government*, Commission on California State Government Organization and Economy, December 31, 1962.

[3] See Legislative Fact Sheet, *A Proposal to Establish a Department of Public Safety in California State Government*, distributed by supporters of SB 1261, 1965 General Session.

[4] *Military and Veterans Code*, Section 1513.

CALIFORNIA STATE DISASTER COUNCIL

The California State Disaster Council consists of representatives of local and state government, the American Red Cross, Speaker of the Assembly, and President pro Tem of the Senate [5]

Members of the Disaster Council are reimbursed for their actual and necessary expenses incurred in connection with their duties or in lieu thereof they receive mileage and $10 per day of actual service [6]

The Governor is the ex officio chairman of the Disaster Council [7]

The duty of the Disaster Council is to act as an advisory body to the Governor in times of war or disaster and to minimize the effects of such occurrences by recommending ameliorative action The Disaster Council meets upon the call of the Governor During any war declared by Congress or during any national emergency proclaimed by the President of the United States, the Disaster Council is required to meet not less frequently than once every month on the day to be designated by the Governor

It is also the duty of the Disaster Council to devise a state disaster plan, encourage and approve mutual aid plans, and to evaluate state communications systems [8]

The Governor may also establish a committee or a board composed of heads of state departments or agencies of the state government, should he deem it necessary, to aid him or the Disaster Council, or both, in obtaining information and advice, assisting in developing or carrying out plans, or otherwise acting in accomplishment of the purposes of the Disaster Act [9] The Disaster Council usually meets annually [10]

STATE DISASTER COUNCIL

NUMBER OF MEETINGS HELD

Year	*Meetings*	*Year*	*Meetings*	*Year*	*Meetings*	*Year*	*Meetings*
1945	1	1950	5	1955	3	1960	1
1946	3	1951	1	1956	1	1961	1
1947	1	1952	5	1957	0	1962	1
1948	1	1953	3	1958	1	1964	0
1949	1	1954	1	1959	1	1965	1

Source *Minutes*, State Disaster Council

The California State Disaster Council on December 4, 1961, approved state government organization plans for civil defense Basically, the plan constitutes the new cabinet of agency administrators as the Disaster Control Board and gives to the Public Safety Administrator responsibility to act for the Governor in the direction of overall state emergency operations.[11]

There are several advisory committees to the California Disaster Council However, these committees have not reported on their activities since February, 1962, more than four years ago [12]

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[5] *Ibid*, Section 1510
[6] *Ibid*, Section 1511
[7] *Ibid*, Section 1512
[8] *Ibid*, Section 1513
[9] *Ibid*, Section 1514
[10] Minutes, State Disaster Council
[11] *Ibid*, December 4, 1961
[12] *Ibid*, February 21, 1962



CALIFORNIA DISASTER OFFICE

The California Disaster Office has responsibility for planning and coordinating statewide programs for emergency relief operations in the event of natural or war-caused disaster and for providing leadership and assistance to other state agencies and local governments in developing an effective state of operational readiness as provided in the California Disaster Act.[13]

The California Disaster Office implements four basic programs:

1. *Disaster Preparedness*

The objective of this program is to create on the part of state and local governments the ability to cope with the natural or war-caused disaster. Some 15 projects relating to civil defense and disaster planning and training are included in the program. These projects include the development and maintenance of the State of California Civil Defense and Disaster Plan, Master Mutual Aid Agreement, and plans to provide for continuity of government during an emergency.

2. *Emergency Systems Development*

The objectives of this program are to develop and maintain the equipment and various systems needed by state and local governments to conduct disaster operations. Some 30 projects are contained in this program. These projects relate to development and maintenance of communications systems, radiological monitoring systems, medical and health supplies and equipment and specialized vehicles and equipment needed for mutual aid, fire and law enforcement purposes. Under this program the office assists state agencies and local jurisdictions throughout California in the procurement of federal matching funds for the procurement and maintenance of



equipment needed for disaster purposes. Additionally, the office provides administrative and technical assistance to local jurisdictions.

The capabilities which are developed through this program are primarily applicable to civil defense programs but may be applied to natural disaster programs.

3. *Mutual Aid and Disaster Relief*

This program includes actions taken in anticipation of, during and subsequent to a disaster. The included projects relate to operation of the state warning and communications center, conduct of mutual aid operations, such as fire suppression during a disaster, and administration of federal disaster relief funds under Public Law 875.

4. *Administration*

All management and supervisory functions, fiscal and other services required for direction and support of all departmental programs are considered part of administration. The management structure includes the director and his staff, seven headquarters division administrators responsible for specific functions and four regional administrators. A system of project authorization and control and a policy procedure manual provide the method of directing the activities and evaluating the progress of the office.

The 1966–67 budget allocated $1,137,894 for support of the Disaster Office. An additional $837,863 was contributed by the federal government for support. The headquarters staff total approximately 90 positions of a total of 126 authorized positions.[14]

[13] *Military and Veterans Code*, Chapter 1, Division 7. See also: *Natural Disaster Check List for Public Officials*, California Disaster Office, August 1964.
[14] Senate Bill No. 1, 1966 Second Extraordinary Session.

CALIFORNIA CIVIL DEFENSE AND DISASTER PLAN

The 22 state agencies involved in the California Civil Defense and Disaster Plan and their major responsibilities are

1. *Department of Agriculture*—Food supply administration, biological and chemical defense
2. *Department of the California Highway Patrol*—Traffic control and radiological monitoring
3. *Department of Conservation—Division of Forestry*—Fire and rescue organization and radiological monitoring
4. *Department of Corrections*—Emergency shelter and welfare for disaster victims and radiological monitoring
5. *Department of Education*—Dissemination of survival information
6. *Department of Employment*—Manpower administration
7. *Department of Finance*—Equipment and material supply and records preservation
8. *Department of the State Fire Marshal*—Assistance to fire and rescue operation and radiological monitoring
9. *Department of Fish and Game*—Law enforcement and radiological monitoring
10. *Department of Industrial Relations, Division of Industrial Safety*—Facility protection advice and radiological monitoring
11. *Department of Justice*—Law enforcement, communications and radiological monitoring
12. *Department of Mental Hygiene*—Medical care and emergency welfare to disaster victims
13. *Military Department*—Law enforcement and intelligence
14. *Department of Motor Vehicles*—Central registration service for displaced persons
15. *Department of Parks and Recreation*—Emergency shelter and welfare for disaster victims
16. *Department of Public Health*—Medical care, sanitation, and public health, chemical and biological defense, radiological monitoring
17. *Public Utilities Commission*—Transportation resource
18. *Department of Public Works*—Damage control intelligence and transportation resource
19. *Department of Social Welfare*—Emergency relief.
20. *Department of Veterans Affairs*—Emergency shelter and welfare for disaster victims
21. *Department of Water Resources*—Flood control, engineering and radiological monitoring
22. *Department of the California Youth Authority*—Emergency shelter and welfare for disaster victims and radiological monitoring

Four of these enumerated departments, namely, Agriculture, Highway Patrol, Military, and Social Welfare have created full-time civil defense staff positions with matching federal funds for half of the cost The others have assigned civil defense and disaster responsibility to regular personnel

This committee requested each of the 22 state agencies to remit information showing as specifically and extensively as possible what their department did before, during and after the following disasters [15]

1 The Crescent City Tidal Wave Disaster of 1964
2 The 1964–65 Humboldt County Floods
3 The 1965 Watts Riots

Following is a summary of the responses received

The Crescent City Tidal Wave Disaster of 1964

The Crescent City area was struck by a series of four heavy tidal wave surges commencing about midnight Friday, March 27, 1964 The primary geographical boundaries of the major damage areas comprise about 29 square blocks of the City of Crescent City

The above areas of destruction represented an economic loss estimated at from 20 to 45 millions of dollars The entire business area of Crescent City was considered a total loss, requiring complete rebuilding of this section of the city

The Department of Agriculture was not called for assistance in this disaster because damage was restricted to business establishments There were ample local facilities for feeding and caring for the homeless

The California Highway Patrol observed that *no one was in overall charge of the disaster center*

The California Highway Patrol assigned radio dispatchers to the disaster area enabling 24-hour radio communications both with mobile units and with the sheriff's office. The California Highway Patrol kept a journal, a continuing summary report of status conditions which was maintained at the area California Highway Patrol office to provide a running account of their operations to all news media The area commander of the California Highway Patrol appeared on radio and arranged for televised messages to inform the public of the situation and traffic control measures and to enlist their cooperation

Police Aid Sought

The California Highway Patrol recommended that legislative action be initiated to authorize police agencies whenever a menace to the public health or safety is created by a calamity such as a flood or tidal wave, to close or restrict traffic on highways *outside* the disaster area which are essential to the movement of equipment into and out of the area The use of ropes, signs, markers or guards other than police officers to indicate a closure should also be authorized

Due to the absence of a teleprinter facility at the Crescent City area office of the CHP, it was necessary to expend a great deal of clerical hours and cost in long-distance telephone calls in submitting periodic and special reports In addition, relaying these reports and other communications through other facilities increase the probability of error This area has previously experienced four disasters during the last 11 years. Therefore, it was recommended that in an area such as Crescent City, where disasters have occurred in the past, teleprinter service be installed, regardless of the size of the organization, to facilitate communications with adjacent areas [16]

The Division of Forestry, Department of Conservation, is an integral part of the State Fire Disaster Plan Twenty-three Division of Forestry ranger unit administrators serve as operational area coordinators and three district deputy state foresters serve as regional coordinators within the framework of the State Fire Disaster Plan In addition, a number of pieces of California Disaster Office, fire, rescue, and communications equipment are based at Division of Forestry installations On Sunday, March 29, 1964, all units in Crescent City were working under the overall direction of civil defense officials.

During and after the Crescent City Tidal Wave Disaster, the Department of Corrections sent 80 inmates and 5 Department of Corrections staff members who were utilized directly in providing relief to citizens of the area These people worked under the supervision and direction of the Division of Forestry. As a side note, there were no incidents involving trouble with the inmates reported

The Department of Education reported that no state textbooks were reported to have been destroyed

MANPOWER USE

The Department of Employment used their local office as a manpower center when the devastated area was declared safe enough to enter In response to a call from civil defense officials, the Department of Employment immediately began recruitment of workers over a local radio station The department accepted calls from citizens offering use of labor and equipment, and the department directed individuals to various relief sites and various public agencies [17]

The Department of Finance has developed a working relationship with the agencies directly involved in disasters to assure adequate financial support of emergency and disaster operations, so that timely action is possible and delays arising from administrative bottlenecks may be avoided Immediately after the Crescent City tidal wave, staff members of this department accompanied damage evaluation teams to assess the extent of damage and cost of repairs Following these efforts, the Department of Finance undertook the processing of claims for payment of the cost of repair or restoration of damaged publicly owned facilities under the provisions of the Emergency Flood Relief Law



The State Fire Marshal's Office sent a deputy from the Eureka branch office to work from the City Hall in Crescent City He was able to assist in directing state, federal and local officials who were coming into the stricken area to the proper agencies or persons After the disaster, the deputy and a fire prevention engineer, assigned from the Sacramento office, made extensive surveys of the individual damaged buildings They were accompanied by members of the State Division of Housing, Division of Highways, State Department of Public Works, and Department of Finance Particular emphasis was made on inspection of all schools, jails, institutions, and places of public assembly, which are occupancies under the direct jurisdiction of the State Fire Marshal's regulations

WARDENS HELP

Wardens of the Department of Fish and Game, in the north coast area assisted in warning residents in endangered areas of the impending disaster The warden in Crescent City warned the occupants of buildings in the lower part of that town prior to the arrival of the destructive massive waves Immediately following the disaster, wardens in the northwestern counties were assigned to patrol duty in Crescent City to assist local law enforcement agencies in preventing looting, providing radio communications, and controlling the entry of unauthorized persons into the disaster area Such work was done under the direction of the local agencies

The Division of Industrial Safety, Department of Industrial Relations, was not involved in the Crescent City disaster The division was not called upon for service, and a call would not normally have been expected unless the needed work was closely related to its assigned responsibilities

The Department of Mental Hygiene did not take specific action and none was requested The department's facilities were outside the area affected

The State Military Department took a number of significant actions between January 1, 1962 and the March 1964 Crescent City disaster, which enhanced the readiness of the Military Department The first action occurred in February 1962 with the employment of a civil defense operations officer in the office of the Adjutant General For the first time, the Adjutant General had a full-time staff officer who could devote his efforts exclusively towards coordinating and planning for state military support of civil government during emergencies The other major action was employment a year later of a full-time signal officer in the office of the Adjutant General This was the first time the Adjutant General had a staff officer who could devote his efforts exclusively towards that vital aspect of disaster preparedness This, in effect, gave the Military Department two full-time coordinators for disaster programs The Military Department also maintains direct and continuous liaison in coordination with the headquarters of the Sixth United States Army In connection with the seismic wave disaster at Crescent City, civil authority did not request military assistance The State Military Department, therefore, did not officially participate in the Crescent City disaster Unofficially some volunteer members of the

State Military Reserve made their services available However, the National Guard was not utilized

Military Support

Following the Crescent City emergency, the tempo of preparedness activities increased as a result of actions taken by the Department of Defense In June 1964, the Secretary of Defense approved a plan whereby the State Adjutant General would, in the event of a nuclear attack, become the commander of all federal forces engaged in supporting civil authority This plan, concurred in by the Governor of California, had some impact upon the Military Department First, it established the Adjutant General as the primary preattack coordinator and planner for military support of civil defense Second, it clarified the status of the National Guard under such conditions, and third, it provided the Adjutant General with eight federally paid, full-time planners to accomplish the new mission Of significant importance, even though the plan was predicated upon a nuclear attack situation, the resources provided by the federal government to implement and support the plan could be used fully in preparation for military support of civil government under any other condition of emergency Initial planning for the implementation of this plan was completed in January 1965 Employment of the full-time planning personnel was accomplished between March and June of 1965 The military forces of the State of California have a traditional responsibility to be trained to assist civil authority wherever civil resources are inadequate to meet an emergency situation Although the primary mission of the National Guard is to be trained for the military defense of the United States, an ever-increasing emphasis is being placed upon the Guard's civil assistance role

The Department of Motor Vehicles indicated that their formal responsibility in regard to the State Disaster Program was not affected by this disaster

The Department of Parks and Recreation field personnel from Jedediah Smith Redwood State Park contacted the Office of Civil Defense in Crescent City immediately and put all of the resources of the park at their disposal The Office of Civil Defense utilized these resources in both evacuation and cleanup work The Division of Small Craft Harbors made a survey of damage to boats and harbors resulting from the tidal wave and also made certain inquiries regarding boats damaged by the Humboldt County floods The Division took no further action in view of the Federal Aid Program The Division estimated that the cost for rehabilitation of the harbor to be $252,000, which allows for some salvage

Department of Public Health responsibility for coordination resided within its Division of Community Health Services through its regional medical coordinator who was first informed of the tidal wave disaster early on Saturday, March 28, 1964 The situation was quickly assessed and it was determined that the major problem was that of environmental health and that the medical situation was well in hand In addition to the local

Health Department, the regional medical coordinator worked closely with the personnel of the State Department of Forestry, State Department of Corrections, and the State Highway Patrol Forty-eight hours after the disaster, a state sanitarian from Berkeley arrived in Crescent City to assist in the local health authority's program of debris removal On the day of the disaster, two food and drug inspectors were assigned to Crescent City to assess the problem of damaged food goods and to quarantine as necessary Two days after the disaster, two members of the Bureau of Vector Control of the State Health Department arrived to work with the local health authorities in assessing the possibilities of problems arising as a result of the disaster, mainly in the area of mosquito and rodent control

State Agencies Cooperate

The Public Utilities Commission staff made periodic telephone inquiries of electric, water, and telephone utilities involved concerning the extent of their damage and the action they were taking to restore utility service to the affected area

The Department of Public Works, Maintenance Department of the Division of Highways, has borne the brunt of emergency work in restoring the state highway system to normal use following major storms, slides or other disasters After the Crescent City tidal wave struck and the waters had receded, highway maintenance crews moved in immediately and cleaned out the debris and opened Route 101 to traffic as soon as possible The Division of Highways maintenance crews were requested to assist the city in cleaning up the streets of debris in the area that had been struck by the tidal wave Maintenance crews moved in immediately and worked approximately four days in assisting city maintenance crews in clearing the streets and opening them to traffic The Division of Highways forces were reimbursed in the amount of approximately $4,900 from other than state highway funds for doing this work The damage to the state highway system was repaired in the customary manner, and this work was financed with maintenance funds

The Department of Social Welfare has established a staff position to carry out the functions of the emergency welfare services program and assisting local welfare departments to develop emergency welfare services plans as an integral part of city and county civil defense and disaster plans The department placed initial emphasis on planning and organizing operations for welfare services in war-caused emergencies However, the department is currently reexamining state and county welfare responsibilities in operational capability for disasters from natural causes as well After the Crescent City tidal wave struck, mass care centers for evacuees were set up under the direction of Del Norte County officials Inasmuch as the destruction created by the tidal wave was limited almost entirely to the business district and very few private homes or citizens were involved, little was required in the way of disaster relief or rehabilitation




TEXACO
REST ROOM
TEXACO

No Cal-Vet Farm and Home Loan contract holder suffered a loss to his property in the disaster and, therefore, the Department of Veterans Affairs did not participate in any of the state programs regarding that disaster

The Department of Water Resources sent a department employee for the purpose of assessing the situation It was determined that the department could not render assistance through any of its programs

The Department of Youth Authority was not directly involved in the Crescent City tidal wave disaster

DAMAGE ASSESSMENT

The Department of General Services, through its Office of Architecture and Construction, became involved by its evaluation of damages and its offer of assistance during the period of disaster

The Department of Finance requested the Office of Architecture and Construction to dispatch a team of specialists to investigate and appraise damage to public facilities in that area Damage to sewer and water services was also to be given special attention When the team got to Crescent City, they found that emergency clearing and sanitary control measures were being done under the direction of the county sanitarian and flood control coordinator, assisted by an official of the State Department of Public Health Equipment and personnel were made available by the State Division of Highways, Division of Forestry and Department of Corrections to expedite the clearing operations

The task force sent to Crescent City to assess damages adopted as a temporary headquarters the assessor's office A great deal of time was spent in the county assessor's office, pulling records and tabulating assessed values of all parcels in the damage area, verifying values of properties completely destroyed or to be removed, and correcting maps of the area The preliminary estimate of damages to public and private property, prepared by the Office of Architecture and Construction, was reviewed and concurred in by representatives of the California Disaster Office, Department of Finance, and two other representatives of the Office of Architecture and Construction [15]

The Department of Justice was not involved in any of the activities concerned with this disaster

The California Disaster Office now disseminates all seismic sea wave information and warnings issued by the United States Coast and Geodetic Survey to California's coastal city and county governments, and to the California Highway Patrol

[13] Letters to 22 state agencies regarding disaster study, October 18 1965, from Chairman Powers to agency heads and responses

See also Administrative Orders 62–1 to 62–22 authorizes California Disaster Office to assign specific civil defense and disaster responsibilities to particular agencies subject to agreement between agency and California Disaster Office and approval of the Governor

[14] See *Summary Report Crescent City Area Emergency Operation, State of Disaster*, March 28, 1964 April 6 1964, California Highway Patrol

[15] See *Log of the Crescent City Local Office Activities* during the 36 hours after the tidal wave struck Department of Employment

[16] See "*Tidal Wave Damage*" by Ray H Soehren, OAC Coordinator and others, April 16, 1964

The 1964–65 Humboldt County Floods

The first indications of flooding became indicative on December 21 As the situation progressed, it soon became apparent that a flood of major proportions was in the making and would ensue By the morning of December 22, all roads into and out of Humboldt County were closed due to high water, slides and bridges out Many communities were isolated and completely cut off from surrounding communities Isolated communities, in the order of their isolation, were Cummins, Garberville, Miranda, Myers Flat, Weott, Willow Creek, Hoopa, Weitchpec, Orleans, Pepperwood, Scotia, Rio Dell, Ferndale, Shively, Stafford, Fortuna, Carlotta, Eureka, Arcata, Samoa, Blue Lake, and Orick The ravages of the waters resulted in very heavy losses to bridges on major state and county roadways Many stretches of highway were completely wiped out from slides and slipouts Approximately 550 homes were destroyed in Humboldt County, with approximately 1,200 homes damaged Hundreds of vehicles were destroyed

During the early stages of the flood, the Department of Agriculture contacted the California Disaster Office and made inquiries on the food situation in counties affected by the flood Information received revealed that most refugees had moved to higher ground and were staying with friends In areas where mass feeding was instituted, food was supplied by welfare agencies and the Red Cross In rural, isolated areas there were airdrops of food to those in need Since airfields were in operation in Arcata and Crescent City, those cities were regularly supplied with food via chartered airlines

Because the dairying and the livestock industries are major sources of income to Humboldt and Del Norte Counties, the California Department of Agriculture received numerous requests for assistance to transport feed and hay to distressed dairymen and cattlemen in the disaster area The feed condition was very critical in that thousands of animals were on narrow rations

The department coordinated its activities with the California Disaster Office and assisted in the air movement from McClellan Field in Sacramento to the Arcata and Crescent City airports of 2,818,649 pounds of feed and hay during a 26-day period, ending on January 22, when the first road was opened

The department also coordinated with the counties requesting assistance in the airdrop of hay by helicopter to isolated cattle herds in remote areas where bridges were destroyed

During and after the flood period, the department's field representative was in the disaster area to coordinate with local civil disaster officials on feed matters requiring priority attention

Other disaster activities engaged in by the department were in the burial of thousands of animals drowned by the flood The veterinarians worked with public health officials and with army engineers on this problem

The Bureau of Dairy Service assisted in the inspection of stray dairy cattle that were assembled into many herds for milking

CHP Actions

Field operations by the California Highway Patrol during the early stages of the disaster consisted primarily of evacuation of flood victims and assistance to evacuees Much of the efforts of the CHP manpower during the early stages was devoted to control of people rather than traffic Two locations where this was more prevalent than in other locations were Garberville and Hoopa

Garberville was isolated completely without sheriff's office personnel on hand The only law enforcement officers were California Highway Patrol officers The CHP immediately assumed responsibility for all law enforcement control in the Garberville-Redway vicinity Directions were given to set up patrols to control looting and enforce a rigid curfew immediately

The Civil Defense Director, at CHP request, closed all bars in the communities The sheriff was able to place manpower in Garberville on December 26, and at this time California Highway Patrol personnel returned to traffic duties

The same condition prevailed in the Hoopa vicinity A CHP officer was dispatched from Willow Creek to Hoopa He crossed the river and hiked with a backpack, to Hoopa Hoopa was without heat, electricity, and communications of any type Once in Hoopa, the officer and a deputy sheriff organized a law enforcement group The deputy immediately deputized 20 special deputies These men were directed by the CHP officer and the deputy sheriff

The early stages of the disaster in the immediate vicinity of Eureka, Arcata, and Fortuna also included many instances of assistance in the evacuation of people Traffic control, due to restrictions of automobile movement during the early stages, was a minor problem compared to the control of people Assistance in patrol of flooded areas was rendered to the sheriff at his request Patrols were primarily necessary to suppress and discourage looting

As roads started to open, at first only to four-wheel-drive vehicles, California Highway Patrol traffic responsibilities became abundant The flood left hundreds of people marooned in the area who were traveling through for Christmas holiday visits in the south Although many of these people eventually flew out of the area, many did not have funds for this mode of transportation The economy of the area is extremely dependent upon roadway travel The railroad line into the area was completely wiped out and the need for road travel was even more imperative Roadways out of the area opened slowly



Manpower

Some of the activities of the California Highway Patrol can be grouped into general subject areas First of these is manpower On December 24, a total of 80 outside police officers from the bay area were flown in to assist the sheriff with law enforcement control They were deputized by the sheriff

The influx of 80 lawmen into the area led to a situation wherein the sheriff had more manpower than he could use, due to the fact that all planes and helicopters were grounded because of inclement weather and the men could not be dispersed

The California Highway Patrol was contacted by the sheriff and asked if the CHP could utilize some of the manpower The assistance of these extra officers was refused by the CHP

The CHP points out that the men were, for the most part, inexperienced in traffic control, not in uniform and, most important, not California Highway Patrol officers The need for not accepting help from outside people was stated thusly by the CHP "We have 3,000 uniformed, trained, qualified and eager traffic officers available How many do you require?" Resultant events proved the immediate availability of California Highway Patrol assistance, when required and needed On December 28, 12 traffic officers, 1 sergeant and 1 dispatcher were flown in at the request of the Eureka area commander

Other CHP Activities

Automotive equipment is the second subject area The Eureka area, on December 27, requested more automotive equipment The vehicles arrived the afternoon the request was made The vehicles were flown in by C-119 Flying Boxcars All vehicles arrived in good shape

Another subject area is Civil Defense office liaison As soon as the Civil Defense office was activated, the CHP had a representative on post at the Civil Defense office 24 hours a day A meeting of Civil Defense service chiefs was held daily in the county supervisors' chambers The meeting included attendance by federal and state coordinating heads The CHP attended each and every meeting

On several occasions the California Highway Patrol would have been placed into the taxi business for people who had no transportation had not a representative been on hand to object The California Highway Patrol also maintained liaison with civil defense people in the smaller local communities of Garberville, Willow Creek, and Hoopa In Hoopa CHP officers had to deal daily with decisions involving food supplies, medicines, fuel and shelter There were no other responsible persons to assume these controls and they had to do so as a necessity

As roadways started to open, it soon became apparent that a means of recording road information had to be devised, and so the California Highway Patrol devised such a system and began alerting the public It was

soon apparent that the information regarding road conditions was not being given the consideration it should have been given by the news media in other area offices The Division of Highways was putting out an informational all-points bulletin which, in the opinion of the Highway Patrol, was misleading and sometimes erroneous People were driving up U S 101, having no idea that it was closed

The CHP started an all-circuits, all-stations daily teletype road report The early teletypes asked all stations to advise their news media of the contents This helped in getting correct information concerning the condition of the roadways out to the public

Another subject area is relations with outside agencies During the period of the disaster, many agencies were dealt with by the CHP The principal agencies dealt with daily were the California Disaster Office, the Division of Highways, the sheriff's office, the board of supervisors, police departments, county road department, and the Red Cross

During the early stages it became apparent that many flares and barricades would be needed as soon as roads opened Air transportation was arranged for the Division of Highways' supplies sent from Sacramento This transportation was arranged by California Highway Patrol personnel

Communications Problem

Because of the numerous state agencies involved in the CHP communications systems, considerable research was required to find causes of breakdowns in that system During the critical period of the disaster, the Eureka area suffered many serious communications failures Maintenance and repair problems were increased because of the multiple ownership of state radio facilities and the resultant division of responsibility toward their upkeep

When the California Highway Patrol communications failed, the CHP had to depend upon the state agency owning the particular defective equipment to make repairs and deliver fuel As the trouble was almost always located at mountain top repeater stations, the CHP was entirely dependent upon other agencies for equipment to clear snow from roads leading to those sites It was apparent that the state agency which owns road-clearing equipment does not give radio communications the high priority that the CHP does during disasters Consequently, necessary repairs to blacked-out CHP communications during the flood disaster suffered extra delays because of the lack of adequate transportation to snowbound stations

The delay in replacing the defective antenna at Mt Pratt was prolonged because of having to wait for installers to come from Sacramento to perform a task that local technicians could have done in a much shorter time because of the shorter distance involved This was proven when, after the installers had made their second trip from Sacramento to Mt Pratt and the antenna became defective again, the local technician was finally given an okay to make repairs and did so in a matter of hours, rather

than several days as was previously required Several of the standby generators are worn out war surplus machines, requiring constant repair

The generator on Red Mountain failed so miserably that state agencies were forced to use a private power plant for the long period that commercial power was out Fuel supplied to standby generators in Humboldt County is mostly inadequate for sustained power during commercial blackouts The largest supply of fuel is contained in the 500-gallon tank at Horse Mountain which required refueling six days after commercial power failed and again the day before commercial power was resumed

Borrowed walkie-talkie sets proved invaluable to officers that were isolated in Hoopa and to officers on various one-way traffic control points The CHP had trouble obtaining walkie-talkie sets and then delayed operations further until crystals could be located to set the transceivers on a common frequency [19]

Forestry Division Aid

Division of Forestry flood fighting and rescue activity can be broken down into three areas of assistance

1 That rendered to the Department of Water Resources for the patrol and the protection of levee systems
2 That rendered to local jurisdictions based upon the request of local disaster officials, and
3 That rendered at the request of other state agencies, or which was deemed necessary by the Division of Forestry personnel, based upon their own judgment of need

The Division of Forestry received its first request from the Department of Water Resources flood operations center on December 22 This initial request for 4 large bulldozers, 10 dump trucks, and 8 stakeside trucks, was the first of a series of requests and activity that was not to end until January 18

The initial request for equipment was quickly followed by requests for conservation camp crews to work in the Sacramento area This resulted in the establishment of a flood-fighting camp at the Davis installation on December 22 A second flood-fighting camp was established at the Colusa Fairgrounds

To meet additional high water problems and levee threats, it became necessary to establish the third and fourth flood-fighting camps at the State Fairgrounds in Sacramento and at the Stockton National Guard Armory on Christmas Day, December 25 The fifth flood-fighting camp was established at Hastings Island near Rio Vista on December 26 as the high water began to crest in the delta area There were 78 conservation camp crews plus additional kitchen crews committed for a total of 1,377 inmates and Division of Forestry crew leaders

The majority of crew activity consisted of patrolling levees and reinforcing observed weak spots To meet the needs for movement of men and equip-

ment dispatch offices in the Sacramento headquarters and in division district headquarters at Santa Rosa, Redding, and Sacramento were manned on a 24-hour basis as required during this emergency period

In the North Coast district personnel from the Alder Conservation Camp assisted local authorities with rescue operations and in evacuation, cleanup and salvage in the vicinity of Klamath, Klamath Glen, Smith River, and Orick They aided the local highway crews in the removal of slides on main roads Several homeless families were given shelter at the Alder Camp until other arrangements could be made

In cooperation with disaster officials and the Red Cross, as many as 157 homeless people were furnished meals at the camp for approximately two weeks

The Division of Forestry's communications system played a vital role in communications to isolated towns and small communities and in providing flood-stage information to disaster and weather bureau offices

Critical river readings were supplied on an hourly basis from the Leggett and Alderpoint areas by Division of Forestry personnel In addition, flood-stage information was reported from Fort Seward on the main Eel River and from Bridgeville on the Van Duzen River

Division of Forestry personnel, with mobile units, reestablished communications with a number of the smaller mountain communities in the North Coast area following the flood disaster

In order to provide uninterrupted communications for emergency operations affecting not only the Division of Forestry but the Division of Highways, the Highway Patrol, and the California Disaster Office, communications service radio technicians and Division of Forestry personnel manned repeater points at Mt St Helena, Mt Berryessa, Cahto Peak, and Seigler Mountain on a 24-hour-day basis for several days In effect, the Division of Forestry coordinated communications -"

INMATES INVOLVED

Department of Corrections inmates and staff working jointly with the Division of Forestry in the northern and central areas of the state were involved in—

(1) Saving lives of citizens trapped by flood waters,
(2) Reinforcing levees to protect communities in danger of flooding,
(3) Operating kitchen crews to feed refugees from flood-stricken areas, and
(4) Playing Santa Claus to homeless children in isolated areas during Christmas

During the disaster period 80 conservation camp crews, totaling 1,200 inmates and 250 Division of Forestry support personnel battled floodwaters Communities where these services were provided included Davis, Colusa, Sacramento, Stockton, and Rio Vista, as well as the hard hit northern counties of Del Norte and Humboldt

The productivity and utilization of inmate manpower was effectively demonstrated. This applied not only to inmates who were located in a particular area but also the effectiveness of bringing inmates from a considerable distance to assist with a local disaster situation. Inmates were transported from as far south as San Bernardino County into the northern parts of the state to help out with the flood. The fact that these inmate crews received both physical as well as team training in fire-fighting and other emergency and rescue work greatly increases their effectiveness in emergency situations.

The Department of Education provided the California Disaster Office with analyses and recommendations on each application from school districts for supplemental assistance under Public Law 875 as a result of the disaster. Immediately subsequent to the flood disaster in northern California, personnel of the Bureau of Administrative Services of the Department of Education visited county schools' offices in school districts in the affected areas. The purpose of the visits was to assist all local agencies in reconstructing attendance records, so that there would be no loss of attendance incurred on account of the disaster. Emergency applications were processed and approved for all school districts with the result that there was no loss of attendance for state apportionment. There developed a need in the disaster area for immediate classrooms to replace those that had been wiped out. Eventually new schools were established.

Personnel Availability

The Department of Employment, Employment Service Office, was contacted by the sheriff's office with a request for guards. The Employment Service Office recruited, screened, and placed nearly 200 guards so quickly that with their help the law enforcement officers were able to prevent all looting. Over 100 other emergency service workers were recruited to load and unload planes, assist in the construction of prefabricated buildings, clear debris, and do other emergency work.

As soon as the extent of the disaster was recognized, Department of Employment personnel were at the manpower desk in the Civil Defense operating center. The desk was manned 24 hours a day, 7 days a week. During the first week, over 500 applications were taken by the Manpower Service, most of them for volunteer labor. The interviewers were able to dispatch several hundred of these volunteers. No shortage of people or of skill appeared at the Employment Service Office in Humboldt County.

The problem of restoring unemployment insurance services to those residents cut off by the floods received attention. Two staff members flew into Garberville by Marine helicopter and set up a temporary claims service, then arrangements were made for itinerant claims service in the Scotia-Rio Dell area, which is not ordinarily so served.

On January 7, claims service was begun by airplane to the Hoopa area, which contains California's largest Indian reservation, and to Willow Creek. Another isolated town, Orleans, was served by air and by mail.

Civil defense people had apparently assigned a high priority to unemployment insurance services, and from the beginning of the emergency had urged that there be no interruption in benefit payments The workload eventually became so great for the department employees that volunteers were called for from the San Francisco Bay area offices. Many responded to the call for help and eight were chosen They were flown to Eureka where they worked on an as-long-as-needed basis.

Two things became evident to the department as a result of their experience in this disaster

(1) the importance of prompt unemployment insurance payments in supporting the economy of the disaster area, and in minimizing the necessity for long-term relief
(2) the lack of need for recruitment outside a disaster area; the disruption of normal business in industry usually frees more local men than the disaster services can use.[21]

The committee notes that while the Department of Employment is of the opinion that recruitment of workers from outside the disaster area is unnecessary, other state agencies, such as the Department of Corrections, transported personnel from as far away as San Bernardino to the disaster area.

Claims Processed

The Department of Finance acted primarily in an advisory or consultative role. Immediately after the Humboldt County floods staff members of this department accompanied damage evaluation teams to assess the extent of damage and cost of repairs Following those efforts, the Department of Finance undertook a processing of claims for payment of the cost of repair or restoration of damaged publicly owned facilities under the provisions of the Emergency Flood Relief Law.

The State Fire Marshal deputy from the Eureka branch office set up operations in the California Disaster Office's Coordination Center in Eureka. All activities relative to fire and life safety were administered through this center. An inventory was immediately taken of all fire-suppression equipment in the area and the degree to which it was operable and the degree to which the fire departments could provide fire protection After the flood, inspections were made of existing buildings for temporary housing of school facilities Under the broad performance-type building regulations, the State Fire Marshal was able to approve use of churches, motels and other facilities for school purposes on a temporary basis and at the same time to provide reasonable fire and life safety to the children

The State Fire Marshal suggested that while there is always some confusion in all emergencies, there does appear to be a need for a more clearly defined single agency responsible for directing and coordinating all state and local activities. According to the State Fire Marshal, this is particularly evident during large forest and brush fire emergencies

The Department of Fish and Game personnel, particularly the officers in the Wildlife Protection Branch, took an active part in the disaster The law enforcement personnel of the department were concerned with rescuing persons stranded and endangered by floodwaters Such rescues were effected by use of department boats, mainly small skiffs with outboard motors In addition to rescue operations, the law enforcement personnel assisted other law enforcement agencies in the performance of necessary duties Use was made of the department's radio communication system In several areas isolated by the flood, the only communication with the outside was through the department radio equipment in wardens' vehicles This radio equipment was also used to transmit local weather information to military rescue operation bases where helicopters were dispatched for rescue flights. This local weather information was invaluable in scheduling helicopter flights as all other communication systems were inoperative The radio system was used extensively Extra portable radio sets were flown into the area by military aircraft

DEL NORTE CENTER

The Department of Fish and Game made reference to the disaster control center in Del Norte County Apparently the Del Norte County disaster control center was a small, compact, efficient operation made up of the local sheriff, the civil defense director, four chiefs of staff and clerical and dispatch personnel The warden of the Department of Fish and Game served as one chief of staff dealing with all information and actions affecting life and property

The committee notes that local people stationed at the location of the disaster were able to formulate and set up their own disaster control center to meet the threat from the disaster It illustrates that those persons on the local level who are accustomed to dealing with each other on a day-to-day basis can effectively coordinate with each other to meet the threat of a disaster

The Department of Industrial Relations, Division of Industrial Safety, had a representative located in Eureka at the time of the Humboldt County floods He was isolated at his home in Rio Dell by bridge failures and so he remained in that area for the rest of the week He assisted in evacuating people, home furnishings, and livestock to higher ground However, as a division, there was no participation by the Division of Industrial Safety in flood activities

The Department of Justice did not do any special activity as a result of the Humboldt County floods

TALMAGE FLOOD

The Department of Mental Hygiene State Hospital was threatened by the Humboldt County floods The high water in later December and early January badly flooded the village of Talmage, which is adjacent to Mendocino State Hospital Personnel and equipment from the hospital worked



with the county disaster corps in evacuating the area About 50 people were evacuated to the hospital the first night, with about 20 remaining for three or four nights One family of 8 was given housing for about 2 weeks

Military Role

The seriousness of the flood situation in northern California was called to the attention of the State Military Department by a telephone call from the Humboldt County sheriff The sheriff requested National Guard assistance in the vicinity of Eureka Between then and the end of March 1965, the National Guard was heavily engaged in supporting civil authorities, not only in Humboldt County, but in most of the northern counties A variety of tasks were performed, including rescue and evacuation, prevention of looting, security of installations, land and air transportation of relief supplies, and even the operation of a ferry provided by the U S Army where the flood had destroyed the Highway 101 bridge over the Klamath River National Guard personnel and equipment from Salinas, San Jose, and Sacramento were flown into the areas by the Air National Guard

A step was taken to enter into an agreement with the Commanding General, Sixth U S Army, for the exchange of liaison and information The Army commander expressed his desire to look to the Adjutant General to evaluate state requirements if federal military assistance were to be requested through the regional Office of Emergency Planning And, with the employment of the federally paid, full-time military support planners in the office of the Adjutant General, a nucleus of a full-time emergency operations center was provided

Personnel of the State Military Reserve who were assigned to units in the vicinity of Eureka were ordered to active state military duty These individuals were used, for the most part, in support of Humboldt County civil defense, although some did perform other tasks during the early part of the emergency The main task assigned, however, was to assist in the operation of the civil defense emergency operations center, at the request of the civil defense director

The Department of Motor Vehicles did not participate in the disaster program There was some personal participation by one of the managers of a district office of the department, but there was no departmental response to the floods

The Department of Parks and Recreation, Division of Beaches and Parks, district and field personnel, participated in the disaster operations beginning during the build up period of the floods and continuing throughout the disaster period All personnel of the Division of Beaches and Parks were placed on a 24-hour emergency call basis as of that time All units in the flood zone were instructed by telephone to contact their local office of civil defense and to offer all park resources to assist with the disaster effort After that, Beaches and Parks personnel participated as requested by the Office of Civil Defense in the disaster effort For several days, the town of Guerneville obtained water from the park water supply

PUBLIC HEALTH DEPARTMENT

The Department of Public Health received word on the morning of December 22, that the Klamath River and the Redwood Creek were flooding An emergency desk was established by the State Department of Public Health in the Division of Community Health Services Other divisions and bureaus were notified By late afternoon, some of the counties had declared their entire counties disaster areas and a state of emergency was declared by the Governor At this point, the Department of Public Health notified Civil Defense that it was available for any calls On December 23, it was decided that representatives from the Bureau of Sanitary Engineering, Food and Drug Inspections, and Vector Control, should be sent to the flood area They were flown into the area as soon as air transportation was available Daily reports were made and telephone surveillance was made during the next few days More health department personnel went to the flood area later that week and on January 4, one physician, four sanitarians, and one laboratory person joined the engineers and food and drug inspectors The Bureau of Nursing sent three nurses into the disaster area to work with the Red Cross in certain isolated communities

Department of Public Health personnel in Humboldt-Del Norte Counties assisted in

(1) Making surveillance trips to assess damage, determine general health needs, and establish emergency measures for water, dead animals and food in stricken communities

(2) Helping with routine duties of the local health departments and keeping constant surveillance after regular office hours,

(3) Coordinating the Red Cross and the local health departments in certain activities,

(4) Interpreting and evaluating reports on the local situation and transmitting summaries to the State Department of Public Health

The Bureau of Sanitary Engineering provided field personnel from as far away as Los Angeles At the peak of the emergency, 15 engineers were in the field, and approximately 200 man-days were spent on flood disaster work from December 22 to January 11 Where sources of water supplies were disrupted, sanitary engineers from the department worked with the local people to assist in restoration of these services Assistance was given in securing equipment and supplies, including chlorinators and chlorine where needed In one community, sanitary engineers from the department led a work party in laying several hundred feet of pipe to bring in supplementary water to a part of the community which was out of water The Bureau of Sanitary Engineering will continue to assist the flood-damaged areas Long-term follow-up is necessary until all water supply and sewerage systems are restored to normal operation The bureau is now assessing damages to water and sewerage facilities and certifying to these damages as part of the Federal Assistance Program (PL 875) Similar work will be done later on the State Aid Program

FOOD AND LIVESTOCK

The major activities of the Bureau of Food and Drug Inspections were to inspect flood-damaged food and drug establishments and, where necessary, quarantine foods, drugs, or liquor suspected of being contaminated by the flood waters

The Bureau of Vector Control made extensive searches by ground and air of beaches and flood areas for dead animals Livestock carcasses were located and mapped, and sites of log-jams and large concentrations of debris were also noted Animal disposal sites were established and disposal activities were conducted by the U S Army Engineers and the National Guard under the bureau's surveillance Other accessible county refuse disposal sites were inspected to verify their levels of sanitary operation, and the bureau assisted local public health personnel to reestablish garbage collection services, chlorinate wells, and reactivate and clean septic tank systems and other individual sewage disposal systems. Investigations were made of domestic rat infestations and sites were established for garbage disposal, non combustible waste disposal, and combustible refuse burning

On January 3, three Public Health nurses were assigned to the Red Cross at the request of the California Disaster Office They were reassigned to isolated areas of Humboldt County which had no medical or nursing personnel, and which were accessible only by helicopter The nurses handled first aid and prescriptions and arranged for helicopter transportation to Eureka where more definite treatment was available

Laboratory Field Services provided a person to the local health department laboratory in Eureka, and also sent additional equipment that was needed due to the increased work load The water and sanitation laboratory in Berkeley shipped an incubator to Eureka to handle an increased number of water samples over the ensuing several months

The Director of Transportation of the California Public Utilities Commission is also Chairman of the Emergency Motor Transport Board which was formed under the auspices of the Interstate Commerce Commission and the California Disaster Office In this particular case, the Director of Transportation convened the Emergency Motor Transport Board at the request of the Director of the California Disaster Office, to consider the problem of moving feed and grain to Del Norte and Humboldt Counties for livestock which were cut off from other sources of food A critical problem had arisen, because this feed and grain had, up until the time of the Emergency Transport Board meeting on January 7, 1965, been moved by airlift by the federal government, and the federal government had ordered the airlift discontinued As a result of the meeting, the California Emergency Motor Transport Board recommended to the Director of the Disaster Office that the airlift be continued until barge and highway transport would be available to the area The airlift was continued for a week or so which was sufficient time to permit the restoration of highway transportation for the feed and grain

Traffic Movement

The commission, or members of its staff, took a number of actions through its normal channels, and it was these activities which constituted the greater portion of the commission's involvement in the Humboldt County floods. For example, the commission contacted the Western Greyhound Lines officials in order to ensure the restoration of bus service to the area at the earliest possible date. The commission also obtained information from the California Division of Highways with respect to highway conditions at various points, in order to properly advise Western Greyhound Lines officials of those conditions. The commission also conferred with officials of the Northwestern Pacific Railroad with respect to rebuilding that railroad through the Eel River Canyon. However, the commission has not yet seen fit to order the restoration of rail passenger service to the Eel River Canyon. Several requests to the commission regarding various public utilities have been made, and the commission has taken appropriate action regarding each request.

When the Governor declared a state of emergency on December 23, 1964, the Department of Public Works, Division of Highways, activated survey teams and started reviewing the storm damage on December 26. Emergency contracts were placed into operation in order to open the major routes for traffic as soon as possible. Maintenance crews were assisted by private contractors and Army and Navy personnel. The damage to the bridges in Eureka was of such magnitude that contractors were brought in from San Francisco and Seattle to expedite the reconstruction. The concentration of emergency work in Eureka, Redding and Marysville resulted in the highways being open to normal traffic in far less time than was originally estimated.

The Bureau of Public Roads, Office of Civil Defense, and the U. S. Office of Emergency Planning, worked in close liaison with the Division of Highways in this emergency. The Bureau of Public Roads made federal emergency relief funds available immediately for restoration of the damaged roads and bridges. There are numerous contracts still in progress restoring damaged bridges and roads in the northern part of the state. A large number of projects have already been completed, and traffic is once again moving safely through all major routes in northern California.

According to the State Government Code, in case of a disaster resulting from storms or floods, the Director of the Department of Public Works may declare the existence of an emergency. The department may perform any work required or take any remedial measures necessary to avert, alleviate, repair, or restore damage or destruction to property.

Emergency Aid Financing

The mechanics of declaring the emergency require the Director of the Department of Public Works to transmit his declaration of emergency to the Department of Finance with a recommendation and a request that

money be allocated from any available money appropriated for that purpose

The Director of Finance is then required to determine if a state of emergency exists and if money is available in any appropriation or emergency fund for the work and remedial measures. Upon the Director of Finance's affirmative findings upon these matters, he is required to allocate to the Department of Public Works such amount as in his opinion will be required to meet the emergency.[22]

The committee notes that the Director of Public Works, in declaring his proclamation of emergency, is not required to inform the California Disaster Council nor the California Disaster Office nor any civil defense official, of his action. It is also interesting to note the total absence of any reference or mention of the California Disaster Office in the procedural outline that the department is to follow in case of disaster due to floods.[23]

The letter to the Director of Finance, requesting funds pursuant to Section 14122 of the Government Code, is necessary only for work to be done by the Division of Highways on roads or streets not on the state highway system. State highway funds for work on the state highway system are allocated by the Highway Commission pursuant to Section 188.1 of the Streets and Highways Code.[24]

Social Welfare Department

The Department of Social Welfare supported disaster relief programs. The kind and extent of assistance and relief which was provided was confined almost exclusively to those which have traditionally been provided by the American Red Cross.

Upon the request of the American National Red Cross, the Department of Social Welfare assigned 10 staff members to assist in case work activities on an emergency basis. This staff worked primarily in Del Norte, Humboldt, and Mendocino Counties.

The department also indicated that it was involved in other rehabilitative and followup activities. For example, approximately 200 trailers had been brought into Del Norte and Humboldt Counties for use as temporary housing after the floods, and also plans to relocate Klamath, Myers Flat, and one or two other small communities, necessitated the involvement of Social Welfare in helping meet the social needs of individuals and families in those towns. The rebuilding of homes and rehabilitation of the Hoopa Indians likewise required considerable assistance from County Welfare Departments.

The Department of Veterans Affairs assured those veterans who had Cal-Vet home and farm loans that new loans could be obtained to make repairs to their property which was damaged as a result of the flood, and subsequently legislation was enacted whereby the loans were paid in full by the state.



Flood Forecast

The Department of Water Resources participated in joint state-federal flood forecasting. Beginning on Saturday, December 19, the United States Weather Bureau Forecaster analyzed and reported the developing storm from data available from the Weather Bureau teletype circuits released from San Francisco and Washington, D.C.

On Sunday, December 20, the first joint forecasts of possible high water stages were issued by the Weather Bureau and the Department of Water Resources. The department's first estimates, based on quantitative precipitation forecasts, were sent by teletype to the Weather Bureau office in Eureka. Periodically thereafter, as additional data became available from storm reports and from precipitation gauges and streamflow gauges jointly owned and operated by the U.S. Weather Bureau, the Department of Water Resources, and the U.S. Geological Survey, new estimates of peak flows were made and forwarded to Eureka for dissemination. This was an example of joint federal-state river forecasting.

On Saturday, December 19, 1964, the first level of activity by the department as a result of floods was the activation of a flood operation center on a 24-hour basis. A duty forecaster is assigned responsibility for alerting key personnel to changing conditions during nights and weekends.

The next level of activation was a declaration made by the chief engineer authorizing the utilization of departmental personnel who may be required to support the flood operation activity. This preemergency activation occurred on December 22, 1964. And, finally, an emergency may be declared. The declaration is made by the Director of the Department and concurred in by the Governor. An emergency was declared on Christmas Day, December 25, 1964.

In the first hours of the emergency period, travel into the north coastal area was virtually impossible and no assistance in flood-fighting could be provided Humboldt County by department personnel.

Damage Evaluation

Following the flood peaks, and as soon as transportation was available, engineering teams were organized and sent into the area to evaluate damage The California Disaster Office called a meeting on Monday, December 28, 1964, to brief damage evaluation survey teams These teams, composed of representatives of state and federal agencies, traveled throughout the flooded areas to determine public and private damages resulting from the floods.

The first damage evaluation survey was made to assist the California Disaster Office in recommending to the Governor the need for a declaration of a state of disaster Further, it was the basis for advising the President of the scope of the disaster and of the need for a federal declaration of a state of disaster.

This survey also provided an estimate of the possible magnitude of the State Emergency Flood Relief Program Survey teams departed by air from Sacramento on Monday, December 28, for Eureka, Redding, and Yreka. Other survey teams for the Santa Rosa and Willits areas left approximately the same time by auto. Each team was headed by a Department of Water Resources representative

Evaluation of damage throughout the north coast area and the administrative work in connection with both the State Emergency Flood Relief Law and Public Law 875 continued for many months following the storm As the eligible work is completed, the department is requested by the California Disaster Office to conduct a field review of the work performed and report on satisfactory completion This phase of the work is still in progress.

The Department of Water Resources has developed a flood forecasting and flood warning system with coverage four times as broad as the one destroyed by the 1964 flood. It will provide virtually instantaneous information and up to 24 hours advance warning of impending floods in the seven river basins with the highest flood potential [25]

Work Authorization

Authorization for the work performed by the department in flood emergencies is contained in the Water Code Section 128 authorizes the Direc-

tor of Water Resources to designate the existence of an emergency in times of extraordinary stress and disaster resulting from storms and floods Upon concurrence by the Governor and availability of funds, the department is authorized to perform any work required or to take any remedial measures necessary to prevent, lessen, repair, or restore damage or destruction to property Moreover, Water Code Section 8360 provides that the department, on behalf of the state, has supervisory powers over maintenance and operations of the Flood Control Works of the Sacramento River Flood Control Project

Finally, Water Code Section 236 gives statutory recognition to certain functions of the department by specifically authorizing the department to collect hydrologic data necessary for river forecasting, to make forecasts of stream flow and to provide for flood warning

In the recovery period following the flood disaster, the Department of Water Resources participates in two programs which provide financial assistance in the repair and restoration of storm or flood damaged property having a general public and state interest These programs are created by

1 The State Emergency Flood Relief Law (Government Code Sections 54150–54164), and
2 Federal Public Law 875 (81st Congress, 2nd Session)

The State Emergency Flood Relief Law provides assistance to local public agencies on a cost-sharing basis for the permanent repair or restoration or the replacement of public property damaged or destroyed by storm, flood, or flood conditions when funds are appropriated by the Legislature for this purpose

The department is responsible for administering this law in cases of damage to levees, flood control works, channels, irrigation works, or other related water facilities Proposed expenditures are subject to the approval of the Department of Finance

Federal Public Law 875 authorizes federal assistance to state and local governments in major disasters for protective or preventative work, and the minimum work necessary to the emergency repair of essential public facilities The department provides engineering services to the California Disaster office in the review of these requests for assistance relating to water facilities

ROLE OF WATER RESOURCES

In summary, the department's emergency role in the disaster program is directly related to flood situations and it is influenced by the historical assignment of supervisory responsibility for operating the Sacramento River Flood Control Project The department's recovery role is to provide funds for repair by cities, counties, and districts of public property and for engineering review of applications for federal assistance under Public Law 875

The department may, independent of the Disaster Office, declare a state of emergency, so that the department can begin its disaster relief operations

The California Disaster Office is not mentioned in any of the Water Code sections that empower the department to become involved in the administration of either the State Emergency Flood Relief Law or the administration of federal Public Law 875

The Department of Youth Authority was not directly involved in the flood disaster

The Department of General Services, Office of Architecture and Construction, Building, Maintenance and Protection section contracted with the U S Office of Emergency Planning for 250 trailers for relief as temporary emergency housing by flood victims

COMMUNICATIONS SYSTEMS

Prior to the flood emergency, when it began to appear that a major disaster could develop, Department of General Services, Communications Service, technicians and engineering forces were alerted to be ready on call As conditions worsened, Communications Service established an additional channel between Eureka and Sacramento using equipment flown to Eureka by military aircraft and installed by department technicians to increase the availability of weather information from the Eureka area

Communications Service technicians proceeded to remote mountain top locations to assure continuous operation of state communications They remained up to 48 hours at these locations during the critical periods Flood-damaged radios were restored to operating condition, even though the technicians had to proceed through floodwaters and, in some cases, five feet of snow to reach the damaged equipment At the height of the flood the technicians installed on a crash basis a radio-based station in the sheriff's office at Weaverville and some 12 mobile radios in jeeps

Prior to and during the flood, Eureka had only one microwave path to the state's microwave system After the flood, to increase the reliability of the communications path to Eureka, a second microwave path has been added in collaboration with the Division of Highways Eureka can now be reached by microwave on the coast route to the south and by an entirely separate microwave route to Redding on the east and then to Sacramento

AGENCY COORDINATION

The Transportation Services Section made available two four-wheel drive vehicles from the Sacramento State Garage which were airlifted from McClellan Field to Arcata for assignment to the California Disaster Office In addition, numerous other units, primarily pickup trucks, were issued which were then used as needed by the sheriff's office, Division of Highways, Department of Parks and Recreation, and the Department of Fish and Game

The Department of General Services, Sacramento Office of Procurement, assisted the Division of Highways, Military Department, Department of Water Resources, California Disaster Office, and other state agencies during the Humboldt County floods as follows

(a) Made emergency purchase of highway flares and flasher lights for Division of Highways and arranged to have them flown in to critical-need areas

(b) Made emergency purchases of tires, bulldozer blades, grader blades, buckets for heavy construction equipment, and other parts for heavy road and construction equipment, arranged for airfreight delivery for some of the more emergent items.

(c) Arranged for present petroleum contract holder to make emergency deliveries of bulk fuel and oil for Military Department, Department of Water Resources, and Division of Highways, expedited purchase of petroleum products in areas where contract vendor could not make deliveries due to washed-out roads and bridges.

(d) Expedited purchase of large quantities of corrugated metal pipe and metal retaining wall material for use by Division of Highways and Department of Water Resources, located sources for and made emergency purchases of, cobblestones, rock, and other aggregate for highway and levee repairs.

(e) Located a large diesel engine unit for Division of Highways for immediate delivery into a distressed area, located sources of supply and made emergency purchases of sandbags.

(f) Since the 1964–65 disasters, the Office Drug Buyer has been working with the California Disaster Office in making up special-purpose *drug kits*, to be distributed throughout the state for use in the event of future disasters. The Office Buyer has been instrumental in obtaining information for the California Disaster Office relative to the price, packaging, and availability of drug items to be included in the kit.

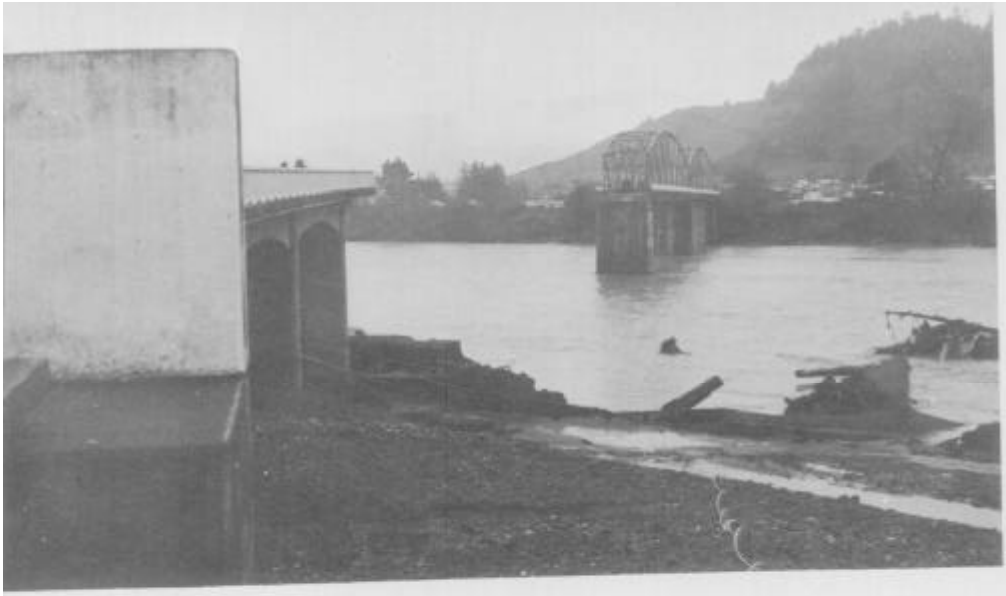
EMERGENCY PURCHASES

During and for three months after the December floods in Humboldt and Del Norte Counties, the State Purchasing Office in San Francisco was called on to make and approve hundreds of emergency purchases. The principal customer was the Division of Highways with Forestry and Beaches and Parks running a close second and third.

Construction material to repair roads, buildings, and park structures, streams and banks, constituted the bulk of the requests. Equally, or perhaps more important, were mechanical repair parts, gasoline emergency lightings, signal equipment, chlorinating equipment, and supplies for water purification, plus an almost limitless variety of other materials.

Total identifiable emergent transactions amounted to approximately one-half million dollars. To this figure would have to be added those materials which were ordered on regular requisitions where time would permit.

The Office of Local Assistance of the Department of General Services, with respect to the major flood relief programs, had no responsibilities prior to the enactment of Chapter 27, Statutes of 1965, which transferred the administration of the state's program for roads, streets, and bridges to this division. The office is now engaged in actively administering the program. This includes considerable discussion and coordination of activities with



local units of government and other state agencies. This division prepares the recommended allocation to the State Allocation Board. The board makes the allocation and the staff has the responsibility for all necessary followup work.

The Legal Services Section reported that at the request of the Disaster Office it spent sometime in the Redding-Eureka-Crescent City area immediately after the disaster. The purpose of doing so was to explain to the cities, counties, and districts involved what they had to do to qualify for state funds under the Flood Relief Act of 1959.

Subsequent to the activities enumerated above, the Legal Service Section participated in the processing and drafting of reports and agreements which enabled the areas involved to qualify for state funds under the Flood Relief Act of 1959.

Temporary Housing Standards

The State Building Standards Commission participated in the disaster program by advising local building enforcing agencies and the Division of Housing as to the minimum standards which may be used for temporary housing.

The committee notes that the role of the General Services Department is essentially one of coordinating activities between various state agencies and local units of government.

The Office of Architecture and Construction in the Department of General Services prepared an excellent summary of the team damage assessment of the floods.[26]

Disaster Office

The California Disaster Office activated an Emergency Operating Center as state headquarters and operating centers in the two northern regional offices.

Communication with the affected counties was established through the regional offices and the new microwave extension installed on the Division of Forestry system, which made possible direct microwave radio communication from California Disaster Office headquarters to the Humboldt County Emergency Operation Center Continuing liaison was also established with the Flood Operation Center and with other state and federal agencies These other agencies included the California Highway Patrol and the Military Department, each of which assigned a staff man to the California Disaster Office State Headquarters, as well as the Division of Highways, Department of Social Welfare, Department of Public Health, Department of Employment, American Red Cross, the U S Office of Civil Defense, and the U S Office of Emergency Planning. Additionally, the Department of Water Resources assigned an engineer to the California Disaster Office headquarters and to each of the California Disaster Office regional offices for liaison purposes California Disaster Office personnel were sent to the Humboldt area and to Redding

The California Disaster Office activities consisted mainly of obtaining resources and manpower for the stricken area Included were such things as helicopter service and a dog sled team for rescue work

Reinforcing Activities

The committee notes that the other activities performed by the Disaster Office were also performed by other state agencies The Disaster Office and the Department of Public Health obtained medical personnel and equipment The Department of Agriculture, State Military Department, and the Disaster Office conducted a massive airlift which continued for 30 days following its inception on December 24, 1964 The airlift carried over four million pounds to the disaster area The Department of Social Welfare and Department of General Services and the Disaster Office provided homeless people in the disaster area with house trailers as a temporary substitute for homes destroyed

A series of meetings were held at six locations in the northern counties to help political subdivisions prepare requests for federal assistance The Disaster Office, Department of General Services, and Department of Finance were able to obtain federal assistance in excess of 13 million dollars in grant funds and 26 million dollars in federal agency assistance for this disaster [27]

[19] See *Summary Report 1964 Flood Disaster, Eureka Area*, California Highway Patrol
[20] See *Flood-Fighting and Rescue Activity, Floods of December 1964 to January 1965*, Division of Forestry
[21] See William Demerell, "Wild Water and the Local Office," Employment Service Review
[22] Government Code, Sections 14120 to 14123
[23] See Division of Highways Circular Letter No 64–33 regarding emergency relief under Federal Aid Highway Acts, dated January 21, 1964
[24] Streets and Highways Code, Section 188 1
[25] News Release, Department of Water Resources, November 2 1966
[26] See *"Flood Damage, Northern California Floods of December 1964,"* Office of Architecture and Construction, January 11, 1965
[27] See *"The Role of the California Disaster Office During the 1964–65 Floods"* Remarks by John W Gaffney, Director, January 11, 1965



Watts Riots—1965

On the evening of Wednesday, August 11, 1965, a California Highway Patrol officer in the South Los Angeles area, while making a drunk driving arrest, became involved in a situation which required him to call for assistance. The drunk driving arrest precipitated a riot condition in that area of the City of Los Angeles. The Watts Riots of 1965 occurred from Wednesday, August 11 to Sunday, August 15.

The Department of Agriculture Regional Food Administrator met with Civil Defense officials in the Los Angeles office of the Governor on August 16 for the purpose of planning for the feeding of victims of the riot. The department furnished information at this meeting on the national emergency food consumption standards prepared by the U.S. Office of Emergency Planning. The department had available the names and addresses of major food supply sources of the Watts area. In this instance, it was decided that the California Disaster Office would purchase surplus food through the school lunch program. A number of San Joaquin Valley growers donated fresh fruit for use of the riot area. The department coordinated the efforts of these growers with the distribution agencies in the area in order that the fruit was made available promptly. One of the large milk distributors in the Los Angeles area donated milk and orange juice for use of the riot victims.

A California Highway Patrol officer was assigned to the Los Angeles Police Department's command post headquarters in the riot area for liaison. Requests for manpower assistance were received from the Los Angeles Police Department beginning on August 12. California Highway Patrol personnel, as requested, were assigned and were deployed to posts as determined by the Los Angeles Police Department.

On the morning of Tuesday, August 17, mutual aid assistance to the Los Angeles Police Department was concluded California Highway Patrol personnel on duty in the City of Los Angeles were not released until clearance was obtained from the Los Angeles Police Department commander in charge, and reliefs were made only at the request of the Los Angeles Police Department [28]

Although there was some confusion during the period of assistance, due to all parties being thrust into an emergency situation, with no time for advance planning, it appeared that excellent cooperation took place."[29]

GUARD MOVES IN

On August 13, 1965, Friday, the National Guard began to move into the Watts area along with 150 men from the Santa Monica Police Department

On August 14, 1965, Saturday, California Highway Patrolmen were being pulled out of the Watts area for the first time The initial withdrawal of CHP officers involved 37 men and 9 sergeants

The executive clemency and extradition secretary to the Governor was contacted by the CHP to advise him of information pertaining to an incident in Indio, California On the afternoon of August 15, 1965, the secretary called the CHP in Los Angeles and requested all the information that comes in CHP subsequently relayed approximately seven calls to him informing him of various developments in the disaster [30]

The committee is unable to locate the executive clemency and extradition secretary to the Governor in the Disaster Plan The committee notes that the secretary's request for all information came at a time when the Public Safety Agency Administrator and the Director of the California Disaster Office were in Los Angeles

CALL FOR SHOTGUNS

On Saturday, August 14, the Law Enforcement Division of the California Disaster Office, contacted the chiefs of police and sheriffs in the state relative to the Los Angeles Police Department's need for 250 shotguns The Disaster Office requested all chiefs and sheriffs to notify the Regional Law Enforcement Coordinators of the availability of shotguns from their departments and to deliver available guns to the Regional Coordinator's Office The State Disaster Office, Law Enforcement Division, was to arrange a central delivery point for all transportation in Los Angeles

The Regional Law Enforcement Coordinators are

Region 1—Sheriff, Los Angeles County
Region 2—Chief of Police, San Francisco
Region 3—Sheriff, Butte County
Region 4—Sheriff, Stanislaus County
Region 5—Sheriff, Madera County
Region 6—Sheriff, Riverside County

The Department of Conservation, Division of Forestry, placed its department on an alert status and standby status to assist in firefighting programs if the need arose In addition, because of Division of Forestry's concern with wisespread incendiarism associated with the Watts Riots might spread to the highly flammable watershed areas, 20 Division of Forestry fire trucks with three-man crews and five assistant rangers were dispatched to southern California from the Division of Forestry's five northern districts, as was requested on Saturday, August 14, 1965 Additional fire trucks located at Division of Forestry stations at Riverside, San Bernardino and San Diego Counties were placed on alert but were not called

The Department of Corrections submitted a plan to the Governor's office for utilizing department resources The plan made available 450 trained custodial personnel experienced in handling firearms and groups of recalcitrant persons upon proper authorization from institutions throughout the state on two to four hours' notice plus traveling time In addition, 150 parole agents scattered throughout the state were made available within two to four hours plus traveling time, upon proper notification The manpower was organized on the basis of institutional location and parole agent mobilization points throughout the state Technical specialists in such areas as feeding and medical service were also made available in limited numbers

VEHICLES LOCATED

The department was also prepared to supply a total of up to 67 vehicles which might be used in emergency situations These vehicles were all located at correctional institutions in the state and would be available immediately upon authorization by the Director of Corrections plus traveling time to locations where needed Firearms totaling 557 weapons, plus ammunition, gas, and restraint equipment were also available

Parole agents actively cooperated with law enforcement officials both in supplying information on the trouble area as well as screening large numbers of persons in the Lincoln Heights jail to determine whether they were parolees

The Department of Education found that no textbooks were destroyed during the Los Angeles riots The Bureau of Intergroup Relations of the Department of Education played a role in the discussion of education leaders to implement the school opening programs in the Los Angeles public schools The superintendents were informed that the services of the Department of Education were available to them to work out various approaches calculated to getting schools underway with a minimum of trouble and tension Immediately following the riots in the Watts area, the State Superintendent of Public Instruction called together the school superintendents of the major cities in California to discuss with them possible implications of the Watts Riots relative to the opening of schools It was then that the Bureau of Intergroup Relations came into play in assisting the local school district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The Department of Employment's downtown Los Angeles offices served the Watts area From the onset of the riots, the manager of the Los Angeles metropolitan area was in contact with civil defense and city authorities On the first working day of the riots, Monday, August 16, the area office and all downtown local offices remained closed while the authorities instituted initial control measures On the following day, Tuesday, August 17, although the disturbance was still in progress, all offices resumed operations providing both employment services and making benefit payments Some localized adaptations had to be made to compensate for staff unable to report due to the interruption of normal access and to reschedule claimants similarly affected

Job Office

On August 20, the Governor suggested opening a "one-door" office in the Watts area At the close of business on August 20, a manager for this operation was selected At that time the method of operation was nebulous The department's main role would be to provide job guidance services

On August 27, the premise had been selected, altered and the office opened On August 28, the Governor's executive secretary, designated by the Governor to oversee the operation, indicated job placement services should be provided This information was relayed to the area manager in charge of the Los Angeles operation He and his staff worked Saturday and Sunday, and on Monday, August 30, jobs were cleared from neighboring offices and job placement activities commenced

The Department of Finance acted primarily as an advisory or consultative agent during the Watts riot A representative of the Department of Finance was assigned to the Watts area immediately to expedite the establishment of a service center operation in that area The Department of Finance then undertook the processing of claims for payment of the cost of repair or restoration of damaged publicly owned facilities

The State Fire Marshal was in Los Angeles at the time the Watts riot began He immediately contacted the California Disaster Office operation center in Pasadena All of the State Fire Marshal's personnel in the Los Angeles district office were notified to stand by for call The State Fire Marshal made immediate personal contact with the Los Angeles City and Los Angeles County fire chiefs offering the services of the state office The State Fire Marshal was present during the entire period of the rioting Neither the California Disaster Office nor the State Fire Marshal's Office was needed in the fire suppression activities Some 45 local departments around Los Angeles City perimeter had units ready to provide mutual aid if needed None of these were used

No School Damage

The State Fire Marshal's personnel assisted in making building inspections No damage was found in any school, institution or place of public assembly, all of which come under the jurisdiction of the State Fire Mar-

shal Three dry cleaning plants and four dry-cleaning shops were destroyed These occupancies were inspected and regulated by the State Fire Marshal's Department

The Department of Fish and Game personnel did not participate directly in the law enforcement effort to suppress the Watts Riots The department felt that the total manpower it could provide would be insignificant Consequently, it did not volunteer its assistance for "front-line" duty. The department did, however, provide backup patrol for the Harbor Division of the Los Angeles Police Department at Terminal Island, San Pedro, when all men from that unit were at Watts For several nights, at the request of the captain in charge of the Harbor Division, the state wardens maintained all-night security patrols on Terminal Island, thus relieving the Los Angeles Police Department officers for duty in Watts

The Department of Industrial Relations, Division of Industrial Safety, was not involved with the Watts riots, although the staff was at all times willing to lend assistance However, other divisions within the department responded to the Watts Riots These are divisions that are *not* administratively related to the California Disaster Act. Personnel from the Divisions of Labor Law Enforcement and Industrial Welfare were stationed at the Watts center immediately following the riots However, no workload developed for either divisions so the personnel were returned to their headquarters A consultant from the Division of Apprenticeship Standards worked intensively in the area after the riots Concentrated special activities in Watts added 114 Negroes in apprenticeship in California, representing an 11 percent increase The Division of Fair Employment Practices was working in the area both before and after the riots Negro members of the consultant's staff went into the areas of disturbances at the request of the Governor's office to make first-hand observations of conditions and to interview informally a number of residents, community workers and business people

Law Enforcement Network

The Department of Justice initiated a statewide intelligence gathering system and established formal lines of communication with the Los Angeles sheriff's office and the Los Angeles Police Department The department acted as the legal advisor to the Governor during the crisis Liaison was also established with the U S Attorney's Office in Los Angeles and through that office to the Assistant Attorney General in Washington, D C

The committee notes that the Department of Justice was not included in the 1963 meeting between the State Military Department and local police departments called to establish guidelines for utilizing the National Guard in support of local law enforcement agencies

The Department of Justice also did some statistical work on the background of the persons arrested In addition, the Bureau of Criminal Identification and Investigation and Data Processing Section incurred certain expenses

The Department of Mental Hygiene was not affected by the riots, except for employees who could not get to and from home, and patients who were on leave or at family care homes in the area However, Patton State Hospital loaned six walkie-talkie sets to Civil Defense officials The hospitals were on alert in case the rioting should move in their direction

The State Military Department, Office of the Adjutant General, was directed to contact the Los Angeles Chief of Police who had informed the Governor of his concern over the growing civil disturbance threat. This initial contact was established in late July 1963

Immediately following his conference with top Los Angeles Police Department officials, the Adjutant General assigned the task of continuing liaison to an officer of his personal staff who brought key officers of Headquarters, 40th Armored Division, and top members of the LAPD staff together on August 21, 1963 to begin joint contingency planning on a continuing basis This pattern of liaison was repeated with respect to the police departments of the San Francisco Bay area and Headquarters, 49th Infantry Division [81]

Police and Guard Liaison

There was direct liaison in the operations between the California National Guard and the Los Angeles Police Department The curfew area and zones of responsibility were defined so that there were comparable level Army Guard headquarters coordinating with and supporting police command elements Division commanders would respond directly to requests for assistance by the police field commanders responsible for division areas Police would turn to the National Guard with requests for assistance outside the curfew area and the National Guard would in turn assign these missions to the appropriate guard division command

Liaison between the National Guard and police officials seemed constant, comprehensive and effective [12]

The Los Angeles Police Department assisted in locating the guard units in Los Angeles Shortly after the Adjutant General arrived in Los Angeles, the police department assigned one of its inspectors as its logistics coordinator to work with the National Guard's logistic staff and provide liaison between the police and other city agencies Through the police inspector, arrangements were made with the Los Angeles Board of Education to open various city schools for use as troop billets The schools selected were located in or adjacent to the guard's assigned areas of operation

The local Salvation Army sent a station wagon loaded with refreshments to a bivouac area in Glendale three times daily

Shortly after the National Guard was committed, requirements emerged for additional supplies, such as cots, radio batteries, repair parts, housekeeping supplies and ammunition As the buildup continued, such requirements increased in intensity These demands were relayed to the United

States Property Fiscal Office in Sacramento who directed that required supplies in USPFO stocks at Camp San Luis Obispo be dispatched to Los Angeles Items not in USPFO sticks were obtained on temporary loan from Army, Air Force, Navy, Marine Corps installations and other governmental agencies in the area For example, Fort Erwin, through Fort MacArthur, provided ammunition The U S Public Health Service and U.S and State Forestry services provided 8,000 canvas cots The USPFO Supply Division at Camp San Luis Obispo and Fort MacArthur operated on a 24-hour basis providing supplies on call as needed

A total of 137 tactical vehicles were borrowed from the USAR

Airlift Arrangements

Units airlifted to Los Angeles required transportation from Van Nuys Air National Guard Base to Los Angeles Arrangements were made with the Los Angeles Board of Education to borrow buses with drivers to accomplish this move The movement of airlifted units from Los Angeles to Van Nuys Air National Guard Base during the withdrawal phase was accomplished in the same manner

Military red tape caused some delay in the use of aircraft during the riots For example, to clear the way for possible airlift support by either the U.S Air Force or Air Force Reserve, the Governor's staff took steps on Saturday afternoon to insure that presidential approval would be forthcoming At 1430 hours an officer who was at the Office of the Adjutant General and taking part in the Emergency Operating Center operation, phoned the Deputy Commander of Western Transport Air Force and requested assistance The deputy commander advised that he could furnish two C-130 and two C-124 aircraft provided approval was obtained from the Military Air Transport Service and the Pentagon At this time, the Office of the Adjutant General Air Staff also contacted the Sacramento Air Materiel area at McClellan Air Force Base and Mather Air Force Base The McClellan Air Force Base Commander immediately promised support in the form of one C-54 and one C-118 aircraft This commitment was the first U.S Air Force material assistance for the airlift mission Approximately four more hours were to pass before the operational release of additional United States Air Force aircraft could be obtained Although the Office of the Adjutant General Air Staff received direct word that the President had approved the use of federal airlift forces, confirmation through United States Air Force channels could not be obtained This situation necessitated repeated telephone calls between the Office of the Adjutant General's staff and the National Guard Bureau staff duty officer to obtain the proper United States Air Force releases Meanwhile, the Western Transport Air Force capability was increased to three C-130 and five C-124 aircraft

The Office of the Adjutant General's Air Staff had previously contacted the 349th Troop Carrier Wing (U.S Air Force Reserve) at Hamilton Air Force Base to determine if that organization could make its C-119s avail-

able The wing commander replied that he had the capability but lacked the authority to commit his aircraft in support of state military forces

Unlike the deployment phases of the airlift, return air movements were accomplished entirely with California Air National Guard resources U.S Air Force, Air Force Reserve, Military Air Transport Service and Arizona Army National Guard aircraft were not available

Food Brought In

By dawn of August 16, the situation in the riot area had definitely changed for the better Various groups such as the Salvation Army were given permission by the Governor to distribute bulk foods at designated locations within the disturbance area Food distribution began early on the morning of August 16 and continued without incident At the same time, plans were prepared to provide security for trucks and personnel required to restock the many supermarkets located in the damaged area

During the riot, many governmental agencies were constantly seeking information concerning strengths, locations and movements of the company-size units making up battalions or brigades To complicate the situation, local representatives of the same agencies continually made requests and then belatedly furnished the information to their higher echelons This dual reporting resulted in many inaccuracies and erroneous assumptions and was a considerable duplication of effort The State Military Department suggested that an accurate and timely reporting system must be developed to overcome this problem and keep interested agencies informed while avoiding unnecessary interference with operations

Because of nationwide interest in the Los Angeles riots, the National Guard public information staff was swamped with queries from the press, radio and television Besides countless local requests, calls came in from all over the country The Adjutant General and other ranking officers of the guard held numerous press conferences in an attempt to provide the news media with up-to-date information Despite this, numerous news reporters were continuously in and out of the National Guard emergency operation center and often interferred with the conduct of operations This situation points up the need for clear policies and guidelines to permit full cooperation with the press,[33] and the requirement for a pressroom adequately equipped and staffed during any large-scale operation of this nature[34]

The McCone Commission suggested that the Third Brigade of the 40th Armored Division from San Diego might have been committed earlier to assist during the riot[35]

The Department of Motor Vehicles considered its formal responsibility under the disaster program as not affected by the riot

Health Services Adequate

The Department of Parks and Recreation, Division of Beaches and Parks, personnel participated in emergency preparation of an antipoverty pro-


PAINT & HARDWARE
PAINT HARDWARE
SUPPLIES

gram workload shortly after the riots were over This was part of an overall statewide effort which was later extended to include most state agencies

Once it became obvious that the riots in the Watts area of Los Angeles were extensive and that the damage caused was of large magnitude, the Regional Medical Coordinator's Office of the Department of Public Health in Los Angeles made an assessment of the need for and the availability of health services in Los Angeles and whether or not additional resources would be needed It was determined that available medical and health services were adequately meeting the demand and continued to do so In addition to this, the Regional Medical Coordinator, a sanitary engineer and sanitation consultant were part of a state team which surveyed the area to assist the local government in making its declaration that a disaster area did exist The problems of general sanitation and contaminated foodstuffs following the fires were handled by the local County Health Department making it unnecessary for the State Health Department to supply assistance other than on a consultation basis

The Public Utilities Commission, Transportation Division, staff conferred with officials of the Southern Los Angeles Transportation Company (the local transit company) with respect to stopping bus service so as to prevent injury to bus operators and damage to the buses After the riots, the commission staff conferred with the officials to provide bus service at the earliest possible time

The Watts area in Los Angeles is almost entirely served by the Los Angeles Department of Water and Power Informal contacts made by the commission staff indicated that their crews reestablished service and reconstructed the damage as soon as possible Southern California Edison Company, which serves outside of Los Angeles City in the vicinity of Watts, suffered relatively minor damage Contacts by commission staff indicated that crews of Southern California Edison performed repair work promptly

Telephones Repaired

The Pacific Telephone and Telegraph Company reported 7,000 telephones were out of service Service was restored to 75 percent of these telephones in three days General Telephone Company reported that six toll cables were cut in the Whittier-Downey area during the time of the riots Southern California Gas Company closed many services at the street valves as a precautionary measure

The Department of Public Works, Maintenance Department, in Los Angeles, was alerted by the Governor's office of the possibility of furnishing men and equipment for transporting foodstuff into the riot zone At 3 p m , on August 16, the department had assembled 12 trucks with crews at the Chelı Air Force warehouse Eight of the twelve units were loaded with foodstuff and dispatched to prearranged points with National Guard convoy into the Watts riot zone

On Thursday, August 17, 20 trucks were loaded with materials at the Cheli warehouse for delivery to five destinations within the Watts riot zone The use of state highway crews for transporting foodstuff during the emergency in the Watts area was completed on the afternoon of August 17

The Department of Social Welfare, along with several other state departments, has been extensively involved in setting up the State Service Center ordered by the Governor and in other rehabilitative efforts in the Watts area

After analysis and studies by the Social Welfare Board and other groups throughout the state, the department became aware sometime ago that there was high potential for various kinds of civil disturbances, riots, or protests in several areas of the state such as the kind that took place in Watts

Responsibility Areas Unclear

State officials were alerted to this possibility on numerous occasions by several means during the previous year The warnings and apprehensions were not limited to the Negro minority groups An analysis of the social economic conditions throughout California revealed that tensions and poor community relations exist particularly within the poverty and deprived segments Some of these threaten to erupt in disturbances on a scale requiring emergency action or measures on the part of state and local government which go beyond the normal maintenance of law and order In an effort to determine state and local governmental responsibilities and to evaluate the need for developing emergency operations to augment the law enforcement arm of government in handling these specific situations, the Department of Social Welfare Emergency Welfare Services staff representative introduced this subject for discussion with the California Disaster Office and other civil defense groups There has not been to the knowledge of this department, however, any definitive statement of legal responsibility or policy within the general framework of disaster operations

The Department of Social Welfare reported that while it is entirely in accord with the concept of mobilizing total government in response to disasters, it is difficult to know where the department stands in the total effort In other words, the department feels a lack of appropriate leadership, direction and guidance which can only emanate from a central authority

As of early Sunday, August 15, the Governor had received information from reliable citizens living and working in the curfew area that a considerable number of individuals and families were in need of food and drugs The Governor instructed the California Disaster Office to review the situation, determine the need and take immediate action to deliver food supplies to meet the needs of those suffering hardship The operation was to be carried out under the general direction and supervision of the assistant to the Governor for human rights, who called a meeting of local

merchants and officials of the Retail Clerks Union early Monday, August 16. He received their cooperation and commitment to open as many retail grocery markets as possible as soon as possible. It was subsequently reported that 40 to 50 markets were opened on Monday and Tuesday, August 16 and 17. Also on Monday, August 16, at 10 a.m., the assistant to the Governor for human rights convened a meeting of representatives of the California Disaster Office, State Department of Social Welfare, Department of Agriculture, Los Angeles County Administrator's Office, the Food Service Branch of the City Schools Administrative Office, the California Division of Highways, California National Guard and Salvation Army.

Reliable Information Lacking

An initial review of the situation revealed that reliable information (intelligence) concerning the extent of damage, numbers of persons affected and extent of distress or security measures required for safe operations in the area were almost totally lacking. The Salvation Army representative reported that they had sent some trucks and personnel into the area earlier in the day with military escort and that they had experienced no difficulty whatsoever in starting the food distribution operation. They had, in fact, been well received. In addition, they reported that their personal contacts indicated that the need in certain areas was acute.

The group decided to set up a food (groceries) distribution operation under the auspices of state government at Watts. The educational agency for surplus property had approximately 125 to 150 tons of food warehoused near the area which could be delivered in wholesale shipments when trucking facilities were provided. The Salvation Army volunteered the services of 10 trucks and drivers. The Division of Highways had enough trucks and drivers immediately available to truck 25 to 30 tons per day. The National Guard offered to provide the required security escort. The city schools offered to open their facilities to be used for distribution points if required. Plans were quickly formulated. The State Department of Social Welfare in cooperation with the Department of Agriculture developed a suggested grocery package (composed of items available) which would provide a two- to three-day balanced diet with adequate calorie content for a family of five. Salvation Army and Division of Highways trucks were dispatched to the warehouses. Contacts were made with a number of churches and private organizations in the area which had volunteered to serve as distribution centers, including the furnishing of manpower and supervision of packaging and handing out packages. It was decided not to use school facilities unless they were needed later. Local merchants and warehouse dealers donated additional grocery items, such as fresh bread, eggs, and milk and bags for packaging.

The plan was successfully carried out. The first trucks arrived in the area Monday afternoon. By Thursday, August 18, approximately 110 to 115 tons of surplus food and $2,000 to $3,000 worth of donated food had



been distributed to 6,500 to 7,000 families (40,000 to 50,000 individuals). Staff from the State Department of Social Welfare made a tour of the affected area to observe the food distribution operation and to engage in conversations with citizens in the community to determine whether their needs for food were being met.

Drugs Available

Staff also undertook to determine the availability of doctors and drug supplies to meet reported health and medical needs. A number of doctors had kept their offices open, and although many drugstores had been destroyed in Watts, drugs were obtainable from neighboring areas for those with available transportation. There were sufficient retail food markets and drugstores in operation to meet the needs of those living in the western and northern parts of the curfew area. Health officials were alerted and apprised of the situation.

The Department of Veterans Affairs reported that no Cal-Vet contract holder suffered a loss to his property as a result of the riots. There was no involvement by this department in the Watts riots during any phase of the incident.

Since the riot was not related to flood operations, the Department of Water Resources did not participate in its alleviation.

The Department of Youth Authority had roughly 1,300 wards in the central Los Angeles riot area.

The Youth Authority had 37 parole agents working in the central rectangle. Some agents had their entire caseload in the area. Others extended into adjoining areas.

Youth Authority staff efforts were three-fold (1) instructing wards about participation in the riots, (2) assisting police at division stations and (3) assisting at detention facilities—Lincoln Heights and juvenile hall

The Department of General Services, Property Acquisition Service, negotiated and secured a lease of office space for various state agencies requiring facilities in the riot area The departments included Employment, Industrial Relations, Public Health, Social Welfare, Rehabilitation, Housing, Governor's Office of Economic Opportunity and the Attorney General's Fraud Section Office The lease was made for 3,000 square feet of building area at $900 per month, which included janitorial service The Building Maintenance and Protection Division sent four state policemen from Sacramento to Los Angeles to assist the opening of the Department of Employment branch offices in that area They provided additional service for the Museum of Science and Industry, Los Angeles, and provided backup police support to the Los Angeles Police Department

Work from Trucks

The Communication Service maintenance shop in Los Angeles is located at the edge of the Watts area When it became evident that the location would become untenable for technicians, spare radio parts and test gear were loaded into trucks which were then deployed to safer areas The technicians working out of their trucks were thus able to keep all essential state communications working throughout the emergency

The Los Angeles garage and the Los Angeles airport pool had considerable increased activity during this period Specifically, the pool furnished six sedans for the California National Guard and two station wagons were furnished a short time later to transport arms and ammunition back to the Arizona National Guard in Arizona The Los Angeles airport pool furnished six to eight vehicles to members of the California Highway Patrol and six other state employees who flew to Los Angeles for riot duty, but the agencies involved cannot be determined at this late date However, it was recalled that the cars were issued with no time limitation when the duration of need could not be given at time of dispatch

The Los Angeles garage also made parking space available to the McCone Commission, which was appointed by the Governor to study the Watts riots The Office of Procurement within 24 hours furnished to the National Guard various emergency supplies and stores valued at about $3,000

Disaster Office Acts

The California Disaster Office activated 24-hour operating centers at Sacramento and Pasadena Liaison was established at the Los Angeles Police Department Command Center and the Los Angeles County Fire Command Center

The Disaster Office was requested to provide 105 shotguns, which it subsequently did A request for 500 riot guns was also received An emer-

gency request was sent to all chiefs of police and sheriffs in the state. Over the next 24 hours, 534 guns arrived from California, Nevada, and Arizona law enforcement agencies and were furnished to California Highway Patrol, Los Angeles Police Department, Los Angeles Sheriff's Department and other local law enforcement agencies.

Due to the fact that available resources had been depleted, the Disaster Office arranged to obtain ammunition from federal, state and local agencies and was able to supply considerable amounts of ammunition to law enforcement agencies. Some of the riot ammunition was obtained from Pittsburgh, Pennsylvania. The Disaster Office also obtained 250 flak suits for firemen through the Marine Base at Camp Pendleton. 412 radio transmitter receivers and 2,500 cots were also supplied by the Disaster Office. The Disaster Office also assisted in setting up the system for emergency feeding of needy families in the riot area.

A damage-assessment team, composed of state, county and city personnel, was organized by the Disaster Office and the results of the survey were furnished to the Governor's office.[36]

Another state government agency which participates in disaster preparedness is the Bureau of Adult Education of the State Department of Education. A program financed by the Department of Defense in the Department of Health, Education and Welfare administered by the Bureau of Adult Education of the State Department of Education is now available in California. A staff of consultants and field representatives has been geared to give the necessary guidance and support in setting up courses in "Individual and Family Survival" in the adult divisions of high schools and junior colleges. These courses are given in any school district maintaining high schools or junior colleges. The course in "Individual and Family Survival" is taught by qualified instructors over a 12-hour period, usually divided into six 2-hour periods or four 3-hour periods.[37]

Two federal agencies have been established with primary responsibilities to assist the states in civil defense and natural disaster planning and projects: the Office of Civil Defense and the Office of Emergency Planning. The committee at this time is not prepared to judge the effectiveness of the federal programs in California.[38]

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[26] For discussion of crowd control, see also Raymond M. Momboisse, "Crowd Control and Riot Prevention," *Western City Magazine*, September 1965.

[27] See CHP Log, August 14 and 15, 1965 for 12-hour delay in transferring equipment from Sacramento to Los Angeles.

[28] CHP Log August 15, 1965 and August 16, 1965.

[29] See *Report Concerning the California National Guard's Part in Suppressing the Los Angeles Riot*, August 1965, State Military Department.

[30] See Julian Hart, "National Guard at Watts," *The National Guardsman*, October 1965.

[31] See Transcript, "*News Media Reporting of Natural Disasters and Civil Disturbances*," Assembly Military and Veterans Affairs Committee, October 5, 1966.

[32] See also "Report on Characteristics and Potential of State Military Support During Natural Disasters and Civil Disturbances," State Military Department, 1965.

[33] *Violence in the City—An End or a Beginning*, A Report by the Governor's Commission on the Los Angeles Riots, December 2, 1965.

[34] See "Director's Report on CDO Activities in Los Angeles Area Disaster, August 1965," California Disaster Office.

[35] William J. J. Smith, "Civil Defense Education—An Answer to Anxiety," *California Education*, November 1963.

[36] See *Federal Disaster Relief Manual* (Rev. Ed.), 1963, for listing of federal civilian agencies with responsibilities in disaster planning, relief and rehabilitation. Some of these agencies have sizeable staff, facilities and materials in California.

DISASTER COMMUNICATIONS SYSTEMS

A large number of federal and state radio, teletype and telephone networks may be found in California. Some of these systems may communicate with each other while others are routed by use of other communications devices. Communications systems currently available and in use in California include:

(A) *Federal*

1. NAWAS (National Warning System)
2. NACOM I (National Communications) teletype
3. NACOM II radio, two-way voice
4. EBS (Emergency Broadcast System) successor to CONELRAD
5. U.S. Weather Bureau, Sacramento

(B) *State*

1. Department of Justice teletype and radio
2. Highway Patrol IDT (Inter-regional Dial Telephone) microwave
3. Highway Patrol radio
4. CDO "Local Government" VHF radio
5. Division of Forestry radio
6. Division of Highways radio
7. Department of Fish and Game radio
8. Department of Water Resources radio
9. Military Department (Air National Guard) radio
10. Division of Communications, Department of General Services the original and continuing *technical coordination and servicing* agency for several (but apparently not all) state-owned microwave, radio, and telephone systems



Appendices

CALIFORNIA'S NATURAL DISASTER AND CIVIL DEFENSE PROGRAMS

LIST OF WITNESSES

Appearing Before the Assembly Interim Committee on Military and Veterans Affairs

January 12, 1966

1 MR RAYMOND M MOMBOISSE, Deputy Attorney General, State of California
2 MR WILLIAM PARKER, Chief of Police, City of Los Angeles
3 MR HALTON ARP, Chairman, Los Angeles Chapter, Federation of American Scientists
4 MR WILLIAM FRANK, Deputy Civil Defense Director, City of Los Angeles
5 HON WILLIAM GOEDIKE, Mayor, City of Inglewood
6 MR ANDREW J FINK, Assistant, Safety and Disaster Services, County of Los Angeles
7 MR ROY MCCANN, Managing Editor, San Clemente *Sun Post*
8 MR EDMUND L LEWIS, Executive Assistant, California School Boards Association
9 MR ELMER KELL, President, Southern California Civil Defense and Disaster Association
10 HON PETER J PITCHESS, Sheriff, Los Angeles County
11 MR JOHN GAFFNEY, Director, California Disaster Office
12 MR MELVILLE I STARK, Director, Office of Civil Defense, Riverside
13 MR RUDY MEDINA, Coordinator, Civil Defense, Imperial County
14 MR LINTON T COLLINS, Representative, United Spanish War Veterans

October 5, 1966

1 MR EDMONDE A HADDAD, News Editor, Capital Cities Broadcasting Corp
2 MAJOR GENERAL RODERIC L HILL, State Adjutant General, Military Department
3 MR JOHN W GAFFNEY, Director, California Disaster Office
4 MR HOWARD SMILEY, Executive Vice President, California Broadcasters Association
5. MR ROBERT M LICHT, President, Southern California Broadcasters Association (observe only)
6. MR WILLIAM HORN, Chief, Flood Forecasting and Control Branch, Department of Water Resources
7 MR HOWARD MOORE, Deputy State Forester, Department of Conservation
8 MR BEN MARTIN, General Manager, California Newspaper Publishers Association

Persons Interviewed

The committee staff interviewed the following individuals while studying California's Natural Disaster and Civil Defense Program

1 Mr David W Davis, Consultant, Program and Policy Office, Department of Finance
2 Mrs Emeline Ebberts, Director of Public Information, Sacramento Area Chapter, American Red Cross
3 Mr John W Gaffney, Director, California Disaster Office
4 Mr E L Halcomb, Jr, Executive Secretary, Commission on California State Government Organization and Economy
5 Mr Nathan B (Dave) Keller, Principal Administrative Analyst, Legislative Budget Committee
6. General Clarence D Smith, Assistant to the Adjutant General, Military Department
7 Mr Frank Mesple, Legislative Secretary to the Governor, Governor's Office
8 Mr W A Farrell, Chief, Surplus Property Office, State Educational Agency for Surplus Property
9 Miss Carlyn Froerer, Attorney, League of California Cities
10 Mr Merrill Gaffney, Executive Secretary, California Peace Officers Association
11. Mr. Richard F. Gordon, Director, San Francisco Region, American Red Cross
12 Mr George M Grace, Director, Region Seven, Office of Emergency Planning
13 Mr O J. (Bud) Hawkins, Assistant Deputy Director, Department of Justice
14 Mr William L. Horn, Chief, Flood Control Center, Department of Water Resources
15. Mr Paul T Hoyenga, Local Assistance Office, Department of General Services
16 Mr. Edmund K Lewis, Executive Assistant, California School Boards Association
17 Mrs Grace Lusk, State Personnel Board
18 Mr John D MacKenzie, Information Officer, Department of Veterans Affairs
19 Mr A David Motes, Budget Operations (Public Safety Agency), Department of Finance
20 Mr. William C Parker, Chief of Police, City of Los Angeles
21. Mr R. E (Ron) Nelson, Assistant Director, Contra Costa Disaster Office
22 Mr Will H Perry, Jr, Director, Contra Costa County Disaster Office
23 Mr. Charles T Rainey, Staff Member, Disaster Research, Stanford Research Institute

Persons Interviewed—Continued

24 MR. H. A (VIC) ROSA, Assistant to the Administrator, Public Safety Agency
25. MR THOMAS C SHERIDAN, General Counsel, Governor's Commission to Investigate the Los Angeles Riot
26 MAYOR SAMUEL W YORTY, City of Los Angeles
27 MR BRADFORD M CRITTENDEN, Commissioner, California Highway Patrol
28. MR. CARL H. AULICK, MAJOR GENERAL (RETIRED), Director, Office of Civil Defense, Santa Rosa

STATISTICAL REPORT

Federal Assistance Programs Administered by California Disaster Office Fiscal Year 1964–65

The California Disaster Office administers four programs under which the federal government assists states and local governments in their efforts to build effective civil defense organizations and cope with the effects of natural disasters These four programs are (1) granting of matching funds for civil defense supplies, equipment and training activities, (2) donations of surplus federal property, (3) matching funds for administrative costs for civil defense activities, and (4) grants for the emergency restoration of public facilities damaged in a natural disaster which has been recognized by the President as of major proportions

Amounts of this assistance are shown on this summary. They reflect only those donations and grants which were completed prior to July 1, 1965. Still available to local governments are funds which were allocated during fiscal year 1964–65 for approved projects

SUMMARY

	Total Fiscal year 1964–65
Supplies—equipment—training	$1,349,068.33
Surplus property donations	2,889,856 73
Personnel and administrative costs	1,715,418 06
Grants under Public Law 875	6,334,389.12
GRAND TOTAL	$12,288,732.24

Work requested by state to be performed by the appropriate federal agency under Public Law 81-875 (expenditures resulting from the December 1964 flood)

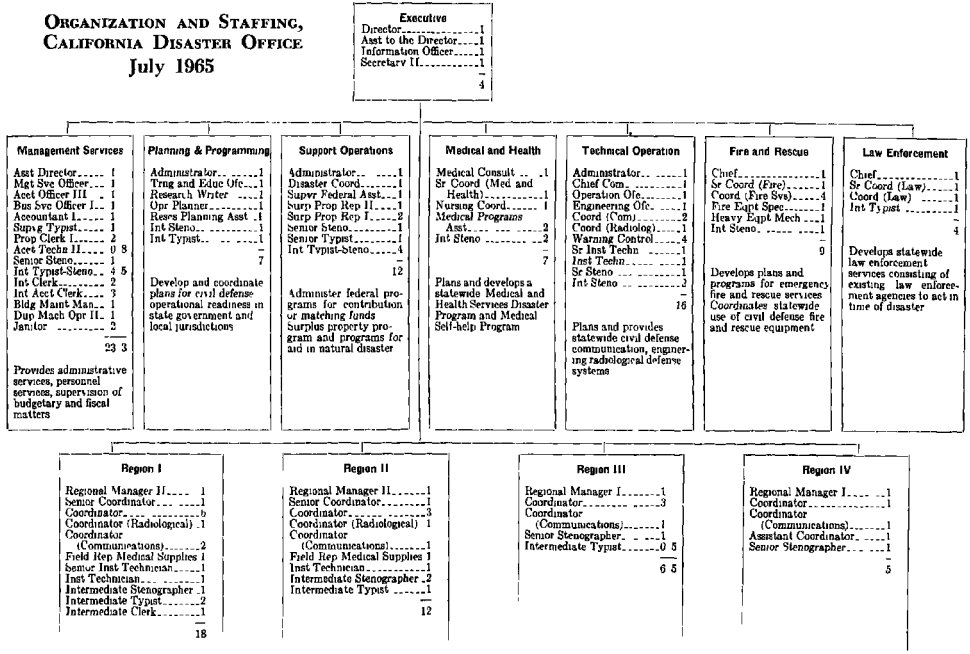
Funds Expended or Contracts Let as of June 1, 1965 $23,872,000.00

STATISTICAL REPORT

Federal Assistance Programs Administered by California Disaster Office—Fiscal Year 1964–65

State agencies	Contributed for supplies, equipment and training fiscal year 1964–65	Fair value of donated property fiscal year 1964–65	Contributed for personnel and administrative costs fiscal year 1964–65	Grants under PL 875 fiscal year 1964–65	Total fiscal year 1964–65
Calif Disaster Office	$138,009 13	$38,770 54	$525,900 62		$702,680 29
Calif Highway Patrol		164 00	7,244 34		7 408 34
Dept of Conservation	112,400 00	10,432 70			122,832 70
Dept of Corrections		920 00			920 00
Dept of Education			(12 09)		(12 09)
Dept of Fish and Game				$73,762 00	73,762 00
Dept of General Services		2,781 00			2,783 00
Dept of Justice	1,940 94	1 605 40			3,546 34
Dept of Mental Hygiene	834 61				834 61
Dept of Motor Vehicles					
Dept of Parks and Recreation		8,501 70			8 501 70
Dept of Public Works		315 00			115 00
Dept of Social Welfare			11,306 70		11,306 70
Dept of Water Resources				8,150 00	8,150 00
Military Department			11,483 12		11,483 12
State Board of Nurse Education and Nurse Registration	2,209 62				2,209 62
Total	$255,394 30	$63,492 34	$555,922 69	$81 912 00	$956,721 33

Organization and Staffing, California Disaster Office
July 1965




CALIFORNIA DISASTER OFFICE
MUTUAL AID REGIONS
SISKIYOU
MODOC
TRINITY
SHASTA
LASSEN
III
TEHAMA
PLUMAS
GLENN
BUTTE
SIERRA
LAKE
COLUSA
PLACER
YOLO
EL DORADO
ALPINE
AMADOR
CALAVERAS
TUOLUMNE
SAN FRANCISCO
SAN MATEO
SANTA CRUZ
MARIPOSA
MERCED
MADERA
FRESNO
V
TULARE
KINGS
SAN LUIS OBISPO
KERN
SANTA BARBARA
I
VENTURA
LOS ANGELES
ORANGE
EFFECTIVE JANUARY 1, 1964

Civil Defense/Disaster Organization Expenditures by State of California *

Fiscal year	Name of civil defense/disaster agency	Number of authorized positions	Amount spent during previous fiscal year	Requested in Governor's Budget	Recommended by Legislative Analyst	Change made by Legislature	Approved by Governor	Fiscal year
49–50	Disaster Council	1	$27,983	$33,081	(1) None (2) $20,906	None	$20 906	49–50
50–51	Disaster Council[1]	2	18 551	19,993	(1) None (2) 20 266	None	20 266	50–51
50–51	Office of Civil Defense[2]	127				$+1,503,221	[4]1,503,221	50–51
51–52	Office of Civil Defense	139	627,604	1 238,953	871,507	+55,302	1,294,255	51–52
52–53	Office of Civil Defense	157 5	1 370,028	1,416 678	1 366,767	−35,012	1 381,666	52–53
53–54	Office of Civil Defense	128	[5]1,269 497	1 404,937	1 076 517	−145,015	1,259,922	53–54
54–55	Office of Civil Defense	103	997,847	1 055 419	1 055,419	None	1,055,419	54–55
55–56	Office of Civil Defense	94 7	948,255	1 142,082	813 268	−140 000	973,268	55–56
56–57	Office of Civil Defense	97 6	973,268	939,055	908,055	None	908 055	56–57
57–58	Disaster Office ("CDO")[3]	110 3	953,780	1 071,885	1 057 641	+26 688	1,098,573	57–58
58–59	Disaster Office ("CDO")	112 0	1 222,263	1 150,812	498,566	−50,000	1 057,864	58–59
59–60	Disaster Office ("CDO")	78 3	1,107 224	1 108,035	1,018,842	−326,768	737,074	59–60
60–61	Disaster Office ("CDO")	93 9	805,951	932,516	904,856	+9,980	904,856	60–61
61–62	Disaster Office ("CDO")	133 5	865 958	964 373	Indeterminate	−9,000	911,373	61–62
62–63	Disaster Office ("CDO")	149 5	877,264	1 011,746	890 086	−46,911	913,175	62–63
63–64	Disaster Office ("CDO")	156 5	1,028,701	851,577	Unresolved	+30,331	881 908	63–64
64–65	Disaster Office ("CDO")	149 0	896,904	1 357,232	1,323 432	−33,800	1,323,432	64–65
65–66	Disaster Office ("CDO")	137 5	[5]1,344 100	1 290,685	1,290 685	−200,000	1,090,685	65–66

[1] Disaster Council continues, without budget
[2] "Civil Defense Act of 1950," Ch 3, Stats of 1950, Third Ex Session
[3] Amendment to Sec 1518, M&V Code Stats of 1956, Ch 56 pp 438–448
[4] Supplementary legislation and appropriation, Third Ex Session, 1950 (Korea)
[5] *Estimated* amount
NOTE All moneys in column 2 are state funds Federal (matching) funds greatly increased since 1961–62 are not included —J R B
* Prepared by John R Bodo, Research Analyst Assembly Legislative Reference Service, December 28, 1965

ΔL-2199—100 1-67 1M

Volume 24 Number 5

REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON MILITARY AND VETERANS AFFAIRS

1965–67

PART II

CALIFORNIA VETERANS BENEFITS

To the 1967 General Session of the California Legislature

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Speaker pro Tempore
HON ROBERT MONAGAN
Minority Floor Leader
JAMES D DRISCOLL
Chief Clerk

LETTER OF TRANSMITTAL

January 3, 1967

Hon. Jesse M. Unruh
Speaker of the Assembly, and
Members of the Assembly
Assembly Chamber—State Capitol
Sacramento, California

Gentlemen:

Pursuant to House Resolution No. 710 of the 1965 Regular Legislative Session, the Assembly Interim Committee on Military and Veterans Affairs submits its final report covering its functions and activities during the 1965–67 interim.

Respectfully submitted,

WALTER W. POWERS, *Chairman*
NEWTON R. RUSSELL, *Vice Chairman*

ROBERT E. BADHAM	GEORGE DANIELSON
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CALIFORNIA VETERANS BENEFITS

LIST OF WITNESSES

APPEARING BEFORE THE ASSEMBLY COMMITTEE ON MILITARY AND VETERANS AFFAIRS

November 12, 1965

1. MR. JOHN HANDSAKER, *Administrative Deputy Director,* Department of Veterans Affairs
2. MR. JAMES A. GILBERT, *Vice Commander,* Department of California, American Legion
3. MR. STANLEY DUNMIRE, *Legislative Representative,* American Legion, Department of California
4. MR. EDWIN MYERS, *Department Commander,* Veterans of Foreign Wars of the United States
5. MR. J. NORMAN KELLY, *Director,* Military and Veterans Affairs for County of Los Angeles
6. MR. B. BILL MURAD, *Commander,* AMVETS, Department of California

August 18, 1966

1. MR JOSEPH M. FARBER, *Director,* Department of Veterans Affairs
2. MR STANLEY F DUNMIRE, *Legislative Chairman,* American Legion
3. MR BYRON B. GENTRY, *Member,* California Veterans Board
4. MR CHARLES WOOD, Sacramento County *Veterans Service Officer*
5. MR. CESAR MENDEZ, *State Secretary,* American GI Forum
6. MR W KEITH GARRISON, *Director,* County of Ventura Veterans Service Bureau
7. MR. JOHN MONAGHAN, *Member,* California Veterans Board; Veterans Political Council of San Francisco
8. MR MANUEL VAL, *Manager,* Service and Coordination Division, Department of Veterans Affairs
9. MR. JOHN ERTOLA, *Board Counsel,* Department of Veterans Affairs
10. MR. MATTHEW ZOLLNER, *Assistant Manager,* Farm and Home Purchases Division, Department of Veterans Affairs
11. MR. HARRY E WENTWORTH, *Representing* Disabled American Veterans
12. MR. E. W. REYNOLDS, *County Service Officer,* Kern County

PART II

CALIFORNIA VETERANS BENEFITS

INTRODUCTION

The committee reviewed California veterans benefits for the purpose of insuring California's position as having the nation's finest state program of benefits for war veterans A grateful people could do no less for the thousands of Californians called to serve their country in the uniform of the United States armed forces. The California Military and Veterans Code was reviewed to determine whether it was suited to meet current conditions realistically

The committee held public hearings on this subject on November 12, 1965, at the Museum of Science and Industry Building, in Los Angeles, and on August 18, 1966, at the State Building, in San Francisco The committee requested and received suggested problem areas to be reviewed from veterans organizations. The committee then prepared a draft of a proposed revision of the Military and Veterans Code which encompassed a variety of suggestions made by interest groups and ideas developed by committee members as a result of independent research.

The end result was the drafting of a legislative proposal embodying repeal of many obsolete code sections and the amendment of other sections to make clear legislative intent New ideas are presented Changes in the organization of the Department of Veterans Affairs are offered The committee also gave special attention to the role of the California Veterans Board as a policymaker

This report first considers the findings and recommendation concerning the California Veterans Board Then a general chronological development is presented of the steps that resulted in the committee's legislative proposal for the 1967 Regular Session of the State Legislature.

FINDINGS

The committee finds that some sections of the Military and Veterans Code have not been amended since 1939 Much has happened in the last 27 years that is not reflected in the current code provisions Two World Wars, the Korean and Vietnam conflicts and the several lesser military actions involving American troops, together with the changing social, economic and educational conditions in society, constitute a need to revise California's program of benefits to veterans

RECOMMENDATION

The committee recommends that the legislative proposal developed as a result of interim studies be presented to the Legislature for enactment into law at the 1967 Regular Session of the State Legislature

The revision of the Military and Veterans Code should include making the California Veterans Board an Advisory Board and transferring all policymaking responsibilities to the Director of Veterans Affairs, amend, add and repeal various sections, change definition of "veteran" and "veterans" for veterans' benefit purposes, increase educational benefits and make other changes relative to educational assistance, make changes respecting claims for educational benefits; provide for administration of local assistance and burial provisions through county veterans service officers and make other changes respecting those provisions and officers, make changes in provisions on farm and home purchases, including change increasing amount of home loans from $15,000 to $20,000, make other related changes

The committee also recommends that a bond issue of $500,000,000 to continue financing the Cal-Vet home and farm loan program be proposed to the electorate for approval at the 1968 general election

The committee further recommends that the position of commandant at the State Veterans Home be filled by the administration to clarify the responsibilities for management of the State Veterans Home

CALIFORNIA VETERANS BOARD AS A POLICYMAKER

INTRODUCTION

The Assembly Committee on Military and Veterans Affairs is not limiting its interest to merely authorizing policies and programs for administrative action It is also concerned with the administrative organization to carry out the policies and programs of state government

We may say as a general rule that politically and legally this committee is as much interested in how government functions as it is in what government is supposed to be doing Therefore, the committee is asking whether the Department of Veterans Affairs should continue to be headed by the California Veterans Board

RECOMMENDATION

It is recommended that the California Veterans Board be made an advisory board and that all policymaking responsibilities be vested in the Director of the Department of Veterans Affairs.

SCOPE

General Considerations

In the early years of the Federal Republic, Congress established most agencies with a single individual as head and by 1860 it was generally accepted that single-headed control of administrative agencies was preferable[1] After the Civil War, legislative thinking began to change The number of boards and commissions in the federal government tended steadily to increase Perhaps the most important such body set up after World War II was the Atomic Energy Commission

[1] Lloyd M Short, *The Development of National Administrative Organization in the United States*, Baltimore Johns-Hopkins Press, 1923, pages 37-51

However, it is interesting to note that the trend has been somewhat different in our state and local governments Here during most of the 1800's it was customary to have boards for education, health, welfare, road and even police administration. Except in the field of education, this trend has been reversed and the prevailing practice is to have single-headed agencies in these fields, sometimes with an advisory board attached To be sure, there are still many boards and commissions in state and local government but in relative terms, the proportion of government services operated by boards has tended to decline.[2]

Arguments in favor of board administration may be made. First, it may be claimed that it is of vital importance to have a board that deals with a particular activity such as veterans and veterans benefits and that that particular activity is best entrusted to the judgment of a group rather than to the decision of a single person.

A second argument is that there is more wisdom in a group than in a single individual. Furthermore, as part of this proposition about wisdom, a board may be advocated by various groups in the expectation that a representative of their organization may be appointed and so ensure the presentation of their particular point of view

A third argument in favor of a board is that this creates positions in state government to which individuals may be appointed as a reward for political favors or support

Fourthly, a board may be valuable in overcoming public apathy in opposition toward necessary public projects It may be helpful in creating a favorable climate of opinion for many issues and questions which require voter approval such as a bond issue

A fifth argument is that a board may become a visible and responsible pressure group on a reluctant administration The board may render a major civic service by evaluating the needs of the community and the resources and urging the elected officials to take appropriate steps for meeting these needs.

And, a sixth argument may be made that one of the least publicized but certainly one of the most vital potential advantages of the board is that it may act as a counterforce against a growing void between the government and the governed

There are also some general arguments that may be made against a board-headed administrative agency.

The first is that it tends to dilute or obscure political responsibility for direction of an agency's work When an administrative activity is headed by a single person, he and he alone must accept responsibility for all basic policies of operation Popular dissatisfaction with work objectives or performance can then be expressed through pressures which result in replacement of the agency's head This kind of simple solution is not available in the case of an agency headed by several persons

Secondly, a multiheaded agency may encourage vacillating or ineffective direction of work A good deal of organizational experience has indicated that agencies run by several persons are apt to have uncertain or confused lines of communication, channels of command

[2] John D Millett, *Government and Public Administration*, McGraw Hill Book Co, Inc, 1959, pages 99–100

and divisions of work assignment The reasons for this are primarily technical in nature.

A third defect of this type of board is a method of selection or appointment Thus the board is borne with two limitations First of all, since the members are selected with a specific problem in view, presumably an attempt would be made to select persons who will be sympathetic to the agency's or official's point of view Thus the board becomes, in fact, either a device by which a respectable rubber stamp may be applied to one of the administration's proposal or a pressure group in disguise [3]

However, it may be said that even though the administration may have recommended policy to the board, it does not diminish the fact that the board adopts the policy and may be held responsible to the appointing power for its success or failure [4]

In general it may be laid down as a canon of correct administrative practice that where the work to be done is essentially of an administrative character, that is, one calling for direct performance of work, the bureau-type of organization should be adopted [5]

If, however, important regulatory, rulemaking, or quasi-judicial functions are assigned to an agency, the commission form of organization is usually provided.[6]

Legal Considerations

The California Veterans Board consists of seven members who are appointed by the Governor with the consent of the Senate [7] Each member of the board receives a per diem of $20 for attendance at each meeting of the board and $20 per diem for each day spent on official duties assigned by the board In addition, each member is reimbursed for his traveling and other expenses incurred in the performance of his official duties [8] The board sets its own meetings [9] All meetings are open and public [10] The board selects its own chairman and also is empowered to appoint and fix the salary of a secretary [11] The board is empowered to determine the policies for all operations of the department [12] The board may create advisory committees [13] The chief administrative officer of the Department of Veterans Affairs is the Director of Veterans Affairs.[14] who is appointed by the Governor [15]

The director is required to present reports and recommendations to the board concerning any matter relating to veterans' welfare when asked to do so by the board or when the director feels it is advisable to do so [16]

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[3] Lyle E Schaller, "Is the Citizen Advisory Committee a Threat to Representative Government?" *Public Administration Review*, September 1964, pages 175–179
[4] John M Pfiffner and Robert V Presthus, *Public Administration*, Ronald Press Co., 1960, page 189
[5] W F Willoughby, *Principles of Public Administration*, Johns Hopkins Press, 1927, page 120
[6] Joseph P Harris, *Congressional Control of Administration*, Brookings Institution, 1964, page 31
[7] Military and Veterans Code, Sec 65
[8] *Ibid*, Sec 68
[9] *Ibid* Sec 69
[10] *Ibid*, Sec 69 5
[11] *Ibid*, Sec 71
[12] *Ibid*, Sec 72
[13] *Ibid*, Sec 73
[14] *Ibid*, Sec 74
[15] *Ibid*, Sec 75
[16] *Ibid*, Sec 84

Cost Considerations

All per diems, travel, and other expenditures are paid from the Veterans Farm and Home Building Fund of 1943 including the salary of the secretary to the Veterans Board,[17] and the salary of the legal counsel to the board.

The board counsel is a part-time attorney for the Department of Veterans Affairs He serves as legal counsel for the Veterans Board and the Director of Veterans Affairs. This salary is one-half the rate for a full-time attorney in accordance with the salary adopted by the Personnel Board [18] The administration also has a full-time attorney on its staff and it may request the services of the office of the Attorney General.

Members of the board serve without salary but are paid a per diem of $20 for each day spent on official duties and are reimbursed for traveling expenses [19]

Members of the advisory committee to the board receive no compensation for their services but when called into meetings on other duties by the board, they are reimbursed for actual and necessary expenses [20]

The total actual cost for the operations of the California Veterans Board is $48,911 per year [21] The true cost is much higher considering the per diem and traveling expenses of the board counsel, board secretary, and the department staff members who regularly attend meetings of the California Veterans Board.

Advisory Committee to the California Veterans Board

The Advisory Committee to the California Veterans Board was appointed pursuant to Section 73 of the Military and Veterans Code The advisory committee functions as a "Little Veterans Board" within the Department of Veterans Affairs There are 11 members on the advisory committee [22] They are to be permitted to sit in on any veterans' hearings at the California Veterans Home and are authorized to make inquiries into various situations at the home. The advisory committee is then to report back to the board.[23]

CALIFORNIA VETERANS BOARD

Actual per diems claimed by individual board members from July 1, 1965, through May 1966 (claims are not as yet processed for June 1966) are as follows:

[17] *Ibid*., Sec 702
[18] Office of Legislative Analyst, July 20, 1966
[19] Military and Veterans Code, Sec 68
[20] *Ibid*., Sec 73
[21] Office of Legislative Analyst, July 1966
[22] Minutes, California Veterans Board, January 29, 1966
[23] *Ibid*., February 19, 1965

PER DIEMS FOR BOARD MEMBERS

	Per diems at $20	Amount
Board member No 1	58	$1,160
Board member No 2	30	600
Board member No 3	41	820
Board member No 4	127	2,540
Board member No 5	101	2,020
Board member No 6	67	1,340
Board member No. 7*	19	380

* No per diems claimed from January 1966 to June 1966 Resigned on June 8, 1966
Source Office of the Legislative Analyst, July 1966

Actual Annual Cost—1965–66

Board Members

Per diems	$10,020
Actual traveling expenses	*23,859
Actual secretary salary	8,366
Actual counsel salary (part time)	6,666
	†$48,911

* Includes expenses for Advisory Committee
† To this total should be added the per diem and travel expenses for department staff members who regularly attend meetings of the California Veterans Board
Source Office of the Legislative Analyst, July 1966

The California Veterans Board has approved travel expenses in connection with attendance by advisory committee members at various department conventions of veterans' organizations [24] A member of the advisory committee went out of state to Reno, Nevada, for a meeting and was paid travel expenses [25]

The advisory committee meets for approximately two days each month It makes a statement to the California Veterans Board at each board meeting The substance of its remarks are generally commendations for the department [26] and for the Veterans Home [27]

The advisory committee has recommended to the board that individual servings of condiments be made as far as possible to home members in the dining room [28] and that consideration be given to the construction of a fishing lake at the Veterans Home for the recreation of the home members [29]

There is also a Veterans Home Committee of the California Veterans Board which does essentially the same thing as the advisory committee, that is report back to the California Veterans Board about the policy and operation of the California Veterans Home.[30]

[24] *Ibid*, May 31, 1965
[25] Office of Legislative Analyst, July 20 1966
[26] Minutes, California Veterans Board July 17, 1964, September 25, 1964, March 26, 1965, April 23, 1965, May 21, 1965, August 27, 1965, October 22, 1965, November 19, 1965, April 29, 1966 May 20, 1966
[27] *Ibid* October 23, 1964, February 19, 1965, July 16, 1965
[28] *Ibid*, December 10, 1965
[29] *Ibid*, April 29, 1966
[30] *Ibid*, January 29, 1966

It may be argued that the Advisory Committee to the California Veterans Board is a mere paper compliance with the idea of involving "the people" in the decision making process Good intentions mark both the selection of the committee and acceptance by the members but little that is really significant ever takes place

California Veterans Board as a Policymaker

Who sets the policy for the administration of the California Department of Veterans Affairs? Consideration of that question involves recognition that basically three agencies may be involved in setting policy for the department. They are the Legislature, the department itself and the California Veterans Board. This paper is concerned specifically with the functions of the California Veterans Board as it relates to policymaking for the Department of Veterans Affairs

The California Veterans Board meets once a month There are seven members on the board They reside in Fresno, Turlock, Sacramento, Santa Rosa, San Francisco, Los Angeles and Pasadena. Two of the seven board members reside south of Fresno.

CALIFORNIA VETERANS BOARD

MEETINGS HELD

July 17, 1964, to June 10, 1966 *

Date	City	Number board members present	Number department staff present	Number visitors present	Length of meetings
7/17/64	Monterey	7	11	16	2 hrs
8/19/64	Veterans Home	6	18	21	2 hrs 45 min
9/25/64	Newport Beach	7	9	10	2 hrs 25 min
10/23/64	San Francisco	6	16	33	2 hrs
11/20/64	Santa Barbara	6	11	10	1 hr 45 min
December	No meeting				
1/15/65	Santa Rosa	6	28	47	2 hrs
1/29/65	Veterans Home	6	10	7	45 min
2/19/65	Fresno	7	13	16	2 hrs 50 min.
3/26/65	Sacramento	7	17	5	2 hrs
4/23/65	Paso Robles	6	9	20	1 hr 30 min
5/21/65	San Diego	7	18	9	2 hrs 15 min
6/22/65	Sacramento	6	16	16	1 hr 30 min
7/16/65	Scotia	6	12	13	2 hrs 30 min
8/27/65	Los Angeles	7	17	37	3 hrs
9/24/65	Anaheim	6	7	21	1 hr 45 min
10/22/65	Fresno	6	12	25	2 hrs 15 min
11/ 9/65	Sacramento	6	16	22	1 hr 40 min
12/10/65	San Francisco	6	13	38	1 hr. 30 min
1/29/66	Fresno	6	13	12	2 hrs 35 min
2/25/66	Palm Springs	6	7	15	1 hr 55 min.
3/25/66	San Diego	6	7	28	2 hrs. 10 min
4/29/66	Redding	6	12	21	2 hrs 30 min
5/20/66	Pacific Palisades	6	12	17	2 hrs 35 min.
6/10/66	State Line	6	10	9	2 hrs 20 min

* Minutes, California Veterans Board.

At the meetings of the California Veterans Board, the agenda consists of a call to order by the chairman, the approval of minutes of the previous meetings, reports by the divisions of the Department of Veterans Affairs, board committee reports, old business, new business, and adjournment

The Veterans Board meets throughout the state Anywhere from 7 to 18 officials or members of the staff of the department travel to and attend each meeting of the board.

Anywhere from 5 to 47 visitors attend each meeting. The average meeting lasts approximately two hours There are usually six members of the board present for the meetings

The board travels extensively throughout the state to hold its meetings Northern California locations seem to be more popular by a ratio of almost 2 to 1 to cities in the southern part of the state It is clear, also, that the meetings do not last very long, averaging two hours per meeting Further, there is a disparity between the number of staff people that attend each meeting. (See chart "Meetings Held")

At its meetings, the board is informed of pending legislative programs [31] which it then supports or opposes [32]

The board has requested that certain study of operations be made concerning the California veterans service officers' program,[33] the Cal-Vet loan program,[34] the California Veterans Home,[35] and a Veterans Administration program [36] The board also receives annual audit reports of the Farm and Home Purchases Division.[37]

Several examples illustrate how department policy is established For example, the board was advised of the administrative decision to deemphasize the educational program for veterans.[38] Eventually the Educational Assistance Division was merged with another division [39] This merger was accomplished even though the Military and Veterans Code clearly requires a Division of Educational Assistance in the Department of Veterans Affairs as one of the four required divisions [40] The board ratified the action of the administration by its silence.

On another occasion the administration proposed the concept of "part-time" farming which required the redefinition of the word "farm" under the home and farm purchase program. The board adopted the recommendation.[41]

Selection of administrative officials who will report to the board at the meetings is determined by the administration [42]

The board ratifies action previously taken by the Veteran's Finance Committee regarding the sale of bonds.[43]

[31] Minutes, California Veterans Board, July 17, 1964, August 19, 1964, February 19, 1965, April 23, 1965, November 19, 1965, January 29, 1966, June 10, 1966
[32] *Ibid*, February 19, 1965, March 26, 1965
[33] *Ibid*, July 17, 1964
[34] *Ibid*, September 25, 1964, October 22 1965, November 20, 1964, March 25, 1966
[35] *Ibid*, March 25, 1966, April 29, 1966, September 25, 1964, August 19, 1964, July 16, 1965
[36] *Ibid*, May 20, 1966
[37] *Ibid*, September 25, 1964
[38] *Ibid*, August 19, 1964, February 19, 1965, March 26, 1965, May 21, 1965, January 15, 1965, March 25, 1966
[39] *Ibid*, March 26, 1965, May 20 1966
[40] Military and Veterans Code, Sec 81
[41] Minutes, California Veterans Board, September 25, 1964
[42] *Ibid*, September 25, 1964, September 24, 1965, February 25, 1966,
[43] *Ibid*, March 26, 1965, April 29, 1966

The board is informed of new programs initiated by the administration [44]

The board ratifies the budget prepared and presented by the administration without questioning performance by the administration [45] The final budget is presented for the board's information after the same budget is submitted to the Legislature.[46]

The board has set some policy For example, the board chairman gave the other board members permission to make official visits to veteran's meetings in the state and to attend conventions of veterans' organizations so that they can be well informed [47] This policy relates more to the functions of the board rather than to the performance of the administration.

The board has set rules pertaining to the Farm and Home Purchase Division [48] and to the California Veterans Home [49]

The board frequently adopts resolutions commending the department,[50] the staff, leading citizens, a board member, and a Veteran's Administration official.[51]

The board also establishes committees to study problems One of those committees is a Veteran's Home of Southern California Committee [52] It appears that the committee was not activated It has not been mentioned again in over a year.

The board also established a burial and cemeteries committee.[53] Progress reports were made by this committee for four consecutive months, during which time the administration informed the board that the department itself was also conducting an independent study of the same subject matter, and during this time a board member on this committee took a trip to Washington, D.C., to discuss this problem with federal officials [54] Finally it was announced to the board that the study had been completed and the report would be available within 60 days.[55] However, nine months later the report is not available, if at all submitted.

The board determines the interest rate on Cal-Vet loans by adopting the recommendation of the administration.[56]

The board ratifies the formula concerning contracts with counties by adopting administration proposals [57]

The board appointed a committee to study medicare and its impact on California veterans [58] but apparently the committee was not activated.

[44] *Ibid*, December 10, 1965, January 29, 1966, March 25, 1966, April 29, 1966
[45] *Ibid*, September 25, 1964, November 20, 1964, October 22, 1965
[46] *Ibid*, January 29, 1965
[47] *Ibid*, January 15, 1965
[48] *Ibid*, March 26, 1965, May 20, 1966
[49] *Ibid*, January 29, 1966, September 25 1964
[50] *Ibid*, August 19, 1964
[51] *Ibid*, July 17, 1964, January 15, 1965, January 29, 1965, July 16, 1965, April 29, 1966, January 29, 1966, February 19, 1965, April 23, 1965, August 27, 1965, December 10, 1965, March 25, 1966
[52] *Ibid*, February 19, 1965
[53] *Ibid*, February 19, 1965
[54] *Ibid*, March 26, 1965, April 23, 1965, May 21, 1965, June 22, 1965
[55] *Ibid*, September 24, 1965
[56] *Ibid*, October 29, 1964, October 22, 1965
[57] *Ibid*, June 22, 1965, June 10, 1966
[58] *Ibid*, August 27, 1965

The board favors an inland veteran's administration hospital in southern California, and it has expressed its opposition to the closing of any VA hospitals in the United States.[59]

The board is informed of the consolidation of offices within a division,[60] or of plans to increase field offices,[61] and about special studies the administration may be conducting.[62]

CONCLUSION

It is apparent that policymaking is not a chief function of the California Veterans Board That is to say an examination of its activities discloses that a relatively small portion of its time is ever devoted to "policymaking" But a great deal of its time is devoted to asking questions about administrative procedures that properly should be handled either at the division manager level, or below, or at the very least, should be handled and resolved by the administration.

Perhaps the board should have an executive secretary to serve on a full-time basis to help give the board an independent appraisal and an independent view of the activities of the administration [63] As long as the board has to depend upon the administration for its information and for guidance in making decisions it will continue to function as a "rubber stamp" for the activities and policies promulgated by the administration

There seems to be an absence of reports from the board to the Governor or to the legislature concerning board activities.

The board has been compared to a board of directors of a private corporation.[64] This analogy is interesting because if the Veterans Board is truly to function as a board of directors of a corporation, it must have some control in the budgeting of that corporation

The principle should be one of making administrative officers the subordinates of, and subject to, the superior authority of the board It is unlikely that a board of directors of a corporation would allow the company to merge divisions, expand or consolidate field offices, embark on new programs, or eliminate existing programs, without prior approval, if not initiation, from the board of directors itself Yet it is clear from the reading of the minutes of the California Veterans Board that the department policy is not initiated by the board Thus, if no administrative duties are vested in the board and if the board determines little policy, then the present form of organization finds no case where it can be justified. The California Veterans Board is an unimaginative, perhaps unnecessary, appendage of state government which acts as a "rubber stamp" for administrative programs

The administration could be given full legal responsibility for establishing all departmental policy and carrying out that policy. An obvious advantage of this reorganization would be that the Legislature and the

[59] *Ibid*, February 25, 1966
[60] *Ibid*, January 15, 1965
[61] *Ibid*, October 23, 1964
[62] *Ibid*, February 19, 1965
[63] John B Wentz, "Assistance to Citizens Committees," *Public Management*, September 1963, pages 201–203
[64] Minutes, California Veterans Board, April 29, 1966 For similar analogy see W F Willoughby, "The Legislature as a Board of Directors," *Principles of Public Administration*, Johns Hopkins Press, 1927.

people would be able to pinpoint responsibility for the policy and operations of the administration on a single administrative head.

More and more we have come to realize that basic policy decisions must be made within our scheme of government by legislatures and chief executives The resolution of the argument in case of any particular administrative situation is a political question which must first of all be provided by the Legislature [65]

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SCOPE

SUMMARY OF CALIFORNIA STATE BENEFITS FOR VETERANS

Agency

Established in May 1946, as a consolidation of previous boards and commissions, the Department of Veterans Affairs is headed by a director appointed by the Governor Policymaking responsibilities are vested in the California Veterans Board The department is composed of four divisions· (1) Farm and Home Purchases; (2) Educational Assistance, (3) Service and Coordination, and (4) Veterans Homes

Bonus

None authorized.

Burial

Up to $250 allowance is provided by each county so that burial of any honorably discharged veteran or widow of a veteran may not be made

[65] John D Millett, *Government and Public Administration*, McGraw-Hill, 1959, pages 102–103

in a pauper's field Maintenance of graves and setting of headstones are a county charge County burial allowance is not payable if federal burial allowance is available.

Education

Widows of veterans who died from war (or peacetime since September 16, 1940) service-connected disabilities, wives of war veterans totally disabled from service-connected disabilities, and children of veterans who died or are totally disabled from service-connected disabilities may be granted educational assistance Applicants must be native of or have five years' residence in California immediately preceding initial applications Deceased or disabled veterans are not required to be a resident or a native of California Where applicable, federal benefits must be exhausted before state entitlement can be granted

Employment Preference

Veterans and widows of veterans receive from 3 to 15 points' preference on examinations for state civil service positions, depending on type of examination and disability if any Veterans also have retention rights on employment lists, are entitled to civil service credit for applicable military experience, preference over nonveterans in policemen and watchmen examinations, educational leaves of absence, rights to complete examinations interrupted by military service, and seniority credits Veterans employment representatives are stationed at all local offices of the State Department of Employment to assist veterans in obtaining employment

Exemptions

Certain state income, property tax, estate tax, and gift tax privileges and exemptions are extended to California veterans Vehicle fees are waived for any one motor vehicle owned by a veteran who has lost the use of both legs or is permanently blind from injury or disease during active military service Pensions and retirement, disability, and death payments are exempt from execution or attachment

Free hunting licenses and tags and fishing licenses are available to veterans with service-connected disability of 70 percent or more, incurred during wartime.

Guardianship

State has adopted the Uniform Veterans Guardianship Act, which provides for appointment of a guardian or conservator by the courts to administer the property of an incompetent veteran, or for the minor child of a veteran to receive benefits from the Veterans Administration on behalf of such ward In the case of incompetent veterans committed to state hospitals, the Department of Mental Hygiene acts as guardian if no other interested person will serve.

Home and Farm Loans

The Farm and Home Purchase Plan financed through California Veterans Bonds enables the department to make loans to qualified

veterans of up to $15,000 on a home and $80,000 on a farm at low interest rates Veterans must be natives of or have been bona fide residents of California at the time of entering the service, and served during a wartime period or in a military campaign or expedition for which a medal was authorized by the United States government Refinancing is available in cases where loans of low balance and high rates are not guaranteed by the federal government, and the applicant is found to be specifically in need of the low rate Cal-Vet contract Special consideration is to be given here to wounded and disabled California veterans Improvement loans are also available to current farm and home contract holders Income properties or properties located outside California do not qualify for purchase

Homes and Hospitals

The state maintains the Veterans Home of California, near Yountville in Napa County To be eligible for admission, a veteran must have been a resident of California for at least five years immediately prior to making application, and have honorable wartime service in the armed forces of the United States Veterans must have a temporary or permanent disability to the extent that they are unable to follow a gainful occupation, and be financially unable to provide for their hospitalization or domiciliary care A domiciliary section is operated for women veterans

Services to Veterans

County service officers have been appointed by boards of supervisors in all but three of the state's 58 counties A state subvention, administered by the Department of Veterans Affairs, pays a portion of the cost of their offices The department's Service and Coordination Division maintains liaison with these offices and with community veterans service centers The division also provides direct assistance to veterans and their dependents at the Veterans Administration regional offices in California, in presenting claims against the United States arising out of war service and in establishing their rights to privileges, benefits, hospitalization, or compensation to which they are entitled under federal or state law

Vital Statistics

No charge will be made by a county recorder for the recording of an honorable discharge, certificate of service, report or notice of separation, or for issuing a certified copy thereof Neither the state, a county or city, nor any public officer acting in an official capacity on behalf of the state, county or city, including notaries public, may make any charge for furnishing a certified copy of a marriage, death, or birth certificate, divorce decree, deed of trust, mortgage or property assessment, or for making a search of such instruments, when they are to be

used in making a veteran's claim for federal or state benefits Notary services in certifying pension affidavits also are free [66]

The Department of Veterans Affairs has begun a program of contacting Vietnam veterans in VA hospitals or at home The plan is to provide each Vietnam casualty in Oak Knoll Naval Hospital and Letterman Army Hospital with a new or used transistor radio These radios are given to the men through the generosity of the people of California who have contributed radios and money to a special fund Much of the credit for the continuation of the program goes to the Military Order of the Purple Heart

In the beginning several radio stations, notably KNBR in San Francisco and KGMS in Sacramento, had their disc jockeys go on the air and appeal to the general public to donate radios This effort produced a total of 263 used radios It was necessary to throw 62 of them away as scrap These were sent to the State Veterans Home hobby shop The remaining 201 radios adequately provided for all casualties to have radios at Christmas time in both Oak Knoll and Letterman

Beginning December 21, each hospital has been covered each week without fail and each new casualty admitted has been given a new radio. The Department of Veterans Affairs has authorized the program to be a continuing procedure subject only to the availability of funds

Thus far, $1,103 18 has been expended for new radios The radios are bought direct from a bay area importer who is cooperating in this respect. From all indications, donated funds will be available to conduct the donations indefinitely and, hopefully, as long as the conflict in Vietnam continues

Radios are given to out-of-state veterans as well as California veterans However, more than 85 percent of the wounded military personnel in hospitals in California are actually California residents. This is largely due to the air evacuees program in effect which distributes the casualties to the hospital nearest their home

Bedside counseling is provided when requested at the time the radios are given out *Interviews are scheduled* weekly by the hospital authorities who now depend on the Department of Veterans Affairs regular counseling schedule The counseling program is picking up each week as more and more hospitalized casualties become aware of the service The service is, for the most part, therapeutic in value

In addition to the radio donations and the counseling service, a further liaison has been effected with the California military establishments so that the Department of Veterans Affairs is now receiving Separation Form DD 214s on all California veterans separated either medically or for length of service Each separation notice contains the address from which the veteran will seek employment Upon receipt of the separation notice, the Division of Service and Coordination will send a letter to each veteran advising him of the location of the nearest veterans service office, either county or state [67]

[66] Department of Veterans Affairs August 24, 1965
[67] Department of Veterans Affairs, April 6, 1966

SUMMARY OF VETERANS LEGISLATION

1965 General Session

This summary is an attempt to capture the highlights of legislation enacted during the 1965 General Session affecting California veterans

Cold War GI Bill

Senate Bill No 511 (McAteer-Powers) changed the definition of "veteran" to permit the extension of Cal-Vet benefits to California veterans who served in campaigns for which a medal was authorized by the Government of the United States Such campaigns are listed in Executive Order 10977, December 4, 1961, and include Lebanon, Vietnam, Quemoy and Matsu Island, Taiwan Straits, Congo, Laos, Berlin, and Cuba.

Informal and unconfirmed estimates are that approximately 15,000 to 25,000 additional California veterans may be eligible for Cal-Vet benefits.

Civil Service

Assembly Bill No 819 (Allen) provides that a person who has resigned from his public employment to serve in the armed forces, must return to his position in public employment within 12 months after the time he could terminate his active military service to exercise his right to such a position, rather than keeping the right existing as long as the person voluntarily requests an extension of his military service.

County Service Officers

Assembly Bill No 1751 (Powers) changes the title of county service officer to county veteran service officer to emphasize the type of service rendered by the county officer

Flood Damage Relief

Senate Bill No 61 (Christensen) provides for reimbursement to Cal-Vet contract holders for cost of repairs to Cal-Vet homes or farms damaged by the recent floods in northern California

Condominiums

Senate Bill No 92 (McAteer) includes condominium as a home for purposes of Cal-Vet financing

Cal-Vet Refinancing

Senate Bill No 386 (McAteer) increases from $5 million to $10 million the amount of Cal-Vet funds to be used for refinancing and converting conventional loans into Cal-Vet loans.

Educational Benefits

Assembly Bill No 2085 (Greene-Powers) permits wives of totally disabled veterans to obtain Cal-Vet educational assistance benefits

Cemeteries

Assembly Joint Resolution No 20 (Barnes) requests Congress to establish a national cemetery at Camp Elliott.

Veterans Administration

Senate Joint Resolutions No 14 and No 15 (Sturgeon) memorialize Congress and the Veterans Administration to provide and maintain in California, as a minimum, the nation's average ratio of veterans psychiatric beds to veterans in the state

Senate Joint Resolution No 24 (Pittman) memorializes Congress to study the effect that will result from proposed closing of Veterans Administration facilities upon veterans and their families before authorizing the closing of those facilities

Veterans' Tax Exemption

Assembly Constitutional Amendment No 41 (Z'berg) would permit the Legislature to exempt homes of certain blind veterans from property taxation up to $5,000.

Veterans Suggestions

The committee held a public hearing for the purpose of giving veterans organizations and interest groups an opportunity to recommend changes in the state program of benefits for veterans

The testimony of the witnesses at the hearing may be summarized into 10 major suggestions·

1 That the Department of Veterans Affairs be urged to conduct an extensive public relations and publicity campaign to inform those citizens who are eligible for Cal-Vet benefits of their eligibility and how to apply for those benefits
2 That action be taken to construct a state veterans home in southern California It was suggested by a member of the committee that the veterans organizations take the lead in this issue by coming together and agreeing on a specific site for the construction of a state veterans home in southern California
3 That the county veterans service office program be maintained in its present form and that the funds to support this program be taken from the state's General Fund and not be charged against the farm and home loan surplus
4 That the veterans' tax exemption be continued
5 That unused domiciliary facilities at the State Veterans Home be converted into nursing care facilities and that the Legislature appropriate $500,000 to qualify for an additional matching grant from the federal government to accomplish the conversion
6 That the California Medicare Program be reviewed to ascertain its impact on veterans requiring home nursing care who are unable to gain admittance to the State Veterans Home.

7. That the committee request sufficient funds for improvements at the State Veterans Home
8. That the Veterans Code sections pertaining to the burial of veterans be reviewed and brought up to date.
9. That the Cal-Vet home loan limit be increased to at least $20,000.
10. That veterans state civil service preference points be continued.[68]

Proposed Revision

Following the Los Angeles hearing, the committee prepared a proposed revision of the Military and Veterans Code to reflect the suggestions made to the committee and also to reflect ideas developed by committee members as a result of independent research. The proposed revisions covered Section 690 to Section 1121 of the code

Following is a summary of recommendations abstracted from a staff report, "Proposed Revision of the Military and Veterans Code," June 1966:

DIVISION 4. Veterans Aid and Welfare

Chapter 1 *Department of Veterans Affairs*

Repeals "contract services program" whereby the department contracted with veterans organizations to perform services for veterans

Chapter 2. Repealed

Chapter 3. Repealed

Chapter 4. *Educational Assistance*

Article 2 *Veterans Dependents*

Repeals and amends sections to clarify legislative intent

Increases monthly living expense allowance for high school students from $20 to $30 per month

Increases the limit on the amount that may be expended on account of any one applicant in postgraduate studies from $1,600 to $2,000

Requires dependents' educational program to be fully funded and for applications to be administered on a first-come, first-served basis.

Adds section requiring educational programs to be administered by an individual with professional educational qualifications.

Adds sections requiring department to contract with State Scholarship Commission to administer dependents' educational program.

Chapter 5. *Local Aid*

Article 1 *Indigent Veterans*

Repeals and amends sections to clarify legislative intent.

Article 2. *Burial of Veterans and Veterans' Widows*

Repeals and amends sections to clarify legislative intent

Increases from $150 to $250 the amount each county may pay toward the burial expenses of a veteran

[68] See Transcript, "Veterans Benefits," Assembly Military and Veterans Affairs Committee, November 12, 1965

Article 3 *Care of Veterans' Graves*

Repeals and amends sections to clarify legislative intent.

Article 4. *Administration*

Amends sections to clarify legislative intent

Amends section so that the California Veterans Board *instead of* the Department of Veterans Affairs regulates and sets standards for the county veterans service officers.

Adds section requiring county veterans service officers to complete qualifying examination administered by the State Personnel Board to qualify for state subvention.

Chapter 6. *Veterans of World War II*

Article 1. *Veterans*

Amends definition of "veteran," permitting other definitions in the code.

Article 2. *Educational Assistance*

Amends sections to clarify legislative intent.

Amends definition of "veteran" to conform to the U.S. Code definition.

Repeals and amends section to require department to administer applications on first-come, first-served basis

Increases amount of payment to a student for living expenses from $40 to $80 per month.

Deletes section permitting additional $10 per month living allowance for students

Increases limit of state expenditure for education on account of any one veteran from $1,000 to $1,500

Amends section to encourage veterans to pursue postgraduate education

Article 3. *Farm and Home Purchase*

Amends section to clarify legislative intent.

Increases Cal-Vet home loan limit from $15,000 to $20,000

DIVISION 5. Veterans' Institutions

Chapter 1. *Veterans' Home of California*

Amends and repeals obsolete sections

Presents issue of whether position of commandant should be abolished or filled.

Repeals "Special Deposit Fund—Spanish-American War Account—Unclaimed Trust."

Chapter 2. *Womens' Relief Corps Home of California*

Repeals entire chapter which is obsolete.

Chapter 3. *County Institutions*

No changes recommended.

COMMITTEE BILL DRAFT

The committee requested the Office of the Legislative Counsel to draft a bill embodying the proposed changes in the Military and Veterans Code. The following bill draft was then mailed to veterans organizations, the Department of Veterans Affairs, and to the County Veterans Service Officers Association.

LEGISLATIVE COUNSEL'S DIGEST

Veterans

Amends, adds, and repeals various secs., M. & V. C.

Abolishes California Veterans Board and transfers its functions to Director of Veterans Affairs

Changes definition of "veteran" and "veterans" for veterans' benefit purposes

Increases educational benefits and makes other changes relative to educational assistance

Makes changes respecting claims for educational benefits

Provides for administration of local assistance and burial provisions through county veterans service officers and makes other changes respecting those provisions and officers.

Makes changes in provisions on farm and home purchases, including change increasing amount of home loans from $15,000 to $20,000.

Makes other related changes

Vote—§; Appropriation—Yes; State Expense—Yes.

An act to amend Sections 72, 73, 78, 80, 83, 699.5, 701, 702, 890, 894, 895, 896, 920, 921, 931, 940, 942, 945, 960, 972, 980, 981, 981.1, 981.2, 981.4, 981.6, 986, 986.3, 986.5, 987, 995.5, 996.12, 996.14, 996.37, 1014, 1030.2, and 1044 of, to add Section 897 to, and to repeal Sections 61, 64, 65, 66, 67, 68, 69, 69.5, 71, 84, 85, 922, 923, 924, 925, 926, 927, 928, 929, 941, 944, 946, 947, 948, 949, 950, 960.5, 961, 1018, 1019, 1039.5, and Chapter 2 (commencing with Section 1080) of Division 5 of, the Military and Veterans Code, relating to veterans' benefits.

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

SECTION 1. Section 61 of the Military and Veterans Code is repealed.

~~61. As used in this chapter, "board" means the California Veterans Board.~~

SEC. 2. Section 64 of the Military and Veterans Code is repealed

~~64. There shall be in the Department of Veterans Affairs the California Veterans Board.~~

SEC. 3. Section 65 of the Military and Veterans Code is repealed

~~65. The California Veterans Board shall consist of seven members who shall be appointed by the Governor subject to the confirmation of the Senate.~~

SEC. 4. Section 66 of the Military and Veterans Code is repealed

~~66. Six members of the board shall be veterans as the term "veteran" is defined in either Section 800 or 980 of this code, and one member of the board may, in lieu thereof, be a veteran as the term "veteran" is defined in Section 18510.4 of the Government Code.~~

SEC. 5. Section 67 of the Military and Veterans Code is repealed

~~67. Of the members as appointed, one shall be appointed for a term expiring January 15, 1947, two for terms expiring January 15, 1948,~~

~~two for terms expiring January 15, 1949, and two for terms expiring January 15, 1950. Subsequent appointments shall be for terms of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.~~

SEC 6. Section 68 of the Military and Veterans Code is repealed

~~68. Each member of the board shall receive for each day's attendance at each meeting of the board a per diem of twenty dollars ($20). and shall receive the same per diem for each day spent on official duties assigned by the board. In addition, each member shall be reimbursed for his necessary traveling and other expenses incurred in the performance of his official duties.~~

SEC 7 Section 69 of the Military and Veterans Code is repealed

~~69. The board shall hold meetings at such times and at such places as shall be determined by it.~~

SEC 8 Section 69 5 of the Military and Veterans Code is repealed

~~69.5. All meetings of the board shall be open and public.~~

SEC 9. Section 71 of the Military and Veterans Code is repealed.

~~71. The members of the board shall select one of their members to serve as chairman, who shall hold office as chairman at the pleasure of the board. The board shall also appoint and fix the salary of a secretary, who shall attend all meetings of the board, keep a full and true record of all its proceedings, preserve at its general office all its books, documents, and papers, and perform such other duties as the board may prescribe.~~

SEC. 10. Section 72 of the Military and Veterans Code is amended to read:

72 The ~~California Veterans Board~~ *Director of Veterans Affairs* shall determine the policies for all operations of the department

SEC. 11. Section 73 of the Military and Veterans Code is amended to read:

73. The ~~California Veterans Board~~ *Director of Veterans Affairs* may create advisory committees consisting of veterans to advise the ~~board~~ *director* in specific fields under or relating to the jurisdiction of the ~~board~~ *director* The ~~board~~ *director* shall appoint the members thereof and they shall serve at its pleasure The ~~board~~ *director* shall also designate the chairman and vice chairman thereof The committees shall be under the direction of the ~~board~~ *director* and shall be wholly advisory in character and shall not be delegated any administrative authority or responsibility Members of such committees shall not receive compensation from the state for their services, but when called into conference or session by the ~~board~~ *director* shall be reimbursed for their actual and necessary expenses incurred in connection with such conferences or sessions, and for purposes of such reimbursement shall be deemed to be nonsalaried commission members.

SEC. 12. Section 78 of the Military and Veterans Code is amended to read:

78. The Director of Veterans Affairs is head of the department and, as head of the department ~~and subject to the policies adopted by the board,~~ shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities and carry out and effect all provisions now or hereafter vested by law in the department.

SEC. 13. Section 80 of the Military and Veterans Code is amended to read:

80. The director may employ subject to law such expert, technical, legal, clerical, and other employees as may be necessary to carry out his powers and duties and ~~except as expressly otherwise provided in Section 71 of this chapter,~~ the director shall be the sole appointing authority for the department for all positions. Whenever possible preference shall be given to veterans for employment in the department.

SEC. 14. Section 83 of the Military and Veterans Code is amended to read:

83. Except to the extent inconsistent with the provisions of this chapter, the provisions of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code shall be applicable to the Department of Veterans Affairs as if the provisions of said Chapter 2 were set out fully herein.

Whenever in such chapter the term "head of the department" or similar designation occurs, it shall mean the director~~, except that for the purposes of Article 2 of said Chapter 2 it shall also mean both the board and any member of the board to whom the duty of conducting any investigation is given by the board~~.

SEC. 15. Section 84 of the Military and Veterans Code is repealed ~~84. The director may whenever he deems it advisable and shall when required so to do by the board present reports and recommendations to the board concerning any matter relating to veterans' welfare whether or not provided by existing law.~~

SEC. 16. Section 85 of the Military and Veterans Code is repealed. ~~85. All records of the board, except records of contract purchasers, shall be open to inspection by the public during regular office hours.~~

SEC. 17. Section 699.5 of the Military and Veterans Code is amended to read:

699.5. The department may assist every veteran of any war of the United States and the dependent of every such veteran in presenting and pursuing such claim as the veteran or dependent may have against the United States arising out of war service and in establishing the veteran's or dependent's right to any privilege, preference, care, or compensation provided for by the laws of the United States or of this state. ~~The department may cooperate and, with the approval of the Department of Finance, contract with any organization of veterans chartered by the Congress of the United States and authorized by the Veterans Administration to pursue claims before federal agencies and which has regularly, for a period of five years next preceding the date of such contract, maintained an established committee or agency, in a Veterans Administration regional office in the State of California, rendering similar services to veterans and dependents as the services referred to in this section and pursuant to such contract may compensate such organization for services within the scope of this section rendered by it to any veteran or dependent. The department also may cooperate and, with the approval of the Department of Finance, contract with any other organization of veterans authorized by the Veterans Administration to pursue claims before federal agencies and which has regularly, for a period of 12 years next preceding the date of such contract, maintained an established committee or agency, in a Veterans Administration~~

~~regional office in the State of California, rendering similar services to veterans and dependents as the services referred to in this section and pursuant to such contract may compensate such organization for services within the scope of this section rendered by it to any veteran or dependent. No such contract shall be made unless the department determines that, owing to the confidential relationships involved and the necessity of operating through agencies which the veterans or dependents involved will feel to be sympathetic towards their problems, the services cannot satisfactorily be rendered otherwise than through the agency of such veterans organization and that the best interests of the veterans or dependents involved will be served if such contract is made.~~

SEC. 18 Section 701 of the Military and Veterans Code is amended to read:

701 In the event that the provisions of the Servicemen's Readjustment Act of 1944 are amended in such manner as to make the guarantees by the United States of loans to veterans for farms and homes applicable to purchases of farms and homes from the Department of Veterans Affairs pursuant to Chapter 3 and Article 3 of Chapter 6, the State of California hereby accepts the benefits of such federal act, and agrees to comply with all the requirements of said act

The Department of Veterans Affairs is hereby designated as the official agency of the state to apply to the United States for such guarantees and to do all acts required in connection therewith The ~~board~~ *director* is authorized to adopt such rules and regulations and standards as may be required by the federal act and are not in conflict with the provisions of this division

SEC 19. Section 702 of the Military and Veterans Code is amended to read:

702 The salaries and expenses ~~of the California Veterans Board, of the secretary of such board, and~~ of the director and deputy director of the Department of Veterans Affairs and all salaries and expenses of the Division of Farm and Home Purchases shall be paid out of the Farm and Home Building Fund of 1943 and no part thereof shall be paid from the General Fund.

SEC 20 Section 890 of the Military and Veterans Code is amended to read:

890. As used in this article

(a) "Veterans" means any person who ~~served in the Army, Navy, or Marine Corps of the United States and was killed in action or died as a result of war service in the World War since April 6, 1917, or any member of the Army, Navy, Coast Guard or Marine Corps of the United States, or any of their auxiliaries who was killed in action in World War II on or after December 7, 1941, and prior to January 1, 1947, or who died at any time as a result of war service during such period, or any member of the armed forces of the United States who was killed in action during any period of hostilities in which the United States is engaged, or who died or was totally disabled at any time as a result of active service during any such period or during the induction period~~ *died or who was totally disabled as a result of service in the armed forces of the United States during World War I, or after September 16, 1940, and continuing for so long as the U.S. Selective Service is in effect.*

(b) "Dependent of a veteran" means the natural or adopted child of a veteran, or stepchild of a veteran as defined by the U S Veterans Administration for compensation purposes, the unmarried widow of a veteran, or the wife of a totally disabled veteran.

~~(c) "Induction period" means (1) the period beginning September 16, 1940, and ending December 6, 1941, and the period beginning January 1, 1947, and ending June 26, 1950, and (2) the period beginning on February 1, 1955, and ending on the day before the first day thereafter on which individual (other than individuals liable for induction by reason of a prior deferment) are no longer liable for induction for training and service into the armed forces under the Universal Military Training and Service Act.~~

SEC 21 Section 894 of the Military and Veterans Code is amended to read.

894 For students of postgraduate, collegiate, junior college, business and trade school rank the amount expended by the department as an allowance for living expenses shall not exceed fifty dollars ($50) per month. For students of high school rank the amount shall not exceed ~~twenty dollars ($20)~~ *thirty dollars ($30)* per month, during the time the student is in actual attendance at a day school Absence during the month on account of illness shall be included as part of such attendance.

SEC 22. Section 895 of the Military and Veterans Code is amended to read

895 For tuition and fees,

(a) The amount expended on account of any one applicant while pursuing a course of postgraduate college or professional school rank shall not exceed ~~one thousand six hundred dollars ($1,600)~~ *two thousand dollars ($2,000)*

(b) The amount expended on account of any one applicant of undergraduate, collegiate, junior college, business, and trade school rank under the provisions of this article shall not exceed the maximum rate authorized for the regular school year under Section 31214 of the Education Code and not to exceed one-third more for students pursuing a summer session or full year course

(c) For students of high school rank the sum shall not exceed two hundred dollars ($200) a year for students pursuing a regular course and two hundred forty dollars ($240) a year for students pursuing a summer session or full year course.

SEC 23 Section 896 of the Military and Veterans Code is amended to read

896 The department shall consider applications in the order in which they are received ~~If the funds available are insufficient to meet the obligations which would arise from the guardianship of all worthy applicants, the department shall assume wardship over the applicants who are most urgently in need of further education, taking into consideration both scholastic achievement and financial need~~ *The department shall request sufficient funds annually to assist all eligible applicants In the event the applications exceed available funds, the department shall prepare a deficiency request for additional funds for submission to the Legislature immediately*

SEC 24. Section 897 is added to the Military and Veterans Code, to read:

897 The educational assistance programs for veterans and for dependents of veterans shall be administered by an individual with professional educational qualifications

SEC 25. Section 920 of the Military and Veterans Code is amended to read:

920 As used in this article, unless the context otherwise indicates, "veteran" means a person who has been honorably discharged from any branch of the United States ~~Army, or Navy, or the American Red Cross, and who has served in any war in which the United States has been engaged~~ *armed forces*.

SEC 26. Section 921 of the Military and Veterans Code is amended to read:

921 The board of supervisors of any county may grant financial assistance, relief, and support to indigent veterans. Such assistance, relief, and support shall be administered through ~~and by any military, naval, or marine organization created for the purpose of aiding, relieving, and supporting such veterans under the terms and conditions set forth in this article~~ *the county veterans service office*

SEC 27 Section 922 of the Military and Veterans Code is repealed.

~~922. Any organization desiring to assist indigent veterans shall first file with the board of supervisors of the county in which it is operating or intending to operate, a verified statement setting forth the following:~~

~~(a) Name, objects, and purposes of the organization. One of the purposes shall be that mentioned in section 921.~~

~~(b) Date of organization.~~

~~(c) Names and addresses of officers and relief committee.~~

~~(d) Name and address of the treasurer or financial officer in charge of the receipt and disbursement of funds.~~

~~(e) Number of members.~~

~~(f) Financial condition, showing total assets and liabilities.~~

~~(g) That financial assistance for indigent veterans to be administered in accordance with the provisions of this article will be requested.~~

SEC. 28. Section 923 of the Military and Veterans Code is repealed

~~923. Upon the filing of the statement the board of supervisors shall set a day for its consideration not more than ten days after the date of filing. At least five days' notice of the hearing shall be given by mail to the clerk or secretary of the organization.~~

SEC. 29. Section 924 of the Military and Veterans Code is repealed

~~924. On the day set, the board of supervisors shall, after hearing any evidence presented, determined by resolution entered upon its minutes whether the organization is qualified to carry out this article. The resolution shall be effective for a period of one year only and may be revoked at any time.~~

SEC. 30. Section 925 of the Military and Veterans Code is repealed

~~925. No money shall be transferred to any person under this article except to the treasurer or financial officer whose name is given in the statement required by section 922. The treasurer or financial officer shall, before receiving any money hereunder, file with the board of supervisors a bond or undertaking signed by at least two sureties, in~~

~~an amount fixed by the board of supervisors. The bond shall inure to the benefit of the county and shall be conditioned upon the faithful and honest administration of the funds intrusted to such officer.~~

SEC 31 Section 926 of the Military and Veterans Code is repealed

~~926. Upon receipt of a request from any organization qualified under this article, giving the names of all indigent veterans for whom relief is desired, together with the branch of service, division, regiment, and company, or other unit or designation by which each of such veterans may be identified, and a further statement that the circumstances of each of such veterans has been personally investigated by the relief committee of the organization, and that each is in all respects worthy and entitled to relief hereunder, the board of supervisors may direct the county auditor to draw his warrant upon the county treasurer for the amount specified in the request, or a lesser amount. Such warrant shall be delivered to the treasurer or financial officer of the organization.~~

SEC. 32 Section 927 of the Military and Veterans Code is repealed

~~927. All money paid out by any county under this article shall be used by the organization receiving it exclusively for the relief of indigent veterans and no part of it shall ever be used for administration or overhead expenses.~~

SEC 33 Section 928 of the Military and Veterans Code is repealed

~~928. The indigent and dependent widow, minor child, father, or mother of any indigent veteran may be granted relief by the organization out of the money available under this article.~~

SEC 34 Section 929 of the Military and Veterans Code is repealed

~~929. The necessary expenses, not to exceed seventy-five dollars, for burial or cremation of any indigent veteran may be paid out of the money available under this article.~~

SEC 35 Section 931 of the Military and Veterans Code is amended to read:

931. Any municipal corporation may extend assistance to any ~~organization under this article~~ *county government where the program is administered by a county veterans service office or by any other county government agency especially designated to assist indigent veterans*. ~~In such case all proceedings required to be had before the board of supervisors of the county shall be had before the legislative body of the city. The words "board of supervisors," "county," "county auditor" and "county treasurer" wherever used in this article shall mean "legislative body," "city," "city auditor" and "city treasurer."~~

SEC. 36 Section 940 of the Military and Veterans Code is amended to read:

940. As used in this article, unless the context otherwise indicates, "veteran" means ~~an~~ *a person who has been* honorably discharged ~~soldier, sailor, marine, or nurse who has served in or with the army or navy of the United States~~ *from any branch of the United States armed forces*.

SEC. 37. Section 941 of the Military and Veterans Code is repealed

~~941. This article shall not apply to soldiers, sailors, or marines who die in the national or State soldiers' homes in this State.~~

SEC. 38. Section 942 of the Military and Veterans Code is amended to read:

942. The board of supervisors of each county shall designate ~~an honorably discharged soldier, sailor or marine in the county who has served in or with the army or navy of the United States and who shall cause to be decently interred the body of any veteran or widow of a veteran who dies in the county without having sufficient means to defray the expenses of burial, other than moneys paid or due and payable by the United States, pursuant to the World War adjusted compensation act~~ *the county veterans service office to administer the provisions of this article In counties without a county veterans service office, the board of supervisors of such county shall designate an appropriate county government agency to administer the provisions of this article.*

SEC. 39. Section 944 of the Military and Veterans Code is repealed

~~944. In the event a deceased veteran or a widow of a veteran has been interred other than by the person designated by the board of supervisors, the person so designated may pay the sum of two hundred fifty dollars ($250) toward the burial expense of the person who would have been entitled to interment by the person designated by the supervisors.~~

SEC. 40. Section 945 of the Military and Veterans Code is amended to read:

945. ~~The expenses to the county of each burial or contribution shall not exceed the sum of two hundred fifty dollars ($250). Claims therefor are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 910) of Division 3.6 of Title 1 of the Government Code~~ *The board of supervisors of each county may contribute the sum not exceeding two hundred fifty dollars ($250) to pay toward the burial expenses of a veteran as defined in this article or a veteran's widow.*

SEC. 41. Section 946 of the Military and Veterans Code is repealed.

~~946. Such claims shall be paid by the county in which the veteran or widow dies. If the decedent was a resident of any other county than the one paying the claim, the county of the decedent's residence shall refund the money advanced by the county where such person died. Such claims shall be audited and paid by the county as other accounts.~~

SEC 42. Section 947 of the Military and Veterans Code is repealed.

~~947. The person appointed under section 942, before he assumes the charge and expenses of any burial, shall first satisfy himself by a careful inquiry into and examination of all the circumstances in the case that the family of the decedent, if any, residing in the county, is unable for want of means to defray the expenses of the burial. If he finds such inability he shall cause the decedent to be buried as provided in this article. He shall immediately report his action to the clerk of the board of supervisors of the county, stating all the facts and that he found the family of the decedent in indigent circumstances and unable to pay the expenses of the burial. He shall also report the name, rank, and command of the veteran, the date of death, place of burial, occupation, and an itemized statement of the expenses of such burial.~~

SEC 43 Section 948 of the Military and Veterans Code is repealed ~~948. The clerk of the board of supervisors, upon receiving the report and statement of expenses, shall transcribe in a book kept for that purpose all the facts contained in the report respecting such decedent. The clerk, upon the burial of any honorably discharged soldier, sailor, or marine, shall make application to the proper authorities of the United States, for a suitable headstone, as provided by act of Congress, and cause the same to be placed at the head of the grave of such soldier, sailor, or marine. The expense shall not exceed ten dollars ($10) for cartage and properly setting each stone.~~

SEC 44 Section 949 of the Military and Veterans Code is repealed ~~949. The board of supervisors shall perpetually maintain the grave of any such honorably discharged soldier, sailor, or marine. The expenses thus incurred shall be audited and paid as provided in section 916 for burial expenses.~~

SEC 45 Section 950 of the Military and Veterans Code is repealed ~~950. The person appointed under section 942 shall receive no compensation for any duties he may perform in compliance with this article.~~

SEC 46 Section 960 of the Military and Veterans Code is amended to read:

960 Whenever in any cemetery or place of burial of human remains, which is established or organized under the authority of the board of supervisors of any county or the governing body of any city, there is any known grave of *a person who was* a former ~~soldier~~ *member*, ~~sailor, or marine~~ of the United States *armed forces* who was not dishonorably discharged from the service, the officers who manage such cemetery or place of burial shall keep such grave properly marked and identified, and free from weeds and rubbish, and keep in decent order and repair and free from defacement, injury, and unlawful markings any tomb, monument, gravestone, wall, or other appurtenance to such grave.

SEC 47 Section 960.5 of the Military and Veterans Code is repealed ~~960.5. Whenever in any cemetery or place of burial of human remains there is any known grave of a former soldier, sailor, or marine of the United States who was not dishonorably discharged from the service, the board of supervisors of any county as to territory, whether incorporated or not, with it, and the governing body of the city as to territory within it, with the consent of the officers who manage such cemetery or place of burial, if any, may keep such grave properly marked and identified, and free from weeds and rubbish, and keep in decent order and repair and free from defacement, injury, and unlawful markings any tomb, monument, gravestone, wall, or other appurtenance to such grave.~~

SEC 48 Section 961 of the Military and Veterans Code is repealed ~~961. Any fraternal or benevolent organization which maintains a plot in a place of burial mentioned in section 960, which is devoted exclusively to the burial of soldiers, sailors, or marines of the United States, may apply under this article to the board of supervisors of the county in which the plot is maintained. Upon a showing of need, the board may keep the plot free from weeds and rubbish, and keep in de-~~

~~cent order and repair and free from defacement and injury any tomb, monument, gravestone, wall, or other appurtenance to the graves in the plot.~~

SEC. 49. Section 972 of the Military and Veterans Code is amended to read:

972. The board of supervisors may provide the county veteran service officer with such assistants and facilities as it deems necessary. If such a position is created and filled, the compensation and expenses of the county veteran service officer shall be a county charge, but the Department of Veterans Affairs, out of state moneys available therefor, may pay each county a portion of such costs in an amount determined by the department, conditioned upon the observance of standards and regulations prescribed by, and in compliance with the direction of the department and its authorized representatives, *and further conditioned upon the county veteran service officer satisfactorily completing a state qualifying examination to be administered by the State Personnel Board.* Contributions by the department to any county toward the payment of the salary of the county veteran service officer shall not exceed the sum of seventy-five dollars ($75) per month.

SEC. 50. Section 980 of the Military and Veterans Code is amended to read:

980. ~~As~~ *Unless otherwise noted, as* used in this chapter, "veteran" means any citizen of the United States who served in the active military, naval, or air service of the United States on or after April 6, 1917, and prior to November 12, 1918, and received an honorable discharge therefrom or was released from active duty under honorable conditions and who was, at the time of his entry into active duty, a native of or a bona fide resident of this state, or who, if a minor at such time, entered active duty while in the State of California and had lived in this state for six months immediately preceding his entry into active duty, or any person who served in the active military, naval, or air service of the United States for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected disability within such 90-day period, any portion of which was on or after December 7, 1941, and prior to January 1, 1947, and received an honorable discharge therefrom or was released from active duty under honorable conditions and who was at the time of his entry into active duty a native of or bona fide resident of this state, or who, if a minor at such time, entered active duty while in the State of California and had lived in this state for six months immediately preceding his entry into active duty, or any person who served in the active military, naval or air service of the United States for a period of not less than 90 consecutive days or was discharged from the service due to a service-connected disability within such 90-day period, any portion of which was on or after June 27, 1950, and prior to February 1, 1955, or in time of peace in a campaign or expedition for service in which a medal has been authorized by the government of the United States, and received an honorable discharge therefrom or was released from active duty under honorable conditions and who was at the time of his entry into active duty a native of or a bona fide resident of this state or who, if a minor at such time, entered active duty while in

the State of California and had lived in this state for six months immediately preceding his entry into active duty

This chapter does not include:

(a) A person who was separated from such forces under other than honorable conditions

(b) A person who was separated from such forces on account of alienage

(c) A person who performed no military duty whatever or refused to wear the uniform

(d) A person who has received from another state a bonus, compensation, or benefit, the prerequisite of which is service in such forces, which service is the basis for the claim of benefits under this chapter

(e) A person who served only in an auxiliary or reserve component of the armed forces whose service therein did not exempt him from the operation of the Selective Training and Service Act of 1940

(f) A person whose service with the armed forces was due to temporary active duty orders for the sole purpose of training duty, processing or a physical examination

SEC. 51. Section 981 of the Military and Veterans Code is amended to read:

981 There is in the state government an educational ~~institution known as the California Veterans' Educational Institute,~~ *program* which is under the management and control of the Department of Veterans Affairs The purpose of the ~~institute~~ *educational program* is to provide opportunities for veterans to continue their education *The Legislature intends to indemnify the veteran for an educational opportunity which he may have missed through his military service This educational program is not to be administered on a charity or welfare basis. As used in this article, "veteran" means any person who meets residence requirements of Section 980 of this code and the military service requirement of Chapter 34, Title 38 of the United States Code*

SEC. 52. Section 981.1 of the Military and Veterans Code is amended to read:

981 1. Any veteran who desires to continue his education may apply for admission to the ~~institute~~ *program* and if, in the opinion of the department, the educational needs and desires of the veteran can be satisfactorily met, the department shall assume state wardship and supervision over the education of such veteran. The department may provide for such education in educational institutions in this state, or in other states, or in other countries, when necessary or desirable for postgraduate or professional college courses The department may provide educational counsel for students and assist them in securing admission to suitable institutions of learning in either public or private school field. The department may assist any eligible veteran who may apply for a short intensive postgraduate or training or refresher course in any professional field where the purposes of such course are to prepare the veteran for a state examination which he must pass as a prerequisite to practice his profession in the State of California or where said course or courses will acquaint the veteran in professional techniques developed in private practice during the time that he was in the service.

SEC 53. Section 981 2 of the Military and Veterans Code is amended to read·

981 2 The department, insofar as the funds permit, may provide·

(a) For the payment of tuition and other fees other than for individual instruction or private lessons, except where such individual instruction is an integral requirement of a course leading to a vocational or professional license or to a degree from an accredited institution of higher learning

(b) A monthly payment of an allowance for the living expenses of the student in an amount not exceeding ~~forty dollars ($40)~~ *eighty dollars ($80)* per month for the time the student is in satisfactory and actual full-time attendance at a day school, absence during the month on account of illness to be included as a part of such attendance

~~(c) For the student's book and supply requirements, the department may, at the student's request, increase the allowance provided under subdivision (b) of this section by an amount not to exceed ten dollars ($10) in any one month.~~

SEC. 54 Section 981 4 of the Military and Veterans Code is amended to read·

981 4. The department shall consider the application of veterans for admission to the ~~institute~~ *program* in the order in which they are received. ~~If the funds available are insufficient to meet the obligations which would arise from the guardianship of all worthy applicants, the department shall assume wardship over such veterans as are most urgently in need of further education.~~ *No veteran shall be deferred because he is applying for training or education beyond the bachelors degree, or because he intends to enroll at a private college or university.*

SEC 55 Section 981 6 of the Military and Veterans Code is amended to read:

981 6. No veteran who is receiving federal educational benefits shall be eligible to receive the educational benefits provided by this article during such time that he is ~~receiving~~ *eligible to receive* federal educational benefits

SEC 56. Section 986 of the Military and Veterans Code is amended to read·

986. The department shall prescribe and determine the qualfications of all veterans Any person deeming himself a veteran and desiring to benefit hereunder, shall *exercise his opportunity to acquire a farm or home under this article within ten years from the date of his discharge from the armed forces and shall* submit to the department information, in such form as the department prescribes, which will enable the department to determine his eligibility and qualifications The department may make further inquiries and investigations in order to determine such eligibility and qualifications Veterans who are otherwise qualified and who were wounded or disabled as a result of their service shall be given preference in the benefits conferred by this article. The department shall determine, in each case, whether or not the veteran was wounded or disabled as a result of service.

SEC. 57. Section 986 3 of the Military and Veterans Code is amended to read·

986 3. The department may acquire such farm or home from the owner thereof or may contract with a veteran for the construction of

a dwelling house and other improvements for a farm or home, upon the terms agreed if.

(a) The department is satisfied of the desirability of the property submitted

(b) The veteran has agreed with the department that he or members of his immediate family will actually reside on the property within 60 days from the date of purchase by the department, or if the residence on the property is not complete on the date of purchase, within 60 days after the residence is completed, *except that in a case of hardship, on a showing of good cause, the department may waive the occupancy requirement for a period not to exceed four years The department shall establish standards for the occupancy waiver and shall make these standards known*

(c) The sum to be expended by the department pursuant to a contract for the construction of a dwelling house and other improvements, does not exceed the sum of ~~fifteen thousand dollars ($15,000)~~ *twenty thousand dollars ($20,000)*

(d) Where the department is to contract with a veteran for the construction of a dwelling house and other buildings

(1) The veteran is the owner in fee of the real property on which the dwelling house and other buildings are to be constructed and agrees to convey that property to the department without cost

(2) The veteran has paid a reasonable fee set by the department to cover the cost of such preliminary service of the department as may be necessary to process the application.

(3) The veteran has filed with the department adequate plans and specifications for the improvements to be constructed upon said real property, together with a contract, executed by a contractor licensed by the State of California for the construction of said improvements in accordance with said plans and specifications within eight months after the acquisition of said real property by the department, and a bond executed by the contractor providing for compliance with the terms of said contract and for the payment of materialmen and labor furnishing material or labor on the job, executed by a surety company, authorized to do business in the State of California

(4) The plans, specifications, contract and bond are approved by the department

(5) The veteran has placed in escrow, all sums of money to be advanced by him where the cost is in excess of the maximum that may be expended by the department

As used in this section "immediate family" includes only the following:

Spouse, children, either natural or adoptive; and the parents if they are dependent upon the veteran for 50 percent or more of their support

SEC 58 Section 986 5 of the Military and Veterans Code is amended to read.

986 5 The purchase price of a home to the department, shall not exceed the sum of ~~fifteen thousand dollars ($15,000)~~ *twenty thousand dollars ($20,000)*, and a veteran purchasing the home may advance, subject to the provisions of Section 986 4, the difference between the total price or cost of the home and the sum of the purchase price of the home to the department and any amount the department is required

under Section 986 9 of this code to add to the purchase price of the home in fixing the selling price thereof to the veteran. The purchase price of a farm to the department shall not exceed eighty thousand dollars ($80,000), and a veteran purchasing the farm may advance the difference between the total price of the farm or cost of the dwelling and improvements to be constructed on a farm under a contract and the sum of such purchase price to the department or contract price to the department and any amount which the department is required under Section 986 9 of this code to add to such purchase or contract price to the department in fixing the selling price of the farm to the veteran

SEC 59. Section 987 of the Military and Veterans Code is amended to read

987 The purchaser shall make an initial payment of at least 10 percent of the selling price of the property, in case of a farm, and 5 percent in the case of a home The department may waive the initial payment in any case where the value of the property as determined by the department appraisal shall equal the amount to be paid by the department plus at least 10 percent in the case of a farm, and 5 percent in the case of a home. The balance of the purchase price may be amortized over a period fixed by the department, not exceeding 40 years, together with interest thereon at the rate as determined by the department for such amortization purposes The department shall establish the actual interest rate to be paid. To this end the department, ~~by a two-thirds vote of California Veterans Board members and~~ with the approval of the Veterans' Finance Committee of 1943, is empowered to establish a uniform rate of interest payable upon the amount remaining unpaid under any veteran's purchase contract The ~~California Veterans Board~~ *Director of Veterans Affairs* and the Veterans' Finance Committee shall periodically, at least once each year, make a finding as to the rate of interest to be charged, not to exceed 5 percent per annum, taking into consideration the current value of money and the solvency of the Veterans' Farm and Home Building Fund of 1943 The ~~California Veterans Board~~ *Director of Veterans Affairs* may raise or lower the rate of interest payable under such contracts for any given period as many times and as frequently as it deems to be for the best interests of the department, as well as the contract holders, if in so doing its action is made applicable alike to any and all contract holders and 90 days' advance notice be given of the time when the new rate of interest is to become effective Any change in the interest rate shall not affect the total amount of any installment payment, but the difference shall be credited to interest or principal and accelerate or prolong the period of payment. The purchaser on any installment date may pay any or all installments still remaining unpaid. In any individual case the department may for good cause postpone from time to time, upon terms as the department deems proper, the payment of the whole or any part of any installment of the purchase price or interest thereon

SEC 60. Section 995 5 of the Military and Veterans Code is amended to read:

995.5. So long as any bonds authorized under this article may be outstanding, the Director of the Department of Veterans Affairs

shall cause to be made at the close of each fiscal year, a survey of the financial condition of the Division of Farm and Home Purchases, together with a projection of the division's operations, such survey to be made by an independent public accountant of recognized standing The results of such surveys and projections shall be set forth in written reports and said independent public accountant shall forward copies of said reports to the Director of the Department of Veterans Affairs; ~~the members of the California Veterans Board,~~ and to the members of the Veterans' Finance Committee of 1943 The Division of Farm and Home Purchases shall reimburse said independent public accountant for his services out of any funds which said division may have available on deposit with the Treasurer of the State of California

SEC 61 Section 996 12 of the Military and Veterans Code is amended to read:

996 12 So long as any bonds authorized under this article may be outstanding, the Director of the Department of Veterans Affairs shall cause to be made at the close of each fiscal year, a survey of the financial condition of the Division of Farm and Home Purchases, together with a projection of the division's operations, such survey to be made by an independent public accountant of recognized standing The results of such surveys and projections shall be set forth in written reports and said independent public accountant shall forward copies of said reports to the Director of the Department of Veterans Affairs; ~~the members of the California Veterans Board,~~ and to the members of the Veterans' Finance Committee of 1943 The Division of Farm and Home Purchases shall reimburse said independent public accountant for his services out of any funds which said division may have available on deposit with the Treasurer of the State of California

SEC 62 Section 996.14 of the Military and Veterans Code is amended to read:

996 14 With the approval of the Department of Finance and the ~~California Veterans Board~~ *Director of Veterans Affairs*, the Public Works Board, pursuant to the provisions of the Property Acquisition Act, may acquire real property, and, after approval of preliminary plans under the procedure provided by Section 6 of the Budget Act of 1953, the department may construct and equip a building thereon, primarily for the department's own use and make improvements to such property, building, and equipment, not to exceed in total two million six hundred fifty thousand dollars ($2,650,000)

SEC 63. Section 996.37 of the Military and Veterans Code is amended to read:

996.37. So long as any bonds authorized under this article may be outstanding, the Director of the Department of Veterans Affairs shall cause to be made at the close of each fiscal year, a survey of the financial condition of the Division of Farm and Home Purchases, together with a projection of the division's operations, such survey to be made by an independent public accountant of recognized standing The results of such surveys and projections shall be set forth in written reports and said independent public accountant shall forward copies of said reports to the Director of the Department of Veterans Affairs; ~~the members of the California Veterans Board,~~ and to the members of the Veterans' Finance Committee of 1943 The Division of Farm and Home Pur-

chases shall reimburse said independent public accountant for his services out of any funds which said division may have available on deposit with the Treasurer of the State of California.

SEC. 64. Section 1014 of the Military and Veterans Code is amended to read:

1014. The home shall be under the management and control of the department and, subject to the policies adopted by ~~the California Veterans Board~~ and the direction of the Director of Veterans Affairs, shall be administered by the commandant, Veterans' Home of California, known as the Manager of the Division of Veterans Homes

SEC. 65 Section 1018 of the Military and Veterans Code is repealed

~~1018. The commandant, executive officer, chief surgeon, quartermaster or supply officer, adjutant, chaplain, physicians and surgeons, dental officers, hospital administrative officer, and the utilities officer in office shall remain in office as provided in the State Civil Service Act. Thereafter the commandant shall appoint, subject to civil service, qualified persons to fill such offices.~~

SEC. 66. Section 1019 of the Military and Veterans Code is repealed.

~~1019. Officers of the home shall take the oath of office required of state officers, shall file a bond in form and amount approved by the department, and shall reside at the home providing quarters are available. Officers may be removed by the Director of Veterans Affairs for cause as provided in the State Civil Service Act.~~

SEC. 67 Section 1030 2 of the Military and Veterans Code is amended to read:

1030 2 The department may enter into contracts with the United States or any agency thereof and any other governmental agency for the purpose of providing courses of vocational training for disabled veterans who have been bona fide residents of this state of ~~10~~ *five* years.

SEC 68. Section 1039 5 of the Military and Veterans Code is repealed.

~~1039 5. All moneys in that certain fund in the State treasury, which fund is known as the "Special Deposit Fund—Spanish American War Account—Unclaimed Trust," which are unclaimed and for five years last past have been unclaimed by the owners thereof are hereby ordered transferred to the post fund of the Veterans' Home of California, to the fullest extent that the same may be done under the constitutions of this State and of the United States.~~

SEC 69 Section 1044 of the Military and Veterans Code is amended to read

1044 The commandant, in accordance with the policies adopted by ~~the California Veterans Board~~ and subject to the direction of the Director of Veterans Affairs, may make rules and regulations governing the admission of applicants and may prescribe the conditions upon which they may enter and the conditions upon which they may remain

SEC 70 Chapter 2 (commencing with Section 1080) of Division 5 of the Military and Veterans Code is repealed

SEC 71 The California Veterans Board is abolished and any reference in this code to the California Veterans Board shall be construed to refer to the Director of Veterans Affairs

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Testimony

After the bill draft had been distributed among interested parties, the committee held a hearing in San Francisco to receive reactions to the bill draft. The comments of Mr Keith Garrison, representing the California Association of County Veterans Service Officers, were generally concurred with by the other witnesses The gist of Mr. Garrison's remarks follow·

MR. KEITH GARRISON: We do not feel that Sections 1 through 9 should be proposed for favorable enactment as we feel that there is the definite need for the California Veterans Board. There are times when the county service officers do not agree with the California Veterans Board nor do veterans within the state agree with the board but they have been a great assistance to the veterans in the state in setting policies. We feel that the board as now set forth in the code as adopted by the Legislature was intended to be a watchdog to provide counsel and assistance in various investigations to be conducted by the director or by various subcommittees of the board. There have been many criticisms of the current membership of the board and the most frequent observation has been that the board has been politically oriented and served only as a rubber stamp for the actions of the director in administering the department. While this may or may not be correct, we feel that the California Veterans Board should continue to function, as most of the large state agencies have boards such as the Board of Education, State Welfare Board, State Highway Commission, to name a few, and by putting into the hands of one man, it would unfairly subject that one person to pressures which can far more easily be resolved by a democratic representative group and do a good job. We do not feel that favorable action should be taken with respect to Sections 10 and 11. It would allow one man too great dictatorial powers to exist in a state where the democratic processes are of primary importance.

Sections 12, 13, 14, 15, 16, 18 and 19 should not be approved for the reasons as noted previously that our association feels there is the great need for the California Veterans Board and not the undemocratic processes which may arise out of having just one man direct the entire department.

With respect to Section 20, we concur with the thought of the revision However, we suggest that the wording be changed to read: "Veterans" means any person who died or who was totally disabled or has been rated with a disability or disabilities of 50 percent or more in effect for at least one year as a result of service in the armed forces of the United States during World War One, or after September 16, 1940, and continuing for so long as the United States Selective Service is in effect We feel that the 50-percent criterion should be the effective guideline and not be changed by the director with or without the blessing of the board. Recent changes have been made by administrative interpretation and many dependents who were previously entitled to educational benefits are now denied because of the revision to a greater degree of disability than that required when other members of their family were allowed schooling benefits This will stabilize our counseling of veterans concerning these educational benefits

We heartily approve the recommendations as made in Sections 21, 22 and 23, especially that portion of Section 23 wherein it notes. "In the event the applications exceed available funds, the department shall prepare a deficiency request for additional funds to the Legislature immediately."

With respect to Section 25, we feel that Section 920 of the Military and Veterans Code should be amended to read·

920 "As used in this article, unless the context otherwise indicates, 'veteran' means a person who has been honorably discharged, *separated or retired* (italic denotes added words) from any branch of the United States armed forces "

Our reason for this change is that in many cases all requirements for "veteran" status have been met, except that the man may not have a discharge but has an honorable "separation from active duty," or has been honorably retired with some document, not a discharge Section 940 should have inserted after "honorably discharged" the words, "*retired or separated from any branch of the United States armed forces.*"

In Section 40, in which Section 945 of the Military and Veterans Code is proposed to be amended, it is felt by our association that the amount of $250 as noted in the code should be increased to $500. Many of our members at the present time are acting as burial officers within their respective counties and they report that the $250 is not an adequate sum under the conditions that exist today Section 49 in which it is recommended that Section 972 of the code have the additional italic wording added, which is "*and further conditioned upon the service officer satisfactorily completing a state qualifying examination to be administered by the State Personnel Board.*" It is felt that this Section 972 is quite ambiguous in its nature and with the additional words, it does not meet with our approval. We further feel that the county should retain control of the tests to be given its employees and free of any Department of Veterans Affairs control within the office function

In Section 53, wherein Section 981 2 of the code is amended to read: 981 2 "The department, insofar as the funds permit, may provide"; may we suggest that this be changed to read "The department *shall* provide " With respect to Section 981 4, we suggest that the amendment read as follows "The department shall consider the applications of veterans for admission to the program in the order in which they are received *The department shall request sufficient funds annually to assist all eligible applicants. In the event the applicants exceed available funds, the department shall prepare a deficiency request for additional funds for submission to the Legislature immediately* We suggest these amendments in order that the veterans' education can be placed on the same level as education for dependents It would be a futile gesture to add another group of eligible veterans with no funds available to administer the program For this reason we heartily recommend the change from permissive language to mandatory language We feel that it is a useless gesture to add another class of veterans to a situation where the Department of Veterans Affairs has eliminated the program by failure to make application to the Legislature for funds to administer it The interim committee should ask, "How many veterans are now in training under existing legislation?" The answer is "*none* "

Section 56 — Section 986 proposes within its contents to require the veteran to exercise his opportunity to acquire a home or a farm within 10 years from the date of his discharge Our association is opposed to this revision We feel that the Cal-Vet farm and home loan has been the greatest piece of legislation ever enacted The benefits provided by this legislation have not been considered as a bonus, however, if a delimiting date would be set, it is felt it would be an opening for bonus legislation In all of the published literature as well as counseling interviews, the veteran has been advised that there is no delimiting date to this benefit Upon separation from the service, adjusting to civilian life, marrying, starting a family and then thinking about buying a home in most cases takes more than 10 years which we feel would make the change most discriminatory This great loan benefit has not cost the California voter one cent, it has accumulated a surplus out of which other programs within the Department of Veterans Affairs are operating, and it is a benefit that the eligible California veteran should have to use at anytime during his lifetime

Section 57 — Section 986 3, paragraph (b) adds an underlined portion which begins· "except that in a case of hardship, etc , etc " We wish to take exception to having this italic portion added to paragraph (b) We feel that any addition of this sort would tend to open the door for investment purposes and defeats the very nature of the benefits which is to enable the eligible veteran to obtain a home for him and his family. Our association does approve the increase in the amount of the home loan as noted in paragraph (c) of Section 986 3 up to $20,000, as well as it is noted in Section 58 — Section 986 5. We feel that the increase is timely as the cost of living, construction and land values has increased to such a level as to make the present $15,000 not adequate to successfully maintain the program to its fullest value.

Section 59 — Section 987, Section 60 — Section 995 5; Section 61 — Section 996 12; Section 62 — Section 996 14; Section 63 — Section 996 37, Section 64 — Section 1014 It is proposed to amend the Military and Veterans Code by striking out the California Veterans Board and in some sections inserting Director of Veterans Affairs. May I repeat that our association goes on record of opposing such action or legislation. Section 71 abolishes the California Veterans Board and any reference in the code shall be construed to refer to the Director of Veterans Affairs which is in direct conflict to our previous opinions expressed in this matter

BRIEF SUMMARY OF VETERANS BENEFITS PROVIDED BY THE 1966 GI BILL ENACTED BY CONGRESS

Since December 7, 1941, the number of veterans in the United States has increased sixfold. There are now 3 2 million men and women in the armed forces of the United States There are now about 25 66 million veterans on the rolls of the U S Veterans Administration, including veterans of World War II, the Korean conflict, the Vietnam conflict, and service during the "cold war" years

The Veterans Administration estimates the veteran population will number 28 million by 1975 and 30 million by 2000 if present federal veterans benefits continue [69]

The new GI Bill provides a permanent program of benefits to veterans serving in the Armed Forces after January 31, 1955 They are.

EDUCATIONAL ASSISTANCE

Eligibility — Minimum of 181 days on active duty, any part of which occurred on or after February 1, 1955, and no dishonorable discharge; or discharge for service-connected disability

Benefits—Veterans will be eligible to make a guaranteed home or farm loan or to make a direct home loan in the areas where such loans are authorized. Eligibility period is for 10 years after the date of discharge, plus an additional year for each three months of active service. Under the new bill, the 5¼ percent statutory maximum rate of interest is removed and the Administrator of Veterans Affairs is authorized to establish interest rate as he determines loans market demands but not to exceed the FHA rate The maximum loan possible in the direct loan program is raised from $15,000 to $17,500.

MEDICAL BENEFITS

Eligibility—Veterans who served after January 31, 1955, will be eligible for care and treatment in VA hospitals on the same basis as wartime veterans The priorities are as follows:

1 Veterans needing hospitalization due to injuries or diseases incurred or aggravated in line of duty in active service
2. Veterans who were discharged or retired for disability incurred or aggravated in line of duty and who need treatment for some ailment not connected with their service.
3 Veterans with service during any war not discharged or retired for disability and who apply for treatment of a non-service-connected disability may be admitted to VA hospitals if all three of the following conditions are met:
   a Hospitalization is deemed necessary.
   b. They state under oath they are financially unable to defray the cost of the necessary hospital charges elsewhere.
   c If beds are available.

Other benefits—Veterans described above as eligible for medical benefits will also be eligible for domiciliary care, outpatient medical treatment, outpatient dental treatment, medical examinations, and prosthetic appliances.

JOB COUNSELING

Full details as to the operation of this program is now being worked out It will probably be carried on in connection with the Veterans' Employment Service of the U S. Department of Labor

[69] "Vets Total Has Risen Sixfold Since December 7, 1941," Associated Press release, Sacramento *Bee*, December 6, 1960

JOB PLACEMENT

This program already administered by local state employment offices in cooperation with the Veterans' Employment Service of the U.S. Department of Labor will now include those veterans with service after January 31, 1955

FEDERAL EMPLOYMENT PREFERENCE

Eligibility for 5-Point Preference—Honorable discharge.

Eligibility for 10-Point Preference—Honorable discharge, and Purple Heart for wound received in action, present existence of a service-connected disability; or receipt of compensation, disability retirement benefits, or pension.

BURIAL FLAGS

Eligibility—The deceased veterans must have been honorably discharged.

Benefit—American flag to drape casket of veteran, after which it may be given to next of kin or close friend or associate of the deceased.

COMPENSATION

Consists of monthly payments to veterans with service-connected disability and honorable discharge. Monthly payments range from $20 to $250, depending on the degree of disability. Allowances are made for dependents, widows, children, and parents.

ADDITIONAL BENEFITS AVAILABLE TO VETERANS

Several benefits already exist for veterans who have been in service since January 31, 1955 They can be divided generally into the following two types:

1. *Benefits for Veterans with Service-connected Disabilities*—These benefits include aid for the blind, aid to homes where a wheelchair veteran resides, and reimbursement of burial expenses
2. *Benefits to Veterans Without Service-connected Disabilities*—These benefits include burial in national cemeteries, a six-month death gratuity in some cases, and social security wage credits of $160 for each month of military service. The social security wage credits are not actually listed on social security earnings record until applied for.

This summary is intended to focus attention on the major provisions of the 1966 GI Bill It provides general information only. Local VA offices will provide more information.[70]

[70] For a strong argument against veterans welfare legislation see Edwin P Nellan, "Let's Say No to the Veterans," *Saturday Evening Post*, November 30, 1963.

Department of Defense

NUMBER OF CASUALTIES INCURRED BY U.S. MILITARY PERSONNEL IN VIETNAM

Cumulative from January 1, 1961, through June 11, 1966

	Army	Navy	Marine Corps	Air Force	Total
A. CASUALTIES RESULTING FROM ACTIONS BY HOSTILE FORCES					
1. Killed	2,100	87	941	71	3,199
2. Wounded or injured					
a Died of wounds	196	8	71	8	283
b Nonfatal wounds	13,917	503	5,977	585	20,982
3. Missing					
a Died while missing	179	28	5	108	320
b Returned to control	19	1	--	4	24
c. Current missing	22	58	25	113	219
4 Detained					
a. Died while detained	1	--	--	1	2
b. Returned to control	3	--	--	--	3
c Current detained	14	--	1	21	36
5. Deaths					
a From aircraft accidents/ incidents					
Fixed Wing	25	61	13	165	264
Helicopter	203	3	43	2	251
b From ground action	2,248	59	961	21	3,289
Total deaths*	*2,476	123	1,017	188	3,804
B. CASUALTIES NOT THE RESULT OF ACTIONS BY HOSTILE FORCES					
6 Current missing	12	--	1	--	13
7. Deaths					
a. From aircraft accidents/ incidents					
Fixed Wing	53	5	3	46	107
Helicopter	123	3	28	--	154
b. From other causes	310	38	158	58	564
Total deaths	486	46	189	104	825

* Sum of lines 1, 2a, 3a and 4a.
* Includes 104 Special Forces personnel.

SOURCE Directorate for Statistical Services, Office of Secretary of Defense, June 15, 1966.

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ASSEMBLY INTERIM COMMITTEE REPORTS
1965–1967
VOLUME 26 NUMBER 15

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December 1966

RECREATION COSTS AT WATER PROJECTS

A REPORT OF THE
ASSEMBLY INTERIM COMMITTEE ON WATER
TO THE CALIFORNIA LEGISLATURE

Published by the
ASSEMBLY OF THE STATE OF CALIFORNIA

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LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY INTERIM COMMITTEE ON WATER
December 13, 1966

HONORABLE JESSE M UNRUH
Speaker of the Assembly
MEMBERS OF THE ASSEMBLY
State Capitol
Sacramento, California 95814

Gentlemen:

In accordance with the provisions of House Resolution 710 of the 1965 Regular Session, the Assembly Interim Committee on Water herewith submits a record of committee activities and its report entitled *Recreation Costs at Water Projects*.

This report combines the committee's studies with regard to state recreation expenditures at federal, state and local water projects in California. Recreation has become an increasingly important element of water projects in California, as is indicated in this report, and represents a substantial state financial obligation.

Part I of the report considers the Davis-Grunsky Act, the state's program of financial assistance for local water projects.

Part II discusses the subject of cost allocations of the state's Feather River Project. These cost allocations are now subject to legislative review under recently enacted legislation providing for reimbursement of recreation and fish and wildlife enhancement expenditures for the project from tidelands oil revenue.

Part III considers the state's new program of financial participation for recreation at federal water projects under the Cobey-Porter Federal Water Project Recreation Act.

Draft legislation to implement the committee's recommendations is found in the appendix of this report.

Respectfully submitted,

CARLEY V PORTER
Chairman
HALE ASHCRAFT
Vice Chairman

Frank P Belotti
Eugene A Chappie
John L E Collier [1]
William E Dannemeyer
Pauline L Davis
(with a few reservations)
Houston I Flournoy [2]
Charles B Garrigus
Burt M Henson
Harvey Johnson
Ray E Johnson
Frank Lanterman [4]
Charles W Meyers
Robert T Monagan
John P Quimby
Newton R Russell [1]
John E Williamson
Edwin L. Z'berg [3]

[1] With reservations as to recommendation A4 of Part I
[2] With reservations as to Part II
[3] Mr Z'berg does not concur with Part II
[4] With reservations as to recommendation A4 of Part I, Mr Lanterman does not concur with recommendation A3 of Part I

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SUMMARY OF RECOMMENDATIONS

PART I. LOCAL PROJECTS AND THE DAVIS-GRUNSKY ACT

A. *Proposed Changes in Loan Program*

The committee·

1. Recommends *against* enactment of a program of loans for repair of dams.
2. Recommends *against* enactment of a program of special distribution system loans for State Water Project contractors.
3. Recommends expansion of the act to provide loans for advanced reservoir site acquisition
4. Recommends reduction in the Davis-Grunsky loan interest rate to 2¼%.
   Recommends extension of total loan repayment period from 50 to 60 years.
   Recommends that if interest is deferred for the loan development period that no interest be charged on the deferred interest

B. *The Role of the California Water Commission and the Legislature*

The committee·

1. Recommends clarification of existing law to provide Department of Water Resources and California Water Commission review of all loan and grant applications
2. Recommends amendment to the act requiring that full information, including a feasibility report, be in the hands of the Legislature before it authorizes increased grants or loans

C. *Administrative Provisions*

The committee.

1. Recommends further committee and Department of Water Resources study of the definition of "statewide interest."
2. Recommends further study by the committee and the Department of Water Resources of procedures to better coordinate Davis-Grunsky expenditures with other state recreation programs
3. Recommends amendment of the act to provide for either an escrow arrangement or a reserve account at the discretion of the Department of Water Resources to assure onshore development
4. Recommends recodification of the act
5. Recommends *against* providing additional funding, at this time, for the Davis-Grunsky Act
6. Recommends that the Department of Parks and Recreation and Department of Fish and Game comment on all Davis-Grunsky reports prepared by the Department of Water Resources

Recommends that Davis-Grunsky project reports and other departmental comments be sent to the Legislature when completed, rather than on annual basis

7 Recommends that the Auditor General be authorized to post-audit Davis-Grunsky recipients

PART II. COST ALLOCATIONS OF THE STATE WATER PROJECT

A. The committee recommends approval of the first cost allocations reimbursable under AB 12 (1966 First Extraordinary Session) in the amount of $454,082

PART III. FEDERAL WATER PROJECT RECREATION

The committee:

A. Recommends that the Porter-Cobey Federal Water Project Recreation Act *not* be amended and that "letters of intent" continue to be issued only upon specific authorization of the Legislature.

B. Recommends that the Resources Agency and federal agencies work together to develop more definitive interpretations of the Federal Water Project Recreation Act.

C Recommends continued study by the Resources Agency and the committee of problems raised by the Federal Water Project Recreation Act and the Porter-Cobey Act in order that this new service of recreation can be properly integrated into overall state recreation planning

PART I

LOCAL PROJECTS AND THE DAVIS-GRUNSKY ACT

INTRODUCTION

In its report to the 1965 Legislature[1] this committee reviewed in considerable detail the history of the Davis-Grunsky Act and particularly the changes made in the act at the 1963 session These amendments greatly broadened the concept of the act by placing new emphasis on recreation In that report, the committee recommended that in view of the limited experience under the 1963 amendments no additional legislation modifying the act was needed at that time Thus, at the 1965 session of the Legislature no legislation was enacted amending the Davis-Grunsky Act although there were additional bills enacted providing, on individual projects, for grants in excess of the maximum permitted without approval of the Legislature

During the current interim period, the committee has again reexamined the Davis-Grunsky Act. In this regard it also had before it a series of bills which were introduced at the 1965 Session and referred to interim study These bills and the changes proposed by them are discussed in the report which follows and recommendations are made as to each proposal.

One of the principal emphases of the committee during its current study has been an examination of the administrative aspects of the act to determine whether or not the act is satisfactory in this respect. The Department of Water Resources made an extensive statement to the committee on the operation and administration of the Davis-Grunsky program at the hearing on September 22, 1965. A complete review of each step involved in the department's review of Davis-Grunsky loans and grants is included in the transcript of that committee hearing (See pages 3–7, Exhibit 3) This transcript includes other informative background material on the act.

To conduct this study, Chairman Porter appointed a subcommittee on the Davis-Grunsky Act consisting of the following. Assemblyman Carley V Porter, chairman, Assemblywoman Pauline Davis; and Assemblymen Hale Ashcraft, Frank Belotti, John L E Collier, William E Dannemeyer, Harvey Johnson, Frank Lanterman, John Williamson, and Edwin Z'berg The subcommittee met as follows

September 22, 1965—Sacramento—hearing.
November 15, 1965—Sacramento—hearing
August 30, 1966—Sacramento—executive session

[1] *State Financial Assistance for Local Water Projects Under the Davis-Grunsky Act*, Assembly Interim Committee Reports, Vol 26, No 1, November 1964 (hereafter cited as *1965 Report*).

PROPOSED CHANGES IN THE LOAN PROGRAM

Throughout the history of the Davis-Grunsky Act repeated concern has been expressed over the fact that the largest portion of the $130 million set aside for loans and grants is being utilized for the grant program with only a very small portion being made available in the form of loans

As of August 15, 1966, $76,283,300 in grants and $1,260,000 in loans had been authorized by the Legislature As of this same date, 20 grants, for a total of $30,340,100 had been approved by the Department of Water Resources and 12 loans, for a total of $3,843,000 had been approved by the department

The 1963 amendments to the act included several changes which were an attempt to make loans under the act more attractive to local public agencies and to obtain more widespread use of the loan program These changes included deferment of *interest* during the development period and adoption of a new interest rate formula which was more equitable than the flat rate then in effect. Nevertheless, continued experience with the act has shown that the loan program has not received the additional use expected after the 1963 amendments.

Three major bills were introduced at the 1965 session which would have approached this lack of use by providing additional purposes for which loans may be made. These bills included (1) loans for repair of dams, (2) loans for distribution facilities not otherwise eligible when the public agency was a contractor for water from the Feather River Project, and (3) loans for advance reservoir site acquisition

All of these bills were referred to interim study by this committee on the understanding that before major new extensions of the Davis-Grunsky Act were made a full study would be undertaken and an additional attempt would be made to make more usable the existing loan provisions.

This committee has long believed that the original basic intent of the Legislature in enacting the Davis-Grunsky Act was to develop new water supplies for local areas Inasmuch as the Davis-Grunsky Act loan program serves only public agencies which are unable to finance such facilities from other sources, it was felt that the Davis-Grunsky Act would fill a specific need in local areas which had not achieved sufficient economic development to construct local water projects without state assistance

The Legislature modified the original concept of the act somewhat in 1963 by making projects primarily for recreation eligible for both Davis-Grunsky loans and grants (recreation had previously been limited to an incidental purpose) However, no recreation loans have been made and the basic emphasis of the loan program is still to provide an additional means of financing water development facilities Limitations were placed administratively, and then by statute, preventing the use of such loan funds for distribution facilities, with certain exceptions in case of hardship

At this point the committee should reiterate the statement in its last report to the Legislature that

". . it is through loans that water supply projects are developed and local projects needed for strictly local purposes can be made more easily available to the local people in areas with limited present economic resources This committee is concerned lest the original concept of state assistance for local projects be overshadowed by the availability of nonreimbursable grants." [2]

In spite of what the committee considers a rather clear and well understood legislative intent, the Department of Water Resources has continued to interpret the legislative intent broadly and has given its support to a number of proposals which would greatly expand the purposes of the act and depart substantially from its original concept The department has consistently held that such obvious departures from the original intent are nevertheless consistent with the policy provisions of the Davis-Grunsky Act which read as follows.

12880 In furtherance of the development, control, and conservation of the water resources of the state and the state water resources development system it is the policy of the state to provide financial assistance to public agencies for the *construction of water projects to meet local requirements* in which there is a statewide interest by making grants or loans, or both, and by participating in the *construction and operation of water projects*, and also to provide financial assistance to public agencies for the publication of certain feasibility reports on such water projects by making loans, in accordance with this chapter . . (emphasis added).

The department, in interpreting this section in support of expansions of the act for such purposes as repair of dams, has wrenched part of Section 12880 from context and relies only on the first sentence of the policy statement

"The introductory provisions of the act indicate that its specific objective is to further 'the development, control, and conservation of the water resources of the state . '"

The committee does not concur with the department's interpretation of the policy provision of the act

Representatives of the Department of Finance testified before the committee and reviewed the original concept of the Davis-Grunsky Act in terms consonant with the committee's understanding of the act The department concluded,

" It does appear to us that the original purpose of the act, mamly, the development of new basic water supplies, is being lost in the rush for recreation and fish and wildlife enhancement grants. Under current ground rules, it is unlikely that as much as 20 percent of the $130,000,000 Davis-Grunsky financing capacity will ultimately be disbursed in the form of loans "

The Department of Finance went on to recommend that a limit of two-thirds of the $130 million be established on grants to assure loan

[2] 1964 Report, *op cit*, page 21

utilization of the remaining amount In view of the fact that considerable legislative authorization has been made for grants to date, and in view of the fact that future use of the loan program under proposals elsewhere in this report are unknown at this time, the committee *recommends against such an arbitrary limit* It is expected that the recommendations in this report will provide for additional use of the loan program If such use eventuates the committee can then reevaluate the suggestion that a limit be placed on the grant program but *no limit seems warranted at this time.*

It is against this background of the committee's understanding of the act that attention is now turned to consideration of several proposals under which loan funds would be used for new purposes

1. *Loans for repair of dams*

Senate Bill 597 (McCarthy) of the 1965 session provides for loans of up to $4 million (without legislative approval) to public agencies for repair of dams This legislation was developed by the Department of Water Resources and was complementary to its then concurrent study of California's laws relating to safety of dams In supporting this legislation, the department indicated that a great many dams throughout the state were in need of repair and in the department's opinion the repair of dams already constructed was as important to the development of water resources of the state as was the construction of new facilities [3]

The committee believes extension of the act in this manner is not desirable

First, as proposed, the loans for dam repairs would not in fact, be subject to the general financial eligibility requirements of the act. The department indicated to the committee that such financially secure entities as the Los Angeles County Flood Control District would be eligible for loans to repair dams

An examination of the list of dams which the department felt were in need of immediate repair (and would be eligible for such loans) shows that few of those on the list would qualify if the normal Davis-Grunsky standards of financial eligibility were applied The districts which the department indicated would qualify for such loans are listed in Table 1

Senate Bill 597 did not differentiate between loans for (1) repairs which were necessitated by a failure to provide adequate periodic maintenance of the facility and (2) catastrophic damage to dams not attributed in any way to acts or omissions by the district (See Table 1)

In addition, we believe that the use of Davis-Grunsky funds for the repair of dams is not consistent with the original policy intent of the Legislature in enacting the Davis-Grunsky Act It is quite true that the safety of the dams of our state is essential to the well-being of the people of California, and the committee cannot understate its desire that agencies maintain dams in a safe manner at all times Use of

[3] *Transcript*, September 22, 1965, pages 31–38

TABLE 1

POTENTIAL USE OF DAM REPAIR LOANS

Name of dam	Owner	Condition requiring repair or alteration	Estimate of cost	A or B
Shasta River	Montague Water Conservation District	Structural cracking in spillway tunnel	$25,000	B
Pacines	San Benito County Flood Control and Water Conservation District	Embankment and foundation in need of strengthening	50,000	B
Phoenix Lake	Marin Municipal Water District	Questionable embankment stability	200,000	B
Harold Reservoir	Palmdale Irrigation District	Dam located on San Andreas fault	3,000,000	B
Atascadero Park	County of San Luis Obispo	Outlet inoperable, requires replacement of conduit	8,000	A
Alvord	City of Riverside	No trashrack, downstream face of dam saturated to high level	40,000	B
Matilija	Ventura County Flood Control District	Progressive deterioration due to alkali-aggregate reaction	565,000	B
Murray	City of San Diego	Strengthening of dam is needed	210,000	B
Pacoima	Los Angeles County Flood Control District	Stability of left abutment is questionable	150,000	B
Ruth	Humboldt Bay Municipal Water District	Scour at terminal structure, stability of hillside at right abutment is questionable	$25,000	A

A—Periodic operation and maintenance
B—Major structural defects not susceptible to correction by periodic maintenance

Davis-Grunsky funds, however, to repair existing projects will not develop new economic benefits to local areas and will not develop water supplies for local communities. In addition, the state should expect prompt maintenance of dams and reservoirs and should not, by making available loan funds at exceptionally low interest rates, encourage local public agencies to permit dam and reservoir facilities to fall into disrepair with the knowledge that Davis-Grunsky act funds would be available for later repairs.

We are convinced that once the department's complete reevaluation of dams under the accelerated dam safety program enacted by the 1965 Legislature is completed there will not again in the future be a situation where a large group of dams require repair or large-scale maintenance at a single time

The committee *recommends that the Legislature not enact legislation providing for expansion of the loan program to cover dam repairs as evidence presented to date does not justify such a program at this time.* However, if future events and a specific documented need develops and is presented to the Legislature, the committee's recommendation should be reexamined The committee has not examined the possibility of such a loan program outside of the Davis-Grunsky Act

2. Loans for distribution systems for agencies having state water service contracts

Assembly Bill 2255 (Williamson) was introduced at the 1965 session of the Legislature and provides that distribution system projects would be eligible for Davis-Grunsky loans of up to $10 million for any one

distribution system when the department determines that more than 50 percent of the estimated amount of water to be distributed by the project in the year 1990 would be water that would be supplied indirectly from the State Water Project.

The department indicated that it supported this legislation "anticipating the possibility that some State Water Project contractors might possibly encounter difficulties in obtaining the necessary financing to construct distribution systems in timely fashion."[4]

The department appropriately indicated that the inability of a contractor to repay the state has a direct bearing upon the successful functioning of the State Water Project.

The proposal in Assembly Bill 2255 raises problems in two major policy areas in which this proposal would be contrary to existing policy. First, a key feature of the legislation was that projects eligible under this proposal for distribution system loans need not demonstrate extreme hardship as a condition precedent, which is the only exception today to the ban on distribution system loans The 1961 amendments to the Davis-Grunsky Act limited distribution system loans to situations involving extreme hardship which jeopardizes the public health, safety or welfare.[5]

The committee does not agree with the department that this proposal is consistent with the basic objectives of the act as discussed above. The characterization by the department of the State Water Project as an example of a new basic water supply *in the context of the Davis-Grunsky Act* seems inappropriate. Therefore, these loans would not qualify as distribution systems which are an integral part of an overall water development project

Second, the proposal establishes a special category of beneficiaries of the Davis-Grunsky Act consisting of water service contractors, and the proposal does not make similar loans available on a statewide basis. There is no precedent to date for limiting in such a manner the recipients of Davis-Grunsky assistance Indicative of the possible ramifications of this proposal was the comment by the chief engineer of the Sonoma County Flood Control and Water Conservation District.

> "I do not recommend the expansion of the loan provisions of the Davis-Grunsky program to this select group of agencies in the State of California unless similar provision is made available to all water agencies within the State under a uniform set of requirements The $130 million originally available to the Davis-Grunsky program would not begin to cover the cost of expanding the distribution systems For example, in Sonoma County alone we are planning the construction of approximately $40 million of water conveyance facilities within the next 10 years and a similar situation must, most certainly, exist in most areas of the state."[6]

Such an argument is logical and reasonable, yet such an expansion of this proposal would completely deplete Davis-Grunsky funds in short order This possibility was the reason the Legislature and the administration have consistently supported the strict limitations of existing law on distribution system facilities.

[4] *Ibid*, page 38
[5] For discussion, see 1964 Report, *op cit*, pages 11–13 (Water Code Section 12880.2)
[6] Transcript, November 16, 1966, page 55

The department indicated to the committee that the total value of loans anticipated under AB 2255 would be $41,000,913 [7] This would include three loans for a maximum of $10 million and three additional loans ranging from 2 6 million to $5 million The total estimated cost of the distribution systems involved would be $65,533.500 These loans represent contractors in the San Joaquin Valley for approximately 400,000 acre-feet of state project water, or 10 percent of the project yield

Subsequent materials prepared for the committee by the Kern County Water Agency indicate additional member units of the Agency have need for similar funding The total project cost for distribution systems of all member unit agencies of the Kern County Water Agency is estimated at $194,101,000. The amount of this total which would be financed under this proposal is not known It should be pointed out that since the original proposal was made many of the districts in the area are in the process of attempting to finance as much of their program as possible from other sources In several districts, voters have approved bond issues In other areas Public Law 566 or Public Law 984 financing have been requested Other federal programs have also been investigated, including use of the funds available from the Department of Housing and Urban Development At a later date, following further efforts by the local districts more accurate estimates of the total amounts involved in the proposal will be available.

Although inability to finance was cited as a factor by supporters of the legislation it should be pointed out that this problem is partly a result of inadequate assessed values at the present time in several of the districts This has resulted in an unusually low ability to repay and difficulties in bonding sufficiently *at the present time* However, when water deliveries begin to the districts, the estimated assessed value per acre *in all cases* will increase two to three times

As an example, land in the Berrenda Mesa Water District presently has an estimated *market value* of $169 an acre The average *assessed value* per acre for 1965–66 of land in this district is $5 The ability of the users to finance distribution systems from other sources is based on these figures Yet, as soon as water deliveries begin, this land is estimated to be worth $327 an acre

Similarly, land in the Dudley Ridge Water District is presently carried on the assessment rolls at approximately $10 an acre, while the estimated market value of the land today is $180 per acre and will rise to an estimated $600 per acre after water is delivered [8]

The present value of the lands in districts cited by the department range from $57 an acre to $250 an acre while the assessments on such land range from $5 an acre to $77 an acre The minimum estimated market value of the land in the districts involved after delivery of water was $180 and the maximum $800 an acre

Finally, the committee is concerned that under this proposal a large amount of Davis-Grunsky money (approximately 33 percent of the

[7] Letter to Chairman Porter dated January 19, 1966 This, however, considers only San Joaquin Valley contractors Other contractors, including the Metropolitan Water District, might possibly be eligible under such a program

[8] See Table 2 for data on assessments provided by the Department of Water Resources

TABLE 2

POTENTIAL USE OF SPECIAL DISTRIBUTION SYSTEM LOANS AND ASSESSMENT DATA

Agency	Distribution system				Assessed value per acre	Estimated market value per acre		Estimated Davis-Grunsky loan
	State water utilized (full entitlement) a-f/yr	Acres served	Total cost	Cost per acre		Present	After water is delivered	
Dudley Ridge Water District	57,700	29,916	$4,220 000	$141	$10	$180	$600	$4,220,000
Berrenda Mesa Water District	97,000	62,000	15,000,000	242	[1]5	109	327	10,000,000
Cawelo Water District	57,600	46,277	24,620 500	532	[1]45	[2]250	[2]800	10,000,000
Lost Hills Water District	129,100	65,112	14,000,000	215	[1]8	57	180	10,000,000
Rosedale-Rio Bravo Water Storage District	35,000	43,000	2,693,000	63	[1]67	[2]250	[2]800	2,693 000
Tehachapi-Cummings Co Water District	20,000	196,000	5,000,000	26	77	[2]250	[2]800	5,000 000
Totals			$65,533,500					$41,913.000

[1] 1965–66 average assessed value of land
[2] Estimate by Department of Water Resources
[3] 1963–64 average assessed value of land

total) may be utilized for a purpose not originally contemplated at the time of the financing of the act in 1959 There is no indication how many loans other State Water Project contractors may request under such a program

In summary, the committee recognizes the vital need for complete financing of distribution systems for all state water service contractors, and particularly those in the agricultural areas of the San Joaquin Valley for whom this legislation is principally intended The committee *believes that further study of this matter should be undertaken and the committee should watch closely the progress being made by the local districts in their attempt to provide local financing for these projects However, the committee recommends that no further action be taken upon the proposal of Assembly Bill 2255 at this time Other, means of financing these from state, federal and local funds should be explored*

3. Provision of loans for advance reservoir site acquisition

At the 1965 session of the Legislature, Senate Bill 200 (Lunardi) and Assembly Bill 2429 (Chappie) were introduced providing for advance reservoir site acquisition loans under the Davis-Grunsky Act Senate Bill 200 authorized loans up to a maximum of $400,000 Approval by the department was to be based only on a reconnaissance report From this report the department was required to determine the public necessity of the project, the extent of statewide interest in the proposed project and whether it "appears probable in a preliminary way that the proposed project is engineeringly feasible, economically justified, and financially feasible "[9]

[9] *Transcript*, September 22, 1965, pages 26–27

The bill also provided that if the project is not constructed by the agency within 10 years it must sell the lands acquired with the loan funds and use the proceeds to repay the loan and all accrued interest.

The department pointed to the difficulties of the El Dorado County Water Agency in acquiring a reservoir site in the Texas Hill area in advance of project construction and cited this project as the principal impetus behind the proposed legislation [10]

The committee agrees that the experience throughout the state on other water projects indicates that the upward trend of real estate prices (and particularly after dam sites are selected) often makes the final cost of reservoir land substantially in excess of original estimates.

The department estimated that the maximum number of loans which would be required for land acquisition for all of the 102 preliminary requests for assistance under the Davis-Grunsky Act would total about $5 million, or approximately $500,000 a year for 10 years

The committee believes that legislation to provide advance reservoir site acquisition for Davis-Grunsky projects is desirable, provided that sufficient safeguards are included to prevent speculation and to guarantee, as far as possible, final construction of the project. These safeguards were not provided in the 1965 legislation

The committee believes that reservoir site acquisition loans, subject to all the other eligibility criteria of the Davis-Grunsky Act and requiring the submission of a *feasibility report* prior to approval by the Department of Water Resources, will insure that such loans are made only for projects which local agencies are seriously determined to construct Legislation implementing such a reservoir site acquisition loan program appears as Draft Bill No. 2 in the appendix of this report

The department has appropriately pointed out that advance reservoir site acquisition loans would permit public agencies to buy reservoir sites before land values become so inflated as to make the cost of the water project extremely high or prohibitive

It has been pointed out that this savings in land costs would *decrease the project cost to the local agency, thus preserving Davis-Grunsky funds* which, in the absence of advance acquisition loans, would have been required to supply a larger loan or grant in subsequent years.[11]

This modification represents only a limited new use of Davis-Grunsky funds which is sufficient on an experimental basis Further extension of the site acquisition loans concept is not warranted at this time

We should point out that possible alternative arrangements to solve site acquisition needs are available to local agencies, including judicious use of zoning ordinances

The Housing and Urban Development Act of 1965 (PL 89-117) includes a provision (Section 704 et seq) under which the federal government, through the Departmnet of Housing and Urban Development and its Community Facilities Administration provides "grants to local public bodies and agencies to assist in financing the acquisition of a fee simple estate or other interests in such land " Five million dollars is made available nationwide for the current fiscal year for this program The federal government will grant the amount of the reasonable

[10] *Ibid*, page 26.
[11] *Loc Cit.*

interest charges on the loan or other financial obligation incurred by the local agency to finance the acquisition of such land Loans are limited to a five-year period by the end of which construction must be initiated

Since projects for which reservoir site acquisition loans are available under the committee proposal must meet the general eligibility criteria under the Davis-Grunsky Act, the site acquisition loan program is consistent with the basic objectives of the act These loans will assist the development of such projects in the same manner as feasibility study loans (which are also made in advance of construction) Sufficient safeguards are provided by (1) basing eligibility on a feasibility report, (2) requiring an election in the local agency, (3) limiting such loans to districts which otherwise qualify for Davis-Grunsky loans, (4) providing mandatory sale of land if project is not constructed within 10 years, and (5) limiting such loans to $400,000 unless specific legislative aproval is received

The *committee recommends such a loan program* *

4. Proposals to reduce the effective cost to public agencies under the existing loan program

Assembly Bills 1958 and 2183 (Davis) were introduced at the 1965 session of the Legislature and provide a series of possible changes in the Davis-Grunsky Act to reduce the cost to water users The main objective of these bills was to provide repayment based on "ability to pay"

The Department of Water Resources indicated that the following projects could be benefited by any measures which would reduce the effective cost of loans under the Davis-Grunsky program:

Name of project	*Stream*	*County*
Hulen	Cottonwood Creek	Shasta
Dippingvat	Cottonwood Creek	Tehama
Grenada Ranch	Shasta River	Siskiyou
Millville	South Cow Creek	Shasta
Paskenta	Thomes Creek	Tehama
Newville	Thomes Creek	Glenn-Tehama
Mill-Deer	Mill & Deer Creeks	Tehama
Pete's Valley	Willow Creek	Lassen
San Juan Ridge	Grizzly Creek	Nevada
Agua Fria	Mariposa Creek	Mariposa
Hardin Flat	Tuolumne River	Tuolumne
Duck Lake	Duck Creek	Alpine
Mariposa		
Bean Creek	Bean Creek	Mariposa
Coulterville	Maxwell Creek	Mariposa
Upper Bear	Bear Creek	Mariposa

The committee has made an extensive study and considerable research into a variety of possible modifications of the act to reduce the effective cost per acre-foot of water under the loan program A great many possible alternatives were considered [12]

* Mr Lanterman does not concur

[12] See *Transcripts*, September 22, 1965, and November 15, 1965, and Department letters to Chairman Porter dated January 19, 1966 and June 16, 1966, for detailed repayment schedules, etc

The committee has come to the inescapable conclusion that such devices as extension of the loan repayment period and extension of the development period, for example, *in and of themselves*, are not sufficient to reduce appreciably the overall effective cost to the local agency of loans under the Davis-Grunsky Act

We *reject* any attempt to provide different interest rates for different projects based on ability to pay However, it is the conclusion of the committee that the best means of actually reducing the cost of loans is to reduce the interest rate charged which will, in turn, bring the loan program within the repayment capacity of more districts

Attempts to change the interest rate have been rejected several times in the past [13] As an alternative, in 1963, the Legislature replaced the old formula (which provided for an interest rate "equal in interest cost to the state on the last sale of general obligation bonds") with one based upon the average cost of bonds to the state over a five-year period immediately preceding the issuance of the loan The old formula provided wide fluctuations in the interest rate and left districts to chance in the determination of their interest rate

But the 1963 amendments were disappointing and *did not* result in increased use of the loan program. Obviously, other approaches were necessary

In the past, proposals to reduce the interest rate to a flat amount have been criticized on the basis that full repayment of Davis-Grunsky loans should be required since Burns-Porter Bond funds are pledged to these loans This reasoning, however, overlooks the fact that under the existing average interest rate program the interest charged on an individual Davis-Grunsky loan may actually be below the actual cost to the state of current bonds

Objections to reducing the interest rate also do not take into consideration the fact that Davis-Grunsky grants are made today at a ratio of approximately 10 to 1 to loans No repayment whatsoever is provided for grants Also, grants frequently go to agencies which do not meet the basic financial eligibility requirements of the Davis-Grunsky Act loan program since the state assumes a financial obligation for recreation and fish and wildlife at local agency projects regardless of the financial condition of the agency

Under the grant program considerable benefits accrue to public agencies which have adequate financing for their project but which qualify for large grants for fish and wildlife and recreation, thus reducing reimbursable costs and, in effect, lowering the price of water and power to users To object to a reduction in the Davis-Grunsky loan rate as a "subsidy" is a semantic obscuration of the facts The committee, after considerable deliberation and study believes very strongly that *the basic objective of the act as originally enacted—the development of new basic water supplies in local communities with limited financial resources—can best be served at this time by reduction of the project interest rate to 2½% percent per year* [14]

The committee further recommends the following changes in the loan program in order to provide the maximum net reduction in the

[13] 1964 Report, *op cit*, page 18.
[14] Mr Collier, Mr Lanterman and Mr Russell accept this recommendation "with reservations"

effective cost of loans under the Davis-Grunsky Act and thus, to provide the maximum incentive to local project construction

1 Extension of the total repayment period from the existing maximum of 50 years to a new maximum of 60 years by providing that the 10-year development period (permitted at the *option* of the department) shall be "*in addition to*" rather than "within" the 50-year repayment period
2 Eliminate the requirement that if interest is deferred during the first 10 years, interest be paid upon the deferred interest

Draft legislation accomplishing these recommendations can be found in the appendix as Draft Bill No 3

THE ROLE OF THE CALIFORNIA WATER COMMISSION AND THE LEGISLATURE

1. *The California Water Commission* [15]

Under Water Code Section 12883, the department is authorized to make construction loans not to exceed $4 million, "subject to the provisions of the act, and to the prior approval of the California Water Commission" Grants for water supply and sanitary facilities and loans (except feasibility report loans) are subject to similar procedures.

However, the statutory language referring to grants and loans made *in excess of statutory limits* and on specific authorization of the Legislature is ambiguous as to the role of the commission For some time grants *in excess* of the $400,000 amount (no loans have been made in excess of $4,000,000) had been subject to the same review procedures by the Department of Water Resources and the California Water Commission as grants made *within* the statutory limit

However, the California Water Commission recently raised the legal question as to whether or not its concurrence and comments should be made on grants in excess of the statutory limit in the same manner as it reviews the department's reports on those grants and loans under the statutory limit

Representatives of the Department of Water Resources, the Department of Finance, the California Water Commission and the Resources Agency agreed that the law was unclear and that it is appropriate for the Legislature to clarify the law and provide a clear direction to the commission and the department in this regard

Under existing procedures the department conducts staff review of grant and loan applications and transmits its recommendations to the California Water Commission

The committee believes it is desirable that the procedures utilized by the department and the commission be *uniform throughout the administration of the act* and that the law should not distinguish between projects for which the maximum grants or loans have been increased by legislative act

Since the principal reason for the existing confusion in this area is the language of the act, the committee has redrafted the sections of the law relating to the responsibilities of the department and the commission to provide a single uniform procedure

[15] Additional recommendations as to the commission are included in another report of this committee, *State and Local Responsibilities for Water Resources*, Vol 26, No. 17.

This procedure will, in fact, *be substantially the same as the procedure* utilized by the commission and the department prior to when the commission asked for clarification of the law. (Draft legislation is found in the appendix as Draft Bill No. 4.)

2. Legislative approval of larger grants or loans

It has been the practice in the past for the Legislature to enact bills making available grants in excess of the statutory maximum *well in advance* of the submission to the department of a formal application for a project Thus, the Legislature generally has little or no information on a project before it when increasing the statutory maximum. Little review is given to the project itself At the 1965 session, in fact, legislation was enacted for one project even before preliminary application had been made to the department In some cases it has been necessary to enact subsequent legislation increasing the total amount of the grant available when a project is changed between authorization and construction

Considerable concern has been expressed over the fact that this method of legislative authorization involves only the most cursory legislative review As Chairman Porter indicated,

> " our problem has been in the Legislature that we felt that we were making utterly no review, because I do not recall ever making a review of any project and I do not recall that we have ever rejected one We do not even wait for the witness to finish his explanation of the number of his bill. If he mumbles that the XYZ project has been approved by the Department of Water Resources and has been screened we move it out 'do pass ' So we have presumed that there was a very great amount of careful screening " [16]

The committee feels that it is appropriate that more data be available when it considers these bills

The Director of Water Resources strongly endorsed better committee review procedures and told the committee:

> "We have the mechanics set up but *you have not permitted the mechanics to operate* This is the fact There is not a single one of these projects that could not have been brought in, reviewed by the department, taken to the commission and then referred to the Legislature *as was contemplated* The Legislature then could act with full information before it, and place limitations or compliment us or do anything else that it might like in authorizing these projects But that has not been the way it has gone . . . *As soon as the name of the project becomes known, the Legislature has enacted a bill authorizing* it and says 'if the department approves it, go ahead' Well, at this point *I say we need a review* . If I had anything to do, which I haven't, *I would adopt a rule in this committee saying you would authorize no project without a project report before you* " [17]

[16] *Transcript*, September 22, 1965, pages 53–54
[17] *Ibid*, page 54

If the statutory limitations on grants and loans are to be meaningful, the Legislature must be fully informed at the time it takes such action Such a procedure has been used very successfully in Congress where the requirement that a project report be available before committee consideration is vigorously enforced

The committee therefore *recommends that legislation be enacted providing that legislative authorization for increases in the maximum grant or loan for a project be made only when the project report has been processed by the administrative agency and placed before the Legislature.*

It is the committee's understanding that such a procedure will not impede departmental approval or disbursement of Davis-Grunsky funds

It should be emphasized that this recommendation represents a desire by the Legislature to improve its own procedures of review in keeping with its original intent in providing for legislative authorization to increase the statutory maximum on a project-by-project basis.

ADMINISTRATIVE PROVISIONS

During the interim the committee has given particular attention to administrative aspects of the act and recommends a number of technical changes to improve its administration by providing better reporting procedures and spelling out more clearly the responsibilities of the State Department of Water Resources and the local agencies.

1. *Definition of statewide interest*

The committee expressed concern during the interim over the interpretation given by the department to "statewide interest" (see Water Code Section 12880) Each proposed project must be of "statewide interest" to qualify for participation under the act The committee questioned whether, in order to maximize the benefits from state grants, the department should determine the specific extent of statewide interest and the extent of local interest in each project Existing procedures merely establish general statewide interest which is sufficient for full eligibility for both loans and grants

It appears reasonable that the features allocable to recreation and fish and wildlife enhancement in a given project, although perhaps largely of statewide interest, may be also, to some degree, of local interest

The Department of Water Resources provided the committee with the definition of statewide interest it now utilizes:

> "A project shall be considered to be of statewide interest if any of its features, in a substantial degree, provide protection from damage to public or private property, or protect natural resources against loss and waste or foster their conservation and proper utilization, or promote the economic development of undeveloped areas, or produce benefits which are disbursed generally throughout the community or area In case of a grant under subdivision (c)(2) of this section a project shall be considered to have recreational functions of statewide interest if in addition to meeting any of the above requirements the project has recreational fea-

tures which are open and accessible to the general public on a nondiscriminatory basis "[18]

The department indicated that "although it may be argued that one project may have greater statewide interest than another, *the department has never subscribed to the concept that statewide interest in a project can be less than 100 percent*" The department stated that its definition "expresses the concept that a finding of statewide interest may be based on any *one* of these factors or a combination thereof"

The committee is not convinced that this definition is completely adequate For example, the Department of Finance indicated to the committee that,

> "Since" this expression [statewide interest] *has been broadly interpreted in other areas to encompass such things as municipal swimming pools,* it is difficult to conceive of any project which would not qualify under present interpretations We choose to believe that the Legislature had something more restrictive in mind and would recommend that the Legislature amend the act to clarify this aspect by incorporating Davis-Grunsky recreation projects into a statewide plan of recreational development These proposed projects could be considered as to their priority in this plan, instead of just the broad California Water Plan Recreation water projects would be based upon their ability to meet the increasing recreational needs of the entire state and then could truly be said to be serving a statewide interest "[19]

The committee has not been able to resolve this difference in interpretation to its satisfaction

The committee therefore *recommends that continued study be made by the affected state departments and this committee in order to develop a more adequate and meaningful definition of "statewide interest"*

2. Coordination of Davis-Grunsky Activities with other state recreation activities

In the last few years, the state has greatly accelerated its financial commitment to recreation development Approximately $6 million a year is appropriated from the General Fund to the Division of Beaches and Parks for the California State Parks System, and the voters of the state approved a $150 million bond issue for state and local park development[20]

In addition to this ongoing program of the division, the entrance of the state, through the Department of Water Resources, into the construction of a major statewide water project represents a state commitment of considerable additional recreation expenditures For example, the five dams and reservoirs of the Upper Feather River Project will be primarily for recreation use Also, recreation facilities will be provided at Oroville Dam, the other reservoir facilities of the Feather River Project, the delta facilities and the California Aqueduct and other transportation facilities.

[18] See letter from William E Warne to Chairman Porter dated October 15, 1965
[19] *Transcript*, September 22, 1965, page 78 (emphasis added)
[20] There are other state recreation activities not described here, such as the Department of Fish and Game, Wildlife Conservation Board, and Department of Harbors and Watercraft programs

At its 1966 First Extraordinary Session, the Legislature enacted into law Assembly Bill 12 (Porter) (sponsored by this committee) providing for annual appropriations of $5 million from tidelands oil revenues for reimbursement of recreation and fish and wildlife construction costs and recreation land expenditures of the Feather River Project [21] In addition to this expenditure for recreation construction costs, extensive onshore recreation facilities will be required, with total recreation and fish and wildlife expenditures in the next decade or so for the Feather River Project alone estimated to be in excess of $200 million None of these recreation costs are reimbursable by project water and power users [22]

At the 1966 First Extraordinary Session of the Legislature, state participation as a local agency in recreation development at federal water projects was authorized [23] State participation at future federal projects will be only upon specific authorization of the Legislature However, full state participation (at an estimated cost of approximately $6 million) has been authorized [24] for the Auburn-Folsom South Unit of the Central Valley Project and a "letter of intent" was authorized for the Marysville Project of the United States Army Corps of Engineers

The Davis-Grunsky Act fund of $130 million was appropriated in 1959 by the Legislature as part of the Burns-Porter Act and is available on a continuing basis not subject to appropriation by the Legislature. Davis-Grunsky funds, therefore, are not "in competition" with the other elements of state recreation funding Similarly, only onshore development of the State Water Project is in competition for the General Fund dollar since project recreation costs are met by the annual tidelands appropriation

As a result, review by the Legislature of recreation expenditures is fragmented and incomplete, with some areas (such as the budget of the Division of Beaches and Parks) receiving considerably more attention than others

The committee is concerned over the need for better coordination of all recreation activities in order that the state may receive the maximum benefit for each recreation dollar spent Elsewhere in this report the committee recommends review of onshore recreation requirements and cost allocation data by the Departments of Parks and Recreation and Fish and Game The Davis-Dolwig Act, which controls state water project recreation, requires similar review by these two departments of cost allocations prepared by the Department of Water Resources [25]

The committee believes that to assure adequate coordination and maximum utilization of available funds, better review procedures than now required by law must be developed

Accordingly, the committee requested the Resources Agency and the Department of Water Resources to study the desirability of modifying the Davis-Grunsky Act to provide for better coordination. The act today only requires that a project proposed for Davis-Grunsky assist-

[21] See Part II of this report
[22] *Transcript*, July 22, 1964
[23] Assembly Bill 113—"Porter-Cobey Federal Water Project Recreation Act" (see Part III of this report)
[24] Senate Bill 26 (1966 1st Ex.)
[25] See Assembly Bill 12 (1966 1st Ex.).

ance "substantially conform to the California Water Plan" (Water Code Section 12880(b)) and, of course, be of statewide interest

It may well be that such coordination will be mandatory before legislative authorization can be achieved for permanent long-term financing of the Davis-Grunsky Act For example, the Department of Finance indicated to the committee that it would *not* support permanent financing of the act until such changes were made [26]

The committee requested the agency and the department to determine what procedures could be devised to evaluate the relationship between the need for each local water development project and the recreational activities which each local project will provide the people of the state

The Administrator of Resources told the committee,

> "The main concern in all this, as we see it, is to assure ourselves that the dollar spent for local projects will not only develop the valuable water resources, but at the same time, will also provide adequate recreational opportunities to be enjoyed by the people of the state who might otherwise get no benefit at all from the expenditure of public funds" [27]

The Resources Agency and the Department of Water Resources recommended legislation to the committee to provide that evaluation of a Davis-Grunsky application include consideration of whether or not the project would "carry out the objectives of the California Recreation and Park Plan and the California Fish and Wildlife Plan"

The committee agrees that coordination of Davis-Grunsky projects with established recreation and park plans of the state would be an important first step in obtaining the committee's objective

However, *until the Fish and Wildlife Plan and the Recreation and Park Plan are officially adopted by the Legislature as state policy it would be premature to require such conformity*

Therefore, the committee *recommends that no action be taken with regard to this matter until the state policy documents have been adopted by the Legislature However, the committee should continue its study of this vitally important matter*

[26] *Transcript*, September 22, 1965, page 73
[27] *Transcript*, November 15, 1965, pages 4–5

TABLE 3

SUMMARY OF ONSHORE FACILITIES IN CONNECTION WITH DAVIS-GRUNSKY GRANTS

Agency-project (date approved)	Grants		Recreation facilities			
	Recreation	IWS & SF	Estimated cost (present worth)	Estimated expenditures	Percent complete	Scope[1]
Humboldt Bay MWD-Ruth Project (11/4/60)	$300,000	$0	$47,000	$34,269	100	1 stage 21 camp units 7 picnic units 1 boat ramp (2-lane) 1 swimming beach
Georgetown Divide PUD-Stumpy Meadows Project (6/15/61)	300,000	0	212,900	170,000	95	5 stages[2] 110 camp units 1 group camp (100 persons) 20 picnic units 1 boat ramp
Alameda Co FC & WCD-Cull Creek Project (11/9/62)	184,250	0	323,900	[3]198,419	100	1 stage 50 picnic units swimming lagoon and beach
Monterey Co FC & WCD-San Antonio Project (10/5, 62)	3,820,000	0	3,815,000	1,496,015	20	1 stage 450 camp units 725 trailer units 145 picnic units 3 boat ramps
City of Santa Cruz-Newell Cr Project (2/1/63)	149,300	0	106,600	[3]250,000	100	1 stage 80 picnic units 1 boat dock
Sacramento MUD-Loon Lake Project (3/1/63)	300,000	0	148,000	0	0	1 stage 12 camp units 10 trailer units 20 picnic units 1 boat ramp (2-lane) 1 swimming beach
Sacramento MUD-Gerle Creek Project (3/1/63)	275,000	0	131,000	0	0	1 stage 6 camp units 6 trailer units 25 picnic units 1 swimming beach
Sacramento MUD-Union Valley Project (3/1/63)	300,000	0	143,000	[4]145,000	80	1 stage 13 picnic units 1 boat ramp (2-lane) 1 swimming beach
Sacramento MUD-Ice House Project (3/1/63)	300,000	0	145,000	137,000	99	1 stage 37 camp units 15 picnic units 1 boat ramp (2-lane) 1 swimming beach

TABLE 3—Continued

SUMMARY OF ONSHORE FACILITIES IN CONNECTION WITH DAVIS-GRUNSKY GRANTS

Agency-project (date approved)	Grants		Recreation facilities			
	Recreation	IWS & SF	Estimated cost (present worth)	Estimated expenditures	Percent complete	Scope[1]
Browns Valley ID-Virginia Ranch Project (5/3/63)	700,000	0	217,000	33,000	40	[2] stages[3] 65 camp units 60 picnic units 2 boat ramps 1 swimming beach
Helix ID-Chet Harritt Project (10/17/63)	537,000	0	207,000	[3]127 000	25	[3] stages 44 camp units 34 trailer units 22 primitive camp units 1 boat ramp
South Sutter WD-Camp Far West Project (5/1/64)	1,323,200	240,000	742,200	720,000	95	[2] stages[7] 306 picnic units 1 swimming beach 2 boat ramps (6-lane)
Jackson Valley ID-Jackson Creek Project (4/3/64)	343,000	42,000	186,000	2,000	0	[3] stages[8] 14 camp units 18 trailer units 25 picnic units 3 swimming beaches 1 boat ramp (2-lane)

[1] All projects include necessary water supply and sanitary facilities, roads, parking areas, etc.
[2] Cost for initial stage of recreation facilities was estimated to be about 80 percent of total cost.
[3] Facilities installed are more elaborate and costly than those presented in the feasibility report.
[4] The U.S. Forest Service, in an agreement with the district, is constructing additional facilities beyond the requirements of the grant contract.
[5] Cost for initial stage recreation facilities is estimated to be about 50 percent of total cost.
[6] Cost for initial stage of recreation facilities is estimated to be about 75 percent of total cost.
[7] Cost for initial stage of recreation facilities is estimated to be about 88 percent of total cost.
[8] Cost for initial stage of recreation facilities is estimated to be about 70 percent of total cost.

3. *Onshore facilities*

The chairman of the California Water Commission expressed concern to the committee over the need for additional policy to assure adequate onshore construction by the agencies receiving Davis-Grunsky Act grants. He told the committee,

> "It is the practice of the department, once the amount to be authorized is determined, to prepare a contract with the applicant under which the applicant binds itself to the construction of such [onshore] facilities in addition to the primary structure as may be essential to the realization of the statewide benefits to be gained, and to the operation and maintenance of such additional facilities for the life of such contract. Upon completion of construction of the dam and reservoir the amount of the grant is paid over to the applicant. The commission is concerned that in some instances—

> and this is not a criticism of the department but rather it is from the very nature of the situation what mechanics are available—the expectancy of the grant is a governing factor in determining the financial feasibility of the construction of the primary structure of the project and little or no consideration is given to the cost of construction and operation of the additional facilities required to realize the benefits which are the real consideration of the grant."[28]

The committee is aware of this concern and is in agreement that adequate procedures are necessary to insure that the statewide interest in a project is reflected in construction of adequate onshore facilities

A table listing the agencies that have actually received grant disbursements and the approved grant amount is included in Table 3 The table also lists the estimated costs and the estimated expenditures to date for onshore recreation facilities

As a result of the commission's concern a task force of department personnel was established to consider this matter The task force report of January 20, 1966, indicated that,

> "In view of the financial burden caused by the implementation of these recreation plans [at Davis-Grunsky Projects], it is not sufficient merely to *exact* a contractual promise from grant recipients to carry them out Protection of the state's investment requires reasonable assurance the grant recipients will have the funds to implement these recreation plans when needed "

The task force concluded that, pending legislative action to revise the act, it would establish an administrative procedure to provide such protection to the state, including sufficient flexibility that the financial capabilities of each applicant could be taken into consideration.

The task force recommended a "recreation reserve fund concept" This concept was included in contracts for the first time in Placer County Water Agency and Nevada Irrigation District grants.

As described by the task force, the reserve fund concept

> "Requires the public agency to establish a 'recreation plan reserve fund' which specified amounts must be on deposit at specified times. The amount required to be on deposit is scaled so that sufficient funds are in the account at the time when they are needed for the timely construction of the onshore recreation facilities Provision would also be made for deposits to assure the payment of operation and maintenance costs where the agency's ability consistently to cover such costs through current taxes and charges when in doubt.
>
> "In the case of a recreation plan consisting of several stages, the amounts which the agency would be required to have on deposit would be scheduled so that the total amount needed for the construction of such facilities is on deposit approximately 18 months before the construction completion date "[29]

In view of the fact that the recreation benefits which are established, and which, in turn, determine in large measure the cost allocation of the project and the size of the Davis-Grunsky grant, are dependent

[28] *Transcript*, September 22, 1965, page 72.
[29] See the task force report for actual language of Placer County contract and for additional background on the task force's operation

upon the construction of onshore facilities, such protection is absolutely essential if the objective of the Davis-Grunsky Act in providing for recreation development of statewide interest is to be met

An escrow requirement was suggested by the Chairman of the Water Commission as an alternative procedure to the reserve fund concept Such an escrow procedure would permit the department to set aside portions of the grant to be released to the public agency at stated intervals in order to accomplish the objectives of the reserve account if the account procedure did not provide full protection. Such an escrow procedure is not authorized by existing law.

The reserve fund concept appears sufficiently flexible to guarantee adequate onshore recreation facilities in most circumstances It is possible, however, that the nature of the situation would require an escrow arrangement In order to make certain that public agencies dealing with the department are aware in advance of the requirements which may be made upon them the committee *recommends that the Davis-Grunsky Act be amended to provide, at the discretion of the department, the use of either (a) the reserve fund concept or (b) an escrow provision* Full administrative discretion will allow the procedures to be tailored to meet the specific needs of the local agency and at the same time provide full assurance of the necessary onshore development Draft legislation is found in appendix as Draft Bill No 5.

4. Recodification of the act

The Davis-Grunsky Act itself (Water Code Sections 12880 et seq) is noted for the length of its sections and the cumbersome organization of its text Early in the interim the committee commissioned the Legislative Counsel to draft a *nonsubstantive* revision of the act. A draft was prepared for the committee and released to the general public in late 1965.[30]

The bill received wide distribution and all affected state officials and public agencies which have examined it have endorsed it The committee therefore *recommends that the nonsubstantive revision be enacted at the earliest possible date in the 1967 session* It appears in the appendix as Draft Bill No 1 In the interest of clarity all bills proposed in this report have been drafted as amendments to the revised law.

5. Additional financing for the act

Assembly Bill 1147, which this committee sponsored at the 1965 session of the Legislature, was amended in the Senate to provide (in addition to the purpose for which it was introduced) $5 million annually from tidelands oil revenues for permanent financing of the Davis-Grunsky Act The additional money under the bill was not to be available until the $130 million in authorized funds were exhausted but the Governor pocket-vetoed the bill According to representatives of the Department of Finance, reservations over the advisability of extending the Davis-Grunsky program in its present form resulted in the Governor's decision to veto AB 1147.[31]

[30] Preprint Assembly Bill 1 (1967 Regular Session)
[31] *Transcript*, September 22, 1965, page 77

Current annual expenditures under the Davis-Grunsky Act are estimated to total approximately $10 million at this rate It will be several years before it will be necessary to provide additional funding for the act In view of the possibility that the state revenue picture may be changed considerably before new funding is needed, the committee *recommends that no additional legislation be introduced at this time providing for long-term financing for the act.*

6. Departmental reports on pending projects

Under the existing law the Department of Water Resources is required to report to the Legislature on each formal application for a Davis-Grunsky loan or grant It has been the department's practice to submit these reports annually in January, together with its annual report to the Legislature In order to facilitate legislative review on a more current basis, the committee *recommends that the act be amended to require that such reports be transmitted to the Legislature upon completion.* It is the committee's understanding that this procedure will not involve substantial change in the procedures already established by the department It is recommended that the report to the Legislature clearly indicate the onshore facilities which the department will require (See Draft Bill No 6 in Appendix)

Also, under the existing procedures set up by the Department of Water Resources, Davis-Grunsky reports prepared by the department are reviewed by the Departments of Fish and Game and Parks and Recreation.

In view of the need of overall coordination of state efforts in recreation and fish and wildlife enhancement it is appropriate that the comments of these departments be available to the applicant, the department, and the Legislature

When it enacted the Davis-Dolwig Act providing for financing of recreation development at the Feather River Project the Legislature was careful to provide for review of the Department of Water Resources cost allocations by the Departments of Parks and Recreation and Fish and Game [32]

The committee recommends that language similar to that of the Davis-Dolwig Act be added to the Davis-Grunsky Act providing that the report to the Legislature from the Department of Water Resources and the California Water Commission be accompanied by comments of the Department of Parks and Recreation and the Department of Fish and Game Language similar to that in the Davis-Dolwig Act is included in Draft Bill No 6 in the appendix of this report

7. Audits of Davis-Grunsky recipients

The existing Davis-Grunsky Act provides for an audit function by the State Controller [33] The committee feels that it is appropriate to also provide authority for periodic audits of the books of public agencies receiving state loans and grants by the Auditor General, the Legislature's auditor Language providing for this is found in Draft Bill No 7 in the appendix of this report.

[32] See Water Code Sections 11900 et seq

[33] Water Code Section 12891 For comments of State Controller on audit progress see letter to Chairman Porter dated November 2, 1965

PART II

ALLOCATION OF COSTS OF THE STATE WATER PROJECT

Costs for planning, construction, operation and maintenance of the State Water Project are divided or allocated as equitably as possible among the various purposes or services provided by the project. This cost allocation is peculiarly complex for the State Water Project because it includes pioneering work with respect to certain project purposes, because of the complexity and variety of the facilities involved, and because of many difficult provisions of law and water service contracts which must be observed. Problems associated with *recreation and fish and wildlife enhancement* are some of the most difficult in this area

Chairman Porter assigned the subject of cost allocations of the State Water Project to the full committee during the interim In the latter part of the interim a special subcommittee on cost allocations was created to consider specific details of the overall problem. This subcommittee included Assemblyman Porter, Chairman, and Assemblywoman Davis, and Assemblymen Ray Johnson, Russell, and Williams, members

The full committee met on this subject as follows

Date	*City*	*Subject*
January 14, 1966	Los Angeles	Nonreimbursable costs of the State Water Project
October 19, 1966	Sacramento	Executive session

The special Subcommittee on Cost Allocations met as follows

Date	*City*	*Subject*
October 10, 1966	Sacramento	Cost allocations of the State Water Project

The committee wishes to express its appreciation to the committee staff and the office of the Legislative Analyst for their assistance in the preparation of this report

INTRODUCTION

The Burns-Porter Act authorizes the construction of the State Water Project but is silent on cost allocation, that is, the division of costs among different purposes of the project, and the payment of nonreimbursable costs The Davis-Dolwig Act makes it clear [1] that recreation and fish and wildlife enhancement are nonreimbursable project purposes to be paid from the General Fund and declares that water and power contractors shall not pay such costs This implies the necessity to determine an equitable apportionment of the costs attributable to these purposes in order that they be financed from proper sources and not charged to the water and power contractors

[1] See Water Code Section 11912

At the time the Burns-Porter Act was enacted and when approved by the voters in 1960, it was generally understood that nonreimbursable costs would be paid by the state (probably from the General Fund, as subsequently provided by the Davis-Dolwig Act, Water Code Sec. 11900 et.seq) since this is inherent in the concept of nonreimbursable costs As of 1964, due to shortages of General Fund money, the Davis-Dolwig Act, in practice, had been used to finance only the onshore recreation facilities constructed by the Department of Parks and Recreation at features of the State Water Project The remaining features involving nonreimbursable recreation and fish and wildlife enhancement costs (except for certain expenditures made prior to passage of the Burns-Porter Act) have been constructed with moneys made available through the Burns-Porter Act Until additional financing was provided by the Legislature, the policy of the Davis-Dolwig Act, therefore, remained only partially implemented

In 1964, after considerable study of the fiscal and legal problems involved, the committee prepared and Chairman Porter introduced AB 17 to provide the funding for recreation and fish and wildlife enhancement to make the capitalization of the State Water Project complete AB 17 was a complex and difficult bill because it attempted to provide legislative control over the extent to which recreation and fish and wildlife enhancement would be included in the State Water Project When AB 17 was not enacted, the committee held extensive interim hearings on the bill in Santa Monica on July 22, 1964

A simplified version of the bill was prepared which Chairman Porter introduced at the 1965 General Session as AB 1147 During the process of legislative consideration, AB 1147 was amended to include additional financing for the Davis-Grunsky program For this reason, the bill was not signed by the Governor

A bill similar to AB 1147, but pertaining only to water project nonreimbursable costs, was introduced at the 1966 First Extraordinary Session This bill, AB 12, was sponsored by this committee and introduced by Chairman Porter The bill passed and was signed by the Governor [2] It provides five million dollars per year from tidelands oil revenues to pay for that portion of State Water Project costs which are allocated to recreation and fish and wildlife enhancement at the dams, reservoirs, and appurtenant facilties of the State Water Project, exclusive of the onshore recreation facilties. While the onshore recreation costs can be identified by the very nature of the facilities constructed, costs paid under AB 12 can only be determined as a result of a cost allocation process.

The Cost Allocation Process

Cost allocation in the State Water Project treats the project as two relatively separate but related parts First are the *transportation facilities*, that is, the aqueducts, pumping plants, power drops and terminal reservoirs south of the San Luis Dam and Reservoir The department has not officially allocated costs for those features and, therefore, their allocation has not been the subject of committee study to date Instead, the committee has concentrated its attentions on the second part, which

[2] Chapter 27, Stats of 1966

is the allocation of costs for the *conservation features* of the project, primarily the multiple purpose dams and reservoirs on the Upper Feather River, the Oroville Project, the Delta Water Project and the San Luis Dam and Reservoir

In any method of allocating costs, the primary objective is to charge as much of the costs to each project purpose or product (in the case of a business) as can reasonably be identified to that purpose or product This minimizes the amount of remaining costs which, by definition, cannot be logically or directly associated with any particular purpose or product Therefore, these remaining costs must be distributed on the basis of some arbitrary but rational formula which is generally acceptable to the parties involved In the case of the "separable costs-remaining benefit" method, this arbitrary distribution is made primarily on the basis of economic benefits computed for each purpose

The difficulty in cost allocation arises because costs, such as those for the acquisition of the reservoir land and the construction of the dam itself, generally cannot be directly related or distributed to the individual purposes being served For example, reservoir space used for flood control storage during the winter may be used in the spring and summer to store water for subsequent power generation and delivery of irrigation and urban water supplies Similarly, water stored and released for power generation may also provide downstream recreation values, enhancement of fish and wildlife, or even be sold to water contractors Thus, the water stored in the reservoir can be used for several purposes, depending on conditions at any given time of one year or a period of years, as natural streamflows and the demand for project services may vary

If it is assumed that flood control, power, or water conservation, either separately or in conjunction, are the basic purposes of the project, an incremental approach to the allocation of costs results The difficulty then is to determine which are the basic purposes and which are the incremental purposes, because under an incremental approach the basic purposes will bear the major portion of the project costs and the incremental purposes are added to those basic purposes at a negligible cost If a project is formulated to serve all legally authorized purposes which are appropriate for the site and the demands to be served, a policy decision must be made that one or more purposes are paramount to the others and should, therefore, bear the major portion of the project costs

In view of this difficulty, the most widely accepted approach developed to date is that all project purposes should share in the costs of the project in some equitable proportion related to the services each purpose derives from the construction of the project Obviously, the determination of the equitable proportion is related to the planning process Project formulation presumably attempts to evaluate the best methods of storing and releasing the streamflows at the project site in order to achieve the maximum combined advantage for all project purposes If this evaluation is expressed in terms of computed or estimated economic benefits, consistency requires that the cost allocation be based on the same economic benefits The separable costs-remaining benefit method of cost allocation is based on such an approach.

The separable costs-remaining benefit method is complex and involves considerable opportunity for judgment and dispute over the individual steps and computed benefits Furthermore it has the major disadvantage that several of the steps involved and the final cost allocation are computed figures which cannot be directly related to physical, visual or operational aspects of the project. The end result is a theoretical figure which must be judged largely in terms of general reasonableness as well as acceptance or rejection of the many premises and assumptions involved in its computation

EXPLANATION OF TERMS

With this background, a number of terms which require careful definition should now be discussed:

Project Purpose

A *project purpose* is a type of service rendered by a water project Customarily these services are electric power generation, conservation and/or delivery of water for irrigation and urban uses, flood control, recreation, fish and wildlife enhancement, and, occasionally, navigation or water quality maintenance.

Project Costs

Project costs are all of the costs of a project. These frequently consist of planning, design, land acquisition, construction supervision, contract construction, operation, maintenance, replacement of worn out parts, etc Depending on the individual agency constructing the project and the individual statutes, contracts and precedents defining the project costs, substantial variation can occur in the definition of costs which are charged to the project.

For cost allocation purposes, only those costs which are properly chargeable to the project are of concern, and any costs which may relate to the project but are not defined as project costs do not become involved in the cost allocation process While there may be disagreement over the extent of project costs and while this may affect the amount of costs allocated, it does not change the cost allocation process or method.

Reimbursable and Nonreimbursable Costs

Certain costs of the project are classified as *reimbursable* and are directly repaid by project beneficiaries. Other project costs are *nonreimbursable* and are generally the responsibility of the general public to finance Federal water projects are constructed using the general funds of the United States government and, therefore, there is no repayment of nonreimbursable costs involved In the case of the State Water Project, where general obligation bond financing is primarily used, the principal and interest on water bond proceeds expended for nonreimbursable purposes must, nevertheless, be paid by some means even though the expenditure was for a purpose designated nonreimbursable In these cases, repayment is required by law from some source other than the water and power contractors Thus, nonreimbursability in the State Water Project does not necessarily mean nonrepayment

purpose so as to influence the allocation of costs in a significant manner Attributing large benefits to nonreimbursable purposes, such as recreation, flood control and fish and wildlife enhancement, can result in large portions of the remaining joint costs being allocated to these purposes Economic benefits are computed for all project purposes even when revenues or repayment are secured for a project purpose Therefore the distribution of costs is substantially dependent on the validity of the computation of benefits

Alternative Justifiable Expenditure

In order to limit the benefits attributed to any particular purpose, the separable cost-remaining benefit method also requires computing the *alternative justifiable expenditure* and utilizes whichever figure is less in making the cost allocation The alternative justifiable expenditure is a cost estimate of a single purpose alternative which, it is assumed, would provide service equivalent to the purpose the benefit of which is being computed It is apparent that major differences in opinion can occur regarding the appropriate alternative justifiable expenditure to be used in any particular instance

Equal Annual Equivalent

In order to place all benefits and costs of the cost allocation process on an equivalent basis of time and to include future operation and maintenance costs, the cost allocation process reduces all dollar values to an *equal annual equivalent* This means that a future dollar expenditure made in 50 years, or at some other future date, will be included at a discounted value compared to an expenditure of a dollar at the present time, and the total of this discounted value is averaged over the repayment period.

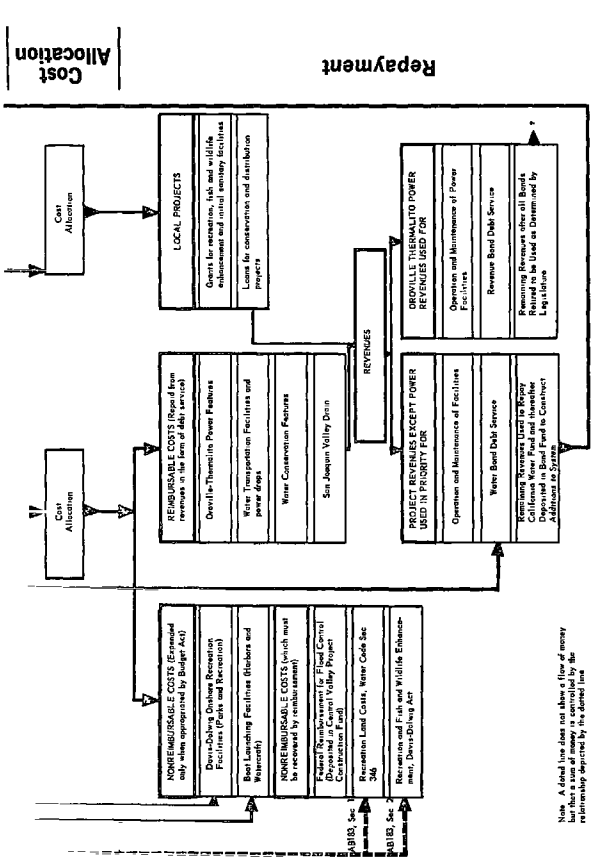
Total Allocated Costs

Total allocated costs for each purpose are the sum of the separable costs for that purpose plus that portion of the remaining joint costs which have been distributed to that purpose. The total allocated cost for each purpose of a project is then expressed by the Department of Water Resources as a percentage of the total project cost and this percentage can, therefore, be applied to actual project costs in order to arrive at revised repayment and cost allocation figures for customer billing purposes.

DESCRIPTION OF THE COST ALLOCATION PROCESS

The separable costs-remaining benefit method of cost allocation was developed by the federal government in order to allocate costs on a common basis when marketable (revenue producing) services such as water and power are included in a project which also contains nonmarketable services such as flood control, recreation and fish and wildlife enhancement It does this by attempting to handle marketable services the same as nonmarketable services In other words, the computed benefits for each project purpose become the basis for the allocation of remaining joint costs rather than revenues, even where revenues are pertinent and available.

FLOW OF FUNDS
Related to allocating Costs of the State Water Project.



Note A detail line does not show a flow of money but that a sum of money is controlled by the relationship depicted by the dotted line

In brief, the separable costs-remaining benefit method of cost allocation can be described as follows:

The benefits for each purpose are computed The alternative justifiable expenditure for each purpose is then computed The lesser of the benefits, or the alternative justifiable expenditure for each project purpose, is selected in order to limit benefits to an amount no greater than the assumed lowest cost justifiable alternative expenditure The separable cost for each project purpose is computed The separable cost is deducted from the lesser of the benefits or alternative justifiable expenditure for each purpose. This gives the remaining justifiable costs The total of the separable costs is deducted from the total project costs to give the remaining joint costs The remaining joint costs are distributed to the various project purposes in proportion to the remaining justifiable costs The portion of the remaining joint costs distributed to each project purpose is added to the separable costs for that purpose to give the total allocated cost of the purpose (This is graphically shown on the accompanying chart on p 42–43)

This approach to cost allocation has generally been preferred because

1. It results in the smallest amount of project costs being designated as joint costs.
2. It distributes joint costs on the basis of economic benefits which is believed by many persons to be the most equitable basis for such distribution.
3. It can handle a variety of project purposes

Its main disadvantages are:

1 It is theoretical and therefore difficult to comprehend and apply
2 There is no means of physical inspection, audit or other verification of the results in the conventional sense of these terms
3 It is expensive and time consuming to gather the extra data for the various computations
4 It requires major assumptions regarding project benefits and alternative costs.
5 It is difficult to justify computing benefits for project purposes which produce revenues

PROBLEM AREAS

After several years of experience in applying the separable costs-remaining benefits method in California a number of specific problem areas have been identified by the committee as a result of hearings and staff investigations. The following are the most important:

1. There is no agreement among any of the purported authorities on an acceptable method to compute certain project benefits As various methods to compute recreation and fish and wildlife benefits have become more widely understood, they have been subjected to increasing criticism among theoretical and academic economists as well as those economists working for the various water resources agencies who make the computations After 10 to 15 years' study of various methods to compute these benefits and in view of the increasing rather than diminishing difference of opinion, there is room to speculate whether agreement will ever be reached and even whether computing such bene-

fits is feasible The use of benefits in lieu of revenues and the computing of dollar benefits when no dollars are involved confuses actual revenues with fictional or computed dollars

2 Inadequate attention has been given to the definition of an alternative justifiable expenditure For example, must an alternative project be one that is found feasible of being constructed in both an economic and engineering sense? How much work must be done to prove this feasibility? Must the alternative project be one that provides identical features to the project proposed for construction?

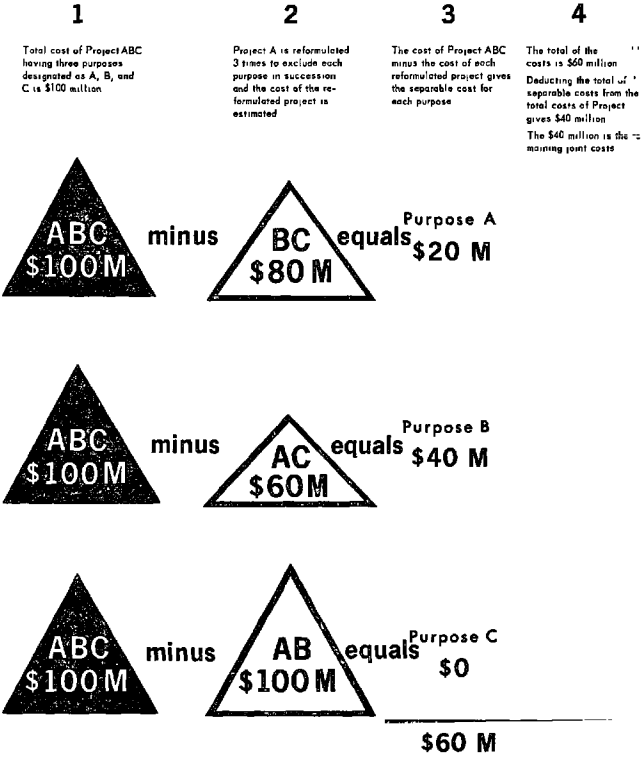
For example, in the Clifton Court Forebay, which is located at the end of the Peripheral Canal, is the provision of beach area, campsites, picnic tables and marina facilities the alternative which should be used for comparison, or is the provision of additional water surface the alternative? The decision as to which alternative to choose involves a difference of about $30 million in the cost of the alternative project

In other instances, should the alternative justifiable project be considered to be the identical project that is being planned for construction if no similar water project site is available in the area? Is such a project a true alternative? Or, if a natural lake in an adjacent area is available for recreation development, is this a justifiable alternative or should another dam and reservoir constructed for recreation be considered the alternative? How far can a project be geographically removed and still be close enough to be an alternative? Since it is not possible to verify the computation of benefits for recreation or fish and wildlife enhancement and since the alternative justifiable expenditure usually provides a ceiling or limitation on those benefits, it is apparent that the assumptions made in selecting an alternative project can be extremely important and in fact sometimes controls the distribution of remaining joint costs

Finally, the logic of limiting benefits by alternative costs is uncertain, not only because it limits fictional dollar benefits by estimated real dollar costs but also because the estimated alternative justifiable expenditure is normally not a true alternative since it is not being considered for construction under any circumstances

3 With the recent expansion in the scope, size and number of purposes of water projects being planned and constructed, the determination of whether a purpose has really been included in a project is not as clear as it originally was During the preparation of the Green Book, federal projects usually included major purposes such as flood control, power, irrigation and urban water supplies Generally, other project purposes such as recreation and fish and wildlife were classified as "incidental" purposes, or by-products, to which project costs were not allocated In the State Water Project, under the Davis-Grunsky Act, and more recently for federal projects under Public Law 89–72, the Federal Water Project Recreation Act, recreation and fish and wildlife enhancement have been raised to the status of major project purposes In many instances no significant change in the formulation, design, sizing or operation of the project has occurred In some instances, by merely designating recreation and fish and wildlife enhancement as major project purposes, a distribution of remaining joint costs is now made to these purposes which is proportional to the computed benefits To a considerable extent, this is a change in

ILLUSTRATIVE ALLOCATION OF COSTS
When no separable costs exist for a purpose.



5	6	7	8	9
Project benefits for each purpose are estimated by various methods The benefits are shown below	Project benefits for each purpose are limited by the cost of the lowest cost alternative which could provide the same service (Not shown here in order to simplify the chart)	The separable cost is deducted from the benefits for each purpose giving the remaining justifiable cost for each purpose as shown below	The remaining joint costs are distributed to the three purposes in proportion to the remaining justifiable costs shown in step 7	The allocated costs are the sum of the separable costs and the distributed remaining joint costs
$40 M		**$20 M**	**$8 M**	**$28 M**
$80 M		**$40 M**	**$16 M**	**$56 M**
$40 M		**$40 M**	**$16 M**	**$16 M**
$160 M		**$100 M**	**$40 M**	**$100 M**

NOTE This chart has been prepared primarily to show how large sums can be allocated to a project purpose, such as purpose C, even though no separable costs for that purpose have been identified The triangular representation of projects in steps 1 and 2 are sized proportional to costs

cost allocation based on adding in more computed benefits which results in a change in repayment policy without any corresponding physical changes in the plans for the construction and operation of the project

The Department of Water Resources follows the practice of allocating remaining joint costs to a purpose even though there may be no specific costs identified or no separable costs allocated to the purpose Essentially, this means that the project need not contain an expenditure or any physical facilities which can be identified with or demonstrated to serve the purpose in order to have remaining joint costs allocated to the purpose so long as benefits for the purpose can be computed by some means

The basic question is whether it is logical to allocate construction costs in the form of remaining joint costs to a project purpose where it cannot be demonstrated that any investment has been made in the project for this purpose but only that a useful and beneficial byproduct has resulted. To date, this condition has occurred at Lake Davis (Grizzly Valley Project) and it is likely to occur to a major extent at the terminal reservoirs in southern California In addition, as noted below, the separable costs for all purposes except power at Oroville are so small that they do not have any significant impact on the Oroville cost allocation The preliminary cost allocation for the Clifton Court Forebay shows no separable costs for water conservation, which is its justification for construction, while showing major separable cost for recreation An allocation of remaining joint costs or of separable costs to a purpose should be justified by demonstrating that sufficient operating or other limitations, such as maintaining a minimum pool for recreation or fish and wildlife, have been imposed on the project to justify the cost allocation The Department's cost allocations to date do not demonstrate limitations appropriate to the sums being allocated to recreation and fish and wildlife enhancement

4 The onshore recreation facilities at the State Water Project are being constructed by the Department of Parks and Recreation under appropriations made by the Legislature from the General Fund to the Department of Parks and Recreation These onshore facilities constitute the principal identifiable investment at the State Water Project in behalf of recreation and fish and wildlife enhancement and, as such, are specific costs and constitute, along with access roads, a major portion of separable costs for this purpose However, they are not essential to the dam and reservoir, as illustrated by the fact that the state added a major recreation area at Folsom Dam after that project was constructed by the U S Bureau of Reclamation even though recreation was never included in the project design or cost allocation.

Similarly, onshore recreation is being added at this time to the Oroville project by the Department of Parks and Recreation without any physical change in the design or reallocation of construction costs of the dam and reservoir It is customary for the agency constructing a dam and reservoir to provide essentially a wholesale service, that is, water is distributed to a local agency for retail to the ultimate user. Similarly, the electric power is wholesaled to distribution agencies Flood control provides a relatively direct public service which can be related to the dam and reservoir sizing and operation. The recreation

facilities at units of the State Water Project also provide a direct service to the public or ultimate consumer but with only limited relationship to sizing and operation of the dam and reservoir

It is the policy of the Department of Water Resources to allocate only state expenditures irrespective of which state department incurs them or how they are financed This policy does not appear to be fully consistent when it is applied across the board to the different purposes of the project and it may therefore introduce elements of bias in the cost allocation because it results in different boundaries for computing benefits and including project costs between the different project purposes In particular, the inclusion of at site, onshore recreation facilities in the project costs to be allocated and as a major portion of separable recreation costs, needs to be given careful evaluation and study because these facilities are not necessarily parts of the dam and reservoir They appear to be more nearly similar to project aqueduct costs which are allocated separately from the dam and reservoir

5. As noted above, only project costs directly expended by the state in construction of the project are allocated. In computing benefits, however, the benefit is computed as far as the ultimate beneficiary after an allowance is made for nonstate costs for distribution facilities, etc There is a tendency to claim most of the excess of total benefits over total costs exclusively for the state features being constructed

6 In allocating costs, the remaining joint costs are allocated in proportion to the remaining justifiable costs (after separable costs have been deducted from the benefits) Where a purpose has no separable costs, the remaining joint costs are allocated based on all the benefits for the purpose rather than a reduced portion, as occurs when separable costs exist This appears to introduce a bias in favor of the purpose having a separable cost which the Department of Water Resources has not been able to explain in its testimony

7 The Department of Water Resources has indicated that revised cost allocations will be made as appropriate This introduces questions as to when and under what circumstances such revisions might be made The provisions of AB 12 make it clear that in the event of a disagreement between the Legislature and the Department of Water Resources over costs allocated to recreation and fish and wildlife enhancement, the allocations of the department govern repayment by the water service contractors This provision presumably was added to the bill in the event that nonreimbursable allocations would be reduced with a concomitant increase in reimbursable costs If, however, further experience should indicate that the pattern of recreation use at projects such as Frenchman exceeds the original estimates for the cost allocation, should the cost allocation be revised in favor of the water contractors if this is permissible under AB 12?

8 A basic premise of the Green Book has been that project features will be formulated in order to maximize project benefits over costs The separable costs-remaining benefit method of cost allocation is based on this approach and this is one reason why benefit evaluation plays such an important role in the cost allocation process However, in the State Water Project, various features of the project have been sized on the basis of executed contracts and without regard to the theory of maximized benefits which is basic to the Green Book and to the separable

costs-remaining benefit method of cost allocation While this is not a vital deficiency in the application of the separable costs-remaining benefit method to the State Water Project, it does introduce an element of inconsistency and perhaps bias in the allocation process

9 The Green Book contemplates that project benefits would be evaluated by the agency planning and formulating the project. This means that these benefits are computed without regard to the benefits which an equivalent expenditure of funds might create for highways, education, public health, or other programs In the case of the State Water Project, the state is developing methods for an "across the board" evaluation of its park and recreation facilities and, under terms of various federal statutes, is required to develop a comprehensive plan for fish and game and the state park system AB 12 directs the Department of Parks and Recreation and the Department of Fish and Game to review the water project cost allocations for recreation and fish and wildlife enhancement Presumably, therefore, the benefits attributable to recreation and fish and wildlife enhancement at the State Water Project will eventually no longer be prepared without comparison to the benefits to be derived from an equivalent expenditure for state parks and fish and wildlife programs which are not parts of the State Water Project While this is a preferable method for evaluating each project purpose, it does not contemplate maximizing benefits derived from an expenditure at an individual project as the Green Book prescribes, but rather contemplates maximizing the benefits derived from the total of all state recreational and fish and wildlife expenditures

10 The committee has partially reviewed the cost allocation for the Oroville Dam and Reservoir which was jointly prepared by the U S Corps of Engineers and the Department of Water Resources In general, the computed benefits appear to be high and the alternative justifiable expenditures do not appear logical or consistent.

The following table compares the alternatives used in the cost allocation with the actual capacity being constructed at Oroville:

Purpose	*Oroville constructed capacity*	*Alternative justifiable capacity*	*Cost of alternative justifiable capacity*
Flood control	750,000 AF	847,000 AF	$189,000,000
Irrigation	364,000 AF	1,200,000 AF	138,000,000
M. & I water	506,000 AF	600,000 AF	87,000,000

It is apparent that there is no consistency in selecting the alternative capacity and its cost As a result, the computed benefits controlled the cost allocation for flood control, the alternative for M. & I water was the same as the benefits while the benefits controlled irrigation. More importantly, a significant separable cost was found only for the power features The other purposes had such minor separable costs in comparison to total project costs that approximately 35 percent of the project costs were allocated as remaining joint costs

In view of the fact that one of the claimed advantages for the separable cost-remaining benefits method of cost allocation is that the separable cost tends most nearly to identify project costs with each purpose and minimizes the amount of remaining joint costs which

must be distributed arbitrarily, it appears that this advantage has not materialized at Oroville

11 The water service contracts for the State Water Project specify the separable costs-remaining benefits method of cost allocation for the State Water Project but only for the *conservation* facilities Other methods are used for the aqueduct transportation facilities The result is to divide the project into two parts, which is inconsistent with the separable costs-remaining benefits method and the computation of benefits

Thus, at Lake Davis, the water conservation benefits had to be plugged into the cost allocation for the dam and reservoir because all the benefits for water conservation were measurable only by the pipeline Since the pipeline was concluded to be a transportation facility, whose costs under the contract are allocated separately from the dam and reservoir and no separable costs for water conservation were identifiable at the dam and reservoir, no costs of the dam and reservoir could be properly allocated to water conservation even though a water service contract had been signed and water revenues would be received The department's solution was to make a trial cost distribution with the pipeline included in the conservation features and then to plug this figure into the final cost allocation Any plugged figure is inconsistent with the principle of the separable costs-remaining benefits method but appears to be the only solution to the Lake Davis problem under the circumstances A somewhat similar problem of benefit evaluation occurs on a large scale on the aqueduct The benefits for conserved water are evaluated at the place of use and then apportioned along the aqueduct proportional to construction costs In this case economic benefits are apportioned by construction costs, rather than economic costs, which represents a mixing of unlike values [6] Furthermore, the allocation of benefits in proportion to costs is the equivalent of making benefits or worth equal to cost irrespective of the cost

CONCLUSIONS

In view of the foregoing difficulties with the separable costs-remaining benefits method of cost allocation, the committee believes that the intervening years have justified its original recommendation contained in its February 1, 1960, report, "Economic and Financial Policies for State Water Projects" [7] At that time the committee recommended the use of revenues in lieu of benefits for project formulation and cost allocation Where revenues were not involved, the allocated costs were to have been the Legislature's determination of the justifiable investment based on the same study, evaluation, and debate as used in determining other state expenditures and investments

The committee realizes that the Department of Water Resources and the water service contractors are committed by contract to the separable costs-remaining benefits method This need not preclude the Legislature from evaluating recreation and fish and wildlife enhancement features in comparison to other uses for the money In particular, the Legislature should require sound evaluations of these costs from the

[6] See *Bulletin 155–66*, page 53
[7] Assembly Interim Committee Reports, Vol 26, No 1

Department of Fish and Game and the Department of Parks and Recreation, as provided in AB 12 These evaluations should cover not only the computation of benefits, but the evaluation of the alternative justifiable expenditure and a general comparison of the worth of the allocation in relationship to other uses of the money by these departments This will require that recreation costs be compared separately from fish and wildlife enhancement costs This will produce additional difficulties in the cost allocation process which, it appears, cannot be avoided

The committee has no significant criticism of the efforts of the Department of Water Resources in attempting to apply the separable costs—remaining benefits method of cost allocation The problems are in the method itself The department has diligently attempted to resolve these problems but the basic deficiencies in the method cannot be overcome Perhaps one reason the problems in the cost allocations made to date are becoming clear is because of the detailed reporting on cost allocations the department has published, which the committee believes, are substantially more complete and thorough than the cost allocations previously published by other agencies

Legislative Approval of Cost Allocations

AB 183 (Porter, 1966 First Extraordinary Session) was referred to interim study as the first bill pursuant to AB 12 which would provide legislative approval for the costs allocated to recreation and fish and wildlife enhancement by the Department of Water Resources Legislative approval of the bill or similar annual bills would release the $5 million per year provided by AB 12 for reimbursement of expenditures made on the State Water Project in the amounts and for the projects specified in the bill

When the Legislature passed AB 12, it intended in general to provide supplemental financing for nonreimbursable costs in order to make whole the financing of the State Water Project The exact extent of the costs to be covered by AB 12 is not stated in the legislation but as a minimum the legislation was to secure a source of funds for repayment of water bond proceeds used to construct recreation and fish and wildlife enhancement features in order that these costs not be paid by the water and power contractors who are the underwriters of the bonds Whether the reimbursement included nonbond constructions funds is now open to question

AB 183, as introduced, includes approximately $8 million in costs originally appropriated from the General Fund, the Investment Fund or the California Water Fund and this creates a problem Additional similar costs at other project features may be identified and requested for repayment in the future

The water service contractors have informally indicated to the committee their understanding that under AB 12 the state would repay all recreation and fish and wildlife enhancement costs irrespective of the original source of the construction funds This assumption arises from the contractor's view that the state has an obligation similar to their obligation to repay all costs allocated to them irrespective of the original source of construction funds Such a repayment of General, Investment and California Water Fund expenditures would both in-

crease immediately the capital available to construct the State Water Project and after the year 2030 would increase the surplus revenues to construct future projects

Since the General, Investment and California Water Fund moneys are all essentially general funds of the state, the committee does not believe any repayment of these is justified Any repayment could be considered double payment

However, the water service contractors have a legitimate concern They would have no statutory protection if by administrative action (1) any of the other remaining appropriations from the above sources previously charged to water conservation purposes or (2) future expenditures of California Water Fund money were separately or jointly recharged to water bond proceeds and the resulting funds so made available were used to write off the state's obligation for recreation and fish and wildlife enhancement in lieu of AB 12 money These appropriations prior to 1960 amount to more than $100 million and California Water Fund appropriations under the Burns-Porter Act to date add almost $160 million more

The committee believes that these funds totaling approximately $260 million were a state contribution to the project and the water contractors in view of the fact that the Burns-Porter Act is silent about return to the General Fund of prior state expenditures on the State Water Project It also believes that the state should continue the administrative practice of earmarking future California Water Fund revenues of $11 million per year for Davis-Grunsky Act grants because there is no other source of funds to repay these grants.

With the California Water Fund being used to finance the Davis-Grunsky grants and AB 12 available to repay bond proceed expenditures used for recreation and fish and wildlife enhancement, the financing of the State Water Project is complete

The Department of Parks and Recreation has not completed its review and given unqualified approval to the cost allocation at Frenchman Dam and Reservoir In addition, the committee does not believe the Legislature should approve land acquisitions for recreation on a piece by piece basis in advance of the submission of a complete cost allocation for approval Therefore, the committee *can only recommend approval at this time of the $154,032 in water bond proceeds which were erpended at Antelope Dam and Reservoir*

PART III

FEDERAL WATER PROJECT RECREATION IN CALIFORNIA

INTRODUCTION

The final section of this report approaches federal water projects in California and discusses the Federal Water Project Recreation Act and the Porter-Cobey Federal Water Project Recreation Act The former, a comprehensive federal policy statute on recreation was enacted by Congress in 1965 [1] The latter, a state enabling statute setting forth procedures for the state's participation under the federal act, was enacted by the State Legislature in 1966 [2]

During the current interim the committee followed closely the federal hearings and enactment of the Federal Water Project Recreation Act and the subsequent steps taken to implement it at the federal and state levels This study was assigned by Chairman Porter to the Davis-Grunsky subcommittee.

A hearing on the newly enacted Federal Water Project Recreation Act was held in Sacramento on November 15, 1965, in conjunction with the Davis-Grunsky hearing of that date In addition, hearings held during the 1966 First Extraordinary Session during the consideration of Assembly Bill 118, the Porter-Cobey Act, included discussion of the federal act

Following adjournment of the 1966 session, members of this committee and the Davis-Grunsky subcommittee participated in a hearing of the Senate Fact Finding Committee on Water Resources held in Visalia on September 21 and 22, 1966, on the subject of the federal and state acts, and, specifically, the need for changes in the Porter-Cobey Act

In this brief report the committee will consider only the major problems raised by the state's early experience in administering the Porter-Cobey Act.

BACKGROUND

Federal Water Project Recreation Act

The enactment by the United States Congress in 1965 of Public Law 89-72, the *Federal Water Project Recreation Act,* culminated several years of study by Congress of the problem of the role of recreation at federal water projects

One of the major sponsors of the legislation was Congressman Wayne Aspinall, Chairman of the House Interior and Insular Affairs Committee In that committee's report on the Federal Water Project Recreation Act, the problem facing the Congress in enacting the bill was placed in perspective

> For many years, federal water projects have been providing outdoor recreation to the increasing millions who visit them. All

[1] PL 89-72 (S 1229)
[2] AB 118 (Chapter 143, Statutes of 1966)

indications are that this trend will continue in the years ahead A difficult policy question which the committee has regularly faced in its consideration of water projects has been that of determining to what extent and under what conditions the federal government should include recreation development as a part of such projects. During the last several Congresses, this question has been dealt with in various ways in connection with individual project authorizations to the Bureau of Reclamation and the Corps of Engineers. This has resulted in inconsistencies and inequities among projects and differences in agency procedure.

The fact that there has been no consistent congressional policy on recreation has been a matter of concern to the committee . .

The nation's needs for outdoor recreation opportunities have mushroomed in recent years as our population and available leisure have burgeoned. Growing recreation use of federal reservoirs is only one indication of these increasing recreation demands This intensive recreation use demonstrates that many recreation needs — particularly those for fishing, hunting, and water-oriented recreation—can be met satisfactorily and economically through appropriate development and management of federal water resource developments Such development, however, raises further questions· What standards shall be followed in allocating project costs to recreation and to fish and wildlife enhancement? How much of these costs shall be treated as nonreimbursable? What allotments, for cost sharing are feasible and fair in these circumstances? How can the practices of the various federal water resource agencies be reconciled with each other and placed on a uniform footing? How much of it should be left to local undertaking and how much is proper for federal undertaking?

These vexing questions have troubled both the Congress and resource agencies of the executive branch ever since it became apparent that recreation should be recognized as a proper and important purpose of federal water resource projects wherever possible. They have prompted the quest of the past several years for a viable, uniform policy to insure that proper recreation development of federal water resource projects is achieved on terms that are equitable to all interests that share in the costs and benefits of federal multiple-purpose projects It is the hope of the committee that . . . [this legislation] will supply reasonable answers to these and other questions and will thereby permit progress to be made on an understandable and coherent basis [3]

The Federal Water Project Recreation Act, in attempting to answer these questions and provide congressional solutions to them, has posed a number of new questions to nonfederal agencies, including the states In fact, experience to date indicates the act and all ramifications have not been administratively resolved with regard to the role of federal agencies themselves It is, however, a step forward in federal policy

It should be pointed out that Public Law 89–161, the authorizing legislation for the Auburn Dam-Folsom South Unit of the Central Valley Project, was pending in the Congress while the Federal Water

[3] 89th Congress, First Session, House of Representatives *Report No 254*, pages 6 and 7.

Project Recreation Act was being considered. As a result, this project is not governed by the Federal Water Project Recreation Act However, provisions very similar to those of PL 89–72 are included in the Auburn Dam authorizing legislation For the purposes of this report, they shall be considered the same.

With the basic objective of providing uniform rules for the treatment of recreation and fish and wildlife benefits and costs in connection with federal projects, the principal policy provisions of the federal act are as follows.

> First, full consideration shall be given to recreation and to fish and wildlife enhancement as project purposes in federal water resources projects, general cost-sharing and reimbursement policy for these purposes is established.
>
> Second, planning with respect to the recreational potential of any project is to be coordinated with existing and planned Federal, State, and local public recreation developments
>
> Third, nonfederal administration of the recreation and fish and wildlife enhancement features of most federal water projects is to be encouraged by federal agencies, and both nonfederal and federal responsibilities with respect to the provision of outdoor recreation opportunities and fish and wildlife enhancement are to be recognized [4]

The following very briefly summarizes the procedures established by the Federal Water Project Recreation Act.

As the first step of project development the federal government agency (such as the Bureau of Reclamation) obtains from a nonfederal public agency prior to authorization an expression of intent to contract to administer land and water areas of the project The nonfederal public agency must also express an intent to contract to pay one-half of the separable capital costs allocated to recreation and/or fish and wildlife enhancement and all of the operation, maintenance and replacement costs associated with them.

Next, after obtaining such indication of intent the federal agency may (1) take in account recreation and fish and wildlife enhancement benefits in determining the economic benefits of the project; (2) allocate costs to recreation and/or fish and wildlife enhancement, and (3) pay *one-half* of the separable costs and *all* of the joint costs allocated to recreation and fish and wildlife enhancement

The act provides that the nonfederal share of the separable costs (which will be borne by the nonfederal public agency) can be assumed by the nonfederal agency either (1) by payment through contribution of lands, interest in lands or facilities; or (2) by repayment within 50 years with the source of repayment designated as entrance and user charges.

The bill also provides that in the event no nonfederal public agency issues a "letter of intent," before project authorization lands may be purchased for the federal project to preserve recreational and fish and wildlife enhancement potential at the project

The law provides further that on projects without nonfederal participation, if a nonfederal agency executes a contract *within 10 years*

[4] *Ibid*, page 5

after the initial operation of the project and the nonfederal agency agrees to administer the project and to pay the applicable nonfederal costs of the project (including operation and maintenance) joint federal-state recreation participation can be undertaken in a manner similar to that which would have been accomplished had nonfederal participation been agreed to prior to construction In this circumstance, however, the federal government would bear up to one-half of the cost of the lands, facilities and project modifications but there would be *no reallocation* of joint costs That is, the joint costs which would have been allocated to nonreimbursable recreation would be borne by other project beneficiaries.

As the final step, a contract or agreement would be executed between the federal agency and the nonfederal agency after project authorization by the Congress

Porter-Cobey Federal Water Project Recreation Act

Following enactment of the federal act there was considerable expression within California that local agencies (such as counties and public districts) would be unable to bear the full costs of nonfederal participation in federal projects in California and that the State should be called upon to meet the requirements of the federal act, including financial participation

In order to provide an orderly procedure of state participation as a nonfederal agency, Chairman Porter authored Assembly Bill 118, the *Porter-Cobey Federal Water Project Recreation Act* (Public Resources Code Secs 5094 et seq) at the 1966 First Extraordinary Session of *the Legislature* [5]

The Porter-Cobey Act declares that it is in the public interest for the state and local public agencies to participate with the federal government with respect to recreation and fish and wildlife enhancement facilities at federal water projects "to the extent that such facilities are deemed necessary and desirable by the state and the local public agency participating "

State participation is permitted to the extent "that it is of statewide importance and the local public agencies are unwilling or unable to do so " The act also provides that the State and local agencies may jointly participate with the federal government.

As enacted, the Porter-Cobey Act provides that the Administrator of the Resources Agency, with the approval of the Director of Finance and *upon specific authorization by the Legislature*, may indicate in writing the state's intent to agree to administer the project and to pay the applicable costs Thus, a separate bill enacted by the Legislature is required to authorize a letter of intent for each federal project

The Porter-Cobey Act requires that the administrator, before requesting authorization, "shall determine that the proposed state participation in the project is in compliance with all comprehensive water, recreation, and fish and wildlife plans of the state, and to the extent that the state intends to participate that the state's participation alone or in cooperation with local public agencies is justified on the basis of statewide importance "

[5] Coauthored by Senator James A Cobey, Chairman of the Senate Fact Finding Committee on Water Resources

The Porter-Cobey Act further requires that the Resources Agency, through the Department of Parks and Recreation and the Department of Fish and Game, conduct an investigation and study of the project and prepare plans for proposed state participation This report must be submitted to the Governor and the Legislature together with the determinations required regarding statewide interest, etc, of the act

On projects for which the letter of intent has been given, another *specific authorization* by enactment of a bill by the Legislature is required before the Resources Agency may contract with the federal government to actually participate in the project

At the 1966 session, concurrently with the enactment of the Porter-Cobey Act, the Administrator of the Resources Agency was authorized (by AB 118) to send a letter of intent to the United States Army Corps of Engineers for the Marysville Dam and Reservoir Project on the Yuba River

Also, at the 1966 session, state participation in the Auburn Dam-Folsom South Project (under the specific provisions of PL 89-161) was authorized by Senate Bill 26 (no letter of intent was required on this project).

PROBLEMS UNDER THE STATE AND FEDERAL ACTS

The enactment of the federal law, and the Porter-Cobey Act to implement it in the State of California, has raised a number of policy questions

Financial Considerations

The principal question before the committee is to what extent the state shall participate in Federal Water Projects in California and how can such participation be coordinated with other state recreation expenditures?

One of the major implications of the Porter-Cobey Act is that a potentially considerable state financial obligation may be incurred, in view of the considerable federal water project development authorized and proposed for California

For example, current estimates of nonfederal costs of authorized and proposed programs of the Bureau of Reclamation and the U S Corps of Engineers show $53,198,500 in initial separable costs and $4,128,000 in initial annual operating, maintenance and replacement costs (see Tables 4 and 5)

In commenting on basic policy areas involved in the Porter-Cobey Act, the Legislative Analyst has pointed out,

> It appears that the major area of discussion should be upon the ability of the state to continue to fund at present levels established and continuing state programs while at the same time assuming a portion of the financial responsibility for the development for recreation and fish and wildlife enhancement facilities at federal water projects our office pointed out to the Legislature that the state was developing or had established policies which would require it to finance nearly all of the recreation and fish and wildlife enhancement costs at local and state water projects and that [the Porter-Cobey Act] involved similar but more limited obliga-

tions for federal projects We noted [during the consideration of the Porter-Cobey Act by the Legislature that] the end result could be a major financial burden on the State to meet these costs as well as to continue financing other needs such as the development of our greatly expanded state park system [6]

[6] Statement to Senate Fact Finding Committee on Water Resources, September 23, 1966, page 1

TABLE 4

AUTHORIZED AND PROPOSED BUREAU OF RECLAMATION PROJECTS IN CALIFORNIA SUBJECT TO PL 89-72

Feature	Separable costs			O. M & R	
	Initial	Incremental	Ultimate	Initial	Ultimate
Cosumnes River Division					
Nashville	$7,587,000	$10,300,000	$17,893,000	$283 000	$813,000
Irish Hill	2,502 000	2,022,000	4,624,000	97 000	178,000
Auburn	2,597,000	2,920,000	5,517,000	97,000	238,000
Pi-Pi	991,000	737,000	1,728 000	33 000	83 000
Sonsago	926,000	1,260,000	2,186,000	35,000	81 000
Capps Crossing	768 000	916,000	1,684,000	28,000	63,000
	15,393,000	18,157,000	33,532,000	573,000	1,436,000
Kellogg Unit					
kellogg	7,034,000	2,420 000	9 454 000	373,000	506 000
Herdlyn	300,000	155,000	455,000	26,000	45,000
Contra Loma	1,227,000	285 000	1,512,000	42 000	57,000
	8,561,000	2,860,000	11,421,000	441,000	598,000
Peripheral Canal Unit	6,610,000	4,864,000	11,474,000	392,000	820,000
Pit River Division (Allen Camp Unit)	578,000	1,600,000	2,178,000	31,000	136,000
West Sacramento Valley Canal Unit					
Ord	502,000	660,000	1,162,000	38,000	115 000
Cannon	645,000	1,815,000	2,460 000	42 000	211 000
Sites	1,791,000	2,035,000	3 826,000	106,000	300 000
Funks	600,000	----	600,000	44,000	44,000
	3,538,000	4,510,000	8,048,000	230,000	670,000
Washoe Project					
Stampede	1 000 000	3,100,000	4,100,000	62 000	481,000
Watasheamu	60,000	170,000	230,000	7,000	24,000
	1,060,000	3,270,000	4,330,000	69,000	305 000
East Side Division					
Knights Ferry	611,000	472,000	1,133,000	13,000	33 000
Montgomery	1,676,000	1,206,000	2 882,000	67,000	148,000
Figarden	7,987,000	1,406,000	9,393 000	118,000	236 000
Little Dry Creek	1,350,000	1,024,000	2,374,000	53,000	133,000
Hungry Hollow	3,088,000	2,000,000	5,088,000	159,000	308,000
	14,712,000	6,108,000	20,870,000	413,000	858,000
Total	$50,452,000	$41,369,000	$91,853,000	$2,146,000	$4 823,000
Nonfederal share	$25,226,000	$20,684 500	$45,926,500	$2,146,000	$4,824 000

SOURCE Statement to Senate Fact Finding Committee on Water Resources, September 21, 1966

The committee should emphasize that nonfederal public agency participation in a federal project results in a reduction in costs to the water and power users of the federal project, since the separable and joint costs allocated to recreation and fish and wildlife are nonreimbursable to water and power users Thus, indirectly, state participation in recreation aspects of the project will reduce the repayment burden on the water and power users In many cases a virtually identical project will be constructed with or without recreation This must be considered in evaluating state participation

TABLE 5

AUTHORIZED AND PROPOSED CORPS OF ENGINEERS PROJECTS IN CALIFORNIA SUBJECT TO PL 89-72

Project	Separable costs for		Annual O, M & R costs for recreation and fish and wildlife facilities
	Recreation	Fish and wildlife enhancement	
Lakeport Reservoir, Lake County	$620,000	----	$23,000
San Francisco Bay to Stockton Channel (navigation)	1,360,000	----	124,000
Marysville Reservoir, Yuba River	2,080,000	----	100,000
Isabella Reservoir, Kern River (modification)	4,550,000	$2,640,000	70,000
*Poso Creek Reservoir, Kern County	(2,510,000 combined)		150,000
*Merced County Reservoirs	(9,285,000 combined)		237,000
Knights Valley Reservoir, Russian River	(11,700,000 combined)		137,000
Big Sulphur Creek Reservoir, Russian River Basin	(2,300,000 combined)		46,000
Worley Flat Reservoir	(4 800,000 combined)		115,000
*Etsel-Franciscan Reservoir, Eel River	(4,200,000 combined)		300,000
*Dos Rios Reservoir, Eel River	(2,500,000 combined)		90 000
*Sequoia Reservoir, Eel River	(4,600,000 combined)		450,000
*Butler Valley Reservoir, Mad River	(2,800,000 combined)		140,000
Cottonwood Creek Reservoirs, Shasta and Tehama Counties	(No data yet available)		
Total	$55,945,000 (combined)		$1,982,000
Nonfederal share	$27,072,500		$1,982,000

* (Preliminary Data)
SOURCE Statement to Senate Fact Finding Committee on Water Resources, September 21, 1966

For example, at the Auburn Dam Project the joint costs allocable to fish and wildlife enhancement and recreation (and borne by the federal government as nonreimbursable costs) are $32,782,000.[7] without recreation participation by a nonfederal agency, much or all of this would be transferred to other project beneficiaries (irrigation, power, municipal and industrial water)

Under proposed arrangements[8] with the federal government the state share (nonfederal) of the separable costs of the Auburn project will be $8 million. The state will transfer our state owned recreation facilities at Folsom Dam to the federal government as part payment It should be recognized that if the state also dedicates the project revenues to repayment to the federal government, this will reduce the state's General Fund revenues by that amount, since project revenues

[7] 89th Congress, First Session, Senate Report No 312, page 10
[8] For details, see Auburn-Folsom Inter-Agency for Force, *Auburn-Folsom Recreation Plan*, October 1966

normally go to the General Fund. (This would be true on any project where the state chose to pledge revenues.)

With regard to fish and wildlife enhancement costs, the Department of Fish and Game has already indicated that the estimated annual cost of fisheries management of the State Water Project ($1 million a year and ultimately $2 million) cannot be borne today by the Fish and Game Preservation Fund without "really reducing or eliminating other valuable programs that are in the public interest."[9] The Department of Fish and Game, therefore, is requesting General Fund financing for these costs of the State Water Project.

Any costs of fish and wildlife enhancement undertaken with regard to federal projects will be in addition to these fish and wildlife costs of the state's Feather River Project.

Although the federal government is financing a major portion of recreation capital costs under the Federal Water Project Recreation Act, this can be misleading. For example, the Department of Fish and Game estimates that annual fish and wildlife operation, maintenance and replacement costs (nondiscounted) could far exceed capital costs at many federal projects (over the 50-year project repayment period). These costs would place a severe, if not prohibitive, burden on state funds.

A similar statement was made by the State Department of Parks and Recreation. The department estimated that the *operation, maintenance and replacement costs* of a project such as the Auburn-Folsom Project would far exceed "the development capital costs over a period of years." Although the state participation for separable capital costs of the Auburn Dam-Folsom South Unit would be approximately $8 million, the operation and maintenance costs of this project are estimated at $1,500,000 a year (when the project is in full operation) or $75 million over a 50-year period.

Tables 4 and 5 indicate a potential similar experience will be reflected on other projects proposed or authorized by the federal agencies in California. Thus, the Legislature cannot limit its consideration merely to the initial capital expenditures which must be made on federal projects under the Porter-Cobey Act, but must also consider even more carefully the impact of maintenance, operation and replacement costs of such projects.

From the review of the financial implications noted above, considered together with the state's financial responsibilities for local projects under the Davis-Grunsky Act and for the State Water Project under the Davis-Dolwig Act and AB 12 (as described in Parts I and II of this report) the committee believes that in the immediate future the Legislature must find *significant new sources of funding* if it intends to fully meet our already committed recreation needs and to fully meet expanded commitments under the Federal Water Project Recreation Act.

The Legislature, in enacting the Porter-Cobey Act, attempted to provide a measure of coordination with other state recreation expenditures by requiring that both "letters of intent" and agreements to participate under the Federal Water Project Recreation Act be *specif-*

[9] Statement to Senate Fact Finding Committee on Water Resources, September 22, 1966, page 20.

ically authorized by the Legislature Thus, each project will be subjected to individual review by the Legislature, including consideration of the financial implications

Letters of Intent

The Porter-Cobey Act became effective when signed by the Governor on July 1, 1966, and the Federal Water Project Recreation Act became effective on July 9, 1965 The state's experience to date has, therefore, been limited

In addition, recent statements of federal agencies indicate considerable differences in interpretation and administration on their part as well.

One major area of uncertainty involves the implication of "letters of intent " Under Public Law 89-72, letters of intent from nonfederal agencies are to accompany the federal agency reports when they are submitted to Congress However, an administrative decision on the federal level has advanced this to the time at which the federal reports are submitted to the Bureau of the Budget in the executive office of the President. The Bureau of the Budget requested this change so it would have the letter while reviewing these reports

With regard to the letter of intent, the Bureau of Reclamation has indicated that the letter "in itself is not legally binding on the agency which issued it It constitutes a declaration of intent given in good faith, to enter into a contract which would be legally binding upon reaching agreement on details which the contract embodies" [10]

The United States Army Corps of Engineers has interpreted the letter of intent as an expression of "an intention to enter into an agreement, or to make an attempt to obtain assurances for an agreement by some other agency for administration of project land and water areas for recreation or fish and wildlife " The corps does not consider the letter of intent "to legally bind such agencies to actually enter into such agreement or undertake such administration. Rather, it is considered to constitute a responsible expression endorsing the project and indicating intent to make every practicable effort to fulfill the pertinent nonfederal requirements " [11]

The Administrator of the Resources Agency has stated that

> the letter of intent would have no effect in obligating its initiator to assume any financial responsibility the letter could hardly be construed as a contract since none of the terms or costs involved could be defined at the time the process requires the letter All parties contacted look upon the letter as a simple expression of local interest in the fish, wildlife and recreation enhancement potential of the project.[12]

A letter of intent surely is a promise by the state which in return receives a specific federal project authorization based upon reliance on the state letter, or else the letter of intent serves no observable purpose

[10] Testimony to Senate Fact Finding Committee on Water Resources, September 21, 1966, page 5
[11] *Loc cit*
[12] Testimony to Senate Fact Finding Committee on Water Resources, September 22, 1966, page 2

The administrator recommended to the Legislature that the Porter-Cobey Act be amended to permit the administrator to issue letters of intent on proposed federal projects *without specific legislative approval* The administrator based his recommendation on the fact that the letter of intent is not legally binding on the state and that the letter of intent is required at such an early stage in federal planning that he does not feel it will be possible to provide the Legislature with a detailed report on the proposed project prior to the submission of a request for a letter of intent The administrator indicated that full data for justification should be provided to the Legislature after the letter of intent is sent but prior to legislative action specifically authorizing execution of an agreement actually binding the state The committee does not believe that the apparent emergency need for letters of intent as indicated by the Congress' prompt action on the Marysville Dam in late 1966, will continue in the future All testimony has indicated that the federal agencies together with the state will be planning future federal projects so that authorization of letters of intent by the Legislature can be done sufficiently in advance of their need in Washington.

The committee notes, however, that testimony by the State Department of Parks and Recreation and State Department of Fish and Game to the Senate Fact Finding Committee on Water Resources reflected a need for the state to move slowly into this new field in view of the possible serious financial implications of large scale state participation. Both departments indicated a lack of experience to date with the act and *did not endorse* amendment of the act

Considerable work also must be done within the State to develop a dialogue and cooperative planning between local public agencies, the state and the federal government in order to assure maximum local agency participation in these projects and agreement on recreation plans The Porter-Cobey Act specifically recognizes this need for local participation Local agencies frequently have indicated that they do not have sufficient funds to participate fully Undoubtedly, however, joint arrangements and local participation in a variety of forms can be undertaken at future federal projects in California

RECOMMENDATIONS

In view of the above, the committee believes that it is essential that as full and complete data as possible on proposed federal projects be available to the Legislature, including estimates of long-term operation and maintenance costs, before commitments are made to participate under the Porter-Cobey Act

Although the committee concurs in the administrator's interpretation of a letter of intent as not being legally binding and enforceable upon the state in a court of law, we feel that a letter of intent issued by the State of California goes much further than merely indicating "an interest" on the part of the state In addition, there is no firm federal policy on the import of such a letter

To permit the Administrator of Resources to issue letters of intent on a large number of federal projects at the very early stages of planning could well lead others to interpret the state's action as a com-

mitment, albeit a tentative one. Although the administrator could not legally bind the Legislature to pay the costs associated with such participation, we seriously doubt that the Legislature could, over a long period of time, continue to withdraw participation after receiving full details on projects for which letters of intent have been granted. To permit the Administrator to issue such letters would deny the Legislature an essential review function, particularly with regard to possible large state financial obligations

For the above reasons, among others, the committee *recommends against amending the Porter-Cobey Act Letters of intent should continue to be issued only upon specific authorization of the Legislature.*

The committee *recommends further that the Resources Agency, its constituent departments and the federal agencies continue to work together (as they have since the enactment of the Federal Water Project Recreation Act) to develop more definitive interpretations of the act and policies to guide the state and local agencies, as well as federal agencies, in the implementation of the Federal Water Project Recreation Act and the Porter-Cobey Act.* In our opinion the Federal Water Project Recreation Act has raised as many questions as it has answered Federal water development in California will not suffer but if past experience is a guide, will benefit from a careful and thorough study before changing state policy

It should be borne in mind that the Legislature already has placed California in the forefront of the states as the first state to adopt an official legislative policy of participation with the federal government as a nonfederal agency The state cannot, at the present time and with the limited information available, embark upon a program of blanket participation in proposed federal projects.

The committee cannot overemphasize the need for balanced recreation planning in California and balanced expenditures by the state government for such purposes The Federal Water Project Recreation cost to be assumed by the state should be integrated into overall planning efforts of the state and cannot be permitted to impair the financing of the beaches and parks development program or the ongoing state water project recreation development program

Expenditures under the Porter-Cobey Act compete with these other state recreation expenditures The Legislature must be able at all times to carefully weigh the advantages and disadvantages of participation at a federal project against other state recreation expenditures.

The committee *strongly recommends continued study by the Resources Agency and this committee of the problems raised by the Federal Water Project Recreation Act and the Porter-Cobey Act in order that this important new source of recreation for California can be properly integrated into overall state recreation planning.*

APPENDIX

DRAFT BILL NO. 1

An act to repeal Chapter 5 (commencing with Section 12880) of Part 6, Division 6 of, and to add Chapter 5 (commencing with Section 12880) to Part 6, Division 6 of, the Water Code, relating to water resources.

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

SECTION 1 Chapter 5 (commencing with Section 12880) of Part 6 of Division 6 of the Water Code is repealed.

SEC 2 Chapter 5 (commencing with Section 12880) is added to Part 6 of Division 6 of said code, to read:

CHAPTER 5 STATE FINANCIAL ASSISTANCE FOR LOCAL PROJECTS

Article 1 Short Title

12880 This chapter shall be known and may be cited as the Davis-Grunsky Act

Article 2 General Provisions

12881 In furtherance of the development, control and conservation of the water resources of the state and the State Water Resources Development System it is the policy of the state to provide financial assistance to public agencies for the construction of water projects to meet local requirements in which there is a statewide interest by making grants or loans, or both, and by participating in the construction and operation of water projects, and also to provide financial assistance to public agencies for the preparation of certain feasibility reports on such water projects by making loans, in accordance with this chapter

12881 2 As used in this chapter:

(a) "Project" means any construction or improvement by a public agency for the diversion, storage, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act

Repeals and adds Ch 5 (commencing with Sec 12880), Pt 6, Div. 6, Wat C.

Recodifies Davis-Grunsky Act without making substantive change Vote—Majority, Appropriation—No; State Expense—No.

(b) "Public agency" means any city, county, district or other political subdivision of the state

(c) "Feasibility report" means such report on the feasibility of a public agency's proposed project as the department may require the public agency to file with the department in support of an application by the public agency under this chapter for a loan for the construction of the proposed project.

12881.4 In the administration of this chapter, the department and the commission shall give preference to projects involving the development of new basic water supplies

Article 3 Procedure

12882. Applications for loans or grants or financial participation by the state under this chapter shall be made to the department in such form and with such supporting material as may be prescribed by the department Supporting material with respect to the ability of a public agency to repay the loan and to the reasonable ability to finance the proposed project from other sources may be supplied by the county assessor and the county engineer

12882.2 Applications for loans for irrigation distribution system projects or municipal distribution system projects which involve extreme hardship which jeopardizes the public health, safety or welfare shall be made in the following manner·

The governing body of the public agency shall submit an application to the department describing generally, such extreme hardship existing with respect to the water supply, the financial and economic conditions existing in the area, and the proposed project The statements by the governing body shall be based upon, and the application shall be accompanied by

(a) A report by the assessor of the local agency with respect to assessed valuations and tax delinquencies

(b) A report by the engineer of the local agency (or if it has none, by the county surveyor or road commissioner) describing the project and estimating its cost, in general terms

(c) In cases involving a health hazard with respect to the domestic water supply, a report by the local health officer or by the Department of Public Health with respect to such health hazard

(d) Such other information as the department may require from the agency

12882.4 A report on each application shall be prepared by the department and filed with the Legislature In such report the department shall make findings as to the nature and extent of the statewide interest in the project, the public necessity for the project, the urgency of the need, and the engineering feasibility, economic justification, and financial feasibility of the project, provided, that in the case of reports on applications for loans for the preparation of proposed feasibility

reports, in lieu of the above findings, the department shall make findings with respect to the public necessity for and urgency of need of the proposed project and the ability of the applicant to repay the requested loan for the preparation of the proposed feasibility report

Article 4 Qualifications Generally

12883 A proposed project may be approved for assistance only if it is determined that the project substantially conforms to the California Water Plan, is engineeringly feasible, economically justified, and, if a loan is proposed, that there is reasonable assurance, commensurate with the need for the proposed project, that the public agency can repay it The potential future growth and development of the area shall be taken into consideration in the calculation of the benefits for the determination of the economic justification of a proposed project Such factors as the public health, safety, and welfare shall be taken into consideration in determining the need for a proposed project.

12883 2. In the case of a grant for recreation or fish and wildlife enhancement, or both, the determination of economic justification of the proposed project may, in the department's discretion, be limited to a determination of the economic justification of the recreation and fish and wildlife enhancement functions of the project

12883 4 A loan for the preparation of a proposed feasibility report on a proposed project may be approved only if it is determined that there is reasonable assurance that the public agency can repay the loan and only if the agency receives a favorable written reply from the department on a written request for a preliminary determination of eligibility for a loan for the construction of the proposed project filed with the department by the agency under the regulations of the department promulgated pursuant to this chapter

Article 5. Grants

12884 The department is authorized to make state grants to public agencies from moneys available for such purpose in amounts not exceeding four hundred thousand dollars ($400,000) for any one project for the purposes specified in subdivisions (a) and (b) of Section 12884 2 and, in addition, in amounts as authorized by subdivision (c) of Section 12884 2, subject to the provisions of this chapter and to the prior approval of the California Water Commission for each grant that the department proposes to make Grants in excess of four hundred thousand dollars ($400,000) for any one project for the purposes authorized by subdivisions (a) and (b) of Section 12884 2 may be made by the department only upon specific authorization of the Legislature and upon such terms and conditions as the Legislature may prescribe.

12884.2. Grants in furtherance of a project that involves the development of a new water supply may be made for the following purposes:

(a) For the part of the construction cost of the proposed project properly allocated to the enhancement of fish and wildlife, provided, that a grant for such part shall not exceed fifty percent (50%) of the construction cost

(b) For the part of the construction cost of any dam and reservoir of the proposed project properly allocated to recreational functions of statewide interest, provided, that a grant for such part shall not exceed fifty percent (50%) of the construction cost, and provided further, that the total grant under subdivisions (a) and (b) for any one project shall not exceed seventy-five percent (75%) of the construction cost of the project. Such construction costs may include expenditures for lands located above the high waterline of reservoirs which are necessary or desirable for public recreation in connection with the reservoir

(c) For the construction of initial water supply and sanitary facilities which are needed for public recreational use of each proposed dam and reservoir of the proposed project. A grant for the purpose specified in this subdivision shall not be subject to the limitation contained in Section 12884 on grants for the purposes specified in subdivisions (a) and (b) and shall not be included in computing the total amount which may be granted to a public agency in connection with a project for such purposes A grant for the purpose specified in this subdivision shall not exceed one-fourth of the total amount granted to a public agency in connection with a project for the purposes specified in subdivisions (a) or (b), or both, of this section.

Article 6. Loans

12885. The department is authorized to make state loans to public agencies for the construction of projects, from moneys available for such loans, in amounts not exceeding four million dollars ($4,000,000) for any one project, subject to the provisions of this chapter and to the prior approval of the California Water Commission for each loan that the department proposes to make Loans in excess of four million dollars ($4,000,000) for any one project may be made by the department only upon specific authorization of the Legislature and upon such terms and conditions as the Legislature may prescribe.

12885 2 Loans may be made only for projects primarily for domestic, municipal, agricultural, industrial, recreation, or fish and wildlife enhancement purposes Such loans may be made for all or any part of the construction cost of any such project but in no event shall any such loan be in an amount which is greater than the portion of the construction cost of the project which the department finds to be beyond the reasonable ability of the public agency to finance from other

sources Such loans shall be repayable over a period not to exceed 50 years A period of development of not exceeding 10 years may be allowed within such maximum 50-year repayment period, during which no payments on the principal of or the interest on such loans shall be required, when in the department's judgment such development period is justified under the circumstances If the payment of interest is deferred pursuant to this section, interest shall be charged on the interest amounts for which payment is deferred at the same rate as the rate of interest charged on the principal amount of the particular loan The accrued interest may, at the option of the public agency, be paid in annual installments during the remainder of the loan repayment period at the same rate of interest as is charged on the principal amount of the loan.

12885 3 In furtherance of the policy set forth in Section 12881 4, no funds shall be loaned for either irrigation distribution system projects or municipal distribution system projects, except in cases which, in the judgment of the department and the commission, involve extreme hardship which jeopardizes the public health, safety or welfare Distribution facilities which are a necessary and integral part of an overall water development project may be covered by a state loan

12885 6 The department is authorized to make state loans to public agencies for the preparation of feasibility reports on proposed projects, from any moneys available for such loans, in an amount for any one feasibility report on a proposed project not exceeding 2 percent of the estimated cost of the proposed project or fifty thousand dollars ($50,000), whichever is less, subject to the provisions of this chapter, provided, that only one such loan may be made to a public agency in relation to any one proposed project A loan in excess of said amount for any one feasibility report may be made by the department only upon authorization by the Legislature and upon such terms and conditions as the Legislature may prescribe

12885 7 Loans may be made for all or any part of the cost of the preparation of proposed feasibility reports on proposed projects, but in no event shall any such loan be in an amount which is greater than the portion of the cost of the preparation of the proposed feasibility report which the department finds to be beyond the reasonable ability of the public agency to finance from other sources Such loans shall be repayable over a period not to exceed 10 years

12885 8 The department shall require the payment of interest on each loan that is made pursuant to this chapter after September 19, 1963, at a rate equal to the average, as determined by the department, of the net interest costs to the state on the sales of general obligation bonds of the state that occurred during the period from January 1, 1962, inclusive, through the calendar year immediately preceding the calendar year in which the application is filed if the application is filed prior to the year 1968 or that occurred during the period of

five calendar years immediately preceding the year in which the application is filed if the application is filed after the year 1967; provided, that when the applicable average of the net interest costs to the state is not a multiple of one-tenth of 1 percent, the interest rate on the loan shall be at the multiple of one-tenth of 1 percent next above the applicable average of the net interest costs.

Article 7. State Participation in Projects

12886 If in order to accomplish the objectives of this chapter it is necessary to construct a project that is larger than one which a public agency proposes to construct, the state may participate in planning, designing, constructing, operating and maintaining the project, and in so participating shall finance those costs of the project allocated to the state, on terms agreed upon with the agency, to the end that the project shall accomplish the maximum water development objectives at a minimum total expenditure.

12886.2 In participating in a project under this article, the department may perform all or part of the planning, designing, construction, operation or maintenance of the project on terms agreed upon with the agency.

12886.4 The department is authorized, following receipt of an application for state participation from a public agency, to participate under this article on behalf of the state in any project that is larger than the one which the public agency proposes to construct and that is primarily for domestic, municipal, agricultural, industrial, recreational or fish and wildlife enhancement purposes and in so participating shall finance those costs of such project that are allocated to the state, on terms agreed upon with the public agency, subject to the prior approval of the California Water Commission, and to expend for participation in the planning, designing, and construction of any one project an amount not exceeding one million dollars ($1,000,000) from moneys available for such participation, including but not limited to, the moneys appropriated by the California Water Resources Development Bond Act (Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of this code) for provision for water development facilities for local areas as provided in this Chapter 5. Expenditures by the department in excess of one million dollars ($1,000,000) for the planning, designing, and construction of any one project may be made only upon specific authorization of the Legislature.

12886.6 The department is authorized to make loans and grants to public agencies pursuant to the provisions of this chapter for projects in which the department participates under this article.

Article 8 Powers of Public Agencies

12887 Notwithstanding any provision of law to the contrary, every public agency empowered by law to construct and operate a project, as defined in Section 12881 2, is hereby granted, in addition to and not in derogation or limitation of the powers conferred upon the public agency by any other law, the powers specified in this article

12887 1 A public agency may borrow money from and repay the same with interest to the state in accordance with this chapter on behalf of the entire public agency or of any portion or portions thereof for which the law applicable to the agency authorizes an indebtedness or liability to be incurred, including any improvement district, distribution district, or zone within the public agency, notwithstanding any debt limitation or other provision in the law applicable to such agency which might otherwise preclude or limit such borrowing

12887 2 A public agency may enter into a contract with the department, on behalf of the entire public agency, or of any portion or portions thereof referred to in Section 12887 1, for a loan or grant under this chapter or for participation by the state in a local project under Article 7 (commencing with Section 12886) of this chapter and to use the loan or grant contracted for as an additional or alternative means of financing the project proposed by the public agency

12887 3 A public agency may comply with the provisions of any contract entered into with the department under this chapter, including any provision which obligates the public agency, or any specified portion or portions thereof, to meet all commitments, financial or otherwise, undertaken by the public agency in such contract notwithstanding any individual default by its constituents or others in the payment to the public agency of taxes, assessments, tolls, or other charges levied by the public agency

12887 4 A public agency may include recreation and enhancement of fish and wildlife, or either of them, as functions of a project which the public agency is empowered by law to construct and operate, and may construct and operate the project for such recreation and enhancement of fish and wildlife functions, or either of them, in accordance with the provisions of a grant contract entered into with the department, including provisions for public use of the project facilities for fishing and other recreational activities

12887 5 A public agency may construct and operate such onshore recreational facilities, fish and wildlife enhancement facilities or other facilities as the department or the Legislature may require in connection with a grant to the public agency under this chapter, and may construct and operate such facilities in accordance with the provisions of a grant contract entered into with the department, including provisions for public use of such facilities for fishing and other recreational activities

12887.6 A public agency may annually levy or cause to be levied upon all property in the public agency, or in any portion or portions thereof, subject to taxation or assessment by the public agency an ad valorem tax or assessment, based upon the assessed valuation of such property, necessary and sufficient to meet all commitments, financial or otherwise, of the public agency that are set forth in any contract which the agency enters into with the department under this chapter, in addition to any other taxes or assessments which the public agency is authorized to levy or cause to be levied on such property and notwithstanding any provision in the law applicable to such agency which might otherwise preclude or limit such taxing or assessing. Where the law applicable to such public agency does not set forth a procedure for leving and collecting taxes or assessments on an ad valorem basis, such public agency shall utilize the procedure for levying and collecting taxes for the payment of principal and interest on general obligation bonds of municipal water districts, set forth in the Municipal Water District Law of 1911 (Division 20 (commencing with Section 70000) of this code), as it may now or hereafter be amended, for the purpose of levying and collecting taxes or assessments necessary and sufficient to meet commitments in a contract entered into under this chapter.

12887.7 A public agency may make charges for the furnishing of services from the project for which the public agency receives financial assistance under this chapter and may pledge and use any or all revenues received from the collection of such charges for the purpose of meeting the commitments, financial or otherwise, of the public agency that are set forth in any contract which the public agency enters into with the department under this chapter.

12887.8 A public agency is hereby granted the power to bring an action in the superior court of the county in which the office of such agency is situated to determine the validity of any contract made with the department under this chapter and the authority of the public agency to enter into the contract. The action shall be had as in the case of the judicial determination of the validity of the public agency's bonds, as nearly as the same may be applicable, and with like effect. Where the law applicable to such agency does not set forth a procedure for the judicial determination of the validity of the public agency's bonds, the action shall be had as in the case of the judicial determination of the general obligation bonds of irrigation districts under the Irrigation District Law (Division 11 (commencing with Section 20500) of this code), as it may now or hereafter be amended, as nearly as the same may be applicable, and with like effect.

12887.9 Whenever a public agency is required to have legal counsel in connection with any of its activities pursuant to this chapter, it may use the services of the district attorney or county counsel of the county in which it is located.

12888 A public agency may perform all acts and do all things that are necessary or convenient to carry out the powers specified in this article.

Article 9 Public Agency Election

12889. Except in the case of a grant to a public agency where the applicable law contains provisions for the election of the members of the governing body of the agency or where a county board of supervisors acts as the governing body of the agency, before a public agency may enter into a contract with the department for a construction loan or a grant under this chapter, the public agency shall hold an election on the proposition of whether or not the public agency shall enter into the proposed contract and more than 50 percent of the votes cast at such election must be in favor of such proposition; provided, that if a higher percentage of favorable votes is required for the issuance of any bonds by the public agency or is required by the Constitution before the public agency may incur an indebtedness, such higher percentage shall apply in lieu of the percentage set forth in this subdivision

12889 2 The election shall be held in accordance with the following provisions:

(a) The procedure for holding an election on the incurring of bonded indebtedness by such public agency shall be utilized for an election on the proposed contract as nearly as the same may be applicable Where the law applicable to such agency does not contain such bond election procedure, the procedure set forth in the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) Part 1, Division 2, Title 5 of the Government Code), as it may now or hereafter be amended, shall be utilized as nearly as the same may be applicable.

(b) No particular form of ballot is required.

(c) The notice of the election shall include a statement of the time and place of the election, the purpose of the election, the general purpose of the contract, and the maximum amount of money to be borrowed from the state under the contract

(d) The ballots for the election shall contain a brief statement of the general purpose of the contract substantially as stated in the notice of the election, shall state the maximum amount of money to be borrowed from the state under the contract, and shall contain the words "Execution of contract—Yes" and "Execution of contract—No "

(e) The election shall be held in the entire public agency except where the public agency proposes to contract with the department on behalf of a specified portion, or of specified portions, of the public agency, in which case the election shall be held in such portion or portions of the public agency only

Article 10 Administrative Provisions

12890 The department is authorized to make from time to time such rules and regulations as may be necessary to carry out, and as are consistent with, this chapter

12890.2 In making loans or grants pursuant to this chapter, the department shall impose terms and conditions that are designed to protect the state's investment and that are necessary to carry out the purposes of this chapter

12890.4 The department shall keep full and complete records and accounts concerning all of its transactions under this chapter and shall render a report on such transactions to the Legislature within 15 days after the commencement of each legislative session

12891. In order to effectuate loans or grants made by the department pursuant to this chapter, the State Controller shall, upon demand of the department, draw warrants made payable to such public agencies and in such amounts as are from time to time designated by the department The State Treasurer shall pay such warrants from available moneys

12891.2 It shall be the duty of the State Controller to make such audit or audits of the books and records of public agencies receiving loans or grants pursuant to this chapter, as he may deem necessary from time to time, for the purposes of determining that the money received by such public agencies as loans or grants hereunder has been expended for the purposes and under the conditions authorized herein Whenever the State Controller determines that any money paid to such a public agency has been expended by such public agency for purposes not authorized by this chapter, or exceeds the final cost of the project for which a loan or grant was made, or exceeds the final cost of the feasibility report for which a loan was made, the State Controller shall furnish written notice to the department and to the public agency directing the public agency to pay into the State Treasury the amount of such unauthorized expenditures, or the amount in excess of the final authorized cost of the project or the feasibility report Upon receipt of such notice, such public agency shall, at the time specified therein, pay to the State Treasurer the amount set forth in such notice. Such amount shall, upon order of the State Controller, be deposited in the State Treasury to the credit of the California Water Resources Development Bond Fund to be available for the purposes prescribed in Section 12937 of this code

It shall be the duty of such public agency to make the payments to the State Treasurer as provided in this section, and it shall be the duty of the State Controller to enforce such collection on behalf of the state

12892 No member of the California Water Commission shall participate in the action of the commission in considering for approval, or approving, a loan or grant under this chap-

ter to a public agency of which he is an officer, employee, agent, consultant, accountant, engineer, or legal counsel or in which he owns real property

DRAFT BILL NO. 2

An act to amend Section 12881 2 of, to amend and renumber Sections 12885 2 and 12885 3 of, and to add Sections 12882 3, 12885 2, 12885 3, and 12885 4, to the Water Code as proposed by Assembly Bill No ___ of the 1967 Regular Session, relating to water resources

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

SECTION 1. Section 12881 2 of the Water Code, as proposed to be added by Assembly Bill No. ___, is amended to read:

12881 2 As used in this chapter:

(a) "Project" means any *dam, reservoir, or other* construction or improvement by a public agency for the diversion, storage, or distribution of water primarily for domestic, municipal, agricultural, industrial, recreation, fish and wildlife enhancement, flood control, or power production purposes

(b) "Public agency" means any city, county, district or other political subdivision of the state

(c) "Feasibility report" means such report on the feasibility of a public agency's proposed project as the department may require the public agency to file with the department in support of an application by the public agency under this chapter for a loan for the construction of the proposed project

SEC 2 Section 12882 3 is added to said code, to read

12882 3. An application for a reservoir site loan pursuant to Section 12885 2 shall include:

(a) Evidence that the proposed site is zoned as a reservoir site

(b) Geologic data as to the suitability of the site for reservoir construction

SEC 3. Section 12885 2 of said code, as proposed to be added by Assembly Bill No. ___, is amended and renumbered to read.

12885 1. ~~12885 2.~~ Loans may be made only for projects primarily for domestic, municipal, agricultural, industrial,

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act

Amends and adds various secs, and various secs as proposed by AB ___, Wat C

Authorizes Department of Water Resources to make loans, up to a maximum amount of $400,000, with loans in excess thereof subject to approval of Legislature and California Water Commission, for acquisition of land in connection with construction of proposed water projects and prescribes requisite conditions and procedures department shall follow in administering such loans

Vote—Majority; Appropriation—Yes; State Expense—Yes.

recreation, or fish and wildlife enhancement purposes Such loans may be made for all or any part of the construction cost of any such project but in no event shall any such loan be in an amount which is greater than the portion of the construction cost of the project which the department finds to be beyond the reasonable ability of the public agency to finance from other sources Such loans shall be repayable over a period not to exceed 50 years A period of development of not exceeding 10 years may be allowed within such maximum 50-year repayment period, during which no payments on the principal of or the interest on such loans shall be required, when in the department's judgment such development period is justified under the circumstances If the payment of interest is deferred pursuant to this section, interest shall be charged on the interest amounts for which payment is deferred at the same rate as the rate of interest charged on the principal amount of the particular loan. The accrued interest may, at the option of the public agency, be paid in annual installments during the remainder of the loan repayment period at the same rate of interest as is charged on the principal amount of the loan

SEC 4 Section 12885 3 of said code, as proposed to be added by Assembly Bill No ___, is amended and renumbered to read:

12885 5 ~~12885 3~~ In furtherance of the policy set forth in Section 12881 4, no funds shall be loaned for either irrigation distribution system projects or municipal distribution system projects, except in cases which, in the judgment of the department and the commission, involve extreme hardship which jeopardizes the public health, safety or welfare Distribution facilities which are a necessary and integral part of an overall water development project may be covered by a state loan.

SEC 5 Section 12885 2 is added to said code, to read.

12885 2 The department is authorized to make state loans to public agencies for the acquisition of interests in lands that are necessary for the construction, operation, or maintenance of proposed projects that would meet water needs of the public agencies Such loans may be made separate and apart from loans that may be made under this chapter for the construction of proposed projects by public agencies

The making of each loan pursuant to this section shall be subject to the following conditions:

(a) The loan may be made for all or any part of the cost of acquiring interests in lands for a proposed project but in no event shall any such loan be in an amount which is greater than the portion of such cost which the department finds to be beyond the reasonable ability of the public agency to finance from other sources

(b) The loan shall not exceed four hundred thousand dollars ($400,000) for any one project A loan in excess of that amount for any one project may be made by the department

only upon specific approval of the Legislature, by act enacted after the receipt of copies of the project report filed pursuant to Section 12882 4 and upon such additional terms and conditions as the Legislature may prescribe

(c) Each loan is subject to the provisions of Article 9 of this chapter

SEC. 6. Section 12885 3 is added to said code, to read.

12885 3 Each loan that is made pursuant to Section 12885 2 shall be repayable with interest upon the same terms as are applicable to construction loans that are made pursuant to this chapter, as set forth in Sections 12885 1 and 12885 8, except that each contract which the department enters into for a loan under this article shall provide for the sale of the interests in lands that are acquired with the loan if, in the department's determination, the construction of the proposed project has not commenced within a period of 10 years from the date of the first disbursement of loan funds under the contract or within any extension of said period that the department may allow shall provide that, under that eventuality, such interests in lands shall be offered for sale within six months from the termination of such 10-year period or of any extension thereof, and shall provide that the proceeds of the sale shall be applied toward the repayment of the principal amount of the loan and toward the payment of the accrued interest thereon. Any remaining proceeds, after deducting administrative costs of the public agency in the purchase and sale of the interests in lands shall be repaid to the state

SEC 7 Section 12885 4 is added to said code, to read

12885 4 Notwithstanding any provision of law to the contrary, any land acquired with a loan made pursuant to this chapter, which land is located outside the boundaries of the public agency acquiring the land and which was subject to taxation at the time of acquisition thereof, shall remain subject to taxation

DRAFT BILL NO. 3

An act to amend Sections 12885 2 and 12885 8 of the Water Code, as proposed to be added by Assembly Bill No ___ of the 1967 Regular Session, relating to water resources

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

SECTION 1. Section 12885 2 of the Water Code, as proposed to be added by Assembly Bill No ___ of the 1967 Regular Session, is amended to read

12885 2 Loans may be made only for projects primarily for domestic, municipal agricultural, industrial, recreation, or fish and wildlife enhancement purposes Such loans may be made for all or any part of the construction cost of any such project but in no event shall any such loan be in an amount which is greater than the portion of the construction cost of the project which the department finds to be beyond the reasonable ability of the public agency to finance from other sources Such loans shall be repayable over a period not to exceed 50 years A period of development of not exceeding 10 years may be allowed ~~within~~ *in addition to* such maximum 50-year repayment period, during which no payments on the principal of or the interest on such *a* loan *s* shall be required, when in the department's judgment such development period is justified under the circumstances If the payment of interest is deferred pursuant to this section, *no* interest shall be charged on the interest amounts for which payment is deferred ~~at the same rate as the rate of interest charged on the principal amount of the particular loan~~. The accrued interest may, at the option of the public agency, be paid in annual installments during the remainder of the loan repayment period ~~at the same rate of interest as is charged on the principal amount of the loan~~

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act

Amends Secs 12885 2 and 12885 8, as proposed by A B ___, Wat C

Provides that the 10-year development period during which interest and principal payments may be deferred shall be in addition to, rather than included within, the maximum 50-year repayment period applicable to state loans for local water projects Abolishes the requirement that interest be charged on interest amounts for which payment is deferred

Eliminates the formula upon which the interest rate due on such loans is computed and specifies in lieu thereof a flat 2¾% annual rate to be applicable to loans made after September 30, 1967

Vote—Majority, Appropriation—No, State Expense—No

SEC. 2 Section 12885 8 of the Water Code, as proposed to be added by Assembly Bill No ___ of the 1967 Regular Session, is amended to read

12885 8 The department shall require the payment of interest on each loan that is made pursuant to this chapter after September ~~19, 1963~~ *30, 1967*, at a rate ~~equal to the average, as determined by, the department, of the net interest costs to the state on the sales of general obligation bonds of the state that occurred during the period from January 1, 1962, inclusive, through the calendar year immediately preceding the calendar year in which the application is filed if the application is filed prior to the year 1968 or that occurred during the period of five calendar years immediately preceding the year in which the application is filed if the application is filed after the year 1967, provided, that when the applicable average of the net interest costs to the state is not a multiple of one-tenth of 1 percent, the interest rate on the loan shall be at the multiple of one-tenth of 1 percent next above the applicable average of the net interest costs~~ *of $2\frac{1}{2}$ percent per annum*

DRAFT BILL NO. 4

An act to amend Sections 12882 4, 12884, and 12885 6 of the Water Code, as proposed to be added by Assembly Bill No ___ of the 1967 Regular Session, relating to water resources

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

SECTION 1 Section 12882 4 of the Water Code, as proposed to be added by Assembly Bill No ___, is amended to read

12882 4 A report on each application shall be prepared by the department ~~and filed with~~ *The report, together with the comments of the California Water Commission, shall be filed with the Legislature, if it is in session, or if it is not in session, with the Rules Committees of the Assembly and the Senate of* the Legislature In such report the department shall make findings as to the nature and extent of the statewide interest in the project, the public necessity for the project, the urgency of the need, and the engineering feasibility, economic justification, and financial feasibility of the project, provided, that in the case of reports on applications for loans for the preparation of proposed feasibility reports, in lieu of the above findings, the department shall make findings with respect to the public necessity for and urgency of need of the proposed project and the ability of the applicant to repay the requested loan for the preparation of the proposed feasibility report

SEC 2 Section 12884 of the Water Code, as proposed to be added by Assembly Bill No ___, is amended to read

12884 The department is authorized to make state grants to public agencies from moneys available for such purpose ~~in amounts not exceeding four hundred thousand dollars~~

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act

Amends and adds various secs, Wat C, as proposed by AB ___, Wat C

Requires that the Department of Water Resources file comments of the California Water Commission as well as its report on each project loan or grant application, with the Legislature

Specifies that a project loan in excess of $4,000 000, or project grant in excess of $400,000, is (1) subject to the provisions of the act and the approval of the California Water Commission, and (2) must be specifically approved by the Legislature by an act subsequent to its receipt of copies of the project report

Specifies that all loans for project feasibility reports are subject to the provisions of the act and the approval of the California Water Commission, as well as being subject to specific legislative authorization when they exceed the lesser of 2 percent of the estimated project cost or $50,000

Vote—Majority, Appropriation—No, State Expense—Yes

~~($100,000) for any one project for the purposes specified in subdivisions (a) and (b) of Section 12881.2 and, in addition, in amounts as authorized by subdivision (c) of Section 12884.2, subject to the provisions of this chapter and to the prior approval of the California Water Commission for each grant that the department proposes to make~~. Grants in excess of four hundred thousand dollars ($400,000) for any one project for the purposes authorized by subdivisions (a) and (b) of Section 12884.2 may be made by the department only upon specific ~~authorization~~ *approval* of the Legislature, *by act enacted after the receipt of copies of the project report filed pursuant to Section 12882.4* and upon such *additional* terms and conditions as the Legislature may prescribe

SEC. 3. Section 12885 of the Water Code, as proposed to be added by Assembly Bill No. ___, is amended to read:

12885. The department is authorized to make state loans to public agencies for the construction of projects; from moneys available for such loans; ~~in amounts not exceeding four million dollars ($4,000,000) for any one project, subject to the provisions of this chapter and to the prior approval of the California Water Commission for each loan that the department proposes to make~~ Loan in excess of four million dollars ($4,000,000) for any one project may be made by the department only upon specific ~~authorization~~ *approval* of the Legislature, *by act enacted after the receipt of copies of the project report filed pursuant to Section 12882.4* and upon such *additional* terms and conditions as the Legislature may prescribe

SEC. 4. Section 12885.6 of the Water Code, as proposed to be added by Assembly Bill No. ___, is amended to read.

12885.6 The department is authorized to make state loans to public agencies for the preparation of feasibility reports on proposed projects, from any moneys available for such loans, in an amount for any one feasibility report on a proposed project not exceeding 2 percent of the estimated cost of the proposed project or fifty thousand dollars ($50,000), whichever is less; ~~subject to the provisions of this chapter~~, provided, that only one such loan may be made to a public agency in relation to any one proposed project. A loan in excess of said amount for any one feasibility report may be made by the department only upon authorization by the Legislature and upon such *additional* terms and conditions as the Legislature may prescribe

SEC. 5. Section 12891.4 is added to the Water Code, to read

12891.4 All loans or grants made pursuant to this chapter shall be subject to the provisions of this chapter and subject to the approval of the California Water Commission

SEC. 6. It is the intent of the Legislature that the provisions of the Davis-Grunsky Act, as amended by this act, providing that loans and grants in amounts in excess of those authorized without specific legislative approval are to be sub-

ject to the provisions of the Davis-Grunsky Act and to the approval of the California Water Commission shall be applicable to excess loans and grants heretofore authorized by the Legislature, but with respect to which the applications for the loans or grants have not been approved by the Department of Water Resources

DRAFT BILL NO. 5

An act to add Section 12893 as proposed by Assembly Bill No. ___ to the Water Code, relating to water resources.

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

SECTION 1. Section 12893 is added to the Water Code, as proposed by AB___, to read.

12893 In the case of a grant under subdivision (b) of Section 12884 2 for the part of the construction cost of a dam and reservoir properly allocated to recreational functions of statewide interest and a grant under subdivision (a) of Section 12884 2 for the part of the construction cost of the proposed project properly allocated to the enhancement of fish and wildlife, the department may provide in the grant contract that the public agency shall deposit a portion of the grant into a special account or fund and shall use the money deposited, and its increments, solely for the construction of specified onshore recreation facilities until the construction cost of the facilities is paid In acting under this section, the department may reserve for the construction of onshore recreation facilities only the portions of such grants which, in the department's judgment, will not be needed for the payment of the construction cost of the dam and reservoir, in the case of a grant under subdivision (b) of Section 12884 2, or the construction cost of any project facilities other than the onshore recreation facilities, in the case of a grant under subdivision (a) of Section 12884 2

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act

Adds Sec 12893, Wat C , as proposed by AB ___, Wat C.

Specifies that when grants are made for part of construction cost of a dam or reservoir properly allocated to recreational functions of statewide interest or for part of project construction costs properly allocated for fish and wildlife enhancement, the Department of Water Resources may provide in the grant contract for deposit of that portion of the grant not needed for payment of dam and reservoir construction costs or other project facilities, as the case may be, into a special reserve account to be used solely for the construction of specified onshore recreation facilities until they are paid for

Vote—Majority, Appropriation—No, State Expense—Yes

DRAFT BILL NO. 6

An act to amend Sections 12882 and 12882 4 of the Water Code, as proposed to be added by Assembly Bill No. ___ of the 1967 Regular Session, relating to water resources.

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

SECTION 1 Section 12882 of the Water Code, as proposed to be added by Assembly Bill No ___, is amended to read:

12882 Applications for loans or grants or financial participation by the state under this chapter shall be made to the department in such form and with such supporting material as may be prescribed by the department Supporting material with respect to the ability of a public agency to repay the loan and to the reasonable ability to finance the proposed project from other sources may be supplied by the county assessor ~~and the county engineer~~

SEC 2 Section 12882 4 of the Water Code, as proposed to be added by Assembly Bill No ___, is amended to read:

12882 4 *A copy of each application, except applications for loans for the preparation of proposed feasibility reports, shall be transmitted by the department to the Department of Parks and Recreation and to the Department of Fish and Game* A report on each application shall be prepared by the Department *of Water Resources* and filed with the Legislature *, together with the comments of the Department of Parks and Recreation and the Department of Fish and Game.* In such report the department shall make findings as to the nature and extent of the statewide interest in the project, the public necessity for the project, the urgency of the need, and the engineering feasibility, economic justification, and financial feasibility of the project; provided, that in the case of reports on applications for loans for the preparation of proposed feasibility reports, in lieu of the above findings the department shall make findings with respect to the public necessity for and urgency of need of the proposed project and the ability

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act.

Amends Secs 12882 and 12882 4, Wat C as proposed by AB ___, Wat C

Requires Department of Water Resources to transmit a copy of a loan or grant application to the Department of Parks and Recreation and to the Department of Fish and Game, and to include in its report to the Legislature on each such application (1) the comments, if any, of either department, and (2) a statement of the project's existing onshore facilities and other facilities which the department will require as a condition of the grant or loan

Vote—Majority, Appropriation—No, State Expense—Yes

of the applicant to repay the requested loan for the preparation of the proposed feasibility report *The report shall include a statement of the project's existing onshore facilities and any other local facilities to be required by the department as a condition of the grant or loan*

DRAFT BILL NO. 7

An act to add Section 12891.3 as proposed by Assembly Bill No ___ to the Water Code, relating to water resources.

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

SECTION 1. Section 12891.3 is added to the Water Code, as proposed by AB ___, to read:

12891.3 The Auditor General may make periodic audits of the books and records of public agencies receiving loans and grants pursuant to this chapter for the purposes of determining that the money received by such public agencies as loans or grants has been expended for authorized purposes and under authorized conditions.

LEGISLATIVE COUNSEL'S DIGEST

Davis-Grunsky Act

Adds Sec 12891.3, Wat.C., as added by AB ___, Wat C.

Authorizes Auditor General to make periodic audits of books and records of public agencies receiving state loans or grants for local water projects to insure that such moneys are expended for the purposes and under the conditions authorized

Vote—Majority; Appropriation—No, State Expense—Yes.

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STATE AND LOCAL RESPONSIBILITIES FOR WATER RESOURCES

a report on

- Groundwater
- Water Boards and Commissions Reorganization
- Water District Organization

by the

ASSEMBLY INTERIM COMMITTEE
ON WATER

CARLEY V PORTER, *Chairman*
HALE ASHCRAFT, *Vice Chairman*

LETTER OF TRANSMITTAL

December 13, 1966

Honorable Jesse M Unruh
Speaker of the Assembly
Members of the Assembly
State Capitol
Sacramento, California 95814

Gentlemen:

In accordance with the provisions of House Resolution 710 of the 1965 Regular Session, Assembly Interim Committee on Water herewith submits a record of committee activities and its report entitled *State and Local Responsibilities for Water Resources*

Part I includes the study of groundwater, which was conducted by the Subcommittee on Groundwater

Part II includes studies of the "Little Hoover Commission" recommendations for reorganization of water boards and commissions (with the exception of recommendations relating to pollution and water rights, which are found in the report of this committee entitled *New Horizons in California Water Development*, Vol 26, No. 16)

Part III of this report includes recommendations on studies in the area of water district organization. This study was conducted by the Water District Organization Subcommittee. Assemblyman Ashcraft served as chairman of this subcommittee

Draft legislation to implement recommendations of this report are found in the appendix

Respectfully submitted,

CARLEY V. PORTER
Chairman

Hale Ashcraft,
Vice Chairman
Frank P Belotti
Eugene A. Chappie
John L E Collier
William E Dannemeyer
Pauline L Davis
(With a few reservations)
Houston I Flournoy
Charles B. Garrigus
Burt M Henson
Harvey Johnson
Ray E Johnson
Frank Lanterman *
Charles W Meyers
Robert T Monagan
John P Quimby
Newton R Russell
John E Williamson
Edwin L. Z'berg

* See comment on page 21

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SUMMARY OF RECOMMENDATIONS

PART I. GROUNDWATER

A. *Water Well Standards*

1. The committee recommends the continuation of well reporting requirements as modified by the Legislature in 1965. In order to provide information on new wells to counties and to aid in local establishment and enforcement of well standards, the committee recommends that the law be amended to provide that the Department of Water Resources, at the request of any county, shall notify the county of filings of notices of intention to drill, including a description of the well site and the proposed date of construction only.

2 The committee recommends that the Regional Water Quality Control Boards, after receiving reports from the department, be required to determine whether or not well standards are required to protect the quality of underground waters and to delineate the specific geographic area to be covered by such standards Responsibility for the establishment of well standards should rest with county government Upon a county's failure to adopt ordinances establishing water well standards, the committee recommends that the Regional Control Board in the affected area be authorized to adopt such standards with enforcement as if the standards had been established locally

3 The committee recommends that provisions relating to water well standards be transferred to Division 7 of the Water Code (the State Water Quality Control Law).

B. *Cost Sharing of Groundwater Management Studies*

The committee recommends that the department continue to develop the concept of substantial local participation in groundwater basin management studies and to require maximum local participation feasible.

PART II. WATER BOARDS AND COMMISSIONS REORGANIZATION

A. *California Water Commission*

1. The Commission Staff

a The committee recommends that the Water Commission be made more effective by providing that the executive secretary and the staff engineer be employed directly by the commission.

b. The committee recommends that the Water Commission request the services of the Attorney General whenever it feels that the proper performance of its duties requires independent legal counsel.

c. The committee recommends that the maximum compensation for members of the commission remain the same but that the maximum for the chairman be increased from $2,000 to $2,500

2. Commission Responsibility

In order to more fully delineate the responsibility of the commission, the committee recommends that a number of general areas where the commission now functions and should continue to function be set forth in the law as required responsibilities of the commission as follows:

Federal Appropriations: The committee recommends that the commission be charged with the responsibility of presenting consolidated views of the state to the Congress on federal appropriations and that the commission be required to consult with local, state and federal agencies

Federal Project Coordination: The committee recommends that on matters concerning the coordination of planning, construction, and operation of federal water development and flood control projects in California, the Water Commission should advise affected state agencies and the Governor and should be authorized to conduct public hearings and investigations as part of this process

Review of Department of Water Resources Planning Programs: The committee recommends that the department be required, each year, to provide the commission with a report summarizing its planning program, including existing and prospective planning projects and the cost of these projects. The commission should be authorized to conduct public hearings and make recommendations on the department's planning program to the department, the Governor and the Legislature.

Review of Feather River Project: The committee recommends that the commission be authorized to make an annual review of the project and report its findings to the Director of Water Resources, the Legislature and the Governor including hearings prior to any authorization by the director of additional features of the State Water Project.

B. State Reclamation Board

The committee recommends that abolition of the Reclamation Board be given further study with particular attention directed to the five problem areas outlined in the body of the report.

PART III. WATER DISTRICT ORGANIZATION

A. Uniform District Election Law

1 The committee recommends that the following district acts be amended to provide for general district elections pursuant to the Uniform District Election Law: California Airport Districts (3), Community Services Districts (125), Library Districts (8), Memorial Districts (26), Police Protection Districts (6), Montalvo Municipal Improvement District (1), Embarcadero Municipal Improvement District (1), Estero Municipal Improvement District (1).

2 The committee recommends that the Uniform District Election Law be broadened to include uniform recall provisions, including separate provisions for land ownership voting districts

B. Reclamation Districts

The committee recommends that legislation be enacted bringing election provisions of the Reclamation District Law up to date and requiring biennial elections.

C. District Bonds Review

The committee recommends that an appropriate Assembly Committee make a comprehensive interim study of bond issue review to ascertain the necessity of continuing this practice

PART I

GROUNDWATER

INTRODUCTION

During the current interim the committee considered several areas under the general topic of groundwater. For this purpose Chairman Porter established a Groundwater Subcommittee consisting of the following: Porter, Chairman; Collier, Belotti, Chappie, Mrs. Davis, Garrigus, Henson, Ray Johnson, Meyers, Monagan, Quimby and Russell, members

The subcommittee was assigned two major areas.

A The Need for Water Well Standards Legislation
B Cost Sharing of Groundwater Basin Management Studies

The subcommittee held the following meetings

Date	*Location*	*Subject*
September 23, 1965	Sacramento	Water Well Standards and Cost Sharing of Groundwater Basin Studies
December 7, 1965	San Diego	Cost Sharing of Groundwater Basin Studies and the Need for New Groundwater Legislation
September 28, 1966	Fresno	Water Well Standards
October 19, 1966	Sacramento	Executive Session

With regard to water well standards, at its initial meeting the committee received testimony from the State Department of Water Resources on the subject of Bulletin 74 It also received testimony from the State Department of Public Health, the other state agency principally involved in water well regulation The committee also received testimony from the representatives of the Associated Drilling Contractors At its meeting in Fresno on September 28, 1966, following the opportunity of the Department of Water Resources to present its views on proposed revision of Bulletin 74, the committee received public testimony on Bulletin 74 and on the provisions of A B 2707, as originally introduced (which would have implemented the recommendation of Bulletin 74 that state water well standards and enforcement be established).

With regard to cost sharing of groundwater basin studies by the department the committee received testimony from the State Department of Water Resources at its meetings in Sacramento on September 23, 1965, and in San Diego on December 7, 1965 In addition, the committee heard considerable testimony from local agencies involved in groundwater basin studies at its hearing on December 7, 1965

Draft legislation incorporating the committee's recommendations is included in the appendix of this report

The committee wishes to express its appreciation to the committee staff and the offices of the Legislative Analyst and Legislative Counsel for their assistance in the preparation of this report.

A. THE NEED FOR WATER WELL STANDARDS LEGISLATION

Water Wells, Groundwater, and Existing Law—a Brief Statement of Problem

Over 50 percent of the water used in California today is derived from groundwater supplies The demands which increasing population and increasing per capita use are placing on groundwater supplies and which in the future will continue to place are well documented and need no elaboration here [1]

Regulation of construction of water wells and destruction of abandoned wells can be a significant factor in the protection of groundwater quality While properly constructed wells do not cause impairment of groundwater, inadequacies in construction or careless abandonment may result in deterioration of the quality of groundwater Such deterioration in quality (depending on source and type of deterioration and surrounding geological conditions) can affect either the water immediately adjacent to the well in question, the water drawn by a group of closely adjacent wells or a much larger quantity of groundwater in underground aquifers

Contaminants entering the groundwater supply through improperly constructed wells have been major factors in outbreaks of water-borne diseases in parts of the United States However, contaminants entering improperly constructed wells are not restricted to those carrying disease producing organisms, but include other sources of degradation of water quality as well Inadequately constructed or improperly abandoned wells are not believed to have been the sole cause of water quality degradation where a sizeable portion of a California groundwater basin has been involved However, the construction of thousands of additional wells in California each year, coupled with the fact that many of them are becoming more closely spaced, and an increase in the number of wells which can be expected to fall into a state of disrepair indicates that the potential for impairing the quality of groundwater continues to grow The Department of Water Resources has found some groundwater impairment in some localities where numerous shallow wells are located [2] Because of the great dependence of California on its groundwater supply it is imperative that such supplies be protected and that risks to public health and economic loss not be incurred because of inadequate water well construction standards or careless abandonment.

Existing Law

At present there are no statewide standards regulating construction and abandonment of water wells Local agencies, however, have general authority to adopt and enforce regulations on a local basis and many cities and counties have adopted water well ordinances of some type [3]

[1] See previous report of this committee, *Groundwater Problems in California*, Assembly Interim Committee Reports, Vol 26, No 4, December 1962 See also the report of this committee, *New Horizons in California Water Development*, Assembly Interim Committee Reports, Vol 26, No 11.
[2] *Bulletin No 74-3*, "Water Well Standards in Del Norte County," page 61
[3] For example, see San Luis Obispo County ordinance and Los Angeles County Health Department regulations

Although the state does not have this authority, it does have various designated responsibilities in the area of protection of groundwater quality Division 7 of the California Water Code states that the primary responsibility for control of water *pollution* by the state rests with the nine Regional Water Quality Control Boards. State water *quality* control is divided between the State Water Quality Control Board, when quality "is of statewide concern," and the regional boards when quality is primarily "of a regional concern"

In 1949 when the Legislature enacted the State Water Quality (then Pollution) Act (Dickey Act) it created several separate and distinct state responsibilities with regard to water pollution as part of a comprehensive program

First, the law established the nine Regional Water Quality (then Pollution) Control Boards to establish waste discharge requirements for pollution control The law also established the State Water Quality (then Pollution) Control Board

Second, the Legislature created the State Water Pollution Control Fund (Water Code 13100 et seq) with an appropriation of $1 million to provide loans to municipalities and districts for the construction of sewage and storm drainage facilities Supervision of the program was placed with the State Water Quality Control Board

Third, concurrent authority in certain areas of water pollution was granted the State Department of Public Health At present the State Board of Public Health may make and enforce regulations for public domestic wells It may make and enforce regulations with respect to use of reclaimed waste waters to recharge water bearing strata which may be a source of domestic water supply (Health and Safety Code Section 4458).

The Department of Public Health may also order abatement in cases of contamination (Health and Safety Code Sections 5412 and 5461) Section 4458 of the Health and Safety Code relates to groundwater It provides that no wells should be used for the purpose of disposal of sewage into water bearing strata used or suitable for domestic use

It should be emphasized that the Department of Public Health is primarily concerned with the maintenance of standards of water for domestic use, especially with respect to "contamination."[4] as distinguished from "pollution "[5] The concern, however, of this committee is that the quality of groundwater be protected and that measures be taken to prevent *any* source of pollution or impairment of the quality of groundwaters as a result of inadequate well construction standards or careless abandonment

Thus, the committee believes that action is necessary not only to prevent the extreme case where public health is endangered, but to prevent any pollution or degradation of groundwater In this respect an improperly constructed or carelessly abandoned well may contribute

[4] Contamination "means an impairment of the quality of the waters of the state by sewage or industrial waste which creates an actual hazard to the public health through poisoning or the spread of disease" (Water Code Section 13005, Health and Safety Code Section 5400)

[5] Pollution "means an impairment of the quality of the waters of the state by sewage or industrial waste to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic, industrial, agricultural, recreation or other beneficial use . . " (Water Code Section 13005, Health and Safety Code Section 5410)

to such deterioration of groundwater supplies regardless of the purpose for which a well was constructed, i e , domestic or agricultural supply

Fourth, Sections 7078 to 7082 of the Water Code were established requiring well drilling reports and logs on all water wells drilled in California be submitted to the Regional Water Pollution Control Boards As modified by the Legislature at the 1965 session, Sections 7078 to 7082 specify that the report must be filed with the Department of Water Resources whenever a well is completed, repaired, or abandoned. A notice of intent to drill is also required.

Fifth, Section 231 of the Water Code was enacted requiring the Department of Water Resources to investigate and survey damage of quality of underground waters as follows·

> The department, either independently or in cooperation with any person or any county, state, federal or other agency, shall investigate and survey conditions of damage to quality of underground waters, which conditions are or may be caused by improperly constructed, abandoned or defective wells through the interconnection of strata or the introduction of surface waters into underground waters. The department shall report to the appropriate regional water pollution control board its recommendations for minimum standards of well construction in any particular locality in which it deems regulation necessary to protection of quality of underground water, and shall report to the Legislature from time to time, its recommendations for proper sealing of abandoned wells

Although the Department of Water Resources may report to appropriate regional Water Quality Control Boards its recommendations for minimum standards of well construction, there are no provisions for enforcement of such standards In accordance with this section the department has made several investigations and has issued reports on groundwater supplies and relevant geological data [6] Bulletin 74, "Recommended Minimum Well Construction and Sealing Standards for Protection of Ground Water Quality, State of California," preliminary edition, released in July 1962, sets forth the department's case for the establishment of state standards for well construction Final revision of this report is now being written

In addition to the foregoing, the Business and Professions Code requires that any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, reperforating

[6] California State Department of Water Resources, Division of Resources Planning "Recommended Water Well Construction and Sealing Standards, Mendocino County" Bulletin No 62 November 1958
"Sea Water Intrusion in California" Bulletin No 63 November 1958
"Water Quality and Water Quality Problems, Ventura County" Bulletin 75 February 1959
"Recommended Minimum Well Construction and Sealing Standards for Protection of Ground Water Quality, State of California" Bulletin No 74 Preliminary Edition July 1962
"Recommended Minimum Water Well Construction and Sealing Standards for the Protection of Ground Water Quality, Alameda County" Bulletin No 74–2 Preliminary Edition December 1962
"Water Well Standards, Del Norte County" Bulletin No 74–3 August 1966
"Recommended Well Construction and Sealing Standards for Protection of Ground Water Quality in West Coast Basin, Los Angeles County" Bulletin No 107 August 1962

or abandoning water wells be a licensed contractor (this licensing is provided in Chapter 9 Division 3 of the Business and Professions Code). There are several exceptions to this licensing requirement. Included among these exemptions are a person or his employees who constructs, alters or abandons a water well for his *own use;* representatives of state and federal governments; representatives of local governments and political subdivisions of the state, public utilities operating under the jurisdiction of the Public Utilities Commission; the drilling and operation of oil and gas wells when performed by an owner or lessee; construction on federally owned sites; and jobs costing less than $100 (Business and Professions Code Sections 7026.3 and 7040 to 7048).

These exceptions appear reasonable. The committee's study of water well standards has not included an inquiry into the need for additional licensing requirements. The committee's concern has primarily been directed toward the need for regulation of physical standards of well construction and abandonment.

1965 Legislation

Chairman Porter introduced AB 2707 at the 1965 session of the Legislature to implement the recommendation of *Bulletin 74* that the state establish and enforce well standards. As originally introduced, AB 2707 would have given the Department of Water Resources this task. Such authority, however, was amended out of the bill and in its final form, the bill merely revised the reporting procedure for persons drilling wells. As enacted into law, the bill requires that the log of drilling operations kept by a well driller be filed initially with the Department of Water Resources, rather than with the Regional Water Quality Control Boards. In addition, the driller of any well is required to provide the department with a *notice of intent* on a postcard form prior to commencement of drilling. The advantage of this new procedure is that the data goes directly to the Department of Water Resources which is the primary data gathering agency of the state in the resources field.

Public Reaction

Assembly Bill 2707, in its original form, has been criticized on several bases. In its study, the committee has not tried to evaluate the myriad of technical objections to the proposed standards in *Bulletin 74,* but shall discuss several areas of disagreement to indicate the general objections presented to the committee.

1. Exemptions of agricultural drainage wells

There was a general objection by many to the inclusion of agricultural wells under any regulations. For example, in parts of the San Joaquin Valley it is necessary to pump water for drainage purposes, i.e., to lower the water table so that agricultural practices may be carried out. It was argued that to apply the standards of *Bulletin 74* to agricultural drainage wells would raise costs prohibitively. Hence, strict regulations should be attempted only in cases where a threat of contamination exists.

In this respect the Department of Water Resources recognized in its proposed revisions of Bulletin 74 that it is "impractical to provide standards for every conceivable situation and further that it may be necessary to deviate from statewide standards or even substitute other measures which will provide protection equal to that in our recommended standards" [7]

The Department of Water Resources, in its proposed revision of Bulletin 74 states that "No protective seal should be required for agricultural wells except when they are adjacent to domestic wells or to known sources of pollution or contamination or sources of surface mineral degradation." In addition "With respect to the destruction of wells our recommendations have been revised to take into account the varying geological groundwater conditions encountered in the state" [8] The general feeling of those testifying at the committee's hearing was that particularly with regard to agricultural wells, local conditions require that any standards be tailored to specific needs, which vary from area to area.

2. Cost of compliance

A second related complaint was that the cost of compliance with state standards proposed in Bulletin 74 would be a burden on local interests The department's revisions proposed for Bulletin 74 seem to give more flexibility to the standards in this respect but considerable concern was expressed over cost factors The committee has been unable to precisely estimate the cost implications

3. Need for local control

Another general category of objection was that in view of varying conditions, local, rather than state water well standards, were more desirable These criticisms resulted in two general suggestions to the committee

First, the state should require local agencies to adopt standards and enforce them [9] on the basis that local agencies can more efficiently set and enforce standards since local agencies have more detailed knowledge of groundwater conditions and can more effectively enforce standards.

It was pointed out to the committee that several counties and cities have enacted and for some time have enforced local water well standards which appear to be stricter than those proposed by the state. It should also be noted that the proposed enforcement of AB 2707 (as introduced) was by the Attorney General. In this regard, local enforcement appears to be considerably more expeditious than utilization of this state entity.

Second, a number of witnesses before the committee indicated that if the state were to establish standards (either on the state level or on a regional level by an entity such as the Regional Water Quality Control Boards) that enforcement of such standards, in any case, be left with local entities.

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[7] Statement to Assembly Interim Committee on Water, September 28, 1966, testimony of J R Teerink, page 4

[8] *Loc cit*

[9] Statement to Assembly Water Committee by Eldridge Lowry, Senior, water works engineer, City of Los Angeles, September 28, 1966, page 4

Recommendations

The Department of Water Resources has shown that there exists a need for technical standards for water well construction and abandonment This is borne out by the fact that many local agencies have seen fit to adopt and enforce standards at the local level In addition, most states have adopted and enforce some type of technical standards for construction of water wells [10]

The committee recognizes that there are considerable variations in groundwater conditions throughout the state associated with various geological factors In a state with such diverse geologic and hydrologic conditions as California, it would be most difficult to formulate a simple set of standards which would be satisfactory for the entire state For example, a requirement which may be necessary to protect an aquifer in one area may impose prohibitive and unnecessary costs on a person drilling a well in another area. Conversely, requirements which would be strict enough in one area may not be adequate in another

The primary responsibility for regulation of water quality rests with the State and Regional Water Quality Control Boards The committee is not convinced that its investigations have shown that the state should impose water well standards on localities *if* local authorities are required to take adequate precautions where necessary to protect the quality of groundwater

The Department of Water Resources has conducted a series of studies of the need for water well standards in various areas [11] However, there appears to be inadequate coordination between the Department of Water Resources and local public agencies with regard to many studies of this type [12] Specifically, this lack appears between Regional Water Quality Control Boards, which protect the underground water supply by establishing waste discharge requirements, and Department of Water Resources in making its studies under Water Code Section 231.

It should be noted that the suggested standards in *Bulletin 74* have proved to be valuable aids to local agencies in establishing local regulations This advisory function will continue to be valuable to local entities

Because now there is no provision for requiring local agencies to enact and enforce water well standards, the *committee recommends that the state require local and regional enforcement of water well standards in specified areas which have been determined to be in need of standards, but which have not presently adopted them*

The *committee further recommends that the water well standards program be supervised on a policy level by the Regional Water Quality Control Boards* utilizing technical data and studies of the Department of Water Resources under Water Code Section 231.

Specifically, the committee recommends that a water well standards law be enacted which will include the following:

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[10] Bulletin 74, Op cit Appendix D See also transcript, September 23, 1965

[11] See footnote 6, page 16 for list

[12] See report of this committee, "*New Horizons in California Water Development*," for a discussion of this problem with regard to waste water reclamation studies under Water Code Section 230 Also see Section E of this report with regard to groundwater basin studies

1. Well Reports

The committee recommends that the water well reporting requirements, enacted in 1949 and modified by the Legislature by AB 2707 at the 1965 session of the Legislature, be continued In order to provide information on new wells to counties and to aid in local establishment and enforcement of well standards *the committee recommends that the reporting law be amended to provide that the Department of Water Resources, at the request of any county, shall notify the county of filings of notices of intention to drill including a description of the well site and the proposed date of construction only.* Similar information would be made available in the same manner with regard to the notice of completion filed by the well driller The committee believes that the existing provisions of law which stipulate that the "well logs" be kept confidential, with certain exceptions be continued. That is, these logs are not to be made available to the general public.

2. Department of Water Resources Studies

The committee recommends that the Department of Water Resources continue to make investigations, studies, and reports pursuant to Section 231 of the Water Code It is anticipated that departmental reports made under this section will be similar to those in the past [13] and will include recommended standards for well construction and maintenance in the area involved. Testimony to the committee indicated that these reports have proven to be of assistance to local agencies in formulating water well standards.

In effect, this recommendation would result in the investigatory and data gathering functions of the department remaining the same as they are under existing law.

3. Well Standards

The committee recommends that primary responsibility for determining whether or not a given area requires minimum water well standards be given to the Regional Water Quality Control Boards. The committee recommends that the regional boards, after receiving reports from the department, be required to make a determination of whether or not well standards are required to protect the quality of underground waters and to describe the specific geographic area to be covered by such standards. The regional board shall make this determination only after conducting a public hearing on the need to establish standards for the specific areas.

If the regional board determines that water well standards are required in a given area the committee believes that the responsibility for establishing such standards should rest with county governments.

To implement this local establishment and enforcement of water well standards the *committee recommends that the board transmit its findings, together with the department's recommended standards, to each affected county.* After receipt of the finding of the regional board that standards are necessary, the counties involved would have 120 days to adopt ordinances establishing water well standards in the area designated by the regional board. In order to assure adequate local stand-

[13] See footnote 6, page 16 for list

ards, such ordinances shall take effect 60 days from the date of their adoption by the county unless the regional board determines that the standards adopted are not adequate to protect the quality of the affected waters and to meet the objectives established by the regional boards. Any such disapproval could, of course, be appealed to the State Water Quality Control Board.

The committee is confident that county governments will assume this responsibility for adopting and enforcing the necessary ordinances to protect groundwater quality. The committee is also convinced that there is no need for any state agency to assume this function which is one that can best be administered and formulated on the local level. However, to provide for the possibility that a county may not adopt the necessary ordinances *the committee recommends further that upon failure to adopt ordinances establishing water well standards the Regional Water Quality Control Board in the affected area be authorized to adopt such standards In such a case, the enforcing responsibility of the local agency would be as if the ordinance had been established locally* *

Testimony to the committee indicated that counties are willing and able to adopt and enforce the necessary standards to protect the quality of the underground waters of our state.

4. Technical Provisions

Inasmuch as water well standards are primarily a matter of water quality *the committee recommends further that provisions relating to water well standards be transferred to Division 7 of the Water Code (the State Water Quality Control Act)*

A draft of a bill proposed to implement the foregoing committee recommendations is found in the appendix

B. COST SHARING ON GROUNDWATER MANAGEMENT STUDIES

Background

During hearings on the 1964 Budget Bill the Senate Finance Committee considered the need to adopt a state policy on cost sharing or local participation in groundwater basin management studies which are undertaken by the Department of Water Resources. The committee asked for recommendations by the Legislative Analyst and the Department of Finance

Recommendations for cost sharing were prepared and submitted by the Legislative Analyst and the Department of Finance in the 1965 General Session There was considerable difference in viewpoint contained in the recommendations Assembly House Resolution 627 was introduced by Chairman Porter to authorize interim study of the problem.

A hearing was held by the Groundwater Subcommittee of the Assembly Interim Committee on Water on September 23, 1965 at which time the Department of Water Resources and the Office of the Legislative Analyst restated the recommendations which they had originally presented to the Legislature in the preceding session Subsequently on

* Mr Lanterman accepts this recommendation provided that county ordinances can be appealed to the regional boards

December 7, 1965, further testimony was received by the subcommittee in San Diego from a substantial number of local water agencies which wished to present their views

The Problem

In general, the problem under consideration involves the extent to which the Department of Water Resources should budget and conduct its studies of the management of groundwater basins contingent upon financial or other participation by the local water agencies which overlie the groundwater basin and possess rights to pump the water or to manage the groundwater aquifers

The principal area of concern is in southern California where the Department of Water Resources has been conducting its "Planned Utilization of Groundwater Basin Studies" This study consists of a series of studies starting with the west coastal plain of Los Angeles and moving inland successively through the San Gabriel Basin, the Chino-Riverside Basin and into the Bunker Hill Basin in the vicinity of the City of San Bernardino Other studies of a somewhat similar nature have been proposed by the department for the San Joaquin Valley and the Sacramento River Valley and a small study has been started in the Livermore Valley area of Alameda County. The Orange County Water District had already undertaken certain work on its own initiative

The planned utilization studies establish the hydrology of the basin, the geologic formation and transmissability of the aquifers in the basin, the water requirements, imports and exports of water from the basin and the basic water transportation facilities serving the basin The above forms of information are collected, analyzed and integrated in the course of the study

Various assumptions and objectives regarding the desirable operation, management and economies of the basin's water resources are then tested using the above data in order to arrive at a management plan or series of recommended operations which would represent the optimum use of the water supplies and facilities available in the basin or identify the facilities needed to achieve such optimization These studies utilize digital computer techniques on a large scale to secure the necessary data handling capacity to consider both surface and groundwater supplies and requirements conjunctively. The planned utilization studies by the Department of Water Resources in the Los Angeles area represent substantial pioneering in the field of water resources management

Recommendations of the Legislative Analyst

The Legislative Analyst, pursuant to the request originally made by the Senate Finance Committee, reviewed the increasing cost of the groundwater studies which the department has been budgeting and pointed out the tendency for the department, in recent years, to budget such studies entirely at state expense Certain studies such as the planned utilization of groundwater basins obviously are of direct value to the overlying water users in that the studies permit a more efficient and economical utilization of their water resources

The analyst also noted that since the water involved is subject to the vested rights of the users, the department in most cases is studying means to enhance private property rights. Therefore, it was concluded that financial participation in the studies by the possessors of those water rights was appropriate and justified A cost sharing formula of 50 percent state and 50 percent local financial participation was recommended based on the existing practice of cost sharing for watermaster service.

Recommendations of Department of Water Resources

The Department of Water Resources endorsed the concept of some cost sharing but did not agree with the 50 percent sharing recommended by the analyst Instead, the department emphasized the possibility that the groundwater storage capacity involved in many of the studies could be an important statewide water resource which the state might wish to utilize in conjunction with future water projects. The department recommended that the same cost sharing policy be applied to both surface and groundwater basin studies The amount of local participation would be based on the department's evaluation of the extent of statewide interest in any particular groundwater management study. The degree of local participation would vary depending on whether the study fits into the department's schedule and serves a departmental need for information as well as whether the study is primarily local or statewide in interest

The department expressed the belief that any study proposed by a local agency would have some degree of statewide interest but that the department should not consider budgeting a cooperative study of this type unless the degree of statewide interest would warrant at least a 50 percent state contribution Each project would have to be evaluated by the department at the time it is budgeted to determine how it met the above criteria and the extent to which local participation would be justified In only one instance, that of the San Joaquin Valley Groundwater Investigation, was specific cost sharing recommended by the department.

Views of Local Water Agencies

The local water agencies which testified before the subcommittee in San Diego expressed, in varying degrees, a substantial interest in the groundwater basin studies undertaken by the department The local agencies stressed their desire to participate in the studies involving their basins to assure that their interest and water rights were protected and that the department studies were responsive to the groundwater management problems the local agencies believed existed.

At the same time, the local agencies pointed out their difficulties in financing a substantial portion of the high cost of the complex and technical work which these studies require Representatives from the San Joaquin Valley indicated no present interest in such studies except for the Kern County Water Agency which stated that it plans to undertake a limited study in cooperation with the federal government and the Department of Water Resources The Orange County Water District and the San Bernardino Valley Municipal Water District expressed a strong desire that the schedule for groundwater basin studies

in their areas be expedited in order to provide answers to problems currently confronting the districts.

The testimony tended to indicate a feeling that the departmental studies were somewhat remote, unresponsive or unsympathetic to the existence of local political or economic problems involved in management of groundwater basins In numerous instances, the witnesses stressed the desire of their agencies to maintain and enhance their responsibility for such groundwater management and made it clear that the state and the Department of Water Resources were not welcome as management agencies in the area. In general, it appeared to the committee that the financial assistance of the department and its technical experience and capabilities in the difficult groundwater basin management studies were welcomed and desired by the local agencies but that the local agencies were fearful of losing control of their groundwater basins

Events of 1966 Budget Session

During the 1966 Budget Session, the San Bernardino Valley Municipal Water District and the Orange County Water District requested the Legislature to augment the department's budget in order to expedite the studies in their respective areas In both cases, the local agencies proposed substantial local participation to assist in meeting the higher rate of expenditure required in fiscal year 1966–67 if the studies were to be expedited. Through a series of negotiations and counter proposals the Budget Bill, as finally adopted, included limited augmentations for the studies in both Orange County and the San Bernardino area with the understanding that the local agencies would also contribute to the study

Since the adoption of the 1966 Budget Act, the Department of Water Resources has negotiated agreements with the water agencies in Orange County, in the Chino-Riverside area and in the San Bernardino area to provide for local participation in the studies Each of the three agreements follows a somewhat different pattern depending upon local conditions, the work required and the ability of the local agencies to contribute to the work In general, the agreements provide for varying combinations of contributions of funds, manpower and services to the department by the local agency The department serves as project manager and provides the major source of funding for the study.

Wherever possible, personnel from a local agency are assigned to the department to work with the department on the study in order to become familiar with the work, to provide an interchange of information at a technical level and to assure the technical capacity of the local agency to carry out the findings and conclusions of the study when it is completed In some instances, hydrologic and other data is being furnished and evaluated by the local agency.

In other cases, office space, computer time and various services are being contributed In each instance, however, the department has adopted the policy of securing sufficient local participation to demonstrate a genuine local interest in the study and an assurance that sufficient understanding and exchange of viewpoints and information exists between the department and the local agency to warrant undertaking the work. In particular, there is cooperation in the selection of the

basin management alternatives evaluated in the study. This increases the probability that the technical problems identified by the department will be evaluated along with the economic, managerial and political problems, which are of major concern to the local agency if the results of the study are to be implemented

Conclusion and Recommendations

The committee concludes that the Legislature's exploration of the extent to which local agencies should participate in groundwater basin management studies has been beneficial to all concerned in developing understanding of the problems involved The local agencies more fully appreciate the high cost to the state and the need for local financial participation in the studies The department and the Legislature have seen the fact demonstrated that where local agencies are genuinely interested in having studies undertaken, these agencies are both willing and able to find methods within their resources to participate actively in the study Evidence to date is that such participation is of major advantage to all concerned and is an essential ingredient of a successful study

The committee has not been able to identify any specific requirements for local participation in a groundwater management study because of the differing financial and technical abilities of the local agencies to provide technical assistance or to share the cost In addition, the nature of the problem varies substantially from basin to basin and this may determine the type of participation a local agency can justify It is apparent, however, that participation sufficient to require allocation of a substantial portion of the resources of the local agencies should be required by the department and the Legislature for each groundwater basin study if assurances of local interest in, and support for the implementation of the study findings are to be secured An arbitrary requirement for a given percentage contribution by a local agency does not appear to be feasible as a general guide until more information can be developed

The committee recommends that the department continue to develop the concept of substantial local participation in groundwater basin management studies and to require the maximum local participation feasible

PART II

WATER BOARDS AND COMMISSIONS REORGANIZATION

INTRODUCTION

In April 1965, the Commission on California State Government Organization and Economy, commonly known as the "Little Hoover Commission," issued a report on "The Use of Boards and Commissions in the Resources Agency." The report dealt with the 41 boards and commissions in the Resources Agency and recommended a number of major changes in the organization of these boards and commissions.

A number of the agencies involved are those traditionally under the jurisdiction of the Assembly Water Committee, and during the 1965 session, the committee considered five bills implementing the report, only one (AB 2504, Marks) of which was enacted. The bill, in fact, was the only Little Hoover Commission recommendation adopted at the 1965 session It transferred responsibility for "state filings" from the California Water Commission to the State Water Rights Board.

In its report to the Legislature, the Little Hoover Commission not only made specific recommendations with regard to modifying existing boards and commissions, but it also presented a rather comprehensive series of recommendations on the basic concepts and criteria which should guide the organization and operation of plural bodies in the administrative branch of government

The commission's recommendations with regard to specific boards and commissions follow these basic premises of organization developed by the commission As an example of type of guidelines the commission has recommended, it was suggested that the number of members of commissions not exceed seven It also recommended the type of organizational status for the various boards and commissions.[1]

The following boards and commissions discussed in the Little Hoover Commission Report were studied by this committee California Water Commission, Reclamation Board, and State and Regional Water Quality Control Boards This committee's complete recommendations with regard to the State Water Rights Board and the State and Regional Water Quality Control Boards and partial recommendations as to the California Water Commission are presented in the report entitled "New Horizons in California Water Development," Assembly Interim Committee Reports, Vol 26, No. 16 Additional recommendations regarding the California Water Commission are included in Part I of the committee report entitled "Recreation Costs at Water Projects," Assembly Interim Committee Reports, Vol 26, No 15

This report includes partial recommendations as to the California Water Commission and the committee's complete recommendations on the Reclamation Board. This study was assigned by Chairman Porter to the full committee and meetings were held as follows:

October 26–27, 1965	Sacramento	Executive session
October 19, 1966	Sacramento	Little Hoover Commission recommendations
December 13, 1966	San Diego	Executive session

[1] See the Little Hoover Commission Report, pages 12–16 for a discussion of the subject

The committee wishes to thank the committee staff and the Offices of the Legislative Counsel and the Legislative Analyst for their assistance

A. THE CALIFORNIA WATER COMMISSION

The Little Hoover Commission recommends that the California Water Commission be retained but with significant changes in its responsibilities and composition The Little Hoover Commission noted the role of the Water Commission in California resources development, and indicated, "The California Water Commission in its policy advisory role is the broadest based of the many plural bodies in some way involved in the state's water programs"

The Little Hoover Commission recommended that the California Water Commission 1) be assigned the entire functions and duties of the *State Water Quality Control Board*,[2] and 2) assume certain flood control responsibilities which would exist after implementing the recommendations with regard to the reclamation board. (See Section B of this report.)

The Hoover Commission also recommended that the Water Commission be relieved of other duties, including those relating to release of state filings (legislation implementing this was enacted at the 1965 session) and approval of condemnation declarations of public necessity made by the Director of Water Resources

In addition to the specific problems raised by the Hoover Commission, there are other significant policy implications in any study of the California Water Commission. Created in 1956 as part of the compromise legislation establishing the Department of Water Resources, the role of the commission, and particularly its relationship to the Director of Water Resources, has never been the subject of a comprehensive re-examination In recent years the commission (or representatives of the commission) have been given expanded responsibilities in state water planning (such as participation in the comprehensive San Francisco Bay Pollution Study and membership on the California Advisory Committee on Western States Water Planning) without an overall evalution of its functions

The commission's responsibilities under the Davis-Grunsky Act recently have been the subject of discussion by the commission itself This matter is considered and recommendations included in the report of the Davis-Grunsky subcommittee.[3]

The close statutory relationship of the commission to the department, the commission's lack of independent staff, and the widely accepted view that the commission has essential water policy advisory responsibilities, indicated that a broad study of the commission, not limited merely to the matters raised by the Little Hoover Commission, was necessary.

[2] A discussion and committee recommendation on this one part of the Little Hoover Commission recommendation is included in this committee's report, *"New Horizons in California Water Development,"* and is not discussed in this report

[3] See report, *"Reclamation Costs at Water Projects,"* Part I

Background

The California Water Commission was created in 1956 concurrently with the establishment of the Department of Water Resources The commission succeeded to the duties and powers of the old State Water Resources Board. The Water Commission as finally constituted, represented a compromise between conflicting views on the type of organization the new Department of Water Resources should take. There was considerable debate over whether the department should be headed by a board or a single executive

The Legislature resolved the conflict by establishing the Department of Water Resources with a director as its head with the California Water Commission primarily an advisory body. However, as noted above, the commission was given certain statutory duties such as approval of Department of Water Resources regulations, and later upon enactment of the Davis-Grunsky Act was given the responsibility of approving loans and grants In this respect the commission must act affirmatively before Department of Water Resources actions become effective. Secondly, however, the commission serves as a sounding board where the public can present views on proposed water developments in the state and other matters under the jurisdiction of the department.

In practice, the Director of Water Resources reports monthly to the commission and generally brings most matters of major policy importance to the commission for discussion

Since 1961, when the commission was granted authority to utilize subcommittees which could hold hearings throughout the state, the commission has expanded the scope of areas of policy it considers The full commission meets approximately once a month.

Over the years, the commission has received widespread public support It has been limited somewhat, however, in exercising fully independent judgment on some matters because of its close ties to the department. There appears to be general support for broadening the commission's policy functions and assuring its independence of judgment

In reviewing the functions of the commission, the committee believes that its present concept as an advisory body and not as a "board of directors" for the Department of Water Resources is the most appropriate role for the commission The committee believes, however, that if the commission is to provide a more meaningful review of the policies and activities of the Department of Water Resources the Water Code should be amended in a number of specific instances.

1. Staff

The staff of the Water Commission consists of a full-time executive secretary and a full-time engineer Under the existing law both of these employees are not appointed by the commission but are assigned to the commission by the Director of Water Resources In this manner, the commission's staff is responsible not to the commission, but to the director and the Department of Water Resources which, of course, is the department which the commission is charged with advising and whose policies it must review.

The committee *believes that the Water Commission can be made more effective by providing that the executive secretary and the staff engineer be employed directly by the California Water Commission.* The limited clerical assistance necessary for the commission should also be appointed directly by the commission rather than drawn from the staff of the Department of Water Resources. The existing law provides that additional technical assistance for the commission can be provided by the department and this should be maintained so that in the event the commission requires additional staff for specific projects, it can be made available from the department

In addition to providing staff assistance the department also provides legal services to the commission Although the commission does not require extensive legal services it is placed in a difficult position when the need arises to develop an independent review of departmental programs as it must utilize the department's own legal staff for legal portions of such review. The committee notes that under the existing law (see Gov. Code Sec. 11157) the commission is free to utilize the Attorney General for legal services if it so desires The committee *recommends that the commission request the services of the Attorney General whenever it feels that the proper performance of its duties requires independent legal counsel.*

The chairman and members of the California Water Commission are compensated on the basis of $50 per day when on commission business up to a maximum of $2,000 per year per member In reviewing the functions of the commission, the committee has found that the chairman of the commission spends considerable additional time in appearances before congressional committees and in representing the commission throughout the state at functions not connected with the commission's regular work As a result, the commission chairman's time on the job often exceeds the maximum compensation permitted Other state boards, such as the State Water Rights Board provide additional compensation for the chairman Therefore, the committee *recommends that the maximum compensation for members of the commission remain the same but that the maximum for the chairman be increased from $2,000 to $2,500.*

2. Commission Responsibilities

Existing provisions of the Water Code are rather general in their enumeration of the areas within the purview of the commission Section 161 of the Water Code provides "The California Water Commission shall confer with, advise, and make recommendations to the director with respect to *any matters and subjects under his jurisdiction*" (Emphasis added) Section 162 of the code provides that "it is the intention of the Legislature that in the making of all major departmental determinations, policies and procedures, such as departmental recommendations to the Legislature, the Director and the California Water Commission shall be in agreement whenever possible" This code section goes on to describe the procedure for resolving differences between the director and the commission The law provides, however, that in case of ultimate disagreement the views of the director shall prevail The committee has found no instance of a specific disagreement under this section of the law.

In practice, the areas of concern of the Water Commission are limited by those matters which the director brings before the commission. The commission has been somewhat reluctant to voluntarily enter into various problem areas in the absence of direct statutory instruction

In order to more fully delineate the responsibilities of the commission, the committee *recommends that a number of general areas where the commission now functions and should continue to function should be set forth in the law.*

Federal Appropriations At the present time the commission serves as a clearinghouse and central coordinating body in representing California before congressional committees on federal water project appropriations for California Working closely with local representatives and local organizations in actively developing and promoting flood control and water projects in California, the commission annually presents a consolidated statement in behalf of California requests for congressional appropriations

The committee believes that this function of the commission is one of its most valuable functions and the commission's performance in this regard has received broad public approval. The committee *recommends that the commission specifically be charged with the responsibility of presenting consolidated views of the state to the Congress.* In performing this function, the committee *recommends that the commission be required to consult with local, state and federal agencies. The commission also should be authorized to represent, upon request, the views of any local or state agency before the Congress.*

Federal Project Coordination This committee and others have expressed their repeated concern over the need for more adequate cooperation and coordination between the federal and state governments in the development of water projects in California The commission has taken the lead in working toward better coordination of these efforts The committee believes that this function of the commission also should be made a statutory one. The committee *recommends that on matters concerning the coordination of planning, construction and operation of federal water development and flood control projects in California, the Water Commission should be required to advise affected state agencies and the Governor and should be authorized to conduct public hearings and investigations as part of this process.*

Review of Department of Water Resources Planning Programs In other reports, this committee has, on several occasions, expressed the belief that Department of Water Resources planning programs and investigations frequently are conducted with inadequate coordination with local agencies and other interested parties. The committee believes that in reviewing "all major departmental determinations, policies and procedures" (Water Code Sec. 162) the commission should specifically be charged with reviewing the department's planning program Therefore, the committee *recommends that the department be required, on January 1st of each year, to provide the commission with a report summarizing its planning program, including existing and prospective planning projects and the costs of these projects The commission should be authorized to conduct public hearings and make recommendations on the department's planning program to the department, the Governor and the Legislature, in order that full public response to these*

vitally important departmental programs and maximum local utilization of the fruits of these efforts can be obtained

Review of Feather River Project A final area in which the California Water Commission has been active in recent years is evaluation of the Feather River Project Under existing law the Water Commission is not given a specific directive to review the Feather River Project. However, the commission has appointed a subcommittee which is assigned the project The subcommittee makes annual inspection trips of the project and has issued periodic reports on its progress The committee believes commission reviews of the project are helpful and desirable even though the project is carefully scrutinized, particularly by the state's water service contractors The committee *recommends that the commission be authorized to make an annual review of the project and report its findings to the Director of Water Resources, the Legislature and the Governor*

Hearing on Authorization of New Features of the State Water Project. Various provisions of the Burns-Porter Act authorize the Director of Water Resources by administrative authorization to add new projects or features to the State Water Project and to authorize additions to the Water Resources Development System Since these authorizations can be of great importance to the state and its water service contractors and the normal hearing processes of the Legislature are not involved, an administrative hearing is desirable before authorization. The Burns-Porter Act need not be amended to require such a hearing nor is it necessary to restrict the authority of the Director of Water Resources The committee *recommends adding a new section 12944 4 to the Water Code providing that the Director of Water Resources notify the commission of any pending authorization and that the commission be required to hold a hearing and submit its advice and recommendations to the director on any authorization to add projects or features to the State Water Project or the Water Resources Development System.*

Summary

The committee believes that the California Water Commission is one of the outstanding commissions in state government It has provided a conscientious, reliable and sympathetic forum for the public and has proved to be a workable and effective means of providing policy guidance to the Department of Water Resources

However, consistent with the general framework of its advisory function, its responsibility should be more clearly set forth in the law. A draft bill incorporating the committee's recommendations on the California Water Commission (except with regard to water quality and the Davis-Grunsky Act) is included in the appendix to this report

B. RECLAMATION BOARD

Background

The Commission on California State Government Organization and Economy recommended abolishing the Reclamation Board, reassigning

its administrative and engineering functions to the Department of Water Resources and reestablishing the board for an interim period of approximately three years to advise the Resources Agency on a statewide flood control policy and plan.

The Reclamation Board is presently a state agency which consists of seven members with administrative responsibility. The board itself has a dual role Its principal role is the acquisition of lands in the name of the State of California which are required for the levee and channel flood control projects of the U. S Corps of Engineers within the Central Valley covering approximately 30 million acres of land or 38 percent of the state The board's staff consists of approximately 90 persons and its budget averages approximately $5 million per year for this function The above function, which is generally known as furnishing lands, easements and rights-of-way for federal flood control projects, is undertaken by local agencies of government such as flood control districts, counties or municipalities and by the Department of Water Resources in the remaining 62 percent of the state The board also carries out a variety of functions under various working relationships with the Department of Water Resources In general, the Department of Water Resources actually executes many of the responsibilities which are legally assigned to the Reclamation Board

In its second role, the board is also the governing board for the Sacramento and San Joaquin Drainage District which covers 1,726,553 acres of land or approximately 1½ percent of the area of the state extending along the Sacramento and San Joaquin Rivers from the City of Oroville south to approximately the Madera-Fresno County line

The Little Hoover Commission commented particularly on several basic problems of organization which the Reclamation Board poses. Included among these are the confusion which arises from having the Reclamation Board carry out the same responsibility to participate in federal flood control projects which the Department of Water Resources and local agencies execute elsewhere in the state The commission noted that the lack of a clear relationship with the Corps of Engineers, the Department of Water Resources and local districts does not permit a clear identification of the state's position on important policy questions It also pointed out that a fully coordinated planning function for all aspects of water resources is difficult as long as the flood control function in the Central Valley is assigned to a substantially autonomous state body Further, this body is undertaking right-of-way and engineering work which is identical to that being done by larger and more versatile staffs located elsewhere in state government Finally, the commission noted that the board itself is a part-time citizen board involved in administrative matters and that the Water Code permits members of the board to vote on and to benefit personally from programs and policies which they administer [1]

In general, the committee concurs with the recommendations of the commission that the Reclamation Board should be abolished as a separate state agency The hearing conducted by the committee, however, indicated that not all of the functions presently performed by the Reclamation Board should be assigned to the Department of Water Resources since some of them are more properly the functions of local

[1] See Section 8575

government than state government Therefore, as a general guide, the committee believes that the statewide responsibilities for planning and for the administration of state participation in federal flood control projects should be transferred to the Department of Water Resources in order to provide a consistent pattern throughout the state However, a variety of assessing, policing and other functions which appear to be more appropriate for a local agency of government should not be assigned to the Department of Water Resources but instead should remain with the board reconstituted as a local agency The responsibility to formulate a statewide flood control program and policy should be jointly assigned to the Department of Water Resources and the California Water Commission.

Conclusions

The committee can not draw unqualified conclusions on the above guides because of several complex matters which it believes require considerable further study as follows

1. The Reclamation Board is a state agency but it is also the governing board of the Sacramento and San Joaquin Drainage District whose functions and duties are uncertain but appear to be primarily those of a local agency. If the board is to be reconstituted as a local agency, the major differences in powers and geographical jurisdiction of the board in its two roles need to be resolved in order that the appropriate jurisdiction both legally and geographically can be established The confusion and uncertainties involved in the dual role of the Reclamation Board should be resolved only after detailed study.

2. The Water Code contains numerous sections authorizing many functions and providing many legal powers, some of which the Reclamation Board no longer uses while others are substantially broader than are required A detailed evaluation of these powers and deletion of obsolete or inappropriate authority from the code is needed.

3 The Reclamation Board was the state agent involved in *Adams v. California* which held the state responsible, under inverse condemnation, for $6.3 million in damages as a result of the 1955 floods at Yuba City The California Law Revision Commission is presently studying in detail the legal problems of inverse condemnation and the major financial liability the present law creates for the state It may be found, as a result of this study, that some of the sweeping declarations contained in the Water Code with respect to the Reclamation Board, and even its existence as a state agency rather than as a local agency, have contributed unnecessarily to the liability of the state under inverse condemnation

4. The Reclamation Board, under authority recently granted by the Legislature, can acquire lands in fee for recreation purposes where it might otherwise acquire a lesser title to the same lands for flood control purposes. The relationship of the flood control and recreation aspects of land acquisition along the Sacramento River and in the delta needs to be clarified. This may be possible

later based upon planning activities now underway elsewhere in the Resources Agency

5 The Department of Water Resources has recommended that the Reclamation Board serve as the agent to secure repayment for the reimbursable costs of the San Joaquin Valley master drain If this function, which is primarily a function of local government, is assigned by the Legislature to the board it should substantially influence the decision on the area to be included in the local agency, the method of selecting board members, the assessment powers needed, and finally whether a local agency should be established in the San Joaquin Valley separately from the Sacramento Valley

Recommendation

The committee recommends that abolition of the Reclamation Board be given further study with particular attention directed to the five problem areas outlined above.

PART III
WATER DISTRICT ORGANIZATION

WATER DISTRICT ORGANIZATION

Introduction

For several years the committee has been conducting a continuing study of water district organization.[1] During the current interim this subject was assigned to a subcommittee consisting of the following Ashcraft, Chairman; Flournoy, Garrigus, Harvey Johnson, Lanterman, Meyers, Monagan, Porter, Quimby, Russell, and Z'berg, members

The subcommittee spent the major portion of its efforts on a continuation of its study of uniform election procedures Early in its studies the committee determined that the most advantageous method of achieving general uniformity in and modernization of the various water district enabling acts would be to select certain subject areas and develop detailed legislation in one field at a time The first subject area selected by the committee was that of district elections

A. Uniform District Election Law

Following the recommendations of this committee to the 1965 Session of the Legislature, Assembly Bill 1892, the Uniform District Election Law, was enacted and, in its original form, was made applicable to four general district acts and five special district acts, for a total of about 450 individual districts

Following enactment of the Uniform District Election Law in 1965, the committee undertook the objective of adding additional nonwater districts to the coverage of its provisions Although such other districts are not traditionally under the jurisdiction of this committee, it was believed desirable to extend the single election procedure to as many public districts in California as possible, in order to attain maximum effectiveness

When Governor Brown placed the subject of Uniform District Election Law on the call for the 1966 First Extraordinary Session, Assemblyman Porter introduced Assembly Bills 60, 61, 62, 63, and 64 This package of bills which was prepared by the committee, added a significant number of additional districts to the coverage of the Uniform District Election Law. It also made a series of technical changes and corrections in the 1965 legislation As a result of the legislation enacted in 1966, 69 percent of the districts now having elected governing bodies are subject to the provisions of the Uniform District Election Law A summary of provisions of the law relating to elections or appointment of elections is shown in Table 1

1. Additional Districts

Since enactment of the 1966 legislation the committee has continued its studies and development of legislation to bring the remaining 424

[1] For previous reports on this subject see Assembly Interim Committee Reports, Vol 26, No 6, *Subcommittee Reports, and Reports on Referred Bills*, December 1962, Vol 26, No 5, *Study of Water District Laws*, November 1962, Vol 26, No 9, *Study of Water District Laws*, (1963, Revision) January 1964, Vol 26, No 14, *Water District Organization*, January 1965

districts with unconsolidated elections under the provisions of the Uniform District Election Law. The committee has excluded from this study most districts in which elections already consolidated with either the primary or general election

The committee recommends that the following district acts be amended to provide for district elections pursuant to the Uniform District Election Law: California airport districts (3), community services districts (125), library districts (8), memorial districts (26), police protection districts (6), Montalo Municipal Improvement District (1), Guadalupe Valley Municipal Improvement District (1), Bethel Island Municipal Improvement District (1), Embarcadero Municipal Improvement District (1), Estero Municipal Improvement District (1).

Draft legislation incorporating the committee's recommendation is found in the appendix of this report

B. *Recall Elections*

In continuing the committee's study of District Elections, its investigation revealed that provisions for recall elections were not uniform among district acts and in some cases these provisions were totally unworkable For example, under the California Water Storage District Act, although directors are elected by a vote of landowners on a basis

Table 1

SUMMARY

SPECIAL DISTRICTS IN CALIFORNIA

Governing Body Elections

I. APPOINTED OR EX OFFICIO		
General law	1,092	
Special law	51	
Total	1,143	districts
II. UNIFORM DISTRICT ELECTION LAW		
General law	1,333	
Special law	10	
Total	1,343	districts
or 69 percent of total districts having elections		
III. CONSOLIDATED ELECTIONS		
General law	172	
Special law	9	
Total	181	districts
or 8 percent of total districts having elections		
IV. UNCONSOLIDATED ELECTIONS		
General law	407	
Special law	17	
Total	424	districts
or 23 percent of total districts having elections		

SPECIAL DISTRICTS IN CALIFORNIA

Governing Body Elections

I. EX OFFICIO OR APPOINTED BOARDS

A. General Law Districts

	District	Type of governing body	Number of districts
1	Air pollution control districts	Ex officio	6
2	Public cemetery districts	Appointed or ex officio	256
3	Drainage District Act of 1885	Appointed	6
4.	Drainage District Improvement Act of 1919	Ex officio	2
5	County fire protection districts	Ex officio[1]	---
6.	Flood Control and Flood Water Conservation District Act	Appointed	5
7.	Garbage disposal districts	Ex officio	10
8	Garbage and refuse disposal districts	Appointed	2
9.	Harbor improvement districts	Ex officio	1
10	Port districts	Appointed	4
11	River port districts	Appointed	1
12	Joint Highway District Act	Appointed	13
13	Protection District Act of 1895	Ex officio	1
14	Union high school district public libraries	Ex officio	4
15	Highway Lighting District Act	Ex officio	404
16	Mosquito abatement districts	Appointed	50
17.	Pest abatement districts	Appointed	9
18	Vehicle Parking District Law of 1943	Appointed	1
19	Citrous Pest District Control Act	Appointed	7
20	Police protection districts—unincorporated territory	Ex officio	3
21	County sanitation districts	Ex officio	136
22	Separation of Grade District Act	Appointed	1
23.	Municipal Sewer Districts, Act of 1911	Ex officio	2
24	Sewer Maintenance District Act	Ex officio	41
25	Storm Drain Maintenance District Act	Ex officio	29
26	Storm Drain Maintenance District Act of 1939	Ex officio	1
27.	Metropolitan Water District Act	Appointed	1
28	County Waterworks District Law	Ex officio or appointed	96

[1] May have appointed or elected commissioners to manage affairs of district If commissioners are elected, date of election is same day as state general election

B. Special Law Districts

	District	Type of governing body
1	Alameda County Flood Control and Water Conservation District	Ex officio
2.	Alpine County Water Agency	Ex officio
3	Contra Costa County Flood Control and Water Conservation District	Ex officio or appointed
4	Contra Costa County Storm Drainage District	Ex officio
5.	Contra Costa County Water Agency	Ex officio
6.	Del Norte County Flood Control District	Ex officio
7.	El Dorado County Water Agency	Ex officio
8	Fresno Metropolitan Flood Control Act	Appointed
9	Humboldt County Flood Control District	Ex officio
10	Lake County Flood Control and Water Conservation District	Ex officio or appointed
11	Lassen-Modoc County Flood Control and Water Conservation District	Ex officio
12	Los Angeles County Flood Control District	Ex officio
13	Marin County Flood Control and Water Conservation District	Ex officio
14	Mariposa County Water Agency	Ex officio
15	Mendocino County Flood Control and Water Conservation District	Ex officio
16	Monterey County Flood Control and Water Conservation District	Ex officio
17	Napa County Flood Control and Water Conservation District	Ex officio
18	Nevada County Water Agency	Ex officio
19.	Orange County Flood Control District	Ex officio
20	Placer County Water Agency	Ex officio
21	Plumas County Flood Control and Water Conservation District	Ex officio
22	Riverside County Flood Control and Water Conservation District	Ex officio
23	Sacramento County Water Agency	Ex officio
24	San Bernardino County Flood Control District	Ex officio
25.	San Diego County Flood Control District	Ex officio
26	San Joaquin County Flood Control and Water Conservation District	Ex officio or appointed
27	San Luis Obispo County Flood Control and Water Conservation District	Ex officio
28	San Mateo County Flood Control District	Ex officio
29.	Santa Barbara County Flood Control and Water Conservation District	Ex officio
30	Santa Barbara County Water Agency	Ex officio
31	Santa Clara-Alameda-San Benito Water Authority	Appointed[2]
32	Santa Clara County Flood Control and Water Conservation District	Ex officio
33	Santa Cruz County Flood Control and Water Conservation District	Ex officio
34.	Shasta County Water Agency	Ex officio
35	Sierra County Flood Control and Water Conservation District	Ex officio
36.	Siskiyou County Flood Control and Water Conservation District	Ex officio
37	Solano County Flood Control and Water Conservation District	Ex officio
38	Sonoma County Flood Control and Water Conservation District	Ex officio
39	Sutter County Water Agency	Ex officio
40	Tehama County Flood Control and Water Conservation District	Appointed
41	Vallejo Sanitation and Flood Control District	Appointed
42	Ventura County Flood Control District	Ex officio
43	Yolo County Flood Control and Water Conservation District	Appointed
44.	Yuba-Bear River Basin Authority	Appointed
45	Yuba County Water Agency	Ex officio
46	Lake Cuyamaca Recreation and Park District Act	Appointed
47.	Mount San Jacinto Winter Park Authority Act	Appointed
48	Fairfield-Suisun Sewer District Act	Ex officio
49	San Francisco Bay Area Rapid Transit District Act	Appointed
50	Bay Area Air Pollution Control Law	Appointed
51	San Diego Unified Port District Act	Appointed

[2] If prescribed protest is filed to appointment of member which nominates another person a special election is required to be called by board of supervisors to elect member of governing body.

II. UNIFORM DISTRICT ELECTION LAW

(First Tuesday after the First Monday in November of odd numbered years Effective January 1, 1967.)

A. General Law Districts

	District	Number of districts
1	Drainage District Act of 1903	16
2	Fire Protection District Law of 1961[2]	470
3	Local Fire District Law	
4	Fire protection districts in one or more counties	
5	Protection District Act of 1880	7
6	Levee districts (Act of 1905)	7
7	Protection District Act of 1907	5
8	Resort Improvement District Law[4]	3
9	Sanitary District Act of 1923	135
10	Sanitary District Law of 1891	1
11	Soil conservation districts	162
12	Storm Water District Act of 1909	6
13	The Public Utility District Act	67
14	California Water District Law	126
15	Water Conservation Act of 1931	10
16	County water districts	205
17	Irrigation districts	113

[2] May have elected, appointed, or ex officio governing body
[4] Ex officio governing body unless board of supervisors authorizes an elected governing body

B. Special Law Districts

	District
1	Brisbane County Water District
2	Costa Mesa County Water District (merger)[5]
3	Crestline-Lake Arrowhead Water Agency[5]
4	Donner Summit Public Utility District
5	Kings River Conservation District[5]
6	Mojave Water Agency
7	Olivehurst Public Utility District
8	Orange County Water District
9	San Benito County Water Conservation and Flood Control District
10	Solvang Municipal Improvement District

[5] First governing body was appointed

III. CONSOLIDATED ELECTIONS

A. General Law Districts

	District	Date	Number of districts
1	Small Craft Harbor District Law	Primary	1
2	Library districts[6]	General	1
3	Recreation and park districts[7]	General	103
4	Regional park districts	General	1
5	Transit District Law	General	6
6	Municipal Utility District Act	General	6
7	Municipal Water District Act of 1911	Primary	53
8	Water Replenishment District Act	Primary	1

[6] First governing body is appointed
[7] May have elected, appointed, or ex officio governing body

B. Special Law Districts

	District	Date
1	Amador County Water Agency	Primary
2	American River Flood Control District[8]	General
3	Antelope Valley-East Kern Water Agency [8]	Primary
4	Desert Water Agency [8]	Primary
5	Kern County Water Agency	General
6	Lower San Joaquin Levee District[8]	Primary
7	San Gorgonio Pass Water Agency	Primary
8	Sutter County Levee District No 1	General
9	Upper Santa Clara Valley Water Agency	Primary

[8] First governing body was appointed

IV. OTHER UNCONSOLIDATED DATES

A. General Law Districts

District	Date	Number of districts
1 California airport district	Fourth Tuesday in March, every second year after formation	3
2 Bridge and highway district	Tuesday nearest first Monday after first Tuesday in March, every fourth year after formation	1
3 Community services district	Same as general law cities or direct primary	125
4 Harbor districts	First Tuesday after first Monday in November of even-numbered years	7
5 The Local Hospital[9] District Law	Third Tuesday in November in each even year, or consolidated with state general election	63
6 Library districts in unincorporated towns and villages	First Tuesday in June annually	8
7 Memorial districts	Fourth Tuesday in March of third March following formation election and fourth Tuesday in March of every second year thereafter	26
8 Police protection districts-unincorporated towns	First Tuesday in April of each year	6
9. Reclamation districts	Tuesday designated by board of supervisors or Tuesday nearest any other day designated by board of supervisors every second or fourth year as provided in districts bylaws	154
10 Water Conservation Act of 1927	First Tuesday in February of odd-numbered years	5
11 California Water Storage District Law	First Tuesday in February of odd-numbered years	9

[9] First governing body is appointed

B. Special Law Districts

District	Date
1. Avenal Community Services District	Same as general law cities or direct primary
2 City of Marysville Levee District	Same as city election
3. Hunters Point Reclamation District	Tuesday designated by board of supervisors, or Tuesday nearest any other day designated by board of supervisors, every fourth year following formation
4 Montalvo Municipal Improvement District	Second Tuesday in September of odd-numbered years
5 Palo Verde Irrigation District	Third Tuesday of September of each year
6 Reclamation District No 317	Tuesday nearest second Wednesday of April of each year
7. Reclamation Districts No 10, 70, 800, 830, 832, 833, 900, 999, 1001, 2020, 2031	Tuesday designated by board of supervisors or Tuesday nearest any other day designated by board of supervisors every second or fourth year as provided in districts bylaws
8 Reclamation District[16], No 1500	Third Tuesday in October each odd-numbered year
9 Reclamation District No 1600	Third Tuesday in October each even-numbered year
10. Reclamation District No. 1660	Third Tuesday in October every other odd-numbered year
11 Sacramento River West Side Levee District	Tuesday nearest last Monday of October of every other odd-numbered year
12 Swamp Land District No. 150	Tuesday designated by board of supervisors or Tuesday nearest any other day designated by board of supervisors every second or fourth year as provided in districts bylaws
13 Union Island Reclamation Districts Nos 1 and 2	Tuesday designated by board of supervisors or Tuesday nearest any other day designated by board of supervisors every second or fourth year as provided in districts bylaws
14 Guadalupe Valley Municipal Improvement District Act	Fourth Tuesday in March every other year after formation
15 Bethel Island Municipal Improvement District Act	Fourth Tuesday in March every other year after formation
16 Embarcadero Municipal Improvement Act	Fourth Tuesday in March every other year after formation
17 Estero Municipal Improvement District Act	Fourth Tuesday in March every other year after formation

[16] If election is not held at time specified, it may be held on Tuesday designated by board of supervisors, or Tuesday nearest any other day designated by board of supervisors
SOURCE Legislative Counsel

of one vote for each dollar of assessed evaluation, recall provisions were added to the California Water Storage District Act by copying directly those provisions of the Irrigation District Act, a resident voter district act As a result, directors in California water storage districts may be recalled by a simple majority vote of the persons voting This provision is totally inconsistent with the method of election of these directors Recall should be on the same basis as original election

This example indicates the type of problem the committee has found in the law when land ownership districts and resident voter districts are given identical treatment when, in fact, such districts are basically different For this reason, a principal feature of the Uniform District Election Law is the establishment of separate election provisions for each type of district

Many district acts provide recall provisions pursuant to the law regarding recall of city offices or the recall of county offices, other have no recall provisions at all In order to provide uniform procedures for recall, *the committee recommends that the Uniform District Election Law be modified to include uniform recall provisions, including separate provisions for land ownership voting districts* Draft legislation incorporating this recommendation is found in the appendix of this report

C. *Reclamation Districts*

Reclamation Districts were the first general act districts provided for by the Legislature in 1966 [2] A reclamation district may be formed by the owners of swamp and overflood, salt marsh, tidelands, or other lands subject to flood or overflow who desire to reclaim the land A district may also be formed for maintenance, protection or repair of, or completion of reclamation works in progress [3]

The Water Code provides for a Board of Trustees of 3, 5, or 7 members to be elected to govern the district The trustees serve until their successors are elected and qualified Voting is generally on the basis of land ownership only with each landowner or representative entitled to one vote for each dollar of land value owned, as determined from the last equalized tax roll in the county. Taxation is also on the basis of land only [4]

Section 50730 of the Water Code provides that there shall be an election in each district every two to four years However, if the board does not call an election as required by Section 50730, Section 50731 provides that only upon petition of 20 percent of the landowners (who own 20 percent of the value of the land) shall the county board of supervisors set an election date.

The act includes the usual cancellation provisions when there are insufficient candidates.

The Water Code also provides that upon the formation of districts only, with consensus of all landowners, a district was to be organized to operate without a Board or without the establishment of bylaws

[2] *Study of Water District Laws,* (1963 Revision), Assembly Interim Committee Reports, Vol 26, No 9, January 1964
[3] Water Code Section 50601
[4] However, under Ch 135, Statutes of 1966 (SB 90) the voting basis is one vote for each $1 of owned value of land *and improvements* when the district chooses to assess on the basis of land and improvements rather than land only

In an attempt to evaluate the election procedures of reclamation districts, the committee sent questionnaires to each of the 118 reclamation districts still in operation Of the 57 respondents,[5] 39 of the districts have held no district elections in the past 10 years

One respondent states, "the best information we have is that the last special election was held in 1937 In the last few years appointments were made by the county board of supervisors" Another district stated, "No records were available, no elections have been held for thirty years" One district held no elections since 1915 while another held elections "only when needed" However, in the latter case, apparently none were needed since no elections were ever held There were numerous districts in which elections were never held, the trustees having been appointed since formation of the district

The chart below gives a breakdown of the date of election or appointment of the trustees of the various responding districts Even though many of the appointments were made during the last ten years, it appears that, on the whole, turnover of trustees is rather low. There does not seem to be much opposition to incumbents, and regularly scheduled elections are the exception rather than the rule.

Although few districts hold regular elections, there is no reason for the committee to conclude that reclamation districts have not been competently governed However, the present procedure places the burden of initiating an election *upon the voters* instead of upon the leadership of the district It is extremely unusual that 20 percent of the voters should be required to submit a petition to call an election This is contrary to provisions governing all other elected water districts.[6]

Date in which trustees of responding districts were first elected or appointed to office.

Date	*Number of trustees*
1916–1920	4
1921–1925	0
1926–1930	1
1931–1935	5
1936–1940	12
1941–1945	12
1946–1950	22
1951–1955	28
1956–1960	41
1961–1965	33
1966–1970	7

Because of these provisions there is a low rate of turnover of trustees, many appointments of directors, and few elections It also appears that the practice of not holding regularly scheduled elections renders difficult any opposition to a district's operation and minimizes the discussion of issues which might well be of concern to the people of the district

Reclamation districts are not now subject to the provisions of the Uniform District Election Law. The committee believes that it is not appropriate to extend the Uniform District Election Law to cover

[5] Including five districts reporting inactive status

[6] Similar provisions in the Irrigation District Act were repealed by legislation sponsored by this Committee in 1966

reclamation districts since many reclamation districts are not active in the sense that they have completed their major reclamation works. As a result, some districts have as their primary purpose the maintenance of existing structures or payment of bonds which financed the major reclamation structures of the district

The committee does believe that the trustees of reclamation districts, however, should be responsive to the voters.

The committee believes that it is important that district voters have an opportunity to discuss issues regularly and that the burden of calling elections should be on the district Regular elections should be called without the necessity of requiring the public to force an election by petition

In districts in which no opposition files or there is only one candidate, of course, elections need not be held and this cancellation procedure is provided for in the Reclamation District Act as a result of 1963 amendments

The committee recommends that legislation be enacted bringing the Reclamation District Law up to date and requiring biennial elections

D. District Bond Issue Review

Over the years the practice of submitting all Water District bond issues to bond counsel for review has evolved. Although this practice is not required by law, it has become a precondition to the offering of bonds for sale and is an accepted prerequisite for guaranteeing the "soundness" of such bonds

The initial effect of the fees charged by bond counsel is to increase costs to the water district of selling the bonds The ultimate impact of these fees is borne by the water users through prices paid for water

During the interim, members of the committee expressed concern over the implications of this practice However, the committee was unable to investigate this problem at this time Therefore, *the committee recommends that the Assembly make a comprehensive study of the subject to ascertain the necessity of continuing this practice* A copy of a proposed house resolution is found in the appendix.

APPENDIX
DRAFT LEGISLATION

PROPOSED WATER WELL STANDARDS LEGISLATION

An act to add Chapter 6 (commencing with Section 13200) to Division 7 of, and to repeal Chapter 7 (commencing with Section 7076) of Division 4 of, the Water Code, relating to water wells.

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

SECTION 1. Chapter 7 (commencing with Section 7076) of Division 4 of the Water Code is repealed

SEC. 2. Chapter 6 (commencing with Section 13200) is added to Division 7 of the Water Code, to read.

CHAPTER 6 WATER WELLS

Article 1 Declaration of Policy

13200 The Legislature finds that the greater portion of the water used in this state is obtained from underground sources and that such waters are subject to impairment in quality and purity, causing detriment to the health, safety and welfare of the people of the state The Legislature therefore declares that the people of the state have a primary interest in the location, construction, maintenance, abandonment and destruction of water wells, which activities directly affect the quality and purity of underground waters

Article 2. Reports

13250 Every person who hereafter intends to dig, bore, or drill a water well, or who intends to deepen or reperforate any such well, shall file with the department a notice of intent to engage in such construction or repair prior to commencing such construction or repair; provided, that when such construction or repair must be accomplished immediately in order to prevent damage to persons or property due to the loss of an existing water supply, such notice shall be filed with the department as soon as possible thereafter, but in any event not more than five days after commencement of such construction or repair.

The report shall be made on forms furnished by the department and shall contain such information as the department may require, including, but not limited to: (a) description of the well site sufficiently exact to permit location and identification of the well; (b) proposed date of construction of well, (c) the use for which the water well is intended; (d) the work to be done and a description of type of construction, and (e) in event of late filing, the reasons therefor.

13251. Every person who hereafter digs, bores or drills a water well, or who deepens or reperforates any such well, shall file with the department a report of completion of such well within 30 days after its construction or repair has been completed

The report shall be made on forms furnished by the department and shall contain such information as the department may require, including, but not limited to. (a) description of the well site sufficiently exact to permit location and identification of the well; (b) detailed log of the well; (c) description of type of construction; (d) details of perforation; and (e) methods used for sealing off surface or contaminated waters.

13252 Reports made pursuant to Section 13251 shall not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies; provided, that any report shall be made available to any person who obtains a written authorization from the owner of the water well.

On the request of any county, the department shall notify the county of the filing of a report pursuant to Section 13250, including only the name of the person filing, a description of the well site, and the proposed date of construction and shall notify the county of the filing of a report pursuant to Section 13251, including only the name of the person filing, a description of the well site, and the date of completion.

13253 Every person who hereafter converts, for use as a water well, any oil or gas well originally constructed under the jurisdiction of the Department of Conservation pursuant to the provisions of Article 4 (commencing with Section 3200), Chapter 1, Division 3 of the Public Resources Code, shall comply with all provisions of this chapter.

13254. Failure to comply with any provision of this chapter, or willful and deliberate falsification of any report required by this chapter, is a misdemeanor.

Before commencing prosecution against any person, other than for willful and deliberate falsification of any report required by this chapter, the person shall be given reasonable opportunity to comply with the provisions of this chapter

13255 Nothing in this chapter shall affect the powers and duties of the State Department of Public Health with respect to water and water systems pursuant to Chapter 7 (commencing with Section 4010) of Division 5 of the Health and Safety Code, nor the requirement of compliance with said chapter.

Article 3. Quality Control

13300 The department, after such studies and investigations pursuant to Section 231 as it finds necessary, on determining that water well construction and maintenance standards are needed in an area to protect the quality of water used or which may be used for any beneficial use, shall so report to the appropriate regional water quality control board The report shall contain such recommended standards for water well construction and maintenance as, in the department's opinion, are necessary to protect the quality of any affected water.

13301 The regional board shall hold a public hearing on the need to establish such standards for the area involved and to determine the objectives to be attained by such standards

13302 If the regional board finds that standards of water well construction and maintenance are needed in any area to protect the quality of water used, or which may be used, for any beneficial use,

it shall determine the area to be involved and so report to each affected county in the area, including in such report the objectives determined by the board as proper and necessary objectives for such standards The report shall also contain any standards which have been recommended by the department

13303 Each such affected county shall, within 120 days of receipt of the report, adopt an ordinance establishing standards of water well construction and maintenance for the area designated by the regional board A copy of such ordinance shall be sent to the regional board on its adoption.

13304 Such county standards shall take effect 60 days from the date of their adoption by the county unless the regional board, on its own motion, or on the request of any affected person, holds a public hearing on the matter and determines that the county standards are not adequate to protect the quality of the affected waters If the board makes such a determination it shall so report to the affected county and also recommend the standards, or modification of the county standards, which it determines are necessary

13305 If a county fails to adopt an ordinance establishing water well construction and maintenance standards within 120 days of receipt of the regional board's report of its determination that such standards are necessary pursuant to Section 13302, or fails within 90 days to adopt or modify such standards in the manner determined as necessary by the regional board pursuant to Section 13304, the regional board may adopt standards for water well construction and maintenance for the area Such regional board standards shall be enforced in the same manner and shall have the same force and effect as if adopted as a county ordinance

13306 Any action, report, determination, or standard taken or adopted by a regional board pursuant to this article may be reviewed by the state board on its own motion, and shall be reviewed by the state board on the request of any affected person or county, in the same manner as other action or inaction of the regional board is reviewed pursuant to Section 13025 The state board has the same powers as to the review of action or inaction of a regional board under this article as it has as to other action or inaction of a regional board under Section 13025, including being vested with all the powers granted a regional board to initially determine the need in an area for water well construction and maintenance standards if it finds that appropriate action has not been taken by a regional board.

PROPOSED CALIFORNIA WATER COMMISSION LEGISLATION

An act to amend Sections 150, 157, 159, 162, and 12602 of, to amend and renumber Section 154 5 of, to add Sections 163, 12604.3, 12634.3, 12944 3, and 12944 4 to, and to repeal Section 163 of, the Water Code, relating to the California Water Commission.

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

SECTION 1 Section 150 of the Water Code is amended to read:

150 ~~The State Water Resources Board is continued in existence within~~ *There is in* the ~~department~~ *Department of Water Resources* ~~as~~ the California Water Commission ~~, but the commission shall have only the powers and duties provided in this article~~

SEC 2. Section 154 5 of the Water Code is amended and renumbered to read ·

~~154 5~~ *163 5* The department shall furnish to the California Water Commission, at its request, such ~~technical and clerical assistants~~ *assistance* as ~~are~~ is required to the extent funds are made available therefor.

SEC 3 Section 157 of the Water Code is amended to read ·

157 Each member of the California Water Commission shall receive fifty dollars ($50) for each day during which he is engaged in the performance of his official duties, but his total compensation shall not exceed in any one fiscal year the sum of two thousand dollars ($2,000) *; except the chairman of the commission may receive compensation of not to exceed two thousand five hundred dollars ($2,500) for performance of such duties* In addition to his compensation each member shall be reimbursed for his necessary traveling and other expenses incurred in the performance of his official duties.

SEC. 4. Section 159 of the Water Code is amended to read:

159. Special meetings may be called at any time by the chairman or by the *executive* secretary at the request of any four members, upon notice specifying the matters to be acted upon at such meeting, but no other matters shall be acted upon at special meetings which were not so noticed, unless all members are present and consent thereto

SEC 5 Section 162 of the Water Code is amended to read ·

162 It is the intention of the Legislature that in the making of all major departmental determinations, policies and procedures, such as departmental recommendations to the Legislature, the director and the California Water Commission shall be in agreement whenever possible; but for the purpose of fixing responsibility to the Governor and to the Legislature, in the event of disagreement between the director and the commission upon such matters, the views of the director shall prevail, *except in those cases where discretionary powers have been granted to the commission by statute* In ~~such situations~~ *the event of disagreement pursuant to this section,* a written report upon such disagreement

shall be made immediately to the Governor and to the President pro Tempore of the Senate and the Speaker of the Assembly by the commission and by the director

SEC 6 Section 163 of the Water Code is repealed.

~~163. The department may employ, and shall do so to the extent funds are made available, such technical and clerical assistants for the California Water Commission as may be necessary for the proper discharge of its duties and may purchase or rent for the commission any necessary supplies, instruments, tools, equipment, and conveniences~~

SEC. 7. Section 163 is added to the Water Code, to read.

163. The commission may employ an executive secretary, exempt from civil service, under Section 4(a) (5) of Article XXIV of the Constitution, and a staff engineer. The commission may also employ such clerical assistants as may be necessary for the proper discharge of its duties and may purchase or rent necessary supplies, instruments, tools, equipment and conveniences

SEC 8 Section 12602 of the Water Code is amended to read:

12602. The department, or a representative authorized by the department to do so, may call, conduct or attend conferences or hearings, official or unofficial, within or without this ~~State~~ *state*, or otherwise participate in such conferences or hearings, with interested persons, agencies or officers, of this or any other state, or with the Congress of the United States, congressional committees, or officials of the federal government, concerning water projects, plans, or problems *However, where the appropriations committees of the Congress are hearing requests for appropriations for flood control projects being planned or constructed in California under the jurisdiction of the United States Army Corps of Engineers, or reclamation projects being planned or constructed in California by the Bureau of Reclamation, United States Department of the Interior, the California Water Commission shall present its views Prior to making such presentation, the commission shall consult with interested local, state, and federal agencies, and may on request represent the views of any county, city, state, agency, or public district regarding such appropriations. Nothing in this section shall be deemed or construed to modify, limit, or take away from any other of the powers and duties vested in the department pursuant to this article*

SEC 9 Section 12604 3 is added to the Water Code, to read:

12604 3 In matters concerning the coordination of planning, construction, and operation of federal water development and flood control projects in the State of California with state and local projects, the California Water Commission shall advise the department, and the Governor, and to this end may confer with the appropriate executive agencies of the United States.

SEC 10 Section 12634 3 is added to the Water Code, to read:

12634 3. The department shall submit, prior to January 1st of each year, a report to the California Water Commission summarizing its activities, including existing and prospective planning projects, the need for such projects, and the estimated costs thereof The commission may conduct public hearings on such reports and may make recommendations thereon to the department, the Governor, and the Legislature.

SEC 11 Section 12944 3 is added to the Water Code, to read:

12944 3 The California Water Commission shall conduct an annual review of the progress of construction and operation of the State Water Resources Development System, and shall make a report on its findings to the department, the Governor, and the Legislature, together with whatever recommendations it deems appropriate

SEC 12. Section 12944 4 is added to the Water Code, to read:

12944 4. The California Water Commission shall hold public hearings on all additional facilities proposed to be added to the State Water Resources Development System by the department pursuant to this chapter and the department shall not authorize the construction of any such facility unless such hearing has been held and the commission has transmitted its recommendations thereon to the department, the Governor, and the Legislature.

PROPOSED
District Bond Approval Legislation

HOUSE RESOLUTION

Relative to an interim study of the necessity of submitting water district bond issues to bond counsel for their approval prior to public sale of the bonds

WHEREAS, It has come to the attention of the Members of the Assembly that all bond issues of the various water districts in California are submitted to bond counsel for approval prior to being offered to the public for sale; and

WHEREAS, The practice of submitting bond issues to bond counsel for approval prior to public sale thereof, although not required by law, has evolved, over the years, into an accepted prerequisite in guaranteeing the soundness of such bonds and thereby ensuring their sale; and

WHEREAS, The legal fees charged by bond counsel incident to approving such bond issues have increased the costs of the water districts concerned and, ultimately, their water users; now, therefore, be it

Resolved by the Assembly of the State of California, That the Assembly Committee on Rules is hereby directed to assign to an appropriate interim committee for study the subject of the necessity of submitting water district bond issues to bond counsel for approval prior to public sale thereof, and to direct such interim committee to report its findings and recommendations thereon to the Assembly not later than the fifth legislative day of the 1968 Regular Session of the Legislature.

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ASSEMBLY INTERIM COMMITTEE REPORT

1965–1967

VOLUME 27 NUMBER 4

FINAL REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON CONSTITUTIONAL AMENDMENTS

House Resolution No. 710(d)

CONSTITUTIONAL REVISION IN CALIFORNIA

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CONSTITUTIONAL REVISION IN CALIFORNIA

A Report of the Assembly Interim Committee
on Constitutional Amendments
1965–1966

ACKNOWLEDGMENT

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LETTER OF TRANSMITTAL

ASSEMBLY CHAMBER, STATE CAPITOL
Sacramento, January 2, 1967

HONORABLE JESSE M UNRUH, *Speaker of the Assembly*
AND MEMBERS OF THE ASSEMBLY
Assembly Chamber
Sacramento, California

Dear Mr Speaker and Members

Your Interim Committee on Constitutional Amendments, established by House Resolution No 710(d), 1965 Regular Session, submits herewith the first of two final reports of its activities This report is on the subject of constitutional revision in California

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

Members:

Jack R. Fenton, *Vice Chairman*

Robert E Badham
John L. E Collier
Charles J Conrad
Milton Marks
James R Mills
Nicholas C Petris
Alfred H Song
George A Willson
George N Zenovich

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TRIBUTE TO CALIFORNIA CONSTITUTION REVISION COMMISSION

The Assembly Interim Committee on Constitutional Amendments wishes to pay tribute to the California Constitution Revision Commission for the splendid public service it is rendering It is sincerely impressed with the skill, dedication, and constructive interest in better government in California with which it has functioned The historic achievement of the first phase of the revision of California's Constitution through its approval by the voters on November 8, 1966, by an overwhelming majority, is a lasting monument to its good work

FINDINGS

The Assembly Interim Committee on Constitutional Amendments has devoted considerable time to studies of the work, recommendations, and procedures of the California Constitution Revision Commission and the present efforts to achieve a complete revision of California's Constitution. The need for such revision has been and is abundantly clear to the committee. The technique developed through the California Constitution Revision Commission is an efficient and effective way of achieving it The progress made with the approval of the first phase at the polls on November 8, 1966, bodes well for the completion of this important project within the reasonably near future The committee is also fully cognizant that the vastness, complexity, and great importance of this project require that the Legislature give vigilant attention to, and make a constant and constructive study of the work, procedures, and recommendations of the Constitution Revision Commission.

RECOMMENDATIONS

1. That the Legislature working with the California Constitution Revision Commission establish as its timetable for the constitutional revision project the presentation of the second phase at the general election of 1968 and the third and final phase at the general election of 1970.
2. That the Legislature use all reasonable restraint in placing any proposed constitutional amendments on the ballot until the constitutional revision project has been completed

List of meetings on the subject of constitutional revision and the review of the work of the California Constitution Revision Commission held during 1965–66.

December 2–3, 1965—Sacramento
Subject: Review work of Constitution Revision Commission

January 13, 1966—Montebello
Subject: Article XXIV—The State Civil Service System
The Initiative

January 14, 1966—Pico Rivera
Subject: Review of Article XXIV—The State Civil Service System
The Initiative

February 23, 1966—Sacramento
Subject: Report of Constitution Revision Commission on Articles V and VI

August 22, 1966—San Francisco
Subject: Second phase of constitutional revision

September 1, 1966—Sacramento
Subject: Second phase of revision of State Constitution

September 27, 1966—Los Angeles
Subject: Second phase of constitutional revision

November 28, 1966—Sacramento
Subject: Executive Session

LIST OF WITNESSES

December 2, 1965

Mr. Gregory L Bounds, Attorney, Constitution Revision Commission
Mr Richard L. Patsey, Special Counsel, California Constitution Revision Commission

December 3, 1965

Mr Gregory L. Bounds, Attorney, Constitution Revision Commission
Mr James Driscoll, Chief Clerk, Assembly, California Legislature
Mr. Richard L. Patsey, Special Counsel, Constitution Revision Commission

January 13, 1966

Mr George Feinberg, Chief of the Representation Division, California State Employees' Association
Mr. John F Fisher, Executive Officer, State Personnel Board
Mr. Timothy Lemucchi, Consultant, Constitutional Amendments Committee
Mr. Richard L Patsey, Special Counsel, Constitution Revision Commission

January 14, 1966

Mr John F Fisher, Executive Officer, State Personnel Board
Mr. L H. Halcomb, Jr., Deputy Officer, Little Hoover Commission
Mr Richard L Patsey, Special Counsel, Constitution Revision Commission
Honorable Leo J. Ryan, Assemblyman 27th District
Mr Richard E. Sherwood, Member, Commission on California State Government, Organization and Economy

February 23, 1966

Mr. John A FitzRandolph, Attorney, Constitution Revision Commission
Mr Barry Keene, Attorney, Constitution Revision Commission
Mr. Richard L. Patsey, Special Counsel, Constitution Revision Commission

August 22, 1966

Mr Terry Baum, Principal Deputy, Legislative Counsel's Office
Mr Gregory Bounds, Attorney, Constitution Revision Commission

September 1, 1966

Mr. Charles A. Barrett, Assistant Attorney General, State of California
Mr. Gregory L Bounds, Staff Attorney, Constitution Revision Commission
Mr. Barry Keene, Staff Attorney, Constitution Revision Commission

Mr. Sid McCausland, Research Analyst, Assembly Legislative Reference Service
Mr. Carl E. Weidman, Representative, California Land Title Ass'n

September 27, 1966

Dr Alonzo L Baker, Professor, La Sierra College, Riverside
Mr Benjamin Hite, Registrar of Voters, Los Angeles County
Mr Sid McCausland, Research Analyst, Assembly Legislative Reference Service
Mr Richard L. Patsey, Special Counsel, Constitution Revision Commission

CHAPTER 1

DEVELOPMENT OF THE CALIFORNIA CONSTITUTION

It was after California had become a territory of the United States in 1848 as a result of the Treaty of Guadalupe Hidalgo with Mexico and during the drama and excitement of the gold rush days of 1849 that a group of distinguished citizens met in Monterey to draft California's first Constitution In 1850 President Millard Fillmore signed an act passed by Congress admitting California to the Union as the 31st state and ratifying the Constitution adopted in 1849

The first California Constitutional Convention benefited from the universally recognized excellence of the work of our founding fathers in writing the U.S Constitution and the experiences of other states, particularly New York and Iowa It was nevertheless obvious from its inception that this fundamental law written for a state of about 92,000 inhabitants contained numerous inadequacies Comprehensive amendments were required The Legislature proposed constitutional conventions in 1859, 1860, and 1873, but each proposal was rejected by the voters. Finally, in 1878 public approval of a second constitutional convention was granted

In 1879 a second constitutional convention was convoked A new Constitution was written and adopted by the people This was during a time of social turmoil and the resulting document was excessive in length and reflective in its intricate detail of a distrust of state government It also contained provisions discriminatory toward oriental Americans which were not repealed until 1950 and 1954, although most of Article XIX had long since been invalidated by the courts Many important provisions of the Constitution had to be added by amendments. These included the initiative and referendum and the provisions for an executive budget, the district court of appeal, municipal courts, absentee voting, and the civil service system

Both the 1849 and 1879 documents followed fundamental American concepts of democratic government Thus, there have been provided checks and balances, the separation of powers between legislative, executive, and judicial branches of government, a system of freely elected representatives of the people at the State Capitol; the irrevocable guarantee of certain rights and freedoms, and the enunciation of the concept of the rule of law in a free society. Despite this, the manner in which both documents were put together left a great deal to be desired Much material was included which was essentially of a statutory rather than a constitutional nature Inordinate length and clumsy phrasing made public comprehension difficult Serious omissions soon became apparent

The Legislature endeavored to remedy deficiencies by presenting amendments to the people, and private groups relied upon the initiative to change the basic law of the state. From 1879 through 1964 the California Constitution was amended 343 times. Its length had in-

creased from 16,000 words to 75,000 words By 1965 it had become the second longest in the United States and the third longest in the world, being exceeded in verbosity only by the constitutions of the State of Louisiana and the nation of India It had acquired a unique collection of archaic provisions and become a cumbersome document difficult to fathom.

Professors Winston Crouch and Dean McHenry noted in 1949 in their book *California Government*· "An extensive constitution, like that of California, departs from the sound rule that constitutions should contain only important principles and structural outlines The excess beyond this basic material is mainly statutory in nature, and should be handled through ordinary acts of the Legislature If the state is to keep abreast of changing times, the detailed matter must be amended frequently This places a burden of huge proportions upon the voters The electorate has been called upon to vote on an average of twenty constitutional amendments at each general election in the last two decades In times of crisis, legislators find themselves lacking the power to act swiftly because of statutory matters in the Constitution."

Except for the elimination of some obsolete language primarily through the action of a joint committee of the Legislature created in 1947, the State Constitution was still, in 1965, pretty much what was described by these educators in 1949

The need for a thorough overhauling of the state's fundamental law had become apparent a few years after the adoption of the 1879 document. It became more urgent as the years progressed

CHAPTER 2

EFFORTS FOR CONSTITUTION REVISION PRIOR TO 1962

The California Constitution provides in Article XVIII, Section 2:

> "Whenever two-thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at such election on the proposition for a Convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. The Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature The delegates so elected shall meet within three months after their election at such place as the Legislature may direct At a special election to be provided for by law, the Constitution that may be agreed upon by such Convention shall be submitted to the people for their ratification or rejection, in such manner as the Convention may determine The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California."

Over the years, efforts were made to use this section to revise California's Constitution or to draft a completely new Constitution. They have all been unsuccessful The issue of convoking a constitutional convention was placed before the people by the Legislature on five separate occasions between 1897 and 1934. On the first four occasions, the voters rejected the proposal for a constitutional convention In 1934 a resolution submitted to the people was approved. The 1935 Legislature and subsequent Legislatures failed to enact the necessary enabling legislation

In 1929, another method of revising California's antiquated and cumbersome basic law was proposed This was through the creation of a commission by the Legislature to make studies and recommendations to be screened by the Legislature, and if approved, submitted to a constitutional convention to be called by a vote of the people When the work of the first commission created by law was stymied by inability to effectuate the calling of a constitutional convention, it was proposed that the Constitution be amended in order to permit the Legislature

to submit a revision of the fundamental law to the people In 1961, a proposed constitutional amendment empowering the Legislature to submit a revision of the Constitution to the people was adopted and placed on the ballot as Proposition 7 It was approved by the people by a vote of more than 2 to 1.

CHAPTER 3

CREATION OF THE CALIFORNIA CONSTITUTION REVISION COMMISSION

Having devised a new technique for constitutional revision, the Legislature in 1963 proceeded to establish the machinery for its utilization Early in the 1963 session of the Legislature Assembly Concurrent Resolution No. 7 created what ultimately became known officially as the California Constitution Revision Commission. The resolution read:

> *"Resolved by the Assembly of the State of California, the Senate thereof concurring.* That notwithstanding the provisions of Assembly Concurrent Resolution No. 77 of 1963, the Joint Committee on Legislative Organization is authorized to appoint a Constitutional Revision Commission to provide the Joint Committee and the Legislature with facts and recommendations relating to the revision of the Constitution of the State of California. The commission shall consist of not less than 25, and not more than 50 citizens, excluding legislative members, and all of the nonlegislative members shall be appointed by the Joint Committee on Legislative Organization The members of the Joint Committee on Legislative Organization shall be ex officio members of the commission The commission shall, in addition, include three other Members of the Senate appointed by the Committee on Rules thereof, and three other Members of the Assembly, appointed by the Speaker thereof Not more than two of such other Members of the Senate and not more than two of such other Members of the Assembly shall be of the same party. Vacancies in the commission shall be filled by the respective appointing powers. The commission membership shall be broadly representative of the various political, economic and social groupings within the State
>
> "The commission shall select its own chairman, who may appoint an executive committee and such other committees as the commission shall determine The commission shall assist and advise the Joint Committee on Legislative Organization in its deliberations as to revision of the California Constitution and shall report its findings and recommendations to the Joint Committee on Legislative Organization from time to time The members of the commission shall serve without compensation but each member shall be allowed actual expenses incurred in the discharge of his duties, including travel expenses
>
> "The Joint Committee on Legislative Organization shall provide the commission with the necessary staff, equipment and supplies to carry on its work All expenses of the commission including the expenses of its members both legislative and nonlegislative shall be paid from the money allocated to the Joint Committee on Legis-

lative Organization from the Senate and Assembly Contingent Funds.

"The existence of the commission shall terminate 90 days after the termination of the 1965 Regular Session of the Legislature."

The adoption of this resolution was followed by the passage of resolutions in subsequent sessions of the Legislature continuing the work of this commission and providing the necessary funds These included.

ACR No. 77 (Filed with Secretary of State July 1, 1963)__$45,000
ACR No. 56 (Filed with Secretary of State May 15, 1964)__ 55,000
ACR No. 144 (Filed with Secretary of State July 1, 1965)__175,000
SCR No. 6 (Filed with Secretary of State May 16, 1966)__137,500 (estimate)

These resolutions empowered the Joint Committee on Legislative Organization, a committee for the coordination of housekeeping activities of the California Legislature, then chaired by Assemblyman James R. Mills, to appoint the members of the Constitution Revision Commission The members of the joint committee serve as ex officio members The first cochairmen were James C. Sheppard and Dr. Robert Gordon Sproul, President Emeritus of the University of California. Later, the joint committee was fortunate in recruiting, first as cochairman and later as chairman of this vast project, Superior Court Judge Bruce W. Sumner of Orange County, a former Member of the Legislature. The 69-member commission consists of a broad spectrum of distinguished California citizens interested in this problem. It includes legal experts, educators, businessmen, labor leaders, civic leaders, local government representatives, legislators, and others. Those serving on the commission under the leadership of Judge Sumner, as of November 8, 1966, include the following:

Totton J. Anderson, Professor of Political Science, USC
Robert S. Ash, Exec. Secy.-Treas., Central Labor Council, Alameda County
John D. Babbage, Attorney at Law, Riverside
Judge Joseph G. Babich, Superior Court, Sacramento
Joseph A. Ball, Attorney at Law, Long Beach
Harry Bardt, Bank of America, Los Angeles
Jack A. Beaver, General Manager, San Bernardino Valley Municipal Water District
Robert C. Brown, Executive Vice President, California Taxpayers Association, Sacramento
John A. Busterud, Attorney at Law, San Francisco
James S. Cantlen, Retired Regional VP, Pacific Tel. & Tel.
Richard Carpenter, Executive Director & General Counsel, League of California Cities, Berkeley
Arthur F. Corey, State Exec. Secy., California Teachers Ass'n
James F. Crafts, Insurance Executive, San Francisco
Arthur J. Dolan, Jr., Stock Executive, San Francisco
Burnham Enersen, Attorney at Law, San Francisco
Bryant Essick, President, Essick Manufacturing Company, Los Angeles

Hon. Phil Gibson, Retired Chief Justice, California Superior Court
Albin J. Gruhn, President, California Labor Federation, San Francisco
Mrs Ruth Church Gupta, Attorney at Law, San Francisco
Mrs Lauffer T Hayes, League of Women Voters
Hon. James L. Holmes, Real Estate & Ins. Exec, Santa Barbara
Bernard L. Hyink, Vice President, Academic Affairs, California State College, Fullerton
P. N Hyndman, Business Executive, San Diego
Mrs William Irvine, Associate Director, Upward Bound, Stanford University
Grandvel A. Jackson, Community Organization Representative, Human Rights Commission, San Francisco
Ralph N. Kleps, Director, Administrative Office of the Courts, San Francisco
Mrs. Ernest Lilienthal, San Francisco Board of Education
William R. MacDougall, General Counsel and Manager, County Supervisors Assn. of California, Sacramento
Paul Mason, Attorney at Law, Sacramento
Adrian McCalman, President, Artists Managers Guild, Hollywood
William McKenna, Attorney at Law, Los Angeles
Emar O. Mohn, International Director, Western Conference of Teamsters, Burlingame
Franklin D. Murphy, Chancellor, University of California, Los Angeles
Mrs. Joel Y. Nemschoff, Executive Director, Volunteer Bureau of San Francisco
Frank C. Newman, Professor of Law, Boalt Hall, Berkeley
Mrs Walter Oliver, Instructor in Political Science, Long Beach City College
Donald H. Pflueger, Assistant Professor of Political Science, California State Polytechnic College, Pomona
Thomas L. Pitts, Exec Sec'y-Treas, California Labor Federation
George W Rochester, Attorney at Law, La Habra
Herman Selvin, Attorney at Law, Los Angeles
Mrs. Earl Shoesmith, California Federation of Women's Clubs, Sacramento
Cornelius Siemens, President, Humboldt State College, Arcata
Sol Silverman, Attorney at Law, San Francisco
Mrs. Lawrence Spear, City Councilwoman, Claremont
Robert G. Sproul, President Emeritus, Berkeley
Hon Bruce Sumner, Judge of Superior Court, Santa Ana
Richard L Taw, Physician, Los Angeles
Milton M. Teague, President, California State Chamber of Commerce
Norman Topping, President, University of Southern California, Los Angeles
John A. Vieg, Professor of Government, Pomona College, Claremont
Norman Woodbury, Councilman and Exec. Dir, California Municipal Utilities Districts Ass'n
Mrs Robert Zurbach, League of Women Voters

LEGISLATIVE MEMBERS OF THE COMMISSION

Senate:

Senator James A Cobey
Senator Richard J. Dolwig
Senator Fred S Farr

Assembly:

Assemblyman Edward E Elliott
Assemblyman Don Mulford
Assemblyman Winfield A Shoemaker

EX OFFICIO LEGISLATIVE MEMBERS OF THE COMMISSION

Senate:

Senator Hugh M Burns, President pro Tempore
Senator J Eugene McAteer
Senator John F McCarthy
Senator Virgil O'Sullivan
Senator Joseph A. Rattigan
Senator Vernon L Sturgeon
Senator Stephen P Teale

Assembly:

Assemblyman Jesse M Unruh, Speaker
Assemblyman Carl Britschgi
Assemblyman Lou Cusanovich
Assemblyman Joe Gonsalves
Assemblyman James R Mills
Assemblyman Leo J Ryan
Assemblyman Philip L Soto
Assemblyman Robert Stevens

CHAPTER 4

OPERATION OF COMMISSION

The California Constitution Revision Commission has, in addition to its membership, a staff and offices both in Sacramento and San Francisco On the staff are four attorneys, a public information officer, and a secretary. With the assistance of this staff it spent over two years studying, debating, and drafting the first phase of the constitutional revision project

In statements before the Assembly Interim Committee on Constitutional Amendments Richard L. Patsey, special counsel, Gregory L. Bounds, attorney, and Barry D. Keene, attorney, explained the method of operation followed by the commission. At a meeting of the Constitutional Amendments Committee held in Sacramento on December 2 and 3, 1965, Special Counsel Patsey outlined the manner in which the commission functions in some detail:

> "As a rule, the full commission meets monthly for two- and three-day sessions. Committees of the commission often meet between those times The commission had organized its study of the Constitution on an article-by-article basis, but before an article is considered by the commission, background study is undertaken by the commission staff or by a specially retained consultant under staff supervision The background study analyzes the article in question, relevant sections of other articles in the Constitution and other provisions which might be considered of a sufficient constitutional character to be added to the article under study. The background study attempts to present, for each provision in the article, the alternative methods of treatment Constitutions and laws of other states, relevant textural material and proposals from knowledgeable sources of the public and private sector are included in the study. When the study is completed, the article is considered by a committee of from 10 to 30 members The committee, after studying the article and related material in detail, submits its recommendations to the full commission. After further study, debate and solicitation of outside opinion, the revised article is approved in substance by the commission and forwarded to the drafting committee. It is the task of the drafting committee to rephrase the article in more modern, concise language and, if necessary, organize it in a more logical framework As with other committees, the recommendations of the drafting committee are forwarded to the full commission where extensive discussion takes place before the article is finally approved In summary the articles considered by the commission are exhaustively studied. Each section of every article is analyzed by the commission staff or a specially retained consultant, and prepared from a variety of source material, including the relevant provisions in other state constitutions, scrutinized by

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outside experts and studied on many occasions by various committees and commissions of the commission as a whole That is what has gone into the three articles which we are going to present, in some detail, to you in the next two days. Just briefly, pages 24 to 27 of the material we have prepared contain a list of the members of our commission, as well as those former members who have resigned for one reason or another. And I think you will find on the whole that our membership represents a responsible group and an adequate cross section of various posts of leadership in California "

In a hearing held in Sacramento on September 1, 1966, Barry Keene further elucidated on the operation of the commission

Chairman Elliott has done so complete a job on the history of revision in California, including the work of the present commission, that I find just one point to add to that first package phase and it relates to the question of informing the public of Proposition 1-a, the work of the commission, and the problems with the present Constitution I am sure this committee, which has so effectively and extensively studied all the complexities of Proposition 1-a, recognizes the importance of having the public make an enlightened decision this November. We may have been a little slow in our public relations, and I think the reason was that what we want to do is enlighten the public We want them to make an enlightened decision We don't want to propagandize, and I think the line is not always a very clear one So we don't want to go too far But we have appointed a committee that deals specifically with public information and we have hired a public information coordinator. The duties of this group include informing the public, continuing to inform the public, of commission meetings so that interested parties may attend; reporting on commission meetings after they have taken place so that the news media are well aware of the progress of the Constitution Revision Commission; following the commission's endorsement of Proposition 1-a, supplying the public, interested committees, and civic organizations with technical data needed for a clear understanding of the revision proposals. We have tried to gear the language of the new Constitution to an eighth grader Unfortunately, in many instances, the matter is just too technical for many eighth graders and many adults to absorb That is why we are trying to compensate for this by supplying other technical data as needed. The commission has indicated a willingness to provide speakers on occasions where there are large groups who are interested in constitutional revision The public information coordinator issued press releases concerning completed background studies These background studies are kind of basic matter They are things that people who are interested in particular articles want right off the bat They want the studies and they want to know what the commission is proposing, what kind of research the staff has done, they want to introduce comments of their own, and we certainly welcome all of these And so the public information committee, the public information coordinator, gener-

ally want to maintain a high level of public awareness, of the revision and its importance to the state and we hope that we will be able to do more than we have done in the past in the way of public information."

In 1966, Commission Chairman Sumner outlined the functioning of the commission as follows.

"Organizationally, the commission has a chairman and an executive committee of nine members who suggest commission activities and policy We have a full-time staff that now includes four attorneys, a public information coordinator, and two secretaries, along with secretarial assistance from the Legislature The staff provides the commission with necessary background studies, staff drafts, and recommendations The commission usually meets monthly for a two- or three-day session The membership is divided into committees that deal with the specific articles currently under study In addition to the committees on articles, there is a drafting committee and a public information committee.

"An article is studied in the following fashion The commission determines which article will be considered A background study is then commenced. It acquaints the commission with the purpose and effect of the article's provisions and identifies problem areas that have arisen In some cases the background study is contracted out to an acknowledged expert Armed with the contents of the study, the commission committee assigned to the particular article studies it and makes recommendations The recommendations are submitted to the commission which adopts or rejects them The commission action is then submitted to the drafting committee, chaired by Professor Frank Newman of the Law School of the University of California at Berkeley, and the article is put in final form The drafting committee includes Ralph Kleps, former Legislative Counsel and presently Administrative Director of the Courts of the State of California, Paul Mason, nationally recognized authority on parliamentary procedure and former Director of the Department of Motor Vehicles of California; Herman Selvin, a prominent attorney and former member of the Board of Governors of the State Bar; Margaret Hayes, past president of the League of Women Voters of the State of California; and the commission chairman The drafting committee's report is submitted to the commission and upon adoption is transmitted to the Legislature"

Between its formation and the submission of its report, the commission held meetings at the following times and places:

1964

February 20, 21—State Capitol, Sacramento
April 7, 8—State Capitol, Sacramento
June 4, 5—San Francisco
July 30, 31—Los Angeles
September 17, 18—San Francisco
November 5, 6, 7—State Capitol, Sacramento
December 10, 11—San Francisco

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February 4, 5, 6—State Capitol, Sacramento
March 4, 5, 6—State Capitol, Sacramento
April 1, 2—Sacramento
May 6, 7—San Francisco
June 3, 4—Los Angeles
July 28, 29—Los Angeles
October 14, 15—San Francisco
November 18, 19—San Diego
December 16—San Francisco

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January 6, 7—Los Angeles
February 21—State Capitol, Sacramento
May 2—Los Angeles
July 14, 15—San Francisco
September 15, 16—Los Angeles
October 20, 21—Coronado
December 1, 2—San Francisco

Final actions of the commission are, of course, presented to the Legislature in a report The Legislature then considers them through a bill introduced by a Member of the Legislature If approved, this goes on the ballot at the next general election for ratification

CHAPTER 5

FIRST REPORT OF THE CALIFORNIA CONSTITUTION REVISION COMMISSION

In an historic action on February 15, 1966, the California Constitution Revision Commission submitted its first report to the Governor of California and the Legislature The comprehensive report was 212 pages long and was widely distributed to interested parties and the public, 30,000 copies being printed

The recommendations of the commission embodied about one-third of the State Constitution as a first-phase revision project It covered the core of the Constitution dealing with the legislative, executive, and judicial branches of government It covered Articles III, IV, V, VI, VII, VIII, and XXIV.

The report of the commission stated

> "The background study attempts to present, for each provision in the article, the alternative methods of treating it The constitution and laws of other states, relevant textual material, and proposals from knowledgeable sources in the public and private sectors are included in the study
>
> "When the study is completed the article is considered by a committee of from 10 to 30 members The committee, after studying the article and related material in detail, submits its recommendations to the whole Commission After further study, debate, and solicitation of outside opinion, the revised article is approved in substance by the Commission and forwarded to the Drafting Committee
>
> "It is the task of the Drafting Committee to rephrase the article in more modern, concise language and if necessary to organize it in a more logical framework As with other committees, the recommendations of the Drafting Committee are forwarded to the full Commission where extensive discussion takes place before the article is finally approved.
>
> "In summary, the articles included in this proposed revision have been exhaustively studied Each section was (1) analyzed by the Commission staff or a specially retained consultant, (2) compared with a variety of source materials including the relevant provisions in other state constitutions, (3) scrutinized by outside experts, and (4) studied on many occasions by various committees of the Commission and by the Commission as a whole "

The first of a long series of hurdles for first-phase constitutional revision was the matter of getting Governor Brown to place this subject under special call, at that time required during an even numbered year under the state's outmoded Constitution After considerable discussion, the Governor issued a proclamation permitting the Legisla-

ture to consider this subject matter at its first extraordinary session then in progress.

The recommendations of the commission were introduced in the Legislature as Assembly Constitutional Amendment No 13 (First Extraordinary Session of 1966) The main author was Assemblyman James R Mills, Chairman of the Joint Committee on Legislative Organization It had 71 coauthors

CHAPTER 6

ACTION BY LEGISLATURE ON CONSTITUTIONAL REVISION AND LEGISLATIVE REFORM PROGRAM

In 1965, the Assembly Committee on Constitutional Amendments began reviewing the work of the commission to prepare the Legislature for its consideration, to assist in keeping the public informed, and enable interested parties to express themselves upon it A number of interim hearings were held in 1965 and early in 1966 upon this subject.

In March of 1966, shortly after the Constitution Revision Commission had submitted its recommendations to the Governor and the Legislature, the Assembly Interim Committee on Constitutional Amendments issued a Special Report on Constitutional Revision The report stated

> "As part of its interim assignment, the Assembly Committee on Constitutional Amendments has been reviewing the work of the California Constitution Revision Commission The Committee has held hearings in Sacramento (3 days); Los Angeles (1 day), Montebello (1 day); and Pico Rivera (1 day) reviewing proposed Articles III, IV, V, VI, VII, VIII, and XXIV, the entire first package of proposals submitted to the Legislature to date
>
> "The Committee has kept well informed on the deliberations and decisions of the Revision Commission Two members of the Committee also serve as members of the Commission and those members of the Committee who have been able to do so were encouraged to and did attend the sessions of the Revision Commission. The members of the Committee were notified of all sessions of the Commission and received the proposed revisions in the various stages of their progress toward the completed report
>
> "The Committee wishes to thank the Chairman of the Constitution Revision Commission, the Honorable Bruce W Sumner, the members of the Commission and the staff of the Commission for their cooperation in keeping the Constitutional Amendments Committee informed of the progress of constitution revision Their dedication to their work was well evidenced to this Committee by the many long hours they have spent preparing reports and giving testimony before the Committee It is hoped that their efforts will be rewarded by increased legislative enlightenment in the field of constitution revision.
>
> "California has the third longest Constitution in the world, exceeded only by that of the State of Louisiana and India It has not been revised since 1879, although since that time it has been amended over 300 times, its size increasing from 16,000 to over 75,000 words. California's Constitution has ceased to be a document embodying only the fundamental law on which the State Government should be directed In the words of Phil S Gibson,

former Chief Justice of the California Supreme Court, it is " . . . cumbersome, unelastic and outmoded . . It is not only much too long, but it is almost everything a Constitution ought not to be."

"For the past two years the California Constitution Revision Commission has been diligently at work studying the Constitution and preparing a proposed revision of it Thousands of working hours and over $150,000 in state funds have been expended thus far on this project. The distinguished citizen members of the Commission, among whose members are lawyers, professors, labor leaders, business executives, civic leaders, educators, judges, doctors, legislators, university presidents, have sacrificed their valuable time and talent to aid in the revision of California's outmoded Constitution.

"In February 1966, the Commission submitted its recommendations to the Governor and the Legislature—the result of two years of intensive investigation, study and debate This report reflects a valuable expenditure of time, money and talent that can ill afford to be wasted by the Legislature

"The Revision Commission has worked for the last two years toward the goal of having the people consider their proposals at the 1966 General Election In 1967 the Legislature may contain more than 30 new members It was the 1965-66 Legislature that was the Revision Commission's parent body during the formulation of many of the Commission's proposals It is important then that this Legislature—a Legislature which is sympathetic with the original purposes of the Revision Commission—act upon the proposals of the Commission.

"It is with this background, then, that the Committee on Constitutional Amendments, having reviewed the work of the Constitution Revision Commission, sets forth its findings and recommendations to the Legislature

"This report is based on the interim assignment of the Committee on Constitutional Amendments, reviewing the work of the California Constitution Revision Commission While the Committee does make numerous recommendations to the Legislature these recommendations are only tentative and thorough public hearings and public discussion should be conducted on the proposals of the Constitution Revision Commission Approval of this report by Members of the Committee does not preclude their later disagreement or non support of individual items proposed by the Revision Commission "

Along with a number of recommendations generally accepting the work of the commission with some slight modifications the committee made the following general recommendations·

GENERAL RECOMMENDATIONS

1 That the proposed revision of the State Constitution be presented to the voters at the next general election in a single omnibus measure

2. That the Legislature enact statutes effective upon the ratification by the electorate of the constitutional revision, placing into statutory law provisions of the Constitution which the commission recommended should be in the statutes rather than in the fundamental law. That in dealing with this problem the Legislature adopt the principle that where the commission intended no change in its recommendation but merely a removal of language from the Constitution which is of a statutory character, the Legislature make no substantive change at this time, but retain these provisions intact, reserving substantive changes for future consideration.
3. That the Legislature enact a conflict of interest statute effective upon ratification by the electorate of the constitution revision.
4. That the Legislature enact a statute effective upon ratification by the electorate of the constitution revision, providing for a modification of mileage and other allowances and a ceiling on adjustments in legislative pensions resulting from an increase in legislative pay.
5. That the Legislature enact a statute effective upon ratification by the electorate of the constitution revision, providing for a compensation commensurate with full time legislative service and the dignity of the lawmaking body of the State, such compensation to become effective at the beginning of the next terms of office for Members of the Legislature (January 2, 1967).

The Assembly Committee on Constitutional Amendments, to which ACA 13 (1st Ex) was referred, held lengthy hearings upon it on April 12 and April 13, 1966. A number of amendments, relatively minor in nature, were adopted and it was referred to the Assembly floor where it was passed by a vote of 67 to 1 on July 7, 1966

The consideration of the commission's proposed first phase constitutional revision necessitated companion legislation on the part of the Legislature Some bills were largely of a technical nature. These included (1) an act creating a Governor's disability commission; (2) an election procedures bill; and (3) an act which would upon the approval of the first phase of constitutional revision place the matter of a nonfundamental nature deleted from the Constitution in the statutes These bills were introduced jointly by Assemblyman James R. Mills and Assemblyman Edward E Elliott, Chairman of the Assembly Committee on Constitutional Amendments.

A more serious matter was the necessity for legislation providing an adjustment of compensation for legislators commensurate with mandatory full-time service provided in the commission's recommendations, limitation of fringe benefits, and a code of ethics and conflict of interest law, effective upon the ratification of ACA 13 by the electorate.

This first phase constitutional revision and legislative reform program embodied in ACA 13 (1st Ex.), AB 173 (1st Ex.), and the three other technical bills were approved by the Assembly after extensive public hearings by the Constitutional Amendments Committee and other committees.

In order to work out differences between the Senate and Assembly an ad hoc informal negotiating committee was appointed by President

Pro Tempore Hugh M. Burns of the Senate, and Assembly Speaker Jesse M Unruh, one of the main architects of the first phase constitutional revision and legislative reform program This committee met under the chairmanship of Senator Luther E Gibson, another one of the principal architects of this project Serving on the committee were Senate President Pro Tempore, Hugh M Burns, Senators Richard J Dolwig, Robert J. Lagomarsino, "J" Eugene McAteer, and John F. McCarthy; and Assemblymen Edward E Elliott, Frank Lanterman, James R Mills, Robert Monagan, Bob Moretti, Don Mulford, and Jerome Waldie. The committee first met on May 18, 1966 After many lengthy sessions, it reached unanimous agreement on June 28, 1966 The ad hoc committee worked in close consultation with the chairman and staff of the commission and the Legislative Counsel's Office, the legal advisers to the Legislature The unanimous agreement of the committee included a tough conflict of interest law and legislative reform measure in addition to approving ACA 13 (1st Ex.) with substantive minor changes

The final resolution of the two-house differences on AB 173 required a formal free conference, which successfully worked out the remaining problems. With the settlement of these final difficulties, ACA 13 was approved along with AB 173, which in due course was signed by Governor Brown.

The first phase constitutional revision has covered Articles III, IV, V, VI, VII, and VIII, dealing with the core of constitutional revision, the separation of powers and the legislative, executive, and judicial branches of government Twenty articles of the state's lengthy fundamental law remain to be revised The first-phase revision would remove a vast amount of excess wording, deleting 16,000 words out of 22,000 in the portions encompassed It makes the following changes.

Article III (Separation of Powers)

The language is updated and shortened by approximately 50 percent.

Article IV (Legislative)

Budget sessions of the Legislature (previously held every other year) are eliminated and regular sessions are held annually. There is no limitation as to the length of a regular session of the Legislature

The Legislature is empowered to fix its own salaries by statute, subject to a two-thirds vote of each house, the Governor's veto, and the initiative and referendum

Any pay adjustment for legislators passed in one session does not take effect until the regular session commencing after the next general election.

After 1966, salary increases for members of the Legislature of more than 5 percent multiplied by the ensuing calendar years cannot be passed.

The Senate and the Assembly are mandated to pass legislative conflict of interest statutes.

In the case of the statutory initiative, the present requirement that the petition be signed by 8 percent of the votes cast for all candidates

for Governor at the last preceding gubernatorial election is reduced to 5 percent The existing requirement of 8 percent for initiative constitutional amendments is retained. The proposed change will encourage persons wishing to sponsor initiative measures to use a *statutory* initiative rather than a constitutional amendment

The "indirect initiative"—a petition to the Legislature rather than to the people—is abolished.

Article V (Executive)

Article V (Executive Department), Article VII (Pardoning Power) and Article VIII (Militia) are combined

The Legislature is given authority to grant extensive powers to the Governor for reorganization of the executive branch

The long line of succession to the office of Governor after the Lieutenant Governor is cut out and a provision is added that other successors be designated by statute The specified line of succession to the office of Lieutenant Governor is also deleted.

Provision is made in the Constitution for determining disability of the Governor and the existence of a vacancy in that office. These powers are now delegated to the State Supreme Court

Standing to raise questions regarding the Governor's ability to perform his duties of office is restricted to a special body provided by law.

A provision allowing the Governor and Controller to authorize special funds for the Attorney General is deleted.

The commission determined that the Attorney General's salary—like that of other elected state officers—should be fixed directly by the Legislature and not by a constitutional provision

Article VI (Judicial)

The department system of the Supreme Court—already made obsolete by district courts of appeal—is deleted

The existing Constitution requires at least one superior court judge in each county The proposed article permits the Legislature with the concurrence of the boards of supervisors involved, to provide that one or more judges may be selected to serve more than one county

The existing Constitution required five years of admission to the practice of law in this state to be eligible for a judgeship in any court of record This is raised to 10 years for superior courts and above.

The existing Constitution specifies that the name of unopposed incumbent judges of the superior court in counties of 700,000 population or more not appear on the election ballot. The proposed language allows the Legislature to extend the system to any trial court in the state

Rules regarding the discipline of judges and absence of judges from the state are revised

Superior and municipal court judges seeking a nonjudicial public office must take a leave of absence without pay.

Membership of trial court judges on the Judicial Council was increased

Article XXII (Temporary Provisions)

The two-thirds vote requirement for a legislative salary adjustment was removed for 1966 leaving only a majority vote

* * * * * * * * * * *

A provision was added to ACA 13 which makes the content and language of Assembly Constitutional Amendment No 90 (reconvening of the Legislature to consider matters pocket-vetoed by the Governor) conform to the commission's style.

It should be noted that the legislative pay increase proposals and the conflict of interest bill were *not* actually a part of ACA 13, although the language in effect brought them into being is by ratifying AB 173.

This entire constitutional revision and legislative reform program went before the California voters on November 8th as Proposition 1-a.

CHAPTER 7

PROPOSITION 1-a

Just as the constitutional revision and legislative reform program had received extensive bipartisan support in the Legislature, so Proposition 1-a was a measure that was generally supported by Democrats, Republicans, and independents It was titled on the ballot in the following manner·

> CONSTITUTIONAL REVISION. Legislative Constitutional Amendment Repeals, amends, and revises various provisions of Constitution relating to separation of powers, and to the legislative, executive, and judicial departments; provides for annual general legislative sessions; provides compensation of members of Legislature shall be prescribed by statute passed by two-thirds vote, and limits rate of annual future adjustments; Legislature must enact laws prohibiting members from engaging in conflicting activities. Signatures necessary on petition for initiative statute reduced from 8% to 5%, eliminates initiatives to Legislature. Legislature shall provide for succession to the office of Governor in event of disability or vacancy.

The arguments in the ballot pamphlet, mailed by the Secretary of State to all registered voters, gave both the affirmative and negative arguments as follows.

Argument in Favor of Proposition No. 1-a:

We support the proposed revision of the State Constitution and urge all Californians to vote YES on Proposition 1-a:

EDMUND G. "PAT" BROWN
Governor of the State of California
RONALD REAGAN
RICHARD J DONOVAN, Judge
Municipal Court
San Diego Judicial District
(Former Member of the Assembly,
77th District)

One of our most crucial needs in these times is effective government—based on a modern Constitution

Yet, concerning the California Constitution, former State Supreme Court Justice Phil S. Gibson stated the Constitution is "cumbersome, unelastic, and outmoded . . . It is not only much too long, but it is almost everything a Constitution ought not to be."

California's Constitution is hardly modern It is the third longest Constitution in the world and has been amended over 300 times since 1879 In short, it is a mess.

In 1962, by more than a 2 to 1 vote, the people mandated modernization of the Constitution As a result, a blue-ribbon Constitution

Revision Commission of 69 leading Californians was appointed to recommend a revised Constitution These prominent citizens from all walks of life worked without pay for three years and spent thousands of hours at their task

The result is Proposition 1-a. It is the first phase of the commission's work It covers approximately one-third of the existing Constitution, and reduces that one-third from 22,000 to 6,000 words

The reforms in Proposition 1-a have been labeled by party leaders and non-partisan groups alike as essential to the effective operation of government

Proposition 1-a puts the Constitution into modern, concise and easily understandable language

The changes in the legislative, executive and judicial articles would include machinery, with adequate safeguards, to remove a Governor from office if he is proven unable to carry on his duties, judges would be under stronger disciplinary procedures and the practice of running for political office while still a judge would be curtailed, and the Legislature would meet annually to consider all problems confronting California

In keeping with increased time demands on the Legislature, Proposition 1-a removes salary provisions frozen in the Constitution and ratifies a new compensation plan with careful controls and strict regulations regarding the outside activities and income of legislators

The fundamental weapons available to California's citizens to combat abuses by their governmental officials—the initiative, the referendum and the recall—have been carefully preserved

State government today faces new challenges and new responsibilities not dreamed of in 1879 This new Constitution helps to meet those challenges by making government itself more flexible and able to do the job which our citizens have a right to expect

If states are to survive and prosper in our system, they need the tools of effective government—Proposition 1-a is a giant step toward that goal California can lead the way Vote YES on 1-a

LUTHER E GIBSON
State Senator, Solano County
BRUCE W SUMNER
Chairman, California Constitution Revision Commission
Judge, Superior Court, Orange County
THOMAS L PITTS
(Exec Sec'y, Calif Labor Fed. AFL-CIO) Member Calif Constitution Revision Commission

Argument Against Proposition No. 1-a:

As the only person who cast a negative vote in the Assembly on the Constitutional Revision program under California law I am designated to submit the negative argument on Proposition 1-a At the time the vote was taken in the Assembly, I was not opposed to this proposition in its entirety, rather, I found fault with a few of its provisions which

placed unrealistic restrictions on the legislature. It would be unfair to those persons who are vigorously opposed to this program for broad and fundamental philosophical beliefs if I were to submit an argument which would express, as is the case, only minor reservations about this program of reform Because of these considerations, I have delegated my responsibility for the negative argument to Senator John G Schmitz (R-Orange County) whose statement follows.

"This Constitutional Amendment, if passed, would mark a significant departure from our traditional system of citizen legislators to fully paid, full-time legislators

"The passing of laws in a free country ought not to be a full-time profession for anyone When it becomes so, the country permitting it will not long remain truly free

"We certainly need legal professionals in our courts, at the bar and on the bench We certainly need police professionals to enforce the law and protect the innocent We may or may not need professional bureaucrats in other branches of government But we do not need professional legislators

"The men who founded our American system of government assigned the law-making responsibility to elected legislatures which were much closer to the people than either the executive or the judiciary The executive and the judiciary were in the hands of professionals The legislature was the people's check on the appetite of government professionals for more and ever more power and money

"PRESCRIBING LAWS WHICH OTHER PEOPLE ARE TO BE FORCED TO OBEY CAN NEVER BE A PRIMARY OCCUPATION FOR ANY MAN WHO LOVES LIBERTY "

LEO J RYAN
Assemblyman, San Mateo County

The organized opposition to Proposition 1-a was nominal Among those opposing it were some taxpayers organizations, some weekly newspapers, and a small number of Members of the Legislature who did not approve of it

In support of Proposition 1-a were both candidates for governor, the mayors of the two largest cities of the state, the influential Los Angeles *Times*, TV and radio stations, and an overwhelming number of organizations, newspapers, and prominent citizens These included·

Agricultural Council of California
Alameda County Democratic Central Committee
Alameda County Taxpayers Association
Associated General Contractors of America, Inc
Baptist Ministers—Conference of Southern California
Bay Cities Metal Trade Council
Boards of Supervisors
Orange County
Riverside County
San Bernardino County
San Diego County
Ventura County
California Association for Curriculum Development Supervision
California Association of School Administrators
California Association of Secondary School Administrators
California Association of Public School Business Officials
California Congress of Parents and Teachers
California Democratic Council Board of Directors
California Elementary School Administrators Assn
California Federation of Women's Clubs

California Hospital Association
California Labor Federation (AFL-CIO)
California Manufacturers Association
California Medical Association
California Optometric Association
California State Chamber of Commerce
California Retailers Association
California State Employees Association
California School Boards Association
California State Restaurant Association
California Taxpayers Association
California Teachers Association
California Trucking Association
Canners League of California
Cannery Workers and Warehousemen's Union, Local 875
Chambers of Commerce
- Alhambra
- Apple Valley
- Arcadia
- Artesia
- Baldwin Park
- Beverly Hills
- Burbank
- Capitola
- Chula Vista
- Conejo Valley
- Covina
- El Monte-South El Monte
- Fresno
- Fullerton
- Greater Pittsburg
- Granada Hills
- La Habra Area
- La Mirada
- Long Beach
- Los Angeles
- Los Angeles (Junior)
- Montebello
- National City
- Oakland
- Orange County
- Pacific Palisades
- Palm Springs
- Pasadena
- Pinole
- San Diego
- San Francisco
- Santa Monica
- Seal Beach
- South Bay District
- West Covina

Citizens Political Advisory Council (San Francisco)
City Councils:
- Albany
- Azusa
- Beverly Hills
- Cypress City
- Dairy Valley
- El Monte
- Gardena
- Hawthorne
- Hermosa Beach
- Los Angeles
- Manteca
- Milpitas
- Monrovia
- Newport Beach
- Richmond
- San Dimas
- San Fernando
- Santa Monica
- South El Monte
- Temple City
- Thousand Oaks
- West Covina

Civic League of Improvement Clubs and Associations (San Francisco)
Commonwealth Club of California
Conference of California Judges
County Supervisors Association of California
Democratic State Central Committee
Downtown Association of San Francisco
Home Builders Association of Los Angeles, Orange and Ventura Counties
Judges, Marshals and Constables Association of California
Laguna Beach Democratic Club
Lassen County Democratic Central Committee
League of California Cities
League of Women Voters of California
Los Angeles County Restaurant Association
Los Angeles Realty Board of Directors
Northern California Ready Mixed Concrete and Materials Association
Republican State Central Committee
Rock, Sand and Gravel Producers of Northern California
San Bernardino County Taxpayers Association
San Diego County Municipal Court Judges Association
San Diego Democratic Central Committee
San Diego Superior Court Judges
San Fernando Valley State College (Advisory Board)
Santa Clara County Conference of Municipal and Justice Court Judges
Southern California Political Science Association
Southern California Restaurant Association
State Judicial Council
Sutter County Democratic Central Committee
Torrance Education Association (Representative Council)
Town Hall, Los Angeles
Tulare County's Superior Court Judges (Ginsburg, Ballantyne, Locke)
Visalia Municipal Court Judge (Noel McDermott)
Western Conference of Teamsters

NEWSPAPER ENDORSEMENTS, YES ON PROPOSITION 1-a

ALAMEDA *Times-Star*
ALHAMBRA *Post Advocate*
ANAHEIM *Citizens News*
ANDERSON *Valley News*
ANTIOCH *Ledger*
ARCADIA *Tribune*
ARTESIA *Advocate*
ATWATER *Signal*
AZUSA *Herald*
BAKERSFIELD *Californian*
BEVERLY HILLS *Courier*
BORREGO SPRINGS *Borrego Sun*
BURLINGAME *Advance-Star*
BURBANK *Review*
CALIPATRIA *Herald*
CAMARILLO *Daily News*
CARMICHAEL *Courier*
CHICO *Enterprise-Record*
CHINO *Champion*
CHULA VISTA *Star-News*
CLOVERDALE *Reveille*
CLOVIS *News & The Pinedale Local*
COLUSA *Sun Herald*
CONCORD *Transcript*
CORCORAN *Journal*
CORONA *Independent*
CORNING *Observer*
CRESCENT CITY *Del Norte Triplicate*
CULVER CITY *Evening Star News*
DUARTE *Duarte-Bradbury Journal*
EL CAJON *Inland Empire Daily Californian*
ENCINO *Encinican*
EUREKA *Humboldt Times Humboldt Standard*
FAIRFIELD-SUISUN *Republican*
FERNDALE *Enterprise*
FULLERTON *News-Tribune*
GARBERVILLE *Redwood Record*
GILROY *Dispatch*
GLENDALE *News Press*
GLENDORA *Press*
GOLETA *Gazette Citizen*
HANFORD *Sentinel*
HAYWARD *Daily Review*
HEMET *News*
HIGHLAND *Messenger*
HOLLISTER *Advisor*
IMPERIAL BEACH *Star News*
KING CITY *Rustler and News*
LAGUNA BEACH *South Coast News*
LANCASTER *Antelope Valley Ledger-Gazette*
LINCOLN *News Messenger*
LIVERMORE *Herald-News*
LODI *News Sentinel*
LOMPOC *Record*
LONG BEACH *Independent and Press Telegram*
LOS ANGELES *Central News*
LOS ANGELES *Eastside Sun*
LOS ANGELES *Enterprise*
LOS ANGELES *Herald Examiner*
LOS ANGELES *Mexican-American Sun*
LOS ANGELES *Sentinel*
LOS ANGELES *Senior American*
LOS ANGELES *Southwest News*
LOS ANGELES *Times*
LOS ANGELES *Wyvernwood Chronicle*
LOS GATOS *Times Observer*
MADERA *Tribune*
MARTINEZ *Contra Costa News Gazette*
MONROVIA *Journal*
MONROVIA *News Post*
MONTEREY *Park Progress*
MONTEREY *Peninsula Herald*
NAPA *County Record*
NAPA *Register*
NATIONAL CITY *Star News*
NEVADA CITY *Nevada County Nugget*
NEWHALL-SAUGUS *Sun*
NEWPORT BEACH-COSTA MESA *Orange Coast Daily Pilot*
NOVATO *Advance*
OAKLAND *East Bay Labor Journal*
OAKLAND *Neighborhood Journal*
OAKLAND *Observer*
OAKLAND *Tribune*
OCEANSIDE *Blade Tribune*
ONTARIO-UPLAND *Daily Report*
ORANGE *News*
PALMDALE *Antelope Valley Press*
PALM SPRINGS *Desert Sun*
PALO ALTO *Times*
PASADENA *Independent-Star-News*
PETALUMA *Argus Courier*
POMONA *Progress-Bulletin*
PORTERVILLE *Recorder*
RAMONA *Sentinel*
RED BLUFF *Daily News*
REDLANDS *Facts*
REDWOOD CITY *Tribune*
REDDING *Record Searchlight*
RICHMOND *Independent*
RIVERSIDE *Enterprise*
ROSEVILLE *Press Tribune*
SACRAMENTO *Bee*
SACRAMENTO *Union*
SALINAS *Californian*
SAN BERNARDINO *Sun Free Press and Muscoy News*
SAN BERNARDINO *Telegram*
SAN BRUNO *Herald*
SAN DIEGO *Business*
SAN DIEGO *Evening Tribune*
SAN DIEGO *Union*
SAN DIEGO *Independent*
SAN FERNANDO *Sun*
SAN FRANCISCO *Chronicle*
SAN FRANCISCO *Daily Comm News*
SAN FRANCISCO *Examiner*
SAN GABRIEL *Valley Tribune*

SAN LEANDRO *Morning News*
SAN LUIS OBISPO *Telegram-Tribune*
SAN MATEO *Times and News Letter*
SAN PEDRO *News Pilot*
SAN RAFAEL *Daily Independent Journal*
SAN JOSE *News-Mercury*
SAN JOSE *Spartan Daily*
SANTA BARBARA *News-Press*
SANTA CRUZ *Mobile Home News*
SANTA CRUZ *Sentinel*
SANTA PAULA *Chronicle*
SANTA ROSA *Press Democrat*
SEASIDE *News-Sentinel*
SELMA *Enterprise*
SHERMAN OAKS *Times*
SOLEDAD *Bee*
SOLVANG *Santa Ynez Valley News*
SOUTH SAN FRANCISCO *Enterprise*
SOUTH SAN FRANCISCO *The Post*
STOCKTON *Record*
STUDIO CITY *Graphics*
SUNNYVALE *Standard*
TAHOE *Daily Tribune*
TARZANA *Times*
TEMPLE CITY *Times*
TERRA BELLA *News*
THOUSAND OAKS *News Chronicle*
TOLUCA LAKE *Toluran*
TORRANCE *South Bay Daily Breeze*
TUSTIN *Citizens News*
TWENTY-NINE PALMS *Desert Trail*
VACAVILLE *Reporter*
VALLEJO *Times-Herald*
VAN NUYS *Valley News and Green Sheet*
VENTURA *Star Free Press*
WALNUT CREEK *Contra Costa Times*
WHITTIER *News*
WOODLAND *Democrat*
WATSONVILLE *Register-Pajaronian*
YORBA LINDA *Star*
YREKA *Daily News*
YUCAIPA *News-Mirror*

PROMINENT INDIVIDUALS ENDORSING PROPOSITION 1-a

Mrs John O Ahern, San Francisco
Executive Vice President
California League of Women Voters
Alton E Allen, Laguna Beach
Orange County Supervisor
Hugh Allen, Redding
Vice President
California Labor Federation, AFL-CIO
Chris Amado, San Francisco
Vice President
California Labor Federation, AFL-CIO
A E Arnold, Santa Ana
Realtor
Al R Arps, San Fernando
Mayor
Peter R Arrigoni, Fairfax
Mayor
DeGraff Austin, San Diego
San Diego County Supervisor
David L Baker, Garden Grove
Orange County Supervisor
Mrs Jeannette Banoczi, Anaheim
Radio Station Owner
Mrs John James Barbour, La Mesa
Vice President at Large, California Federation of Women's Clubs
Dr Harold H Baxter, Oakhurst
President
Oakhurst Chamber of Commerce
Louis Belotti, Mount Shasta
Hotel Executive
Mark Berke, San Francisco
President
California Hospital Association
Anthony J Bogdanowicz, Los Angeles
Vice President
California Labor Federation, AFL-CIO
Robert H Bollum, San Diego
Title Insurance
Henry A Boney, National City
San Diego County Supervisor
R K Boyd, Angwin
Professor of Business Administration
Thomas Bradley, Los Angeles
City Councilman
Richard R Brown, El Cajon
Vice Mayor
Mrs Bill Bryant, El Segundo
Junior President, California Federation of Women's Clubs
Lionel Cade, Compton
City Councilman
M R Callahan, Long Beach
Vice President
California Labor Federation, AFL-CIO
James Carroll, Santa Ana
Business Executive
John A Cinquemani Los Angeles
Vice President
California Labor Federation, AFL-CIO
Fred P Clatworthy, Santa Ana
Business Executive
Horace O Coil, Riverside
David S Collins, Anaheim
Realtor

G Y Conway, Huntington Park
Vice President at Large
California Labor Federation,
AFL-CIO
Robert Cozens, Escondido
San Diego County Supervisor
Mrs C E Crittenden, Long Beach
Vice President
League of Women Voters
Superior Judge James E
Cunningham, San Bernardino
President
Conference of California Judges
John L Dales, Los Angeles
Vice President
California Labor Federation,
AFL-CIO
O Doyle Dannenberg, O D
Escondido—President
California Optometric Association
Burgess Dempster, Santa Ana
Engineering
Robert C. Dent, San Diego,
San Diego County Supervisor
Joseph Desmond, Fresno
President, California State
Restaurant Association
J J Devine, Los Angeles
President
California Trucking Association
Manuel Dias, San Francisco
General Vice President
California Labor Federation,
AFL-CIO
Alberto C Diaz, Los Angeles
Editor-Publisher, Belvedere
Citizen and East Side Journal
Douglas A Dollarhide, Compton
City Councilman
Warren M Dorn, Los Angeles
Supervisor, Los Angeles County
Arthur F Dougherty, San Francisco
Vice President
California Labor Federation,
AFL-CIO
William G Dowd, San Mateo
Vice President
California Labor Federation,
AFL-CIO
Mrs Ward Duffy, San Francisco
Dr Von T Ellsworth, Berkeley
California Tax Service
Gilbert E Essell, San Clemente
W J Estelle, Jr, Susanville
Chairman, Lassen County
Democratic Central Committee
C M Featherly, Santa Ana
Orange County Supervisor
William H Fellows, Los Angeles
President
California Manufacturers Association
Wilbur Filippini, Santa Barbara
Vice President
California Labor Federation,
AFL-CIO

Harry Finks, San Francisco
Vice President
California Labor Federation,
AFL-CIO
Alex Fiore, Thousand Oaks
Vice Mayor
Fred D Fletcher, San Francisco
Vice President at Large
California Labor Federation,
AFL-CIO
Edward J Foley, King City
Walter Frome, Santa Ana
Business Executive
William Fugue, Los Angeles
Business Executive
Frank A Gibson, San Diego
San Diego County Supervisor
Senator Luther E Gibson, Vallejo
Publisher, Vallejo Morning Times
Herald & Evening News Chronicle
Mrs Sidney Goldhammer
San Diego—Director
California League of Women Voters
Bill Greene, Los Angeles
C A Green, Stockton
Vice President
California Labor Federation,
AFL-CIO
Frank A Gruenfelder, Santa Ana
Supt of Orange County Schools
Robert Guggenheim, Newport Beach
Business Executive
Richard W Hackler, San Francisco
Vice President at Large
California Labor Federation,
AFL-CIO
Gertrude J Haist, La Mirada
Secretary
La Mirada Chamber of Commerce
Robert F. Hale, San Diego
Operations Manager
San Diego Chamber of Commerce
Thomas E Hall, Commerce
Business Executive
Benjamin E Handy, Los Angeles
President
Los Angeles Urban League
Catherine Hanrahan
San Luis Obispo
President, California Teachers' Assn
Harry Hansen, Eureka
Vice President
California Labor Federation,
AFL-CIO
Mrs J B Harloe, Fullerton
Vice President
California League of Women Voters
Mrs Norman Hinerfeld, Los Angeles
Director
California League of Women Voters
William H Hinstein, Orange
Orange County Supervisor
Don Hobbs, Newport Beach
Manager, Orange County Airport

Mrs Floyd Hornbrook, Stockton
Vice President at Large, California Federation of Women's Clubs
Harvey Howard, Los Angeles
Chairman, "Get Out the Vote"
Robert J Hudecek, Los Angeles
President, Southern California Restaurant Association
Richard D Hus, Thousand Oaks
City Councilman
Hon Luther N Hussey, San Diego
President, San Diego County Municipal Court Judges Association
Ted Ince, Oakland
President
East Bay Restaurant Association
Paul L Jones, Oakland
Vice President
California Labor Federation, AFL-CIO
J C Jury, Granada Hills
Manager, Granada Hills Chamber of Commerce
Mrs Kenneth Kaplan, San Mateo
Director
California League of Women Voters
Mrs Donald S Keeney, Merced
Director
California League of Women Voters
Norman Kestner, Concord
City Councilman
James C Killingsworth
Newport Beach
Publisher
Mrs Stephen Kline, Los Altos
Vice President
California League of Women Voters
K C Klinger, Yorba Linda
Executive Assistant
Board of Supervisors, Orange County
T F Knight, Jr., Los Angeles
Executive Vice President
California Manufacturers Association
David Koester, Santa Cruz
City Manager
Leonard I. Kopelkin, Santa Barbara
City Councilman
Henry L Lacayo, Los Angeles
Vice President at Large
California Labor Federation, AFL-CIO
H D Lackey, Bakersfield
Vice President
California Labor Federation, AFL-CIO
Kenneth D Larson, La Mirada
Vice President
California Labor Federation, AFL-CIO
Stanley Lathen, Vallejo
Vice President
California Labor Federation, AFL-CIO
Thomas E. Laubacher, Oxnard
County Supervisor
Frank C Layton, Capitola
General Manager
Capitola Chamber of Commerce
Walter Lindecker, Bakersfield
President, Independent Insurance Agents of America
Gilbert W. Lindsay, Los Angeles
City Councilman
Charles E Lloyd, Los Angeles
Chairman
California Community Organizations
Leroy E Littlejohn, Sacramento
President
California State Employees
Daniel N Longaker, Oakland
Chairman, Alameda County Democratic Central Committee
John Lowery, Los Angeles
President, Southern Council of Conservation Clubs
Franklin Lowney, La Puente
Manager, La Puente-Industry Chamber of Commerce
Bernice Hubbard May, Berkeley
City Councilman
William J McCann, Santa Fe Springs
City Councilman
John F McCarthy, San Rafael
California State Senate
Minority Leader
G A McCulloch, Los Angeles
Vice President
California Labor Federation, AFL-CIO
John P McFarland, San Francisco
Attorney
Superior Judge Charles J. McGoldrick, Santa Rosa
Immediate Past President
Conference of California Judges
Ray S Mendoza, Los Angeles
Vice President
California Labor Federation, AFL-CIO
Victor Michel, Placentia
Mayor
Billy Mills, Los Angeles
City Councilman and Chairman of Democratic State Committee
Robert T. Monagan, Stockton
California State Assembly
Minority Leader
John C Montgomery, Camarillo
County Supervisor, Ventura County
Harold W Moore, Yuba City
Secretary-Treasurer, Sutter County Democratic Central Committee
Mrs Adolph Moskovitz, Sacramento
Director
California League of Women Voters
Mrs E P Motley, Davis
Vice President,
California League of Women Voters

Bernice Nield, Gridley
Secretary
Gridley Chamber of Commerce
P J O'Donovan, Los Angeles
Exec. V P, Home Builders Assn. of Los Angeles, Orange and Ventura Cos
Thomas J O'Keefe, San Clemente
City Councilman
E P O'Malley, Los Angeles
Vice President at Large
California Labor Federation, AFL-CIO
William K Opdyke, La Mirada
Executive Director
Chamber of Commerce
H G Osborne, Santa Ana
Director, Flood Control District
Max J Osslo, San Diego
Vice President
California Labor Federation, AFL-CIO
Victor Palmieri, Thousand Oaks
Trustee, California State Colleges
James E Pardee, Susanville
County Counsel, Lassen County
Clayton H Parker, Santa Ana
Chief Assistant County Counsel
Orange County
Lindsley Parsons, Newport Beach
City Councilman
Robert C Paxton, Los Angeles
Business Executive
Lawrence Peters, Seal Beach
President, Seal Beach
Chamber of Commerce
Paul A Peterson, San Diego
Chairman, San Diego County
Democratic Central Committee
William J Phillips, Fullerton
Orange County Supervisor
John F. Porter, Tustin,
Business Executive
Jerome Posner, Los Angeles
Vice President at Large
California Labor Federation, AFL-CIO
Nancy Rademaker, Modesto
Secretary-Treasurer
California League of Women Voters
Howard Reed, Martinez
Vice President
California Labor Federation, AFL-CIO
Enos C Reid, Riverside
Dick Richards, Newport Beach
Business Executive
Dan Ridder, Long Beach
Co-publisher, Long Beach
Independent Press Telegram
Harry S Rinker, Newport Beach
Business Executive
Thomas A Rotell, San Francisco
Executive Secretary
Bay Cities Metal Trades Council
Norman B Scharer, Santa Barbara
President, California Association of School Administrators
Don N Schneider, Fullerton
Business Executive
Mrs Gar Schneider, Pomona
Director
California League of Women Voters
Joseph H Seymour, Los Angeles
Vice President
California Labor Federation, AFL-CIO
Garvin F. Shallenberger
Santa Ana, Attorney
Leslie Shaw, Los Angeles
Postmaster
Samuel C Sheats, Altadena
Attorney
Edward T Shedlock, Los Angeles
Vice President at Large
California Labor Federation, AFL-CIO
Robert Shelton, Los Angeles
Business Executive
Cornelius H Siemens, Arcata
President, Humboldt State College
Dr Wayne A Simpson, Ventura
President, California Association of Secondary School Administrators
Jim Slemons, Santa Ana
Business Executive
Thomas A Small, San Mateo
Vice President
California Labor Federation, AFL-CIO
Charles J Smith, Los Angeles
Vice President at Large
California Labor Federation, AFL-CIO
DeWitt E Smith, Vista
City Councilman
Donald H Smith, Del Rey Oaks
City Attorney
Jack Smith, Tulare
Manager
Tulare Chamber of Commerce
James L Smith, Riverside
Vice President
California Labor Federation, AFL-CIO
James M Smith, Los Alamitos
City Administrator
Mrs George F Spitzer, Berkeley
Director
California League of Women Voters
Mrs David Steinberg, Palo Alto
Director
California League of Women Voters
William Stookey, Dairy Valley
Construction Executive
Mrs Leon H. Stutzman, Monterey
Director
League of Women Voters
Thomas Thompson, Anaheim
Radio Station Owner

Morris Weisberger, San Francisco
Vice President
California Labor Federation, AFL-CIO

Burr Williams, Anaheim
Business Executive

Ted C Wills, Fresno
City Councilman, Mayor Pro Tempore

Herbert Wilson, Los Angeles
Vice President at Large
California Labor Federation, AFL-CIO

Mrs Edward D Wylie, Glendale
Vice President, California Federation of Women's Clubs

Walter J Zable, San Diego
Business Executive

Under the leadership of Assembly Speaker Jesse M Unruh, and with the effective cooperation of Senate President pro Tempore Hugh M. Burns, an impressive campaign was conducted The two candidates for governor served as honorary chairmen of the committee and serving as co-chairmen were Superior Court Judge Bruce W Sumner, Thomas L Pitts, Secretary-Treasurer, California Labor Federation, AFL-CIO, and Milton M. Teague, Past President, California Chamber of Commerce.

Proposition 1-a was approved by the voters on November 8, 1966, by a landslide vote of 4,129,558 for and 1,475,680 against

This first phase constitutional revision and legislative reform program represents a consummation of many years of effort to streamline and modernize the Constitution and institute essential reforms for improved state government in California The California Constitution Revision Commission had achieved its initial goal It turned to the task of completing the job.

CHAPTER 8

TASKS AHEAD FOR THE CONSTITUTION REVISION COMMISSION

It is illustrative of the efficient and dedicated work of the California Constitution Revision Commission that it moved ahead with the work of its second phase of constitutional revision even before the first phase had been approved by the electorate Even before the Legislature took its final action on the first constitutional revision and legislative reform program on July 7, 1966, the commission was already at work on the second phase.

The second phase involves Articles IX, X, XI, XII, XVII and XVIII, as well as some tremendously difficult problems. Altogether there remain 20 articles to be considered out of 26

Mr Richard L Patsey, special counsel for the commission, commented in testifying before the Assembly Constitutional Amendments Committee at a hearing in Los Angeles on September 27, 1966:

> "Now, as for the second phase, the Constitution Revision Commission has now under study Article X, relating to state institutions and public buildings, Article XVII, relating to land and homestead exemptions; and Article XVIII, relating to legislatively proposed constitutional amendments We anticipate that these studies will be completed shortly and later this fall, the commission will be undertaking three very lengthy and complex articles, Article IX, relating to education, Article XI, relating to local government, and Article XII, relating to corporations. These studies will take a good deal of time The staff, however, is preparing new background studies for future articles that will be sent out to interested groups and individuals on the outside so we can receive their comments before the commission begins to study them For example, a background study has been prepared and sent out to interested people on Article II, the article relating to suffrage, and on Article XXI, relating to our state boundaries Background studies are now being prepared by the staff on Article I, Bill of Rights; Article XIV and XV, relating to water rights and harbor frontages. Article XXIII, relating to recall; Article XXVII, relating to old age security and security for the blind; and Article XXXIV, relating to public housing projects So, as you can see, Mr Chairman and members, the commission has not at all stopped its work, even though Proposition 1-a is on the ballot It is continuing on It hopes to have the opportunity to continue its task and to complete its task, that is, to revise or recommend a revision for the entire Constitution
>
> "It seems to us on the commission that the state government has a modern and effective role to play in our governmental structure and that state government can only play this modern and ef-

fective role if it is based on a modern and effective Constitution; and that, I think, is why, basically, we consider this project so important. Again, we are indebted for your support We thank you for your continuing efforts and interest in constitutional revision and we hope that we can continue this project

". . . It would seem to me difficult to complete all of our recommendations by the next legislative session in January of 1967, and I doubt whether it could be completed in January 1968. But we will have another logical portion of the Constitution we hope to submit to you at that time If we are phasing our programs, it would seem to me that there would probably be a third phase As to the length of time that it will take the commission, there have been estimates made by our Chairman, Judge Sumner, of four years. . . It is also realistic to say that it might take longer but it is very difficult to say at this point."

Dr Alonzo L Baker, Professor of Political Science at La Sierra College, in his appearance before the Assembly Interim Committee at Los Angeles on September 27, 1966, expressed his approval of the first phase constitutional revision and the work of the Constitution Revision Commission and the hope that the complete revision would be achieved in a reasonable length of time. He also stated that in his opinion the present method being used for revising the Constitution should be continued but in the completion of the work there should be no weakening of the provisions of Article XVIII which provide for the calling of constitutional conventions, and no discouraging of the use of these provisions in the future.

The most vital portions of California's basic law were encompassed in the first phase revision, those involving the effective functioning and balance among the three branches of state government Much excess verbiage has also been cleared away But monumental tasks remain Twenty articles have still to be considered, and some backtracking in order to take care of minor matters will probably be necessary with those articles already revised in the publicly approved first phase.

CHAPTER 9

CONSTITUTIONAL REVISION IN OTHER STATES AND THE RENAISSANCE OF STATE GOVERNMENT

While the California fundamental law was the third longest in the world, it was not unique in 1965 in having the undesirable characteristics outlined by distinguished authorities on democratic government. This condition has been common among most of the states of the union. It was symptomatic of the decline in the role of state government

What is now happening in California is a part of a nationwide movement toward a renaissance of state government. Particularly since 1950, states in increasing numbers have undertaken projects to improve and modernize their constitutions It was about at this time that the move toward the revitalization of state government began to accelerate. Proposed amendments to the legislative articles of the constitutions of 20 states were voted upon in general elections in 1966 In some respects, California has placed itself in a leadership role, as has been the case in other fields, by the techniques it is developing for constitutional revision.

The nationwide constitutional revision movement among the states involves the strengthening of state government in order that it can perform its function more effectively under a dual sovereignty with the federal government as envisioned by the founding fathers The successful fruition of these efforts is essential in order to maintain government closer to the people and to forestall an excessive centralization and concentration of power that erodes and undermines democracy It is imperative that there be federal protections of rights uniformly guaranteed by the United States Constitution; and the necessity for the federal government to take action in this field at times is apparent. But this need should not lead the citizen into thinking that the states have a declining function in our governmental system

Mr. Sid McCausland, research analyst for the Legislative Reference Service of the California Legislature states in a report upon this subject prepared for the Assembly Interim Committee on Constitutional amendments:

> "The average state constitution in the United States is 85 years old. The shortest constitution contains 4,840 words; the longest, over 200,000. But regardless of the age or length of its constitution, each state has found it necessary to alter the face of its basic law as it has sought to cope with the challenges of a dynamic society.
>
> "Interest in organized, systematic revision is a fairly new phenomenon Prior to 1950, many states paid lip service to constitutional revision, but very little work was accomplished Each year since 1950 an ever increasing number of states have undertaken projects aimed at updating their constitutions.

"There are two basic ways to tackle total constitutional revision The first involves discarding the old document and drafting a new one This one-shot approach is rather drastic and almost always resisted by the state's power structure Michigan is the only state since 1950 to replace an old document by adopting a new constitution

"The second and most popular method for total revision involves the piece-by-piece, segment-by-segment review and revision of the basic document to reflect the needs and trends of a dynamic state Most interest in this process of continuous revision dates from the late 1950's, and we have no report on the success of any of the major projects.

"There are several techniques for the accomplishment of constitutional revision. The most common has been the introduction of constitutional amendments by the state legislatures Approximately 90 percent of all constitutional revision efforts have been in the form of amendments proposed by the legislatures.

"In recent years a second method, known as the limited constitutional convention, has become popular as a tool for working out solutions to specific problems

"Of special interest to California is the rapid growth in the popularity of constitutional commissions since 1950 Between 1950 and 1965, 38 constitutional commissions were organized Eight of the 38 were created in 1965 alone

"Most commissions have been created to study and submit general recommendations for constitutional change · to draft new sections, and to recommend deletion of extraneous and obsolete information

"The commissions with limited mandates to study stated issues and to submit specific amendments have been more successful than commissions with broad mandates Their proposals have had a far higher rate of acceptance than recommendations that would affect the entire constitutional system The latter have usually become embroiled in political controversy, with resultant modifications that often render them unrecognizable, and sometimes even contrary to original proposals

"In conclusion, it should be noted that ·

"1. Most interest in constitutional revision emerged during the 1950's;

"2 The bulk of constitutional changes are taking place on a piecemeal basis with very few states undertaking systematic revision studies;

"3 A large percentage of constitutional change is accomplished through legislative initiative;

"4. The limited constitutional convention has become popular in several states as a tool for revision

"5 Since 1960 the Constitutional Commission has become the popular technique for revision, but its ability for success has not yet been proven; and finally,

"6 State constitutions are changing, slowly perhaps, but they are changing It is possible to update the document without

throwing out the whole thing, but no state has been successful in its efforts for revision unless it has had the wholehearted support of its legislative leadership ''

Article X of the Bill of Rights, which was adopted in 1791, reads·

"The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states, or to the people ''

There are many experts in government who appear to believe that there has been a severe decline of the states in the exercise of this power during recent decades, and that the states are undergoing a crisis. Problems of economics, finance, individual relations, population, traffic, health, conservation, etc, constantly subject the states to severe tests When states are revitalized with constitutional revision programs that give them the tools to respond to needs, this danger of decline is eliminated In its movement for constitutional revision, the California Legislature is endeavoring to perform a vital public service for the strengthening and improvement of our American system of government In the successful achievement of the first phase constitutional revision and legislative reform program the most difficult obstacles have been overcome It is incumbent upon it, with the able, conscientious, and expert guidance of the California Constitution Revision Commission, to bend its best efforts to complete this work

APPENDICES

APPENDICES

Complete text of the bills making up California's first phase constitutional revision and legislative reform program and their authors, 1966 First Extraordinary Session, California Legislature:

CALIFORNIA LEGISLATURE—1966 FIRST EXTRAORDINARY SESSION

Assembly Constitutional Amendment No. 13

Introduced by Assemblymen Mills, Allen, Monagan, Unruh, Alquist, Ashcraft, Badham, Bagley, Barnes, Bee, Beilenson, Belotti, Biddle, Britschgi, Brown, Burgener, Burton, Carrell, Casey, Chapel, Chappie, Conrad, Crown, Cusanovich, Danielson, Dannemeyer, Deukmejian, Dills, Donovan, Duffy, Elliott, Fenton, Ferrell, Flournoy, Garrigus, Gonsalves, Greene, Henson, Hinckley, Harvey Johnson, Ray E. Johnson, Kennick, Knox, Marks, McMillan, Meyers, Milias, Moretti, Mulford, Pattee, Petris, Porter, Powers, Quimby, Rumford, Russell, Ryan, Shoemaker, Song, Soto, Stanton, Stevens, Thelin, Thomas, Veneman, Veysey, Waldie, Warren, Whetmore, Williamson, Young, and Zenovich

March 29, 1966

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Assembly Constitutional Amendment No 13—A resolution to propose to the people of the State of California a revision of portions of the Constitution of the state by repealing Articles III, V, VI, VII, and VIII, by repealing Sections 1, 1b, 1c, 1d, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22a, 23, 23a, 23b, 24, 25, 25a, 25½, 25 7, 26, 28, 32, 33, 34, 34a, 35, 36, 37, 38, of Article IV, by amending and renumbering Sections 1a, 22, 25¾, 29, 30, 31, 31a, 31b, 31c, of Article IV, by amending the heading of Article IV, and adding Articles III, V, and VI, and by adding Sections 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 28 to Article IV, and by adding Section 29 to Article XIII, and by adding Sections

4, 5, 6 and 7 to Article XXII, relating to government of the State of California

[Filed with Secretary of State July 18, 1966]

WHEREAS, The Legislature, in considering a proposal to revise the provisions of the Constitution which relate to the separation of the legislative, executive, and judicial departments, finds it necessary to propose, in a single measure, a revision of Articles III, V, and VI, and a revision of a portion of Article IV, in order to accomplish an orderly and coherent treatment of the constitutional provisions which define the lines of separation; now, therefore, be it

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1966 First Extraordinary Session commencing on the 10th day of February, 1966, 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 portions of the Constitution of the state be revised as follows:

First, that Article III of the Constitution of the state is repealed.

Second, That Article III is added, to read:

ARTICLE III

SEPARATION OF POWERS

The powers of state government are legislative, executive, and judicial Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

Second and One-half, That the heading of Article IV is amended to read:

LEGISLATIVE

Third, That Section 1 of Article IV is repealed

Fourth, That Section 1a of Article IV is amended and renumbered to be Section 20 of Article XIII, to read·

SEC 20 Notwithstanding any limitations or restrictions in this Constitution contained, every state office, department, institution, board, commission, bureau, or other agency of the State, whether created by initiative law or otherwise, shall be subject to the regulations and requirements with respect to the filing of claims with the State Controller and the submission, approval and enforcement of budgets prescribed by law.

Fifth, That Section 1b of Article IV is repealed

Sixth, That Section 1c of Article IV is repealed

Seventh, That Section 1d of Article IV is repealed

Eighth, That Section 2 of Article IV is repealed.

Ninth, That Section 3 of Article IV is repealed.
Tenth, That Section 4 of Article IV is repealed
Eleventh, That Section 5 of Article IV is repealed.
Twelfth, That Section 7 of Article IV is repealed.
Thirteenth, That Section 8 of Article IV is repealed.
Fourteenth, That Section 9 of Article IV is repealed
Fifteenth, That Section 10 of Article IV is repealed.
Sixteenth, That Section 11 of Article IV is repealed.
Seventeenth, That Section 12 of Article IV is repealed.
Eighteenth, That Section 13 of Article IV is repealed.
Nineteenth, That Section 14 of Article IV is repealed
Twentieth, That Section 15 of Article IV is repealed
Twenty-first, That Section 16 of Article IV is repealed
Twenty-second, That Section 17 of Article IV is repealed.
Twenty-third, That Section 18 of Article IV is repealed
Twenty-fourth, That Section 19 of Article IV is repealed
Twenty-fifth, That Section 20 of Article IV is repealed
Twenty-sixth, That Section 21 of Article IV is repealed.
Twenty-seventh, That Section 22 of Article IV is amended and renumbered to be Section 21 of Article XIII, to read:

SEC. 21. No money shall be drawn from the Treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the Controller. No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution.

(1) Whenever federal funds are made available for the construction of hospital facilities by public agencies and nonprofit corporations organized to construct and maintain such facilities, nothing in this Constitution shall prevent the Legislature from making state money available for that purpose, or from authorizing the use of such money for the construction of hospital facilities by nonprofit corporations organized to construct and maintain such facilities

(2) The Legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions

(3) The Legislature shall have the power to grant aid to needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, and no person concerned with the administration of aid to needy blind persons shall dictate how any applicant

or recipient shall expend such aid granted him, and all money paid to a recipient of such aid shall be intended to help him meet his individual needs and is not for the benefit of any other person, and such aid when granted shall not be construed as income to any person other than the blind recipient of such aid, and the State Department of Social Welfare shall take all necessary action to enforce the provisions relating to aid to needy blind persons as heretofore stated

(4) The Legislature shall have power to grant aid to needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State

(5) The State shall have at any time the right to inquire into the management of such institutions

(6) Whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances, or needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, or needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State; such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church, or other control

An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature

Twenty-eighth, That Section 22a of Article IV is repealed

Twenty-ninth, That Section 23 of Article IV is repealed.

Thirtieth, That Section 23a of Article IV is repealed

Thirtieth and one-half, That Section 23b of Article IV is repealed.

Thirty-first, That Section 24 of Article IV is repealed

Thirty-second, That Section 25 of Article IV is repealed

Thirty-third, That Section 25a of Article IV is repealed

Thirty-fourth, That Section 25½ of Article IV is repealed

Thirty-fifth, That Section 25⅝ of Article IV is amended and renumbered to be Section 22 of Article XIII, to read:

SEC. 22. All money collected under the provision of any law of this State relating to the protection, conservation, propagation, or preservation of fish, game, mollusks, or crustaceans and all fines and forfeitures imposed by any court for the violation of any such law shall be used and expended exclusively for the protection, conservation, propagation, and

preservation of fish, game, mollusks, or crustaceans and for the administration and enforcement of laws relating thereto. The Legislature may provide for the division of money derived from such fines and forfeitures.

Thirty-sixth, That Section 25 7 of Article IV is repealed.

Thirty-seventh, That Section 26 of Article IV is repealed.

Thirty-eighth, That Section 28 of Article IV is repealed.

Thirty-ninth, That Section 29 of Article IV is amended and renumbered to be Section 23 of Article XIII, to read:

SEC 23 The Legislature may provide that any money belonging to the State in the control of any State agency or department or collected under the authority of this State from any source whatever other than money in the control of or collected by the Regents of The University of California shall be held in trust by the State Treasurer prior to its deposit in the State Treasury by the State agency or department as may be required by law Any money held in trust may be disbursed by the State Treasurer upon the order of the State agency or department in the manner permitted by law and money held in trust may be deposited in banks to the same extent that money in the State Treasury may be deposited in banks.

Fortieth, That Section 30 of Article IV is amended and renumbered to be Section 24 of Article XIII, to read:

SEC 24 Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever, provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 21 of this article.

Forty-first, That Section 31 of Article IV is amended and renumbered to be Section 25 of Article XIII, to read:

SEC. 25 The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have 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; *provided*, that nothing in this section shall prevent the Legislature granting

aid pursuant to Section 21 of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever, *provided, further*, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; *provided, further*, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation, and

Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and it shall be his duty to make such temporary transfers from the funds in his custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in his custody and are paid out solely through his office Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the taxes accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the taxes accruing to such political subdivision before any other obligation of such political subdivision is met from such taxes

Forty-second, That Section 31a of Article IV is amended and renumbered to be Section 26 of Article XIII, to read.

SEC 26 No provision of this Constitution shall be construed as a limitation upon the power of the Legislature to

provide by general law, from public moneys or funds, for the indemnification of the owners of livestock taken, slaughtered or otherwise disposed of pursuant to law to prevent the spread of a contagious or infectious disease; *provided,* the amount paid in any case for such animal or animals shall not exceed the value of such animal or animals.

Forty-third, That Section 31b of Article IV is amended and renumbered to be Section 27 of Article XIII, to read.

SEC 27. No provision of this Constitution shall be construed as a limitation upon the power of the Legislature to provide that the lien of every tax, whether heretofore or hereafter attaching, shall cease to exist for all purposes after 30 years from the time such tax became a lien, or to provide that every tax, whether heretofore or hereafter levied shall be conclusively presumed to have been paid after thirty years from the time the same became a lien unless the property subject thereto has been sold in the manner provided by law for the payment of said tax

Forty-fourth, That Section 31c of Article IV is amended and renumbered to be Section 28 of Article XIII, to read:

SEC 28 No provision of this Constitution shall be construed as a limitation upon the power of the Legislature to provide by general law for the refunding, repayment or adjustment, from public funds raised or appropriated by the United States, the State or any city, city and county, or county for street and highway improvement purposes, of assessments or bonds, or any portion thereof, which have become a lien upon real property, and which were levied or issued to pay the cost of street or highway improvements or of opening and widening proceedings which may be or may have become of more than local benefit Any such acts of the Legislature heretofore adopted are hereby confirmed and declared valid and shall have the same force and effect as if adopted after the effective date of this amendment

Forty-fifth, That Section 32 of Article IV is repealed

Forty-sixth, That Section 33 of Article IV is repealed.

Forty-seventh, That Section 34 of Article IV is repealed.

Forty-eighth, That Section 34a of Article IV is repealed.

Forty-ninth, That Section 35 of Article IV is repealed.

Fiftieth, That Section 36 of Article IV is repealed

Fifty-first, That Section 37 of Article IV is repealed.

Fifty-second, That Section 38 of Article IV is repealed.

Fifty-third, That Section 1 is added to Article IV, to read·

SEC. 1. The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum

Fifty-fourth, That Section 2 is added to Article IV, to read:

SEC 2 (a) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years The Assembly has a membership of 80 Assemblymen elected for 2-year terms.

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

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

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

Fifty-fifth, That Section 3 is added to Article IV, to read

SEC. 3. (a) The Legislature shall meet annually in regular session at noon on the Monday after January 1 A measure introduced at any session may not be deemed pending before the Legislature at any other session

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

Fifty-sixth, That Section 4 is added to Article IV, to read

SEC. 4. Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two thirds of the membership of each house concurring Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature, the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute

The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of 500 dollars paid to any member of the Legislature unless the member receives the greater amount while serving as a member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the member, except that the Legislature may provide that no member shall be deprived of a cost of living adjustment based on a monthly salary of 500 dollars which has accrued prior to the commencement of the 1967 Regular Session of the Legislature

Fifty-seventh, That Section 5 is added to Article IV, to read

SEC 5 Each house shall judge the qualifications and elections of its members and, by rollcall vote entered in the journal, two thirds of the membership concurring, may expel a member

The Legislature shall enact laws to prohibit members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities, provided that the people reserve to themselves the power to implement this requirement pursuant to Section 22 of this article

Fifty-eighth, That Section 7 is added to Article IV, to read:

SEC 7 (a) Each house shall choose its officers and adopt rules for its proceedings A majority of the membership constitutes a quorum, but a smaller number may recess from day to day and compel the attendance of absent members.

(b) Each house shall keep and publish a journal of its proceedings The rollcall vote of the members on a question shall be taken and entered in the journal at the request of 3 members present

(c) The proceedings of each house shall be public except on occasions that in the opinion of the house require secrecy

(d) Neither house without the consent of the other may recess for more than 3 days or to any other place

Fifty-ninth, That Section 8 is added to Article IV, to read:

SEC 8 (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

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

(c) No statute may go into effect until the 91st day after adjournment of the session at which the bill was passed, except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes

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

Sixtieth, That Section 9 is added to Article IV, to read.

SEC 9 A statute shall embrace but one subject, which shall be expressed in its title If a statute embraces a subject not expressed in its title, only the part not expressed is void A statute may not be amended by reference to its title A section of a statute may not be amended unless the section is re-enacted as amended

Sixty-first, That Section 10 is added to Article IV, to read

SEC 10 (a) Each bill passed by the Legislature shall be presented to the Governor It becomes a statute if he signs it He may veto it by returning it with his objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute A bill presented to the Governor that is not returned within 12 days, becomes a statute unless the Legislature by adjournment of the session prevents the return It does not then become a statute unless the Governor signs the bill and deposits it in the office of the Secretary of State within 35 days after adjournment

(b) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. He shall append to the bill a statement of the items reduced or eliminated with the reasons for his action If the Legislature is in session, the Governor shall transmit to the house originating the bill a copy of his statement and reasons Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills

Sixty-second, That Section 11 is added to Article IV, to read·

SEC. 11 The Legislature or either house may by resolution provide for the selection of committees necessary for the conduct of its business, including committees to ascertain facts and make recommendations to the Legislature on a subject within the scope of legislative control Committees may be authorized to act during sessions or after adjournment of a session.

Sixty-third, That Section 12 is added to Article IV, to read:

SEC 12. (a) Within the first 30 days of each regular session, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements of recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, he shall recommend the sources from which the additional revenues should be provided

(b) The Governor and the Governor-elect may require a state agency, officer or employee to furnish him whatever information he deems necessary to prepare the budget.

(c) The budget shall be accompanied by a budget bill itemizing recommended expenditures. The bill shall be introduced immediately in each house by the chairmen of the committees that consider appropriations Until the budget bill has

been enacted, neither house may pass any other appropriation bill, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose Appropriations from the general funds of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring

Sixty-fourth, That Section 13 is added to Article IV, to read·

SEC 13. A member of the Legislature may not, during the term for which he is elected, hold any office or employment under the State other than an elective office

Sixty-fifth, That Section 14 is added to Article IV, to read.

SEC. 14 A member of the Legislature is not subject to civil process during a session of the Legislature or for 5 days before and after a session

Sixty-sixth, That Section 15 is added to Article IV, to read:

SEC 15 A person who seeks to influence the vote or action of a member of the Legislature in his legislative capacity by bribery, promise of reward, intimidation, or other dishonest means, or a member of the Legislature so influenced, is guilty of a felony.

Sixty-seventh, That Section 16 is added to Article IV, to read:

SEC. 16. A local or special statute is invalid in any case if a general statute can be made applicable.

Sixty-eighth, That Section 17 is added to Article IV, to read:

SEC. 17 The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law.

Sixty-ninth, That Section 18 is added to Article IV, to read:

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

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

Seventieth, That Section 19 is added to Article IV, to read:

SEC 19 (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results

Seventy-first, That Section 20 is added to Article IV, to read:

SEC 20 (a) The Legislature may provide for division of the State into fish and game districts and may protect fish and game in districts or parts of districts

(b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified Appointment to fill a vacancy is for the unexpired portion of the term The Legislature may delegate to the commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit A member of the commission may be removed by concurrent resolution adopted by each house, a majority of the membership concurring

Seventy-second, That Section 21 is added to Article IV, to read

SEC 21. To meet the needs resulting from war-caused or enemy-caused disaster in California, the Legislature may provide for:

(a) Filling the offices of members of the Legislature should at least one fifth of the membership of either house be killed, missing, or disabled, until they are able to perform their duties or successors are elected

(b) Filling the office of Governor should he be killed, missing, or disabled, until he or his successor designated in this Constitution is able to perform his duties or a successor is elected

(c) Convening the Legislature

(d) Holding elections to fill offices that are elective under this Constitution and that are either vacant or occupied by persons not elected thereto

(e) Selecting a temporary seat of state or county government.

Seventy-third, That Section 22 is added to Article IV, to read.

INITIATIVE AND REFERENDUM

SEC 22 (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

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

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect

Seventy-fourth, That Section 23 is added to Article IV, to read.

SEC. 23 (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after adjournment of the session at which the statute was passed, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election The Governor may call a special statewide election for the measure.

Seventy-fifth, That Section 24 is added to Article IV, to read:

SEC. 24. (a) An initiative or referendum measure approved by a majority of the votes thereon takes effect 5 days after the date of the official declaration of the vote by the Secretary of State unless the measure provides otherwise. If a referendum petition is filed against a part of a statute the remainder of the statute shall not be delayed from going into effect.

(b) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail

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

(d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law

(e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors

Seventy-sixth, That Section 25 is added to Article IV, to read:

SEC 25 Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide This section does not affect a city having a charter.

Seventy-seventh, That Section 26 is added to Article IV, to read:

SEC. 26. No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual to hold any office, or names or identifies any private corporation to perform any function or to have any power or duty, may be submitted to the electors or have any effect.

Seventy-eighth, That Section 28 is added to Article IV, to read:

MISCELLANEOUS

SEC 28 A person holding a lucrative office under the United States or other power may not hold a civil office of profit A local officer or postmaster whose compensation does not exceed 500 dollars per year or an officer in the militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is his holding of a civil office of profit affected by this military service.

Seventh-ninth, That Article V is repealed

Eightieth, That Article V is added, to read·

ARTICLE V

EXECUTIVE

SEC 1. The supreme executive power of this State is vested in the Governor He shall see that the law is faithfully executed.

SEC. 2. The Governor shall be elected every fourth year at the same time and places as Assemblymen and hold office from the Monday after January 1 following his election until his successor qualifies. He shall be an elector who has been a citizen of the United States and a resident of this State for 5 years immediately preceding his election. He may not hold other public office

SEC. 3 The Governor shall report to the Legislature at each session on the condition of the State and may make recommendations. He may adjourn the Legislature if the Senate and Assembly disagree as to adjournment.

SEC 4. The Governor may require executive officers and agencies and their employees to furnish information relating to their duties.

SEC. 5. Unless the law otherwise provides, the Governor may fill a vacancy in office by appointment until a successor qualifies.

SEC. 6. Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by elective officers.

SEC. 7. The Governor is commander in chief of a militia that shall be provided by statute. He may call it forth to execute the law.

SEC. 8. Subject to application procedures provided by statute, the Governor, on conditions he deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. At each session he shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and his reasons for granting it. He may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

SEC. 9. The Lieutenant Governor shall have the same qualifications as the Governor. He is President of the Senate but has only a casting vote.

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

He shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office

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

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

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

SEC. 11. The Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer shall be elected at the same time and places and for the same term as the Governor.

SEC. 12. Compensation of the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Superintendent of Public Instruction, and Treasurer shall be prescribed by statute but may not be increased or decreased during a term.

SEC. 13 Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State It shall be his duty to see that the laws of the State are uniformly and adequately enforced He shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make to him such reports concerning the investigation, detection, prosecu-

tion, and punishment of crime in their respective jurisdictions as to him may seem advisable Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases he shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, he shall assist any district attorney in the discharge of his duties

Eighty-first, That Article VI is repealed.

Eighty-second, That Article VI is added, to read:

ARTICLE VI

JUDICIAL

SEC 1 The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts All except justice courts are courts of record

SEC 2 The Supreme Court consists of the Chief Justice of California and 6 associate justices The Chief Justice may convene the court at any time Concurrence of 4 judges present at the argument is necessary for a judgment

An acting Chief Justice shall perform all functions of the Chief Justice when he is absent or unable to act The Chief Justice or, if he fails to do so, the court shall select an associate justice as acting Chief Justice

SEC 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court Concurrence of 2 judges present at the argument is necessary for a judgment

An acting presiding justice shall perform all functions of the presiding justice when he is absent or unable to act The presiding justice or, if he fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice.

SEC 4 In each county there is a superior court of one or more judges The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

The county clerk is ex officio clerk of the superior court in his county.

SEC 5 Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.

There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less The number of residents shall be ascertained as provided by statute

The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.

SEC. 6. The Judicial Council consists of the Chief Justice as chairman and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts, each appointed by the chairman for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified him for appointment A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or its chairman, other than adopting rules of court administration, practice and procedure

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The chairman shall seek to expedite judicial business and to equalize the work of judges; he may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the chairman as he directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned

SEC. 7. The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appointment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal.

SEC 8 The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this state for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and

approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

SEC. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this state is and shall be a member of the State Bar except while holding office as a judge of a court of record

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition

Superior courts have original jurisdiction in all causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute.

Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right.

SEC. 12. The Supreme Court may, before decision becomes final, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.

SEC 13. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

SEC. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.

SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to

a municipal court or 10 years immediately preceding selection to other courts, he has been a member of the State Bar or served as a judge of a court of record in this state A judge eligible for municipal court service may be assigned by the chairman of the Judicial Council to serve on any court

SEC 16 (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years

(b) Judges of other courts shall be elected in their counties or districts at general elections The Legislature may provide that an unopposed incumbent's name not appear on the ballot

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins

(d) Within 30 days before August 16 preceding the expiration of his term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed himself If he does not, the Governor before September 16 shall nominate a candidate At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether he shall be elected If he receives a majority of the votes on the question he is elected A candidate not elected may not be appointed to that court but later may be nominated and elected

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which he had the right to become a candidate or until an elected judge qualifies A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts

SEC 17 A judge of a court of record may not practice law and during the term for which he was selected is ineligible for public employment or public office other than judicial employment or judicial office A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy Acceptance of the public office is a resignation from the office of judge

A judicial officer may not receive fines or fees for his own use.

SEC 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement

(b) On recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension If he is suspended and his conviction becomes final the Supreme Court shall remove him from office

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from practicing law in this State

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

SEC 19 The Legislature shall prescribe compensation for judges of courts of record

A judge of a court of record may not receive his salary while any cause before him remains pending and undetermined for 90 days after it has been submitted for decision

SEC 20 The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability

SEC 21 On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause

SEC 22 The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties

Eighty-third, That Article VII is repealed

Eighty-fourth, That Article VIII is repealed

Eighty-fifth, That Section 29 is added to Article XIII, to read:

SEC. 29. Not more than 25 percent of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof.

Eighty-sixth, That Section 4 is added to Article XXII, to read:

SEC. 4 Nothing in Section 15 of Article VI affects the eligibility of a judge to serve in or be elected to his office if the judge was selected prior to the operative date of Section 15 and was eligible under the law at the time of that selection

Eighty-seventh, That Section 5 is added to Article XXII, to read:

SEC. 5. In any case in which, under the law in effect prior to the operative date of this section, the term of a judge of a municipal or justice court expires in January in a year in which a general election is held, that term shall be extended until the Monday after January 1 following the next general election following the date when the term would otherwise expire, at which general election a successor shall be elected.

Eighty-eighth, That Section 6 is added to Article XXII, to read

SEC. 6. Any law enacted at the 1966 First Extraordinary Session of the Legislature and providing for increased compensation for members of the Legislature shall become operative only at the time the 1967 Regular Session of the Legislature is convened Any such law enacted at the 1966 First Extraordinary Session of the Legislature is not subject to the requirement of Section 4 of Article IV as to passage by a two thirds vote or to the requirement of Section 4 of Article IV that any adjustment of the annual compensation of a member of the Legislature may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted The provisions of Assembly Bill No. 173 of the 1966 First Extraordinary Session are hereby ratified.

Eighty-ninth, That Section 7 is added to Article XXII, to read:

SEC 7 To the extent there is a conflict, constitutional amendments adopted by the electors at the November 1966 General Election shall prevail over the provisions transferred from Article IV to Article XIII by Assembly Constitutional Amendment No 13, adopted by the Legislature at the 1966 First Extraordinary Session

And be it further resolved, That the Legislature having adopted Assembly Constitutional Amendment No 90 at its 1965 Regular Session to propose an amendment to portions of Sections 1, 2 and 16 of Article IV of the State Constitution for the sole purpose of requiring the Legislature to reconvene and reconsider measures submitted to the Governor during the last ten days of a general session (Sundays excepted) which he

fails to sign, and since said amendment did not propose any other change in the length, duration or scope of general or budget sessions of the Legislature, it is the intent of the Legislature, if both Assembly Constitutional Amendment No 90 and Assembly Constitutional Amendment (Revision) No 13, 1966 First Extraordinary Session, are approved by the electors, that both shall be given effect regardless of the vote by which they are approved and that their provisions be construed together so as to give effect to both in the following manner:

First, That subdivision (a) be added to Section 3 of Article IV thereof, to read

(a) The Legislature shall meet annually in regular session at noon on the Monday after January 1 At the end of each regular session the Legislature shall recess for 30 days It shall reconvene on the Monday after the 30-day recess, for a period not to exceed 5 days, to reconsider vetoed measures

A measure introduced at any session may not be deemed pending before the Legislature at any other session

Second, That Section 4 be added to Article IV thereof, to read.

SEC 4. Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two thirds of the membership of each house concurring Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute

Members of the Legislature shall receive 5 cents per mile for traveling to and from their homes in order to attend reconvening following the 30-day recess after a regular session.

The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of 500 dollars paid to any member of the Legislature unless the member receives the greater amount while serving as a member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to members of the Legislature who serve during or after the term commencing in 1967

When computing the retirement allowance of a member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the member, except that the Legislature may provide that no member shall be deprived of a cost of living adjustment based

on a monthly salary of 500 dollars which has accrued prior to the commencement of the 1967 Regular Session of the Legislature.

Third, That subdivision (c) be added to Section 8 of Article IV thereof, to read:

(c) No statute may go into effect until the 61st day after adjournment of the regular session at which the bill was passed, or until the 91st day after adjournment of the special session at which the bill was passed, except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes

Fourth, That subdivision (a) be added to Section 10 of Article IV thereof, to read

(a) Each bill passed by the Legislature shall be presented to the Governor It becomes a statute if he signs it. He may veto it by returning it with his objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute A bill presented to the Governor that is not returned within 12 days becomes a statute If the 12-day period expires during the recess at the end of a regular session, the bill becomes a statute unless the Governor vetoes it within 30 days from the commencement of the recess. If the Legislature by adjournment of a special session prevents the return of a bill it does not become a statute unless the Governor signs the bill and deposits it in the office of the Secretary of State within 30 days after adjournment

Fifth, That subdivision (b) be added to Section 23 of Article IV thereof, to read:

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 60 days after adjournment of the regular session at which the statute was passed or within 90 days after adjournment of the special session at which the statute was passed, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors

Sixth, That the provisions of the second resolved clause of this measure shall become operative only if the amendment to Article IV of the State Constitution proposed by Assembly Constitutional Amendment No 90 of the 1965 Regular Session are approved by a majority of the electors, in which case subdivision (a) of Section 3, Section 4, subdivision (c) of Section 8, subdivision (a) of Section 10 and subdivision (b) of Section 23 of Article IV of the Constitution, as appearing in the first resolved clause of Assembly Constitutional Amendment (Revision) No. 13, shall not become operative

CALIFORNIA LEGISLATURE—1966 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL No. 147

Introduced by Assemblymen Mills and Elliott

March 31, 1966

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS

An act to add Section 18608 to the Business and Professions Code, and to add Section 29104 to the Corporations Code, and to add Sections 3500.5, 3501.5, and 3502.5 to, and Articles 1.3 (commencing with Section 3510) and 1.7 (commencing with Section 3520) to Chapter 1 of Division 4 of, the Elections Code, and to amend Section 100 of, to add Sections 399, 403, 9501.5, 12016, 12017, 12159, 12503, 12504, 12505, 68210, 68500.1, 68508, 68509, 68510, 68704, 68808, 69107, 69108, 69109, 69110, 69500.1, 69508, and 69741.5 to, and to add Article 5.5 (commencing with Section 12058) to Chapter 1 of Part 2 of Division 3 of Title 2 of, Chapter 1.3 (commencing with Section 68120) to Title 8 of, Article 3.5 (commencing with Section 68915) to Chapter 3 of Title 8 of, Article 3.6 (commencing with Section 68920) to Chapter 3 of Title 8 of, Chapter 4.5 (commencing with Section 69300) to Title 8 of, and Article 2.5 (commencing with Section 69560) to Chapter 5 of Title 8 of, the Government Code, relating to codification of various provisions to be omitted from the California Constitution in its revision, and providing for the submission of a portion thereof to the electors, to take effect immediately

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

SECTION 1. Section 29104 is added to the Corporations Code, to read:

29104. All contracts for the purchase or sale of shares of the capital stock of any corporation or association without any intention on the part of one party to deliver and of the other party to receive the shares, and contemplating merely the payment of differences between the contract and market prices on divers days, shall be void, and neither party to any such contract shall be entitled to recover any damages for failure to

perform the same, or any money paid thereon, in any court of this state

SEC 2 Section 3500 5 is added to the Elections Code, to read:

3500 5 Prior to circulation of any initiative or referendum petition for signatures thereof, a draft of the said petition shall be submitted to the Attorney General with a written request that he prepare a title, and summary of the chief purpose and points of said proposed measure, said title and summary not to exceed 100 words in all The persons presenting such request to the Attorney General shall be known as "proponents" of said proposed measure. The Attorney General shall preserve said written request until after the next general election.

SEC 3 Section 3501 5 is added to said code, to read.

3501 5 If for any reason any initiative or referendum measure, proposed by petition as provided by this article, is not submitted to the voters at the next succeeding general election, such failure shall not prevent its submission at a succeeding general election.

SEC 4 Section 3502 5 is added to said code, to read.

3502 5. All such initiative petitions shall have printed across the top thereof in 12-point blackface type the following: "Initiative measure to be submitted directly to the electors."

SEC. 5. Article 1 3 (commencing with Section 3510) is added to Chapter 1 of Division 4 of said code, to read:

Article 1.3. Petition Signatures

3510. Any initiative or referendum petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure

3511 Each signer shall add to his signature his place of residence, giving the street and number if such exist His election precinct shall also appear on the paper after his name The number of signatures attached to each section shall be at the pleasure of the person soliciting signatures to the same.

3512 Any qualified elector of the state shall be competent to solicit said signatures within the county or city and county of which he is an elector Each section of the petition shall bear the name of the county or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section.

3513. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be, and no other affidavit thereto shall be required. The affidavit

of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer oaths

3514 Such petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors. Unless and until it be otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified electors.

SEC. 6. Article 1.7 (commencing with Section 3520) is added to Chapter 1 of Division 4 of said code, to read:

Article 1.5. Filing Petitions

3520. (a) Each section of the petition shall be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all sections circulated in any county or city and county shall be filed at the same time.

(b) Within 20 days after the filing of such petition in his office the clerk or registrar of voters shall determine from the records of registration what number of qualified electors have signed the petition and if necessary the board of supervisors shall allow the clerk or registrar additional assistance for the purpose of examining the petition and provide for their compensation.

(c) The clerk or registrar, upon the completion of the examination, shall immediately attach to the petition, except the signatures thereto appended, his certificate, properly dated, showing the result of the examination and shall immediately transmit the petition, together with his certificate, to the Secretary of State and also file a copy of the certificate in his office.

(d) Within 40 days from the transmission of the petition and certificate by the clerk or registrar to the Secretary of State, a supplemental petition identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid.

3521. The right to file the original petition shall be reserved to its proponents, and any section thereof or supplement thereto presented for filing by any person or persons other than the proponents of a measure or by persons duly authorized in writing by the proponents shall be disregarded by the county clerk or registrar of voters

3522. The clerk or registrar of voters shall within 10 days after the filing of a supplemental petition make like examination thereof, as of the original petition, and upon the completion of such examination shall forthwith attach to said petition his certificate, properly dated, showing the result of said examination, and shall forthwith transmit a copy of said supplemental petition, except the signatures thereto appended, together with his certificate, to the Secretary of State.

3523. When the Secretary of State shall have received from one or more county clerks or registrars of voters a petition certified as herein provided to have been signed by the

requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the state his certificate showing such fact. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by him of a certificate or certificates showing said petition to be signed by the requisite number of electors of the state. Any county clerk or registrar of voters shall, upon receipt of such copy, file the same for record in his office. The duties imposed by this article upon the clerk or registrar of voters shall be performed by such registrar of voters in all cases where the office of registrar of voters exist.

SEC. 8. Section 100 of the Government Code is amended to read:

100. (a) The sovereignty of the state resides in the people thereof, and all writs and processes shall issue in their name.

(b) The style of all process shall be "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC 8 5 Section 399 is added to Chapter 1 of Division 2 of Title 1 of the Government Code, to read:

399. (a) There shall be a seal of this state, which shall be called "The Great Seal of the State of California "

(b) The Great Seal of the state shall be kept by the Governor and used by him officially.

SEC. 8.7. Section 403 as added to said code, to read:

403. All grants and commissions shall be kept in the name and by the authority of the people of the State of California, sealed with the Great Seal of the state, signed by the Governor, and countersigned by the Secretary of State.

SEC 9. Section 9501.5 is added to said code, to read:

9501 5. The enacting clause of every law shall be "The people of the State of California do enact as follows:".

SEC 9.3. Section 12016 is added to the Government Code, to read·

12016. The budget required by the State Constitution to be submitted by the Governor at each regular session of the Legislature shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him, and all of its institutions, departments, boards, bureaus, commissions, officers, employees and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year and the actual revenues and expenditures for the existing fiscal year.

SEC. 9.4. Section 12017 is added to the Government Code, to read·

12017. At each session the Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of the pardon, reprieve or commutation, and the reasons for granting the same.

SEC. 9.45. Article 5.5 (commencing with Section 12058) is added to Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 5.5. Succession to the Office of Governor

12058. In case of vacancy in the office of Governor and in the office of Lieutenant Governor, the last duly elected President pro Tempore of the Senate shall become Governor for the residue of the term, or if there be no President pro Tempore of the Senate, then the last duly elected Speaker of the Assembly shall become Governor for the residue of the term; or if there be none, then the Secretary of State; or if there be none, then the Attorney General; or if there be none, then the Treasurer; or if there be none, then the Controller; or if, as the result of a war or enemy-caused disaster, there be none, then such person designated as provided by law. In case of impeachment of the Governor or officer acting as Governor, his absence from the state, or his other temporary disability to discharge the powers and duties of office, then the powers and duties of the office of Governor devolve upon the same officer as in the case of vacancy in the office of Governor, but only until the disability shall cease.

12058.5. In case of the death, disability or other failure to take office of the Governor-elect, whether occurring prior or subsequent to the returns of election, the Lieutenant Governor-elect shall act as Governor from the same time and in the same manner as provided for the Governor-elect and shall, in the case of death, be Governor for the full term or, in the case of disability or other failure to take office, shall act as Governor until the disability of the Governor-elect shall cease.

12059 In case of the death, disability or other failure to take office of both the Governor-elect and the Lieutenant Governor-elect, the last duly elected President pro Tempore of the Senate, or in case of his death, disability, or other failure to take office, the last duly elected Speaker of the Assembly, or in case of his death, disability, or other failure to take office, the Secretary of State-elect, or in case of his death, disability, or other failure to take office, the Attorney General-elect, or in case of his death, disability, or other failure to take office, the Treasurer-elect, or in case of his death, disability, or other failure to take office, the Controller-elect shall act as Governor from the same time and in the same manner as provided for the Governor-elect Such person shall, in the case of death, be Governor for the full term or in the case of disability or other failure to take office shall act as Governor until the disability of the Governor-elect shall cease

SEC. 9 5. Section 12159 is added to Article 2 of Chapter 3 of Part 2 of Division 3 of Title 2 of said code, to read

12159. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments

of the government, and shall, when required, lay the same and all matters relative thereto before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 9 6. Section 12503 is added to the Government Code, to read:

12503 No person shall be eligible to the office of Attorney General unless he shall have been admitted to practice before the Supreme Court of the state for a period of at least five years immediately preceding his election or appointment to such office.

SEC. 9.7. Section 12504 is added to the Government Code, to read:

12504 The Attorney General shall not engage in the private practice of law, nor shall he be associated directly or indirectly with any attorney in private practice, but instead he shall devote his entire time to the service of the state.

SEC 9 8 Section 12505 is added to said code, to read·

12505. The Attorney General shall receive the same salary as that now or hereafter prescribed by law for an Associate Justice of the Supreme Court.

SEC 10 Chapter 1.3 (commencing with Section 68120) is added to Title 8 of said code, to read:

CHAPTER 1.3. ELECTIONS OF JUSTICES AND JUDGES OF COURTS OF RECORD

68120. A declaration of candidacy for election or a nomination by the Governor, made pursuant to Section 17(d) of Article VI of the California Constitution, shall be filed with the officer charged with the duty of certifying nominations for publication in the official ballot.

68121. A confirmation by the Commission on Judicial Appointments, pursuant to Section 17(d) of Article VI of the California Constitution, shall not be effective unless filed in writing with the Secretary of State.

68122. If two or more presiding justices designated in Section 7 of Article VI of the California Constitution shall have served terms of equal length they shall choose the one who is to be a member of the Commission on Judicial Appointments by lot, whenever occasion for action arises.

SEC. 11. Section 68210 is added to said code, to read:

68210 No judge of a court of record shall receive his salary unless he shall make and subscribe before an officer entitled to administer oaths, an affidavit stating that no cause before him remains pending and undetermined for 90 days after it has been submitted for decision

SEC. 12. Section 68500.1 is added to said code, to read:

68500.1. The Clerk of the Supreme Court shall serve as secretary of the Judicial Council.

SEC. 13. Section 68508 is added to said code, to read:

68508. No act of the Judicial Council shall be valid unless concurred in by a majority of its members

SEC. 14. Section 68509 is added to said code, to read:

68509. The Judicial Council shall meet at the call of its chairman or as otherwise provided by it

SEC. 15. Section 68510 is added to said code, to read:

68510. No member of the Judicial Council shall receive any compensation for his services as such, but he shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such. Any judge assigned to a court wherein a judge's compensation is greater than his own shall receive while sitting therein the compensation of a judge thereof The extra compensation shall be paid in such manner as may be provided by law. Any judge assigned to a court in a county other than that in which he regularly sits shall be allowed his necessary expenses for travel, board, and lodging incurred in the discharge of the assignment

SEC. 16. Section 68704 is added to said code, to read:

68704. No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman

SEC 17 Section 68808 is added to said code, to read·

68808. Each of the justices of the Supreme Court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the Supreme Court or before any court of appeal, or before any justice thereof, or before any superior court in the state, or before any judge thereof

SEC. 18. Article 3 5 (commencing with Section 68915) is added to Chapter 3 of Title 8 of said code, to read:

Article 3.5. Transfer of Cases Appealed to the Supreme Court and Courts of Appeal

68915. No appeal taken to the Supreme Court or to a court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein, as if regularly appealed thereto.

SEC. 19. Article 3 6 (commencing with Section 68920) is added to Chapter 3 of Title 8 of said code, to read:

Article 3.6. Clerks and Reporters of the Supreme Court and Courts of Appeal

68920. The Supreme Court shall appoint a Clerk of the Supreme Court. Said court may also appoint a reporter and assistant reporters of the decisions of the Supreme Court and of the courts of appeal. Each of the courts of appeal shall ap-

point its own clerk. All the officers herein mentioned shall hold office and be removable at the pleasure of the courts by which they are severally appointed, and they shall receive such compensation as shall be prescribed by law, and discharge such duties as shall be prescribed by law, or by the rules or orders of the courts by which they are severally appointed.

SEC. 20. Section 69107 is added to said code, to read:

69107. Upon the creation of any additional division of the court of appeal the Governor shall appoint three persons to serve as justices thereof as provided in Section 17(d) of Article VI of the California Constitution. The justices of said division elected at such general election shall so classify themselves by lot that one of them shall go out of office at the end of four years, one of them at the end of eight years, and one of them at the end of 12 years, and entry of such classification shall be made in the minutes of said division, signed by the three justices thereof, and a duplicate thereof filed in the office of the Secretary of State.

SEC 21 Section 69108 is added to said code, to read.

69108 The courts of appeal in the First, Second and Third Appellate Districts shall always be open for the transaction of business.

SEC 22. Section 69109 is added to said code, to read:

69109 Each of the justices of the courts of appeal shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the court of appeal of his district, or before any superior court within his district, or before any judge thereof.

SEC. 23. Section 69110 is added to said code, to read:

69110. (a) Superior courts, municipal courts and justices' courts in cities having a population of more than 40,000 inhabitants shall always be open, legal holidays and nonjudicial days excepted The process of superior courts shall extend to all parts of the state; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated

(b) Injunctions and writs of prohibition may be issued and served on legal holidays and nonjudicial days The process of any municipal court shall extend to all parts of the county or city and county in which the city is situated where such court is established, and to such other parts of the state as may be provided by law, and such process may be executed or enforced in such manner as the Legislature shall provide

SEC 24. Chapter 4 5 (commencing with Section 69300) is added to Title 8 of said code, to read:

CHAPTER 4.5. BASIC INSTRUCTIONS TO JURIES

69300 (a) The court may instruct the jury regarding the law applicable to the facts of the case.

(b) The court shall inform the jury in all cases that the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of the witnesses.

SEC. 25 Section 69500 1 is added to said code, to read.

69500 1. The provisions of this section apply to the superior courts in any county or city and county containing a population of more than 700,000 as determined by the last preceding federally published decennial census

When only the incumbent has filed nomination papers for the office of judge, his name shall not appear on the ballot unless there is filed with the county clerk or registrar of voters, within 20 days after the final date for filing nomination papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by 100 registered voters qualified to vote with respect to the office

If a petition indicating that a write-in campaign will be conducted for the office at the general election, signed by 100 registered voters qualified to vote with respect to the office, is filed with the county clerk or registrar of voters not less than 45 days before the general election, the name of the incumbent shall be placed on the general election ballot if it has not appeared on the direct primary ballot.

If in conformity with this section, the name of the incumbent does not appear either on the primary ballot or general election ballot, the clerk or registrar of voters, on the day of the general election, shall declare the incumbent reelected

SEC 26. Section 69508 is added to said code, to read.

69508 The judges of each superior court in which there are more than two judges sitting, shall choose, from their own number, a presiding judge, who may be removed as such at their pleasure Subject to the regulations of the Judicial Council, he shall distribute the business of the court among the judges, and prescribe the order of business.

SEC 27 Article 2 5 (commencing with Section 69560) is added to Chapter 5 of Title 8 of said code, to read·

ARTICLE 2.5. REDUCTION OF NUMBER OF JUDGES IN SUPERIOR COURT

69560 If the Legislature diminishes the number of judges of the superior court in any county or city and county, the offices which first become vacant, to the number of judges diminished, shall be deemed to be abolished

SEC 28 Section 69741 5 is added to said code, to read:

69741 5 There may be as many sessions of a superior court, at the same time, as there are judges elected, appointed or assigned thereto The judgments, orders, and proceedings of any session of a superior court, held by any one or more of the

judges sitting therein, shall be equally effectual as though all the judges of said court presided at such session.

SEC 30 Section 18608 is added to the Business and Professions Code, to read

18608 The Legislature may amend, revise, or supplement any part of that certain initiative act relating to boxing and wrestling, approved by the electors on November 4, 1924, as embodied in Chapter 2 (commencing with Section 18600) of Division 8 of the Business and Professions Code

SEC 31 (a) A special election is hereby called to be held throughout the state on the same day that Assembly Constitutional Amendment No 13 of the 1966 First Extraordinary Session is submitted to the people The special election shall be consolidated with the general election to be held on that date The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used Except as otherwise provided in this section, all of the provisions of law relating to the submission of measures proposed by the Legislature shall apply to the measure submitted pursuant to this section A ballot pamphlet shall be prepared, compiled, and distributed relating to such measure The Secretary of State shall distribute the ballot pamphlets to the county clerks not less than 30 days before the election, and the county clerks shall commence to mail these pamphlets to the voters not less than five days before the election The distribution of ballot pamphlets in all other respects shall be conducted in accordance with the provisions of Section 3573 of the Elections Code

(b) At the special election called by this section there shall be submitted to the electors Section 30 of this act

(c) The special election provided for in this section shall be proclaimed, held, conducted, the ballots shall be prepared, marked, collected, counted and canvassed, and the results shall be ascertained and the returns thereof made in all respects in accordance with the provisions of the Constitution applicable thereto and the laws governing general elections insofar as provisions thereof are applicable to the election provided for in this section; provided, however, that the Governor need not issue his election proclamation until 30 days before the election

(d) Upon the effective date of this section the Secretary of State shall request the Attorney General to prepare a ballot title for the measure and shall also request the Legislative Counsel to prepare an analysis of the measure in accordance with Section 3566 of the Elections Code The title and analysis shall be filed with the Secretary of State within five days after the effective date of this section The measure submitted pursuant to this section shall be designated on the ballots at the election by its ballot title

(e) This section, inasmuch as it provides for the calling of an election, shall, under the provisions of Section 1 of Article IV of the Constitution, take effect immediately.

SEC. 32. Sections 30 and 31 of this act shall become operative only if Assembly Constitutional Amendment No. 13 of the 1966 First Extraordinary Session is passed by the Legislature Section 30 of this act shall become operative only if such constitutional amendment is passed by the Legislature and approved by the people and Section 30 of this act is approved by the people

SEC. 33. Except as otherwise provided in Section 31 and 32 of this act, this act shall become operative only if Assembly Constitutional Amendment No. 13 of the 1966 First Extraordinary Session is adopted by the people, in which event it shall become operative at the same time as Assembly Constitutional Amendment No. 13.

CALIFORNIA LEGISLATURE—1966 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL No. 164

Introduced by Assemblymen Mills and Elliott

April 11, 1966

REFERRED TO COMMITTEE ON RULES

An act to add Article 7 (commencing with Section 12070) to Chapter 1 of Part 2, Division 3, Title 2 of the Government Code, relating to the Governor.

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

SECTION 1. Article 7 (commencing with Section 12070) is added to Chapter 1 of Part 2, Division 3, Title 2 of the Government Code, to read:

Article 7. Commission on the Governorship

12070. There is in the state government a Commission on the Governorship, consisting of the President pro Tempore of the Senate, the Speaker of the Assembly, the President of the University of California, the Chancellor of the California State Colleges, and the Director of Finance.

12071. The commission shall have exclusive authority to petition the Supreme Court to determine any questions that arise relating to vacancies in and succession to the office of Governor.

12072. The commission shall have exclusive authority to petition the Supreme Court to decide any questions relating to the existence of a temporary disability of the Governor.

12073. The commission shall have exclusive authority to petition the Supreme Court to decide any questions relating to the termination of the temporary disability of the Governor.

12074 The President pro Tempore of the Senate shall be chairman of the commission and the Speaker of the Assembly shall be vice chairman. The commission shall meet at the times and places designated by the chairman, and, in his absence, the times and places designated by the vice chairman.

12075. The commission may file a petition pursuant to Sections 12071, 12072, or 12073 only if a majority of the members of the commission vote to take such action.

12076. The commission shall have the power of a head of a department to make investigations to determine whether or not a petition should be filed pursuant to this article. Every state agency shall, on request of the commission, make available to the commission the facilities and personnel of the agency to enable the commission to perform its functions.

SEC. 2. Section 1 of this act shall become operative only if Assembly Constitutional Amendment No. 13, 1966 First Extraordinary Session, revising Article V of the California Constitution, is passed by the Legislature and adopted by the people, in which event Section 1 of this act shall become operative at the same time as the provisions of said Assembly Constitutional Amendment No. 13.

CALIFORNIA LEGISLATURE—1966 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL No. 167

Introduced by Assemblymen Mills and Elliott

April 14, 1966

REFERRED TO COMMITTEE ON ELECTIONS AND REAPPORTIONMENT

An act relative to the 1966 general election ballot and ballot pamphlets.

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

SECTION 1. Notwithstanding the provisions of Section 10212 of the Elections Code, Assembly Constitutional Amendment No. 13 of the 1966 First Extraordinary Session of the Legislature, if adopted by the Legislature for submission to the people, shall appear first, numbered 1-a, on the ballot and in the ballot pamphlets of the 1966 general election.

CALIFORNIA LEGISLATURE—1966 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL No. 173

Introduced by Assemblymen Waldie, Unruh, Monagan, Lanterman, Elliott, Alquist, Bee, Belotti, Biddle, Britschgi, Burgener, Burton, Casey, Chapel, Conrad, Cusanovich, Danielson, Dannemeyer, Duffy, Dymally, Fenton, Flournoy, Garrigus, Gonsalves, Henson, Kennick, McMillan, Meyers, Milias, Mills, Moretti, Pattee, Petris, Porter, Quimby, Rumford, Russell, Shoemaker, Song, Thelin, Thomas, Veysey, Warren, and Williamson

(Coauthors Senators Gibson and Lagomarsino)

April 20, 1966

REFERRED TO COMMITTEE ON RULES

An act to amend and renumber the heading of Chapter 1 (commencing with Section 9000) of Part 1 of Division 2 of Title 2 of, and to add Chapter 1 (commencing with Section 8900) to Part 1 of Division 2 of Title 2 of, and to add Sections 9359 11, 9359 12, and 9360 10 to, the Government Code, relating to public officers and employees

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

SECTION 1. The heading of Chapter 1 (commencing with Section 9000) of Part 1 of Division 2 of Title 2 of the Government Code is amended and renumbered to read:

CHAPTER 1 5. GENERAL

SEC. 2 Chapter 1 (commencing with Section 8900) is added to Part 1 of Division 2 of Title 2 of the Government Code, to read.

CHAPTER 1 LEGISLATIVE ORGANIZATION

Article 1 Legislative Compensation

8900 From the operative date of this section until noon of January 2, 1967, each Member of the Legislature shall receive as compensation for his services six thousand dollars ($6,000)

annually, during the term for which he was elected, payable at the rate of five hundred dollars ($500) per month.

8901 Commencing at noon on January 2, 1967, each Member of the Legislature shall receive as compensation for his services sixteen thousand dollars ($16,000) per year, during the term for which he was elected, payable in equal monthly amounts.

8902. During such times as a Member of the Legislature is required to be in Sacramento to attend a session of the Legislature and during such times as a member is traveling to and from, or is in attendance at, any meeting of a committee of which he is a member or is attending to any other legislative function or responsibility as authorized or directed by the rules of the house of which he is a member or by the joint rules, he shall be entitled to reimbursement of his living expenses at the same rate as may be established by the State Board of Control for other elected state officers

8903 When traveling to and from a session of the Legislature, or when traveling to and from a meeting of a committee of which he is a member, or when traveling pursuant to any other legislative function or responsibility as authorized or directed by the rules of the house of which he is a member or by the joint rules, when such travel is by a common carrier of passengers a Member of the Legislature shall be entitled to reimbursement for the actual costs of travel by the common carrier If the member travels by other means and common carrier service is available and feasible he shall be reimbursed in the amount of the fare of available common carrier service If common carrier service is unavailable or not feasible, a member shall be reimbursed at the rate of fifteen cents ($0 15) per mile No mileage shall be allowed or paid for travel in a conveyance owned or provided by and at the expense of a public agency As used in this section "common carrier" means carrier by aircraft, railroad, bus, or vessel

Article 2 Code of Ethics

8920 (a) No Member of the Legislature state elective officer or appointee of any such officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state

(b) No Member of the Legislature shall, during the term for which he was elected

(1) Accept other employment which he has reason to believe will either impair his independence of judgment as to his official duties or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties,

(2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or use any such information for the purpose of pecuniary gain,

(3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person regarding a licensing or regulatory matter, before any state board or agency which is established by law for the primary purpose of licensing or regulating the professional activity of persons licensed, pursuant to state law, provided, that this section shall not be construed to prohibit a member who is an attorney at law from practicing in such capacity before the Workmen's Compensation Appeals Board or the Commissioner of Corporations, and receiving compensation therefor, or from practicing for compensation before any state board or agency in connection with, or in any matter related to, any case, action, or proceeding filed and pending in any state or federal court, and provided that this section shall not act to prohibit a member from making inquiry for information on behalf of a constituent before a state board or agency, if no fee or reward is given or promised in consequence thereof; and provided that the prohibition contained in this subdivision shall not apply to a partnership in which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee resulting from the transaction, and provided that the prohibition contained in this subdivision shall not apply in connection with any matter pending before any state board or agency on the operative date of this subdivision if the affected Member of the Legislature is attorney of record or representative in the matter prior to such operative date;

(4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California;

(5) Participate, by voting or any other action, on the floor of either house, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest, except as follows:

(i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in substance that he has a personal interest in the legislation to be voted on and notwith-

standing such interest, he is able to cast a fair and objective vote on such legislation, he may cast his vote without violating any provision of this article;

(ii) If the member believes that, because of his personal interest, he should abstain from participating in the vote on the legislation, he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest In the event a rule of the house, requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law

8921 A person subject to this article has an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state or a personal interest, arising from any situation, within the scope of this article, if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity He does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state or a personal interest, arising from any situation, within the scope of this article, if any benefit or detriment accrues to him as a member of a business, profession, occupation, or group to no greater extent than any other member of such business, profession, occupation, or group.

8922 A person subject to the provisions of this article shall not be deemed to be engaged in any activity which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, arising from any situation, or to have a personal interest, arising from any situation, within the scope of this article, solely by reason of any of the following:

(a) His relationship to any potential beneficiary of any situation is one which is defined as a remote interest by Section 1091 of this code or is otherwise not deemed to be a prohibited interest by Sections 1091 1 or 1091 5

(b) Receipt of a campaign contribution regulated, received, reported, and accounted for pursuant to Division 8 (commencing with Section 11500) of the Elections Code, so long as the contribution is not made on the understanding or agreement, in violation of law, that the person's vote, opinion, judgment, or action will be influenced thereby

8923. The enumeration in this article of specific situations or conditions which are deemed not to result in substantial conflicts with the proper discharge of the duties and responsi-

bilities of a legislator or legislative employee or in a personal interest shall not be construed as exclusive.

The Legislature in enacting this chapter recognizes that Members of the Legislature and legislative employees may need to engage in employment, professional, or business activities other than legislative activities, in order to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the specific provisions of the chapter However, in construing and administering the provisions of the chapter, weight should be given to any coincidence of income, employment, investment, or other profit from sources which may be identified with the interests represented by those sources which are seeking action of any character on matters then pending before the Legislature

8924 No employee of either house of the Legislature shall during the time he is so employed, commit any act or engage in any activity prohibited by any part of this article.

8925. No person shall induce or seek to induce any Member of the Legislature to violate any part of this article.

8926 Every person who knowingly and willfully violates any part of this article is guilty of a misdemeanor Every person who conspires to violate any part of this article is guilty of a felony.

Article 3. Joint Legislative Ethics Committee

8940. The Joint Legislative Ethics Committee is hereby created. The committee shall consist of three Members of the Senate and three Members of the Assembly who shall be selected in the manner provided for in the Joint Rules of the Senate and Assembly Of the three members appointed from each house, at least one from each house shall be a member of the political party having the largest number of members in that house and at least one from each house shall be a member of the political party having the second largest number of members in that house. The committee shall elect its own chairman Vacancies occurring in the membership of the committee shall be filled in the manner provided for in the Joint Rules of the Senate and Assembly. A vacancy shall be deemed to exist as to any member of the committee whose term is expiring whenever such member is not reelected at the general election.

8941. The committee is authorized to make rules governing its own proceedings The provisions of Rule 36 of the Joint Rules of the Senate and Assembly relating to investigating committees shall apply to the committee.

Prior to the issuance of any subpoena by the committee with respect to any matter before the committee, it shall by a resolution adopted by a vote of two members of the committee from each house of the Legislature define the nature and scope of its investigation in the matter before it.

8942. Funds for the support of the committee shall be provided from the Contingent Funds of the Assembly and the Senate in the same manner that such funds are made available to other joint committees of the Legislature

8943. The committee shall have power, pursuant to the provisions of this article, to investigate and make findings and recommendations concerning alleged violations by Members of the Legislature of the provisions of Article 2 of this chapter

8944 Any person may (a) file with the committee a verified complaint in writing which shall state the name of the Member of the Legislature alleged to have committed the violation complained of, and which shall set forth the particulars thereof, or (b) file a complaint concerning the alleged violation by a Member of the Legislature with the district attorney of the appropriate county

If a person files a complaint with respect to any alleged violation by a Member of the Legislature with the committee, he may not thereafter file a complaint to institute a criminal prosecution for such violation until the committee has rendered its report or until a period of 120 days has elapsed since the filing of the complaint If a complaint is filed with the appropriate district attorney by any person concerning an alleged violation by a Member of the Legislature of any provision of Article 2, such person may not thereafter file a complaint with respect to such alleged violation with the committee.

If a complaint is filed with the committee, the committee shall promptly send a copy of the complaint to the Member of the Legislature alleged to have committed the violation complained of, who shall thereafter be designated as the respondent

No complaint may be filed with the committee after the expiration of six months from the date upon which the alleged violation occurred

8945 If the committee determines that the verified complaint does not allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of Aricle 2 of this chapter, it shall dismiss the complaint and notify the complamant and respondent thereof. If the committee determines that such verified complaint does allege facts, directly or upon information and belief, sufficient to constitute a violation of any of the provisions of Article 2 of this chapter, the committee shall promptly investigate the alleged violation and, if after such preliminary investigation, the committee finds that probable cause exists for believing the allegations of the complaint, it shall fix a time for a hearing in the matter, which shall be not more than 30 days after such finding If, after the preliminary investigation, the committee finds that probable cause does not exist for believing the allegations of the complaint, the committee shall dismiss the complaint. In either event the

committee shall notify the complainant and respondent of its determination.

8946. After the complaint has been filed the respondent shall be entitled to examine and make copies of all evidence in the possession of the committee relating to the complaint

8947. If a hearing is to be held pursuant to Section 8945 the committee, before the hearing has commenced, shall issue subpoenas and subpoenas duces tecum at the request of any party in accordance with the provisions of Chapter 4 (commencing with Section 9400), Part 1, Division 2, Title 2 of the Government Code All of the provisions of Chapter 4, except Section 9410, shall be applicable to the committee and the witnesses before it

8948 At any hearing held by the committee.

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to be represented by legal counsel, to call and examine witnesses, to introduce exhibits; and to cross-examine opposing witnesses.

(c) The hearing shall be open to the public

8949 Any official or other person whose name is mentioned at any investigation or hearing of the committee and who believes that testimony has been given which adversely affects him, shall have the right to testify or, at the discretion of the committee, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains

8950. After the hearing the committee shall state its findings of fact. If the committee finds that the respondent has not violated any provisions of Article 2 of this chapter, it shall order the action dismissed, and shall notify the respondent and complainant thereof and shall also transmit a copy of the complaint and the fact of dismissal to the Attorney General and to the district attorney of the appropriate county If the committee finds that the respondent has violated any provisions of Article 2 of this chapter, it shall state its findings of fact and submit a report thereon to the house in which the respondent serves, send a copy of such findings and report to the complainant and respondent, and the committee shall also report thereon to the Attorney General and to the district attorney of the appropriate county.

8951 Nothing in this chapter shall preclude any person from instituting a prosecution for violation of any provision of Article 2 of this chapter unless such person has filed a complaint with the committee concerning such violation, in which case such person may not file a complaint with the district attorney of the appropriate county to institute a criminal prosecution for such violation until the committee has made its determination of the matter or a period of 120 days has elapsed since the filing of the complaint with the committee

8952 The filing of a complaint with the committee pursuant to this article suspends the running of the statute of limitations applicable to any violation of the provisions of Article 2 of this chapter while such complaint is pending.

8953 The committee shall maintain a record of its investigations, inquiries, and proceedings All records, complaints, documents, reports filed with or submitted to or made by the committee, and all records and transcripts of any investigations, inquiries or hearings of the committee under this article shall be deemed confidential and shall not be open to inspection by any person other than a member of the committee, an employee of the committee, or a state employee designated to assist the committee, except as otherwise specifically provided in this article. The committee may, by adoption of a resolution, authorize the release to the Attorney General or to the district attorney of the appropriate county of any information, records, complaints, documents, reports, and transcripts in its possession material to any matter pending before the Attorney General or the district attorney All matters presented at a public hearing of the committee and all reports of the committee stating a final finding of fact pursuant to Section 8950 shall be public records and open to public inspection Any employee of the committee who divulges any matter which is deemed to be confidential by this section is guilty of a misdemeanor.

8954. All actions of the committee shall require the concurrence of two members of the committee from each house

8955 The committee may render advisory opinions to Members of the Legislature with respect to the provisions of Article 2 of this chapter and their application and construction. The committee may secure an opinion from the Legislative Counsel for this purpose or issue its own opinion.

SEC. 3. Section 9359.11 is added to the Government Code, to read:

9359 11 Any contrary provisions of Section 9359 1 notwithstanding, in computing the retirement allowance of a legislator member of the Legislators' Retirement System whose service as a legislator ended prior to the term commencing in 1967, the salary to which the applicable formula shall be applied shall be five hundred dollars ($500) per month, and any increase in salary of legislators above such amount shall be disregarded for such purpose.

SEC 4. Section 9359.12 is added to the Government Code, to read:

9359 12 (a) Any contrary provisions of Section 9359.1 or Section 9360.9 notwithstanding, and subject to the further limitations in subdivision (b), the retirement allowance of any member of the Legislators' Retirement System who serves as a legislator during or after the term commencing in 1967 shall be the sum of· (1) the amount determined by application of the formula provided by Section 9359 1 to the first five hun-

dred dollars ($500) per month of salary payable to the legislator at the time of his retirement, plus (2) an amount equal to 3 percent of the amount of such salary in excess of five hundred dollars ($500) per month multiplied by the number of years the member has served in the Legislature, or two-thirds of the amount of such salary payable to the legislator at the time of his retirement, whichever is the lesser, plus, in the case of members credited with service prior to the term commencing in 1967, an amount equal to a cost-of-living increase computed under Section 9360 9 as of January 1, 1967, on that portion of the allowance based on five hundred dollars ($500) per month, and said total to be further adjusted to reflect cost-of-living increases occurring after the member's retirement as determined under Section 9360 10

(b) During such time as he serves in any salaried public office any retired member of the Legislators' Retirement System who served as a legislator during or after the term commencing in 1967 shall receive a retirement allowance computed by application of the formula set forth in Section 9359 1 to a salary of five hundred dollars ($500), and any increase in salary above such amount shall, for such purpose, be disregarded.

SEC 5 Section 9360 10 is added to the Government Code, to read:

9360 10. On or before January 15, 1968, and on or before January 15 of each year thereafter, the amount of any allowances provided by this chapter and not subject to Section 9360 9 shall be adjusted by the board to reflect any increase in cost of living occurring after January 1 of the immediately preceding fiscal year The average of the separate indices of the cost of living for Los Angeles and San Francisco, as published by the United States Bureau of Labor Statistics; shall be used as the basis for determining the changes in the cost of living The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made in the allowance. The adjustment provided by this section shall be made only if it operates to effect an increase over the allowance payable for the calendar year immediately preceding

SEC 6. This act shall become operative only in the event that Assembly Constitutional Amendment No 13 of the 1966 First Extraordinary Session is adopted by the people, in which case this act shall become operative at the time the 1967 Regular Session of the Legislature is convened except that Section 8900 of the Government Code as added by this act shall become operative at the same time as Assembly Constitutional Amendment No 13 Upon becoming operative, the provisions of this act shall supersede any conflicting provisions of any other law

SEC 7 This act shall be known and may be cited as the Gibson-Waldie-Lanterman Act

Report of Legislative Reference Service, California Legislature, on A Study of American States (Sid McCausland, Research Analyst):

A STUDY OF AMERICAN STATES

Purpose and Progress

(The following statement quotes liberally from the publications issued by A Study of American States The emphasis is on conveying the tone and intent of the study, rather than providing an evaluation of its methods or findings Any critical analysis of A Study of American States prior to the release of the study's major report next spring would be premature)

Introduction

A Study of American States was begun in March 1965 at Duke University with funds from the Ford Foundation and the Carnegie Corporation At its inception Terry Sanford, former Governor of North Carolina, envisioned a two-phase program: First, an initial action phase aimed at organizing the interstate Compact for Education, which California joined last June; and second, a research project designed to accomplish for state government what Dr James Conant had done for education—namely, the setting up of some priorities for interstate cooperation and action

Both phases of the study were begun simultaneously and work has continued on each, although the compact demanded more time during its organizational phase The Compact for Education serves as an example of the type of creative state action which Governor Sanford sees as a necessary role for state government The Education Commission of the States, also known as the Compact for Education, became a reality last summer, with an office and staff of its own, and the Study of American States has now entered its own research phase on a full-time basis

Background for the Study

The term "state government" refers to 50 distinct entities, each with its own history, its favored methods, its established laws and precedents. Some of them have legislatures in continuous session; some have legislatures which meet for relatively brief periods every other year Some have a governor elected for two years, some for four In some the governor can succeed himself, in others he cannot Some are rich, some are poor, and all of them claim to need more money most of the time

State governments share one thing in common: For the last quarter of a century, their effectiveness has been declining. The nature of their diversity makes it difficult to work with them as a group The tendency has been to dismiss them as obsolete and unmanageable, and to turn to the federal government for help However, no one has seriously suggested that we do away with state government, and even a casual look shows that they play a role in almost every aspect of our lives

They pass most of our laws. They control most of our courts They make the ground rules for all of our local governments They run most of our prisons They operate and support public schools, colleges, and universities They build and repair roads and highways They operate hospitals They control major areas of taxation. They regulate banking They borrow money.

They do all this and more, usually with a sense of desperation, waging activities on many fronts, frequently without guidelines other than those half-forgotten lessons from history, without independent standards of judgment or time to make needed preliminary studies.

Through these 50 state governments flow more than $45,000,000,000 of public money each year

A Study of American States

The goal of the present study is to help renew interest in the revitalization of state government within the federal system Its method will be to publish reports, in book form, written for popular appeal, demonstrating where state governments now stand, and indicating some of the actions state governments and citizens might take to improve the effectiveness of the states The initial efforts of the study have been to investigate the future role of state government in the federal system with special emphasis on the following questions:

1. How can the states exercise their responsibilities more effectively and efficiently?
2. What are the proper relationships of the states to each other, to their local governments, and to the federal government?

The organization of the Education Commission of the States, under an interstate compact, has been the major tangible accomplishment of the study. This phase served several purposes It enabled the study to demonstrate official state interest in action for improvement It has helped establish the reputation of the study in a manner that should assure broader attention to future action and reports

The major product of this study is still in the development stage, though several short articles have been published. The general themes of these reports can be found in the words of Governor Sanford:

> Our question is not whether states should be retained and strengthened Our question is how can we do it
>
> I do not believe we should aspire to weaken the federal government. . . . Rather I believe we should strengthen the states.
>
> One of the characteristics of any system is that a vacuum does not long exist when a service needs to be performed Because of the states' inactivity and timidity, the federal government has tried to fill their role.
>
> (But monumental) social problems confront us at the same moment that the federal government is beset by increasingly numerous and time-consuming problems of national security and international relations. Our margin for error in (international diplomacy) has decreased to the point of being nonexistent, and the time he must spend on considering the ramifications of alternative actions

leaves a President less and less time for the consideration of domestic social problems.

It is possible to cite several recent federal programs which appear hastily conceived and poorly coordinated The best that can be said for many is that they provide a partial stop-gap solution; the worst . . . that they are ineffectual and wasteful. . . . As Governor Pat Brown recently pointed out, while the governors are getting increased responsibility for administering federal programs, they are rarely consulted before the legislation is drafted.

(For example) The federal manpower training program served an excellent purpose The trouble was the delay in getting courses approved under procedures too complicated and cumbersome . . . In one program we had 287 recruits and, by the time we got federal approval, only 118 were left. . . .

However, we must not allow ourselves to get caught blindly castigating the federal government for the weaknesses of state government . . . My good friend Carl Sanders of Georgia . . . recently told a meeting . . . that "We've carried as much government to Washington as any group and laid it on the doorstep there because we didn't want the responsibilities."

So when we begin to talk about the evils of centralization of power in Washington and the decline of state authority, . . . it might be well to remember the words of . . . Pogo, who said: "We have met the enemy, and they is us."

I think it is time for the states to get to where the people are . . . and where the problems are. It is time to reassert their historical role in the American experiment. For the states were once the innovators in this country, and they must innovate again. The first antitrust statutes were developed by the states, the first maximum-hours-minimum-wage legislation was developed by the states; the states fashioned the first antidiscrimination statutes, the first child labor laws, the first unemployment insurance.

Proposals

. . . What can the states do to make themselves more effective instruments of government? . . . In North Carolina, we realized early that if we did not begin to think about the future, we were abandoning that future to haphazard growth. . . . We called in the department heads of all the agencies and asked three questions: Where were we in . 1900? Where are we now? Where do you hope to be in 1976?

My hope was that we could develop a master plan for the future in every field of the state's activity. . . .

I think each state should have an office which formulates long-range plans of action for every area of government . . . located in the Governor's office, because planning has to be relevant to the everyday task of government, and it needs to be fed back into the system, rather than evolve into just another report for the shelf.

In addition to the need for long-range planning, Governor Sanford also feels that serious consideration must be given to the collection and

dissemination of the cumulative experiences of the various Governors and their states

> (During my term as Governor) we had learned a lot, but it had taken us a long time to learn it Other states would have to learn our lessons all over again
>
> For that reason, we need an agency serving all the states which could collect and store the experiences of past Governors and their states The Council of State Governments can probably do this. . . . We need this cumulative knowledge and the experience gained from past battles in planning our future ones. . . .

Governor Sanford also stresses the need for the revision of state tax structures But the major thrust of his study tends to center on the need for a strong Governor who can channel and direct the energies of state government.

> The executive branch should be strengthened In too many states the executive power is too diffused Wouldn't it be better to concentrate executive authority and responsibility in the Governor, the one state official the voters can and do watch?
>
> But, saying that the Governors must be able to exert strong leadership implies a great deal more than just that. No Governor can be strong with a weak or sick legislature, an invidious interest group atmosphere, a weak political party structure or public apathy. What this means is that by truly strengthening our Governors, we revitalize state government But we focus our effort rather than take a shotgun approach

Conclusion

In the immediate future, A Study of American States will concentrate on the major report of the study which should be ready for publication in early 1967.

There will also be a number of articles, speeches, and pamphlets on aspects of state government, incorporating proposals and techniques for state initiative in specific areas of the greatest needs.

The essential purpose of this study is to stimulate public concern and debate over the frequent unwillingness of the states to act, to suggest policies and techniques to improve the ability of state government to act quickly and effectively; to demonstrate their potentials for good if they do act; and to offer concrete ideas and proposals for recognizing and responding to new priorities

In the final analysis Governor Sanford believes that "The American people will respond to state government when state government responds to the needs of the American people."

A STUDY OF AMERICAN STATES

Selected References

September 27, 1966

The following publications from Governor Terry Sanford's "A Study of American States" have been presented to the Assembly In-

terim Committee on Constitutional Amendments for inclusion in the committee's library by the Assembly Legislative Reference Service

"A Study of American States," Statement by Terry Sanford, Washington, D C., April 6, 1965 (4 pages)

"Study of the Future Role of States," The Ford Foundation, Public Affairs, New York, (undated), (6 pages)

"A Study of American States," Press Conference Release by Terry Sanford, Washington, D C , April 6, 1965 (3 pages)

"New Era Ahead for Your State," *Nation's Business*, July 1965, pp. 56–62

"Where the Action Is," Speech by Terry Sanford to Midwestern Governor's Conference, Mackinac Island, September 21, 1965 (8 pages).

"A Study of American States, Annual Report," Duke University, Durham, North Carolina, July 1966 (8 pages)

"Poverty's Challenge to the States," *Law and Contemporary Problems*, Duke University School of Law, Durham, North Carolina, winter 1966, pp 77–89

A SUMMARY OF EFFORTS ON BEHALF OF CONSTITUTIONAL REVISION IN THE UNITED STATES SINCE 1950

States*	Constitutional conventions: Called (a)	Constitutional conventions: Call rejected (b)	Constitutional commissions and study groups (c)	Initiative (d)	Remarks
Alaska	1955		1949–1955		(c) ConConPrepCom (Constitutional Convention Preparatory Commission)
Arizona				X	Arizona Academy studying revision
California			1959, 1963[L]	X	
Connecticut	1965	1959			(a) Recommendations approved by electorate, (b) Rejected by Legislature
Florida			1950—Citizens Constitutional Commission, 1954[L], 1955[I], 1958[E], 1965[S]		(c) Seeking revision of Constitution which allows amendments to only one article per election
Georgia	1965		1963[S]		(a) Legislature sitting as convention and drafting new Constitution, (c) Drafted Constitution, later invalidated by federal court for apportionment clause
Hawaii	1950		1947–1956		(c) ConConPrepCom
Idaho			1965[S]	X	(c) Report due 12/1/66
Illinois			1965[S]		Adopted amendment to simplify revision in 1950
Iowa		1960			(b) Electorate has rejected call for convention every decade for 100 years
Kansas			1957, 1961[C]		(c) Reported late 1962—no further news
Kentucky		1960	1950 1960 & 63[S] Legis Res Com		(b) Calls repeatedly defeated at polls
Louisiana			Louisiana State Law Institute		(c) No news of fate of recommendations Has the longest Constitution in the U S (over 200,000 words), effort for section-by-section continuous revision, no definitive action reported to date
Maine			1961[S]		(c) No report on fate of recommendations
Maryland			1965[S]		(c) ConConPrepCom in anticipation of call
Massachusetts	1956		1962[S]	X	(a) Joint session of Legislature serves as convention, (c) Final report scheduled for 1967
Michigan	1961	1958	1960, 1961[T]	X	1958 call defeated because of strict constitutional provisions related to call, subsequent use of initiative ease the call requirements and the 1961 Convention was called to draft a new Constitution Cost of Convention $2,675,000
Minnesota		1955	1945, 1962[L]		(b) Defeated by Legislature, (c) Continuous revision efforts since 1962—no report on success
Mississippi		1958			(b) Defeated by Legislature
Missouri		1962		X	Has successfully called six conventions, four of which have resulted in basic changes to the Constitution, (b) Voters
Nebraska		1951	1964, Leg Council	X	(b) Defeated by Legislature, (c) Effort to establish continuous revision
New Hampshire	1956, 59 & 64		1963[S]		(a) Call every seven years, means for all constitutional changes, (c) ConConPrepCom
New Jersey	1966				(a) Limited to apportionment, 1947 Convention framed present Constitution
New Mexico			1963[S]		(c) Report due in 1967
New York	1967	1957	1956[L], 1958[L], 1959[S], 1965[S]		(b) Defeated by electorate, (c) Interested in continuous revision ('56 and '65 are ConConPrepCom's)
North Carolina			1957[L]		
North Dakota			Leg Res Com	X	Issued report in 1965
Ohio		1952	1949	X	(b) Defeated by electorate, (c) ConConPrep
Oklahoma		1950	1931–1959	X	(c) ConConPrepCom, (b) Defeated by voters
Oregon			1953, 1961[L]	X	(c) Drafted new Constitution, rejected by State Senate in 1963 over apportionment
Pennsylvania		1951, 3 and 6	1957[S], 1963[L]		(b) 2 rejected by Legislature, 1 by electorate, (c) 1957 ConConPrep recommended no convention, 1963 still pending Interested in continuous revision
Puerto Rico	1951				
Rhode Island	1955 S & 1964		1961[L]		(a) '55 limited to elections '64 limited to apportionment
South Carolina			1948–1950		(c) ConConPrepCom—no call issued
Tennessee	1953, 9 & 1965				All limited, '65 was on apportionment
Texas			Legislative Council 1957[L]		No provisions in Constitution for calling convention, (c) Reported in 1961, no report on outcome of recommendations

A SUMMARY OF EFFORTS ON BEHALF OF CONSTITUTIONAL REVISION IN THE UNITED STATES SINCE 1950—Continued

States*	Constitutional conventions: Called (a)	Constitutional conventions: Call rejected (b)	Constitutional commissions and study groups (c)	Initiative (d)	Remarks
Utah					Special study due in 1967
Vermont			1949–50 1959[b]		(c) No report of outcome
Virginia	1956				(a) Limited to study and recommendations on segregation of schools after Supreme Court decisions re education
Washington			1965[b]		(c) ConConPrepCom
West Virginia			1957[b]		(a) Call on 1965 ballot, no report of outcome, (c) two out of three recommendations approved
Wisconsin			1960, 1963[c]		

* Excluding states for which no data was immediately available, as follows Alabama, Arkansas, Colorado, Delaware, Indiana, Montana Nevada, South Dakota and Wyoming Of these, Arkansas, Colorado and Nevada have the constitutional initiative noted in Column "d"

[b] Commission created by legislative action

[c] Commission created by executive action

[a] Commission created by statute

Compiled from numerous sources including the following

The Book of the States, 1949–1950, Council of State Governments Chicago

Sturm, Albert L., "State Constitutional Commissions Fifteen Years of Increasing Use," *State Government*, winter 1966, pp 59–63

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ASSEMBLY INTERIM COMMITTEE REPORT
1965–1967

Volume 27 Number 5

FINAL REPORT OF THE

ASSEMBLY INTERIM COMMITTEE ON CONSTITUTIONAL AMENDMENTS

House Resolution No. 710(d)

THE INITIATIVE AND THE EFFECTIVE DATES OF STATUTES

MEMBERS OF THE COMMITTEE

EDWARD E ELLIOTT, *Chairman*
JACK R FENTON, *Vice Chairman*

ROBERT E BADHAM
JOHN L E COLLIER
CHARLES J CONRAD
MILTON MARKS
JAMES R MILLS
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GEORGE A WILLSON
GEORGE N. ZENOVICH

FRANCES MORTON, *Secretary*

Published by the
ASSEMBLY
OF THE STATE OF CALIFORNIA

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Majority Floor Leader
HON ROBERT MONAGAN
Minority Floor Leader
JAMES D DRISCOLL
Chief Clerk

THE INITIATIVE AND THE EFFECTIVE DATES OF STATUTES

A Report of the Assembly Interim Committee
on Constitutional Amendments
1965–1966

ACKNOWLEDGMENT

The committee expresses its thanks to Mr Terry Baum, Principal Deputy, Office of the Legislative Counsel, Mr. Edward F Nowak, Deputy, Office of the Legislative Counsel, Mr Sid McCausland, Research Analyst, Assembly Legislative Reference Service, Mrs. Marjorie Lohelt, Assembly Secretary, and Mr Timothy Lemucchi, who served as consultant for the committee from October 1, 1965, to April 15, 1966, for their assistance in conducting meetings and preparing material for the work of the committee

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LETTER OF TRANSMITTAL

Assembly Chamber, State Capitol
Sacramento, January 2, 1967

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

Dear Mr Speaker and Members·

Your Interim Committee on Constitutional Amendments, established by House Resolution Number 710(d), 1965 Regular Session, submits herewith the second of two final reports of its activities. This report is on the subjects of the initiative and the effective dates of statutes.

The reports contain 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

Members:

JACK R FENTON, *Vice Chairman*

ROBERT E. BADHAM
JOHN L. E. COLLIER
CHARLES J CONRAD
MILTON MARKS
JAMES R MILLS
NICHOLAS C PETRIS
ALFRED H SONG
GEORGE A WILLSON
GEORGE N. ZENOVICH

PART I

THE INITIATIVE

PART I

The Initiative

Meetings

The following is a list of meetings on the subject of the initiative held during 1965–1966:

November 17, 1965	San Francisco
December 13–14, 1965	Los Angeles
January 13, 1966	Montebello
January 14, 1966	Pico Rivera

LIST OF WITNESSES

November 17, 1965

Mr Thomas Casstevens, Political Science Specialist from the Institute of Governmental Studies, University of California

Dr. Nancy Jewell Cross, Menlo Park

Mr Grandvel A Jackson, Community Organization Representative, Human Rights Commission of San Francisco

Mr Timothy Lemucchi, Consultant, Assembly Committee on Constitutional Amendments

Mr Joseph Robinson, President of Robinson and Company, San Francisco

Mrs Edward Rudin, Representative, League of Women Voters of California

December 13, 1965

Mr. Charles A. Barrett, Assistant Attorney General, Sacramento Office of Attorney General

Mr. Leon Cooper, Chairman, Advisory Committee, Democratic State Central Committee of Southern California

Mr. Timothy Lemucchi, Consultant, Assembly Committee on Constitutional Amendments

Mr. Richard L. Patsey, Special Counsel to California Constitution Revision Commission

Honorable Bruce Sumner, Judge of Superior Court, Orange County, and Chairman, California Constitution Revision Commission

Mrs. Carmen H. Warschaw, Chairman, Democratic State Central Committee of Southern California

December 14, 1965

Mr. Herbert M. Baus, Baus & Ross Company, Public Relations Advertising, Los Angeles

Mr. Lee Blincoe, Los Angeles

Mr. Robert L. Hamm, County Clerk and Recorder, Ventura County

Mr. William G. Sharp, County Clerk, County of Los Angeles

January 13, 1966

Mr. George Feinberg, Chief of the Representation Division, California State Employees' Association

Mr. John F. Fisher, Executive Officer, State Personnel Board

Mr. Timothy Lemucchi, Consultant, Constitutional Amendments Committee

Mr. Richard L. Patsey, Special Counsel, Constitution Revision Commission

January 14, 1966

Mr. John F Fisher, Executive Officer, State Personnel Board

Mr L H Halcomb, Jr , Deputy Officer, Little Hoover Commission

Mr. Richard L. Patsey, Special Counsel, Constitution Revision Commission

Honorable Leo J. Ryan, Assemblyman 27th District

Mr Richard E Sherwood, Member, Commission on California State Government, Organization and Economy

THE INITIATIVE

Findings

1. The provision in the first phase revision of the State Constitution which provides for the qualification of statutory initiatives by a lesser percentage than constitutional initiatives, should help to avoid cluttering up the State Constitution with matter enacted by initiative that is not of such a nature as belonging properly in the state's fundamental law.
2. Assembly Bill 742 (Marks) of the 1965 General Session of the Legislature, providing for an explanation by the Legislative Counsel in the ballot pamphlet of the effect of an affirmative and a negative vote, while tested only at one election, appears to be a substantial step toward avoiding the confusion in the public mind as to the effect of ballot measures which was clearly evident in the 1964 state general election The committee observed no evidence of this type of widespread confusion at the 1966 general elections
3. The contention that the initiative has been used almost exclusively during recent decades by socalled "special interest groups," while containing some validity, is an oversimplification of a complex matter. The operation of special interest groups advancing particular causes is inherent in the processes of our form of government. Such socalled "special interest" groups have included commercial interests, teachers' organizations, senior citizen organizations, organized labor, etc.
4. The Legislature has acted responsibly in recent years in endeavoring to make the initiative more meaningful.
5. The committee believes that continuing scrutiny of the use of the initiative in order to curb any future abuses and to improve its functioning is needed.
6. The committee believes that the right of the initiative is one that should be preserved. It expresses its strong support of it as one of those rights that should be reserved to the people. It is a safeguard that along with the referendum and recall should always be available to the people though the need for their use may seldom arise.

Recommendations

1. That further study be given to the feasibility of legislation prohibiting employers from requiring their employees to circulate initiative petitions during their on-duty hours or as a condition of employment during their off-duty hours.
2. That further study be given to extending the time for circulating and qualifying initiative petitions from the time of certification of title by the State Attorney General.

CHAPTER 1

The Initiative and Its Purpose

Article IV of the California Constitution reserves to the people the power known as the initiative This right of the people was placed in the state's Constitution in 1911 during a period in which the referendum, recall, and initiative were being widely adopted throughout the United States

The initiative is essentially a form of the exercise of direct democracy. In its employment citizens acting in concert take direct action in proposing the enactment of legislation instead of acting through elected representatives While instances of the people making laws in this fashion can be traced back to ancient times, Switzerland appears to have pioneered in its acceptance in the modern era In the 19th century the Swiss Federal Constitution provided that any laws or resolutions of general application and not of an urgent character must on demand of eight cantons, or 30,000 voters, be submitted to the people for a vote

By 1888, the Swiss procedure of direct legislation was familiar to many groups in both England and the United States and the desirability of adopting direct legislation as a defense against unpopular legislation was widely discussed. The first large, well-organized body in the United States to favor adoption of the initiative and referendum at the state level was the American Federation of Labor, which officially supported the idea in 1892.

In that same year the National People's Party, an outgrowth of the Farmer's Alliance Party and certain labor organizations in the cities, adopted a resolution at their first national convention recommending the adoption of the initiative and referendum. Four years later, in 1896, when the National People's Party came to power in South Dakota, a constitutional amendment favoring the initiative and referendum was passed in the South Dakota Legislature. The amendment, after being submitted to a popular vote, became part of the state's Constitution in 1898. By 1910, eight states—Utah, Oregon, Montana, Oklahoma, Missouri, Michigan, Arkansas and Colorado—had followed South Dakota's lead by adopting both the initiative and referendum as amendments to their Constitutions. The following states today provide for legislative initiatives:

Alaska	Massachusetts	Ohio
Arizona	Michigan	Oklahoma
Arkansas	Missouri	Oregon
California	Montana	South Dakota
Colorado	Nebraska	Utah
Idaho	Nevada	Washington
Maine	North Dakota	

The following states provide for initiative on constitutional amendments:

Arizona	Michigan	North Dakota
Arkansas	Missouri	Ohio
California	Nebraska	Oklahoma
Massachusetts	Nevada	Oregon

It is interesting to note that the reform movement leading to the adoption of the initiative and referendum laws by the states occurred toward the early part of this century. Actually, the first state, South Dakota, adopted it in 1898 Sixteen states had adopted the initiative and referendum procedures by 1914. By 1928, only four other states had adopted the initiative. After that no state adopted any initiative or referendum procedure except for the newly admitted state of Alaska (1959).

In modern popular government the initiative was apparently developed either because of dissatisfaction with state legislatures or the conviction that this tool should be available to the people as a safeguard and protection in cases where the legislature failed to act on a matter in which there was extensive interest. As now constituted the California constitutional provisions on the initiative provide that an initiative measure amending the State Constitution can qualify through obtaining valid signatures of registered voters equal to 8 percent of the vote for the office of Governor at the last general election In 1966 this was 468,259 signatures Under California's first phase constitutional revision, statutory initiatives can qualify with signatures of registered voters amounting to 5 percent of the votes for Governor at the last election for the office The State Elections Code provides for an initial 90-day period for the collection of signatures after the petition has been titled by the Attorney General and an additional 40-day period if the petition fails to qualify in this time The general procedure as outlined in the code provides that a group submit a proposed initiative measure with a $200 fee to the Attorney General, who in turn titles it and makes a brief summary The petitions are cleared through county clerks or county registrars of voters and sent to the Secretary of State.

Of 311 ballot measures approved by the people between 1912 and 1964, 12½ percent have been initiatives Seven and four-tenths percent of the amendments to the State Constitution were by means of the initiative Sixty-eight percent of the ballot measures submitted to the people during this period were placed on the ballot by the Legislature. Legislative proposals account for over 70 percent of those adopted

In testifying before the committee, Assistant Attorney General Charles A. Barrett stated

> "I am in charge of the Government Law Section of the Attorney General's office and in my section the summaries and titles which are provided for under the Constitution are prepared. I have a short statement that I could go over and at the end I would like to have a few comments on some of the testimony that previously was given.
>
> "Requests for titling of the initiative measures must be forwarded to the office of the Attorney General under the provisions of Article IV, Section 1, of the California Constitution A $200 fee is charged to the proponent at the time of receipt of the application in accordance with the provisions of Section 3501 of the Elections Code That fee is returned to the proponent if he is successful in having the initiative measure qualified for the ballot, otherwise the fee is paid into the General Fund of the state
>
> "Although the Constitution and the Elections Code sections do not specifically spell out that the proponent must be a registered

voter, the provisions of Article IV, Section 1, paragraph 13, and Section 3501 of the Elections Code have been interpreted by all Attorneys General to require that a registered voter be identified as a specific proponent for a proposed initiative measure

"When the application is first received, it is quickly reviewed to make sure that all necessary provisions are included in the proposed draft. Quite frequently, we bring to the attention of the proponent some provision which would preclude us from preparing a title."

CHAPTER 2

Problems and Proposed Changes Referred for Study

At the Constitutional Amendments Interim Committee hearing on December 13 and 14, 1965, in Los Angeles, Chairman Elliott declared:

> "I would like to emphasize again what was stated at the previous hearing of this committee and what was stated in the press releases that have been issued in conjunction with these hearings on the initiative That is, that the matter of the outright repeal of the initiative is not under consideration by this committee. I know that no serious thought has been given by the Legislature to repealing the initiative This is a fundamental right that the people have, and I think there is strong feeling that this right of the people should be retained
>
> "What the committee is interested in is whether or not the initiative is being used in the fullest and fairest manner and whether or not this committee of the Legislature can make recommendations to the Legislature which would facilitate its use in the fullest and fairest manner."

During the 1965 General Session, three constitutional amendments were introduced which proposed changes in the use of the initiative. These amendments by Assemblymen Gordon Winton, Joe A Gonsalves, and Alfred E. Alquist were referred to the committee for interim study. There were also a number of bills concerning the initiative that were introduced during the 1965 General Session

While only the three constitutional amendments were referred for interim study, the deliberations were not limited to their contents alone.

The following is the Legislative Counsel's digest of ACAs pertaining to initiatives proposed in 1965:

ACA 3 (Winton) 1965 General Session

Limits initiative petitions to the proposing of statutes, thus restricting the proposing of constitutional amendments to the Legislature.

Authorizes Legislature, by a two-thirds vote, to repeal or amend an initiative statute without a vote of the electorate

Requires initiative proposals to receive a majority vote of those voting at the election at which the measure is submitted, rather than only a majority of those voting on the particular proposition.

ACA 7 (Gonsalves) 1965 General Session

Provides that if initiative measure proposes to prohibit a specified activity or to terminate an existing right or privilege, the measure shall be submitted to the voters in such form that they may vote in the affirmative if they favor the right to engage in the activity or the continuance of the right or privilege.

Requires the Attorney General to frame the question to be submitted to the people with respect to any such measure.

ACA 23 (Alquist) 1965 General Session

Provides that initiative measure proposing constitutional amendment shall not be adopted unless approved by two-thirds, rather than a majority, of the electors voting thereon.

The following are pertinent statements made at the Constitutional Amendments Committee meeting in San Francisco on November 17, 1965:

"My name is Thomas W. Casstevens. I am a research political scientist with the Institute of Governmental Studies at the University of California but I speak for myself since the Institute of Governmental Studies, of course, takes no position or views expressed in this statement. My remarks will stress the basis for reform of the statewide initiative process and will analyze in detail some proposed reforms A copy of my recent article on the initiative is amended to the typescript of my remarks since that article provides some supplementary information.

"California's statewide initiative is a legacy of the progressive era. Under the leadership of Governor Hiram W. Johnson, the initiative process was written into the State Constitution in 1911 by a virtually unanimous vote of both houses of the Legislature and by a margin of almost exactly 3 to 1 in a special statewide election. Repeal of the initiative process has never appeared to be a practical political prospect, but from time to time, the process has been modified by constitutional amendments, legislative acts and judicial decisions.

"Further changes and reforms are being advocated at the present time on the grounds that *the statewide initiative no longer functions as intended by the Progressives.* The Progressives conceived of the initiative as a mechanism for breaking the power of a wealthy lobby—the so-called 'Southern Pacific machine'—and for preventing the resurgence of such a lobby. Thus, the initiative was originally intended to be an instrument of the volunteer citizens; it was not intended to be a tool of the special interest pressure groups.

"Perhaps the initiative functioned as intended for several decades after its adoption, but in recent years, the initiative has rarely been used by citizens as such, and has frequently been used by large and/or wealthy special interests. Thus, by a curious reversal of history, the initiative now tends to serve the pressure groups. California's phenomenal population boom, with the concurrent growth of the electorate, has fundamentally affected the initiative process The basic formula for qualifying an initiative petition has remained the same since 1911, namely, the signatures of a number of registered voters equal to 8 percent of the vote in the preceding gubernatorial election are needed if the initiative is submitted *directly* to the people. The signatures of a number of registered voters equal to 5 percent of the vote in the preceding gubernatorial election are needed if the initiative is submitted to the Legislature before being submitted to the people. The latter indirect initiative proceeding has been used very rarely, so subsequent remarks will refer primarily to initiatives submitted directly to the people.

"The number of signatures needed to qualify an initiative petition has increased enormously since 1911, and continues to grow. After the 1910 gubernatorial election, 30,858 signatures were necessary. By contrast, 468,259 signatures were necessary after the 1962 gubernatorial election The number of signatures needed to qualify an initiative at the present time is greater than the *total gubernatorial vote* in 1910

"The number of required signatures is now so great that only a very large, dedicated and highly organized group of volunteer petition circulators could hope to obtain enough signatures Consequently, professional petition circulators are customarily hired for this task. The cost was about 10 cents per valid *signature* in the 1930's, and roughly 30 to 40 cents per valid signature in the 1960's, a 400 percent increase in 30 years The cost per valid petition has increased even more due to the increase in the number of required signatures The cost of a valid petition has increased in round figures, from about $10,000 in the 1930's to about $125,000 in the 1960's—a 1,200 percent rise in 30 years Even if allowance is made for the general inflation of the last 30 years, the cost per signature has increased by a multiple of 2 and the cost per petition has increased by a multiple of 5. I can only give these rough and approximate figures since I am not in the business of circulating petitions. This committee would, in my opinion, perform a valuable public service by calling witnesses who are in that business, and by making the actual total cost of recent petitions a matter of public record.

"The demand for (and cost of) professional petition circulators can be expected to increase further as California's population, electorate and signature requirements continue to grow. The initiative process, as a result, can be expected to become still more the preserve of wealthier and wealthier—or larger and larger—organizations

"The trend in campaign costs has, of course, reenforced this tendency for the initiative to become a tool of wealthy interests."

MR. JOSEPH ROBINSON: I am Joe Robinson, President of Robinson and Company, San Francisco.

CHAIRMAN ELLIOTT: Mr Robinson, do you have any statement that you would like to make to the committee regarding the initiative and with particular reference to the constitutional amendments proposing changes in the initiative which were introduced at the last session of the Legislature?

MR. ROBINSON: The only statement I would like to make as far as the initiative and referendum business is concerned is that I think this state, in having growing pains every four years, the number of *signatures required* is getting out of proportion. I would like to see that reduced There might be many other organizations instead of having to get 700 and some odd 1,000 gross names to get 500,000 valid signatures every four years with the state growing, it might get up to 6 or 700,000 names I think when it gets up to that point it might become impossible to get the sig-

natures within the time limit allowed by the Constitution. I would rather see the thing go down to maybe 300,000 signatures.

MRS. EDWARD RUDIN: I am Mrs. Edward Rudin, representing the League of Women Voters of California, I am a member of the board of directors of the league The measure I wish to speak about is ACA 7, which provides that initiatives be submitted to the voters in such form that they may vote in the affirmative if they favor the right to engage in that activity. In the interest of making ballot propositions more easily understood by the voter, the League of Women Voters of California support ACA 7, which requires that initiatives be worded so that a yes vote would indicate approval of the activity covered by the initiative. For many years the league has worked for clear and democratic election procedures to safeguard the rights of the voter This has included interest in the effective operation of the initiative, which has produced many solid accomplishments during the half-century since its adoption in California, such as the state civil service system, the State Executive Budget Law, and permanent registration. We welcome measures such as ACA 7, which we feel would make the initiative measures clearer and more understandable to the voter and facilitate his informed participation in government. We believe since it is demonstrably possible for the Legislature itself to propose to the people constitutional amendments worded so that a yes or no vote is clear, it should also be possible to word initiatives with similar clarity for the benefit of the voters The right to initiate is a peoples' right, not just a proponents' right. The purpose is to enable voters to express their will and adopt the law they want, not just to enable proponents to get a law passed. Preceding each general election, league speakers explain the meaning of ballot measures before hundreds of groups throughout the state. We have long recognized the difficulty and confusion the voter faces when it is explained that if you are against something you should vote yes, or if you are for something you should vote no. ACA 7 would eliminate an unnecessary complication the voter faces in expressing his will The league supports ACA 7 as a positive step toward improving the initiative which we consider an important means in a system of government responsive to the will of the people

MR. GRANDVEL A JACKSON: My name is Grandvel Jackson. I represent the Human Rights Commission of San Francisco.

Mr. Chairman, honorable members of this committee, I am happy to have an opportunity to speak before your honorable committee for the purpose of discussing the initiative process. I am particularly interested in the subject as it applies to amendments to the State Constitution

The state is spending a considerable amount of money, at the present time, attempting to revise its Constitution into a document that will be concise and understandable to the layman as well as the legislator.

I would like to make the following points: One, a Constitution should be relatively difficult to amend Two, the primary responsibility for legislation should be in the hands of the Legislature. And, three, the right to amend the Constitution should be equally available to all citizens.

During the past two years as I have pondered the pages of the Constitution and discussed it with others, many people have reflected the Federal Constitution, speaking of its brevity and the manner in which it has stood the test over the centuries. Although almost 200 years old, there have been only 24 amendments. This has been so because the Federal Constitution cannot be easily tampered with It has been amended only to keep up with the changing social order I don't believe anyone in the Legislature or any political scientist will deny that the Federal Constitution has served its purpose for the American people. Conversely, the State Constitution has been amended countless times, and many other proposed amendments have failed I submit to you that the manner in which our State Constitution can be amended is too attractive for those who long to change the law for special interest

Our Constitution is our basic law It was so framed to protect all of the people of the State of California, equally But let me point out to you that if the Constitution can be amended by a simple majority vote, as it can be at present, this basic law will be changed at every election It is presently possible to amend the Constitution of the State of California with fewer than half the people registered to vote in the state If, for instance, only 10 or 20 percent of the registered voters do vote, then the State Constitution can be amended with this number of people To be a little more explicit on this point about the 10 to 20 percent of the people who don't go to the polls, and this very often happens, if a measure gets 51 percent actually, fewer than 50 percent of the people who are registered to vote amend the State Constitution A two-thirds majority should be required to amend the Constitution

The primary responsibility to make laws should remain in the hands of the Legislature Let me hasten to add that I am not advocating doing away with the initiative process I realize that in the days of Hiram Johnson the people of this state needed some protection against big business and the corrupt politicians who sat in the statehouse in Sacramento Today, we do not have this kind of Legislature and it is likely that that day has gone forever. Being a legislator requires knowledgeable skills and our electorate are demanding that our representatives possess these skills.

For those who argue that this is a right that must be protected at all costs, let me point out that only few states in the United States use this process. While I believe this is extra insurance that the electorate will be protected, it is not at all essential

The third and final point is that I am unalterably opposed to the practice of paying professional signature getters for the purpose of placing initiative statutes before the Legislature or before the people. This practice allows the rich and the people with

special interests a decided advantage over the poor, the politically unsophisticated, and the uneducated It is tyrannical, it is unfair and unjust and should be stopped.

When this matter was before the Constitution Revision Commission I offered a resolution which would have made this practice not only unlawful but unconstitutional. The resolution was tabled. I here again submit to you today that the Legislature should make this an unlawful practice for the sake of all of the citizens of California regardless of race, color, affiliation, or station

Let me summarize: The Constitution should be rather difficult to amend in order to preserve its meaning and form and to protect the people of this state. Legislation should be left primarily to the legislators who are held responsible to the electorate. The Constitution should remain the basic document which protects equally the rights and privileges of all of the people of this state. The right to amend the Constitution should be equal to all the citizens of this state That paid professional signature takers should be a violation of the law A two-thirds majority should be required to amend the Constitution.

CHAPTER 3

Other Significant Testimony

Assemblyman Gordon Winton of Merced County was one of the authors of legislation designed to improve the California initiative law In an appearance before the committee at a meeting in San Francisco on November 17, 1965, he stated.

"I want to make clear that ACA 3 was not given to me by anybody. It was my own idea—no pressure groups except if you call myself a pressure group, well, that was it The thing that initiated my interest in this goes back a good many years Part of it has been discussed here today and that was the initiative in 1948, which designated a Director of Social Welfare and made some other changes I shouldn't admit this but over some 30 years ago, I was a political science major and my field was state government and state administration, and even at that time I was concerned about the use of the initiative process in California I was particularly concerned about the Constitution of the State of California because I think all of us here know what a hodgepodge the State Constitution is I think most of us know that there is only one state in the nation that has a longer constitution than the State of California and that is Louisiana. It seemed to me that part of the reason that it is so long is because of the fact that measures were enacted into it by initiative process concerning subjects which really should not be in the State Constitution. I can refer to one which I think of offhand and that's a minimum salary for teachers Why this should be an item in the State Constitution really distresses me For this reason, I thought in our consideration of the revision of the Constitution in the State of California some consideration should be given to limiting the Constitution to the basic outlines of our form of government and exclude the specifics and details. The main idea of ACA 3 was to provide that the initiative should be limited to statutes and not to constitutional amendments In our cauldron of legislative hearings, where we have a proposed constitutional amendment, such as I do, we go through hearings in the legislative session, amendments are offered, they may be accepted or rejected but at least they are talked about In all of this, we have a process of give and take, of discussion and improvement of the proposed amendment When we have a constitutional amendment that is proposed by initiative, somebody draws it up, it is put on the ballot, there is no chance for amendment or discussion or all the processes that we in the Legislature go through before an amendment ever gets on the ballot It seems to me that this is not a wise way to amend a constitution I think the requirement should be there that the people must ratify an amendment to the Constitution. They must do this on legislative proposed ones but I think very often, under our present system, we find amendments to the Constitution appearing from the initiative. Through the

initiative, many amendments fortunately are defeated. But over the years, a great many have appeared in the Constitution which basically, I believe, do not belong in the Constitution. I have one amendment on the proposed ACA 3 which I would not urge you gentlemen to consider seriously and that is the requirement that you should have a majority of all those voting in the general election to vote for the measure. I think a simple majority of those voting on the initiative should be sufficient

"I think the initiative should be limited to statutes, and I think the Legislature should have the right by two-thirds majority vote to amend the statute or by a 50-percent majority vote to refer an amendment to the people; either way. We have the one now by a 50-percent majority vote of the Legislature We can refer to the people an amendment of something that has been put into the statutes by initiative but I think that the Legislature should have the power by a two-thirds vote to amend an initiative statute. In studing this, I had some correspondence with North Dakota where they have a Constitutional Revision Commission now sitting. One of the problems in North Dakota is that they have had this two-thirds regulation ever since they adopted the initiative process in 1914. They have allowed the Legislature to amend initiative statutes by a two-thirds vote of each house. This is now giving them considerable problems. Therefore, one of the recommendations I had was that the Legislature should be able to amend an initiative measure by a 50-percent majority after it has been on the books for five years I think that two-thirds requirement would be safe all the way through because we have the other process where with a 50-percent majority we can put an amendment on the ballot for the people to consider. From the correspondence I have, I assume that in North Dakota they cannot put a measure on the ballot by a 50-percent majority of each house. But in North Dakota they found there are many statutes that were enacted by the initiative 20, 30, and even 40 years ago, and that one-third of the members of one house of the State of North Dakota can prevent amendment to the Constitution. They found that this really fouled them up."

Mr. Caspar Weinberger, a former Member of the Legislature and a prominent attorney and journalist, provided the following statement to the committee:

"It has long been my feeling that the initiative in California, under current conditions, completely fails to fulfill the objectives that Hiram Johnson had in mind for it. As everyone recalls, Governor Johnson recommended the adoption of the initiative process because he felt the Legislature was not responsive to the will of the people, and because of his feeling that the people should have direct legislative power.

"The theory was that the people always would be able to pass legislation they wished and needed if such legislation had been denied to them by a legislature subservient to special interests and

pressure groups. As it actually worked out, the theory however has completely failed to keep pace with the practice.

"The costs of statewide elections being what they are, it is usually only heavily financed pressure groups that can utilize the initiative to secure passage of measures that no representative Legislature would dream of passing. It is, in short, now possible for any group to qualify and place on the ballot any measure they wish, no matter how outlandish, if they are able to spend $250,000 to $300,000.

"This comes about because of the willingness of a sufficient number of California voters to sign any kind of petition that is placed before them by professional signature gatherers. I believe quite literally that if a sufficient number of signature gatherers were employed, at say 50 cents a signature, they could gather enough names to qualify a measure providing for the immediate execution of the Governor This comes about because there are few, if any, voters who read any petition that is put before them. If a professional signature gatherer hands 10 voters a petition with the oral statement "Sign here to cut taxes," at least seven voters will probably sign.

"It is true that occasionally the initiative process has been used by large groups of volunteer workers This occurred in 1952 when the California Teachers Association, using thousands of volunteer workers, qualified a measure increasing the basic state aid to public schools

"More often, however, the initiative is used by groups who have put together sufficient funds to enable them to employ the highly competent professional firms that can guarantee qualifying any measure for the ballot Then, if these interest groups are willing to spend additional funds, they have a very good chance of securing passage of their measure, unless other groups are also willing to contribute the large sums necessary to defeat such a measure, once it is on the ballot.

"It is scarcely conceivable that any Legislature elected by the people would have passed the measure that later became Proposition 14 It is also scarcely conceivable that any Legislature would pass a bill making illegal the legitimate business of pay television It is also inconceivable that any Legislature would have passed a measure giving a private corporation an exclusive franchise to run a lottery—yet all three of these were qualified for the ballot in 1964 by means of signatures gathered by professional firms

"I have a very simple solution to propose which, I believe, would go a long way toward eliminating the qualification of obviously unwise measures, such as these, and would perhaps restore the initiative to the kind of procedure it was originally intended to be.

"I recommend that the law be amended so as to provide that signatures on initiative petitions, to be counted, must be signed by the voter himself in the office of the county clerk or county registrar of voters in the county seat. This would cause a little more trouble and inconvenience to the voter, but it would ensure that he signed only petitions in which he was sufficiently interested

to incur that small, additional amount of trouble It would also eliminate professional signature gatherers and eliminate any question as to whether or not misrepresentations were being made by them as to the content of the initiative petition "

CHAPTER 4

Summary

There was some expressions of concern to the committee about the effective use of the initiative and its fulfillment of the purpose for which it was adopted These concerns included use of the initiative process and methods of qualifying initiatives, their financing, and ballot titling The committee found testimony often to represent vague and generalized mental grappling indicative of a sincere desire to improve the initiative and avoid abuses but not productive of any concrete proposals capable of transformation into legislative action.

This is well illustrated by the following dialogue at the December 17 meeting of the committee in San Francisco

CHAIRMAN ELLIOTT Mr Casstevens, when you get right down to it, any group that is sufficiently strong and sufficiently organized to qualify an initiative would probably be a pressure group, would it not? To define your terminology, when you use the words "pressure group," any concerted effort on the part of a group of citizens with respect to legislative activity whether it is in connection with a measure before Congress or the Legislature, or to qualify an initiative measure, constitutes action on the part of a pressure group, doesn't it?

ASSEMBLYMAN CONRAD That's exactly my point, Mr. Chairman I want to know when he says, "it seems desirable to facilitate the use of the initiative by public-spirited citizens and to restrict the use by pressure groups," I want to know who are the public-spirited citizens as compared to the pressure groups.

CHAIRMAN ELLIOTT. Mr Casstevens, what you really need to get down to, is it not true, to use rather colored language, is the good and evil aspect of the thing and not the pressure group. Pressure group, in itself, is not necessarily anything of a nefarious nature It is the identification of a particular pressure group acting in a manner not calculated to be in the best public interest and even perhaps knowingly sometimes not being in the best public interest

MR CASSTEVENS I quite agree with that, Mr Chairman It is quite true that if one defines one's use of "pressure group" in a very wide sense, it does include citizens because presumably it is composed of residents and qualified voters in California In that sense, any sort of organization among citizens would be a pressure group On the other hand, it seems to me that the sort of volunteer association dedicated to no special interest, I would say, the League of Women Voters, is dedicated to no real special interest whereas in the trade associations, say, the railroad companies, are dedicated to a more special interest

CONRAD: How do you classify, then, the old age pension groups or organized labor?

CASSTEVENS: Well, certainly, I would say that organized labor would fall, rather obviously, in what I would call a special interest group. The old age pension groups, I suppose, to take that famous measure to name the new director, etc, that one I would personally classify as a special interest group.

CONRAD: How about the teachers' association?

CASSTEVENS Well, most of these sorts of associations I would say would fall in the area of what I have referred to as a special interest pressure group

CONRAD: Then, how do you segregate the good guys from the bad guys? In other words, what you say, the good guys should get something on the ballot and the bad guys should be kept off. Now, how are you going to find the good guys and the bad guys?

Specific support was offered by the League of Women Voters for Assembly Constitutional Amendment No 7, 1965 General Session. Mr. Grandvel A. Jackson, member of the San Francisco Human Relations Commission and also of the California Constitution Revision Commission, expressed his convictions that professional petition circulation should be prohibited and amending the State Constitution made more difficult

Assembly Bill 135 of the 1965 General Session of the Legislature provided for a curtailment of professional petition circulation It was defeated on the Assembly floor. There continues to be considerable opposition to such a proposal, and it appears to the committee that strong arguments can be made on both sides of this matter. The committee does not recommend any action in this area at this time.

The Legislature has from time to time considered improvements in the initiative and the amending of the State Constitution. Some desirable changes have been made over the years These include:

A provision that initiative proposals must conform to state budgetary practices (1934); prohibition against more than one subject matter being included in an initiative act or amendment in the State Constitution (1948); prohibiting the name of an individual to serve in a public office to appear in an initiative proposal (1950); provisions for an analysis by the Legislative Counsel appearing in the ballot pamphlet (1949). Legislation was enacted in 1957 systematizing the ballot order of propositions by providing that they will apply in this order: (a) legislative proposals in the order determined by the Secretary of State; (b) initiative measures in the order in which they qualify, and (c) referendum measures in the order in which they qualify.

The latest such improvement was the passage of Assembly Bill 742 by Assemblyman Milton Marks in 1965 This bill requires the Legislative Counsel to prepare impartial analysis in general terms showing effect of "yes" and "no" vote on ballot measure, as well as impartial detailed analysis of measure. The law applies both to measures placed on the ballot by the Legislature and initiative measures.

This new law met its first test at the 1966 general election. It is possible that it will meet some of the concerns expressed about the need to make ballot measures easier for the general public to comprehend.

In the first phase constitutional revision and companion legislative reform program approved by the voters as Proposition 1-a at the 1966 general election, some further improvements were achieved In accordance with one proposal made to the committee, under the first phase revision Article IV of the Constitution now provides that statutory initiatives can qualify for the ballot by the collection of signatures equal to 5 percent of the vote for Governor at the last general election instead of the 8 percent required for initiative measures amending the State Constitution Remaining constitutional revision work also should enable the Legislature to give more attention to this general subject area, particularly as it relates to the amending of the Constitution. Regarding a related matter in the second phase of constitutional revision due in 1968, there should be some safeguards against excessive use of the legislative constitutional amendment.

The initiative is an important vehicle reserved to the people The Legislature should give continued attention to the study of its functioning and ways of improving its employment All such activities should be predicated upon the understanding that the initiative should be an instrument carefully preserved as a basic right of the people.

PART II

EFFECTIVE DATES OF STATUTES

PART II

EFFECTIVE DATES OF STATUTES

Meetings

The following is a list of meetings on the subject of the Effective Dates of Statutes held during 1965.

December 13, 1965 Los Angeles
December 14, 1965 Los Angeles

LIST OF WITNESSES

December 13, 1965—Los Angeles:

Mr Charles A. Barrett, Assistant Attorney General, Sacramento Office of Attorney General

Mr Leon Cooper, Chairman, Advisory Committee, Democratic State Central Committee of Southern California

Mr. Timothy Lemucchi, Consultant, Assembly Committee on Constitutional Amendments

Mr. Richard L Patsey, Special Counsel to California Constitution Revision Commission

Honorable Bruce Sumner, Judge of Superior Court, Orange County, and Chairman, California Constitution Revision Commission

Mrs Carmen H Warschaw, Chairman, Democratic State Central Committee of Southern California

December 14, 1965—Los Angeles:

Mr. Herbert M Baus, Baus & Ross Company, Public Relations Advertising, Los Angeles

Mr. Lee Blincoe, Los Angeles

Mr. Robert L. Hamm, County Clerk and Recorder, Ventura County

Mr. William G. Sharp, County Clerk, County of Los Angeles

PART II

EFFECTIVE DATES OF STATUTES

Findings

1 A genuine problem exists with certain governmental agencies in securing in sufficient time information regarding changes in the statutes or new statutes However, it is not necessary to amend the State Constitution so as to extend the effective dates of statutes in order to remedy this situation In addition, amending the Constitution in this manner would create new problems, such as a disruption of time schedule for the referendum This situation probably could be alleviated by improving the channels of communication between the Legislature and the local governmental jurisdictions involved

Recommendations

1. That changes be made in the Joint Rules of the Legislature in order to expedite information to local governmental agencies regarding statutory changes affecting them.

The Problem and Possible Remedies

At the 1965 session of the Legislature, Assemblyman Burt Henson introduced ACA 21, proposing to the people of the State of California an amendment to the Constitution of the state, by amending the fourth paragraph of Section 1 of Article IV thereof, by extending (with certain exceptions) the effective dates of statutes to January 1, after adjournment of the Legislature sine die

The measure was introduced at the request of the County Clerk of Ventura County, the county Assemblyman Henson then represented in the Legislature. It was supported by the County Clerks' Association. It was referred to Assembly Interim Committee on Constitutional Amendments for study.

A hearing was held upon this matter in Los Angeles on December 13 and 14, 1965 Additional testimony was also received in Montebello on January 13, 1966, and in Pico Rivera on January 14, 1966.

The following testimony involving direct testimony and interrogation by members of the committee of Mr William G Sharp, Clerk of the Superior Court for Los Angeles County, and Mr Robert L Hamm, County Clerk of Ventura County appears to develop this problem and to suggest the possible remedy

> *Mr. William G. Sharp:* Mr Chairman and gentlemen, I am William G. Sharp I am County Clerk and ex officio Clerk of the Superior Court for the County of Los Angeles I am here representing the County Clerks' Association at the request of our executive committee and I am here to state our association's views and recommendations with respect to the proposition that the effective date of new legislation be extended from the present 90-day provision to January 1st after adjournment of the Legislature

I believe Mr. Les Brown, County Clerk of Fresno and vice president of the association, directed a letter to the chairman of this committee in which he briefly set forth the reasons in support of this proposition I have also reviewed the statement of Mr. Hamm, County Clerk of Ventura, who apparently wrote to the committee independently, and I might say it would certainly be the views of the association to support both Mr Brown's letter and the statements by Mr Hamm

There is little more that I could say beyond the facts stated by Mr. Brown and Mr Hamm, other than to say that our county clerks are involved in three major matters We are concerned with the election laws; we are concerned with all of the matters involving the counties and the board of supervisors, and the clerk of the board of supervisors And, of course, the county clerk is interested in the county clerks' laws affecting the corporations and marriage licenses, and primarily 90 percent of his work is concerned as clerk of the court, which involves a tremendous amount of new statutes each session

In our last analysis in our last session, we had the job of analyzing some 5,000 bills and in excess of 2,000 which were passed We do this through our committees and through the legislative bill service. Our main problem is this: We have to analyze these bills, have a statewide meeting to discuss their impact on our offices. We have to determine the amount of staffing that is required and go to our board of supervisors, if necessary, to obtain their legislative approval in giving us the additional staff that is necessary. We have to get out publicity We have to obtain legal opinions from our county counsel and from the State Attorney General, and all of this takes a considerable amount of time

Our statewide meeting was held in the first part of September shortly before the laws became effective, and here is the real problem. We do not have in our hands by that time the laws by which we can make a thorough analysis We have the bills, but sometimes we find them somewhat dangerous to work with without somebody meticulously checking all of the histories and the journals to determine whether there have been amendments Many times we do not have the chaptered laws in our possession in time to give adequate and accurate evaluation of the law and its impact on our offices In fact, the pocket supplement to the statutes is not in our hands until after the laws are passed

So this is our problem Even after we have our state meeting, we are working somewhat in the dark as to how the final bill actually reads Then even after these meetings and after we have had some decisions from our counsel, problems arise that we have to resolve in an effort to acquaint the public, to acquaint the attorneys, and to obtain a uniform application of these laws throughout the state. While we are doing the job now it could be done more efficiently with a great deal more accuracy, with more adequate publicity to all of the public and to the attorneys if we had a longer period—if the laws were in our hands. And, of course, this is impossible, I presume At the time the Governor signs the bill, if it could be in our hands and we had printed copies right at

that time and something to go on definitely, then the 90-day period wouldn't be quite as short But here we are struggling, trying to get the laws so we can get this application and get our opinions and proceed in an orderly way. I believe that's the crux of the whole problem.

CHAIRMAN ELLIOTT: Mr. Sharp, you are aware that the Legislature does print copies of all bills and amendments; in fact, the Constitution requires them to be printed at the time they are introduced. Before a bill goes to the Governor it is printed in its final form and available from the legislative bill room to the general public or anyone who wants to obtain a copy. You are aware of that, are you not?

SHARP: Mr. Chairman, we knew that. We subscribe to the legislative bill service and we get the bill service and all bills before they are signed. The 5,000 bills are all gone over by members of our staff, and we generally divide this into three parts: the clerk of the board, the clerk of the court, and the elections officers each take a phase of it and they are responsible for their bills. But some of our problems have come up here, I believe, I have been to some of the meetings that last until midnight when bills are passed, and sometimes I have left committee meetings wondering just exactly how an amendment might turn out. We have taken the bills and tried to determine what this final bill is going to be, but we don't always promptly have the bill, as it is signed by the Governor, in our hands.

CHAIRMAN ELLIOTT: The bill has to be printed before it goes to the Governor and it is available to the general public from the legislative bill room and, in fact, available to anyone. I fail to see the problem as far as obtaining the printed copy of the bill is concerned and distributing the printed copy of the bill that has passed the Legislature and is to become a statute after the 90-day period from the adjournment sine die of the session.

If you are referring to the codes, the printing of the codes, this is a matter that I think would be impractical to delay the effective date of the statute sufficiently to obtain printed copies of the codes, as this takes a much longer period.

SHARP. We have been working with the chaptered laws and we have had some difficulty in getting the chaptered laws promptly.

CHAIRMAN ELLIOTT: This takes time.

SHARP: I know Mr. Hite assigned us to first-class or airmail delivery through the legislative bill room; but even with that we have a little difficulty and, of course, we have a real good working relationship with the Secretary of State. As soon as the Governor signs the bill, Frank Jordan's office will notify us. There is one problem though—they won't notify us of all of them We have to know the specific bills we are interested in. When the Welfare and Institutions Code is amended and all the other codes, we have got to look these over pretty carefully to see whether the clerk of the court or whether the judges are interested in some particular wording. Perhaps when the amendment came in we weren't concerned about it because you didn't change the statutory time that the clerk was to perform an act, but when it gets up to the last meet-

ings of the Legislature, you may change a certain date in there that will vitally affect us, even affect our liability. And those are some of the problems. What I am saying is, we may say we are not interested in this bill or that and so we won't tell Frank Jordan; but when we get the chaptered law, we want to know and read it again and be very sure that we are not interested in it or we are interested in it. If we know the bills that we are interested in and we definitely know that they concern us, at that point then we can spot that bill and get a very good distribution. I might say, in our bills last time we put out these digests The clerk of the board found there were 83 measures affecting about 11 codes The registrar of voters had about 158 measures affecting about 10 or 15 codes, and the clerk of the court had 78 measures affecting about a dozen different codes We had to watch all of these; for example, 20 bills in the Code of Civil Procedure, 11 in Civil and 1 in Corporations, and 24 in the Penal Code, 14 in the Welfare and Institutions Code, and several scattered out through Probate, Revenue and Taxation, and Vehicle Codes

CHAIRMAN ELLIOTT: Of course, the bills are chaptered by the Secretary of State shortly after they are signed by the Governor. There is no great time lapse here, on the part of the Secretary of State, as far as the technical job of chaptering the bills and getting the printed bill is concerned. But as far as buying the paperbound copy of the statutes, that is, the printed statutes that are distributed, this, of course, takes time, and usually they are printed as they are passed and many of them are available before the Legislature adjourns But those that pass during the final weeks of the session and those bills that are passed in the final days but remain for the Governor to sign, that is, come in that pocket-veto period, would be chaptered later on But there is a fairly efficient and fast operation in making the chaptered copies available. I would say all of them would be available within 30 days after the adjournment of the legislative session, all of the printed paperbound copies of the chaptered bills

SHARP. Mr. Chairman, really this last time we just gave up on getting the chaptered laws We had to rely on West to finally get them, and we just couldn't get them. We made a number of calls. Now, maybe they were available in some other form from the Bill Room and maybe due to some tie-up they were unavailable, but we just had terrific difficulty in getting the chaptered laws in our hands to have adequate material to do the work with. I mean no criticism of the printing office or the distribution; they had too much to do at the last minute.

CHAIRMAN ELLIOTT· I am, of course, describing my experience as a Member of the Legislature receiving these publications. There would be a distribution to the Members of the Legislature first since this is required. Now, isn't this your experience, Mr Collier?

COLLIER· I have been listening to his testimony, and he isn't in any more awkward position than we are. A bill has to be in its final form before we can pass upon it, so if we even change a date, that is in italics as is anything that is changed in a bill

at the last minute So you are not in any more awkward position than we, who have to pass upon the bill We have to see it ourselves. We have to examine it We don't read all the bills that have been introduced We only read those bills that come before us for action. So it seems to me that the approach for you people to be more efficient in your office is not to read all the bills but watch the daily file and keep abreast with the bills before the Legislature Now, if we can do it, it seems to me that you can do it

SHARP We have in each of our three main offices, and Los Angeles does most of it here It prepares these digests for the three respective phases of our work

COLLIER You are from Los Angeles County, are you not?

SHARP· Yes

COLLIER· Now, if you were from some little county away back in the sticks that had to look at all of them—just one clerk—then I would say maybe your job is a little bit heavy, but in Los Angeles County you have a staff here to give you an assist.

SHARP Again I am saying that our main problem was in getting the chaptered bills and, of course, then after we get them in many cases, we have to get legal opinions—in fact, one bill now that is not effective until January 1st is the new divorce statistics law We are still going to come up with new problems.

COLLIER: You know we have a high-salaried man in Sacramento for Los Angeles County and maybe that should be one of his jobs, to be sure that you get a copy of the bill

CHAIRMAN ELLIOTT Perhaps, also something could be done in regard to requiring the Legislature to make these publications available more expeditiously to public officials, such as yourself

SHARP: I think so All we want is a tool for getting bills promptly. I said there were about 300-and-some-odd bills we were very vitally interested in that were finally signed by the Governor And we have to go over those very carefully and get our opinions, determining what staffing, determining all these facts

COLLIER But they come trickling to you. They don't come to you all at once

SHARP· That's true Those that are passed early, we can have pretty well out of the way and then we only have to watch to see whether there is another bill that might supersede it or change it.

So, we have a lot of that done. As soon as your Legislature commences we have a person assigned almost full time to watch and read the legislative bill service. In fact, I have an attorney on my staff who spends a good portion of his time right from the opening of the session of the Legislature I don't think, personally, it is a really critical matter If we could just get a little faster distribution of some of the final bills into our hands. I am a little worried with the great volume and the impact on our relation with the courts and getting all this out to all the counties throughout the state, for which we have taken the responsibility to do. I would like to get the final bill as it was finally passed in our hands so that we know what we are definitely talking about. Some of our digest was a little bit wrong, our mistake, perhaps, in work-

ing with the bill itself and not picking up some amendment that was included in the journal, and we just didn't pick up.

COLLIER. May I make a suggestion to you?

SHARP: Yes, sir.

COLLIER: Los Angeles County is a member of the County Supervisors Association. We have to pay a nice stipend to that outfit and they have a pretty good staff. We have to pay a nice stipend to the lobbyist for Los Angeles County up there. It appears to me as long as they are on the scene and they have to watch those bills as well as we watch them up there, that there could be closer communication and liaison between those lobbyists up there and the County of Los Angeles.

FENTON. Don't you have the facilities of the county counsel available to you for opinions on these bills, too?

SHARP: Oh, yes, and the Attorney General, too. Many times we are involved in other counties so we prefer to get the Attorney General so that we have state uniformity in certain areas

Yes, we work very closely with George Wakefield. Of course, George and those boys at Sacramento have to somewhat rely on our offices. They are not acquainted with the whole field of legal procedure. As you well know, you get into a lot of technicalities and they will want to know the impact, or what the problems are, and we are in communication with that office But I am sure that Mr. Wakefield and his staff up there would have a tremendous job if he was following 5,000 or 2,000 bills and not giving the concentration on, say, the 350 that we are interested in.

FENTON. Yes, but they certainly can give you every bill that was passed and let you cull them over for yourself to determine. You have a staff. You can throw them out fast enough; just have George or someone give you all the bills that have been passed. No problem.

I think, as Mr. Collier said, it is just a question there of liaison with people who are being paid to represent the County of Los Angeles.

SHARP: I think it's merely getting distribution, Mr Collier and Mr Fenton. I don't think it is a real critical thing if we can get the distribution in our hands. But even with county counsel, when I called them and asked for distribution on a particular bill, I will get it done; but by the time we get the chaptered bills and get them in our hands, we are working under quite a deadline. I think we can straighten that out.

CHAIRMAN ELLIOTT: Mr. Sharp, the referendum provisions were placed in Article IV of the Constitution for the purpose of permitting members of the public or groups of citizens to referendum an act passed by the Legislature if they felt they disagreed with the legislation That was the purpose of it.

Your concern and your sponsorship of ACA 21 of the 1965 General Session was because, was it not, of the problems you have in regard to gearing your operation to new legislation that becomes effective after the Legislature adjourns? Is that the problem?

SHARP: Yes, more or less, that is the problem.

CHAIRMAN ELLIOTT: If there is a problem in that regard, bills can be delayed in the effective date of the bill, as you know. That is frequently done. In fact, you cited an example

SHARP: AB 347, yes. I think we had a big problem two years ago when you overhauled the Welfare and Institutions Code extensively. Of course, we got the job done Some judges were down working from 7 in the morning until 10 at night revising all of the forms when the whole attitude toward the juvenile was changed, and this was quite a major overhaul—I think it was four years ago.

CHAIRMAN ELLIOTT: One of the problems would be if there were a referendum of an act after the general session, the referendum measure would not go on the ballot until the next general election, which would be the year later; but if there were a special election, there would be a problem in regard to delay on the referendum.

I think you have brought an important problem to our attention even though the committeee members might not feel we have to deal with it at this point as drastically as recommending an amendment to the State Constitution to extend the 90-day referendum. I think the committee should explore the feasibility of some legislation to expedite the availability of all these printed materials relative to legislative activity on the part of the Legislature to public officials like yourself so you can have them in your hands as quickly as is possible You can be assured that the committee will look into this matter and explore the feasibility of recommending legislation.

COLLIER: Relative to the subscription to all the journals and bills, you get all of those, don't you? All the journals, histories and bills?

SHARP: Yes.

COLLIER: When a bill is passed by the Legislature up there, by both houses, how soon do you get that bill? Is that in the mail to you the next day? What kind of service are we rendering up there? Now, right there may be the step that maybe you are subscribing and that subscription should pay for the cost of this. Maybe there is a lag in time from the time that the bill passes until they put it in the mail to you.

CHAIRMAN ELLIOTT: I think there is a problem there, Mr. Collier. I think we need to go into this and perhaps have somebody who could appear before the committee later on at a future session from the bill room explain their procedure to us so we could examine it.

SHARP: There very definitely is a problem and I think that is a good suggestion, Mr. Chairman It might be explored. I know that many times I have been asked for bills that I don't have and I've called Wakefield in Sacramento or tried to get something out of the bill room mailed down to me. Even in normal distribution, we just don't get it Of course, if I know what bill I am interested in that is one thing But normally we are looking at 5,000 bills during a session. We are glancing over all of them, and then these bills are sent to our division chiefs if it affects criminal, or juvenile,

or psycho, or the probate—it goes to these men for analysis and back to the man I have in charge of it and I presume other men who work have the same difficulty getting their bills But these things are routed around routinely Our main delay that we are thinking about is the chaptered laws when at the end you wind up with 2,000 bills that are finally signed, so we can prepare a digest and help all the counties in the state and the county clerks, for uniformity.

Having the definite bill in front of us, we know exactly what the law reads We have stubbed our toes several times this last session just by not having the exact wording as it finally came out right in our hands If we had been interested in just two or three of the 300-and-some bills that do affect us, then we might have made a specific effort.

Then you have to kick this around and have a meeting and send this to the other county clerks to see their problems, go back to the counsels and back to the Attorney General for an opinion, and then even that leads to other questions The lag that we have experienced, and I think that I am accurately stating it, has been a little serious to us but perhaps not to the extent where you may want to extend the time. If we have the proper distribution, I think we might have it solved

CHAIRMAN ELLIOTT· Mr Sharp, if you did receive the final printed copy of the chaptered bill within 30 days of the end of the 90-day referendum period, would that be sufficient?

SHARP· That would give us 60 days?

CHAIRMAN ELLIOTT It would only give you 30 days. In other words, when you receive this under the present time schedule around the latter part of August, the bill would go into effect under the present time schedule around the last part of September.

SHARP· I think that we could work within that if we had everything in our hands. I know Mr. Hite, the deputy, feels that way Some of the county clerks feel that perhaps you think we are not doing our job—we're laying down here on this thing and asking for too much mercy on it Mr. Hite, I know, feels, on these election laws, that he could work within the present system. And I know there are some county clerks that are very concerned about it, and I think that if we had it within the 30 days we could live with it very nicely.

MR. ROBERT L. HAMM. I guess I'm responsible for ACA 21 being introduced, having asked Assemblyman Henson to introduce the legislation. I think I can only add to what has already been said here. There are two problems, gentlemen One of them is getting information which has been very elaborately touched upon; the other one is implementing the legislation after we get the information.

Now, I hope you appreciate that when the Legislature is in session and you are going on about your business introducing and passing legislation that, after you adopt it all, we have to implement this. I represent one of the smaller counties, allegedly the fastest growing county in the state, and we do not have the com-

plete staff of the larger counties like Los Angeles, San Diego, Alameda, and various others.

Our business goes on day after day regardless of whether the Legislature meets and adopts legislation or not and the problem comes in implementing the legislation that you gentlemen adopt We have to change our training once we get the information; this is a problem, and Mr Sharp touched upon this very fully After we get the information, we have to notify members of the bar, we also have to contact the recorder, we have to contact title and escrow companies, realtors, and the problem is implementing the legislation once you adopt it. It has been my experience that 90 days after the Legislature adjourns for bills to become effective is just not sufficient.

We also have training and procedural manuals that have to be updated and we have to get the information to our staff If my research is correct, the last time the Constitution was changed making legislation effective was in 1911 In 1911, there were some 836 chapters enacted Of the 836, approximately 600 amended one code, the Political Code. Now this year we had, as you well know, 2,070 bills enacted. There are more people to contact, there are more attorneys; there are more people to deal with, you have larger staffs, you have your sophisticated area of administration that we have today and you have to have procedural manuals. There just is not sufficient time to implement the legislation once you get it.

CHAIRMAN ELLIOTT: Mr Hamm, I think I'll ask Mr Lemucchi to respond to this question.

Mr. Lemucchi, doesn't your research show that the 90-day provision was placed in the Constitution in 1912, that is, recommended by the Legislature in 1911 and passed in 1912? Is that your recollection? The point I am getting at is that this provision was placed in the Constitution to permit the members of the public to referendum an act by the Legislature and it did not relate to the matter of effective dates of statutes. Doesn't your research show that a statute became effective immediately upon passage prior to that time unless otherwise provided?

COMMITTEE CONSULTANT LEMUCCHI: That is correct.

CHAIRMAN ELLIOTT So actually prior to the referendum provision being placed into the Constitution, as far as I know—maybe our research will show that this isn't quite the case—but actually the statutes went into effect immediately and there was more of a problem timewise with regard to implementing the legislation unless another effective date was placed in the statute

HAMM: I have no quarrel with the referendum procedure whatsoever, and I imagine it would have to be amended to give us additional time.

CHAIRMAN ELLIOTT: All I am trying to point out is that the 90-day period did not relate actually, only indirectly, to the effective date of the statute

HAMM: That is correct.

CHAIRMAN ELLIOTT: It was for the purpose of permitting the people the opportunity to referendum and there was no con-

sideration apparently prior to this with this implementation problem.

HAMM: Yes, when this was first looked at, and when I called Assemblyman Henson in Ventura County, your colleague, we thought that all we would have to do was amend a section of the Government Code, and then research found that we had to amend the Constitution to make the effective date of legislation.

CHAIRMAN ELLIOTT. However, we can provide in the statute itself for an effective date in advance.

HAMM: This is fine, if you will do so. Now, on the amendments to the Code of Civil Procedure on the new divorce recordings, you allowed us until the first of the year there and we have met many times. I have met with the same committee and on the committee is Mr. Sharp, meeting with the Bureau of Vital Statistics. I think we have worked out a reasonable and practical solution to implement the legislation whether it be good, bad, or indifferent. We have it and I think we can make work what we have The real problem, gentlemen, there is just not enough time. Now, you know what happened two years ago. There were extraordinary and special sessions following the regular session. This clogs the legislative bill room and the printing machinery and this holds us from getting the information.

I can't afford a set of West codes in my office. I have Deering because I don't want to buy a complete set of West. We buy whatever we want of Deering, and I don't have 50 percent of the pocket parts for Deering's codes yet Now, I do have West's, through the kindness of the Secretary of State He received a few copies from the publisher and passed them out, I guess, to his friends, and I have a copy of the West Legislative Service with all the chapters, and without this I just couldn't operate.

Now, one answer to get quicker distribution may be that the Legislature adopt and enact legislation that assigns a distribution that is automatic and when a bill is introduced the various offices of state, county, and city governments that are affected would be put on there at the time the bill is introduced. When it goes through the legislative process there would be automatic distribution to cities, county clerks, welfare directors, recorders, judges of the courts, probation officers, and such as this. This might be your answer and we might get quicker distribution. In this way, we would not have to read some 5,000 bills that are introduced. We do get the daily history and the journal. I do not subscribe to the legislative bill service, and I hope you appreciate that not all of us have the financial as well as staff facilities to work with like large counties such as Los Angeles, San Diego and San Francisco.

CHAIRMAN ELLIOTT: It appears to me your suggestion that we have some sort of date in the law or rules of the Legislature providing copies by statute actually, and that there be prompt delivery to the affected public offices of copies of legislation after it has been enacted into law, might be an answer to this problem. Do you think if you had a 30-day period just before the effective date of the statute, that would be sufficient to provide for the implementation?

HAMM: No, definitely not. We have a 90-day period now and this is not sufficient.

CHAIRMAN ELLIOTT: You don't actually have the 90-day period always. You do if you have a copy of the bill prior to then you might at the present time have much less time.

HAMM: We have superior court forms that are changed by legislation I don't know how many attorneys there are on the committee, but, as you know, we now have State Bar-approved and Judicial Council-approved superior court forms. We have one form, I can't recall the title of it now, that came down approved by the Judicial Council, I think four days after September 17th. Now, from this form we have to go out and make copies of this and make distribution of this form. I think we got it on the 20th or 21st, something like this, and we are still 30 to 45 days from going through the channels of getting a purchase order and getting copies and then getting distribution. It's not that we are crying that we can't do our job, and I hope this is not the inference that is taken. We just want to do a better job with implementing the legislation that has been enacted. That's all.

CHAIRMAN ELLIOTT: And you feel that this is a matter of receiving copies of bills sooner?

HAMM: I think this is part of it, yes.

FENTON: What assurance would you have with extra time that Judicial Council would get it to you in time anyhow?

HAMM: I think they would be able, with more time, to get approved forms to us. Our business goes on day in and day out. I mean the fact that the Legislature met doesn't mean that we have less business. We have to do our daily routine work as well as take care of and implement the new legislation, and I think you gentlemen appreciate that those of us on the operating level who are administrators have a problem in implementing the legislation that the Legislature enacts. And we can't say, "Now just hold off all the business that's coming in for six months until we get this worked out and get it in a nice and orderly fashion." Our business goes on every day whether the Legislature meets or not.

CHAIRMAN ELLIOTT: You realize, of course, that there is some legislation passed by the Legislature which does not come within the scope of urgency legislation so it cannot be placed into immediate effect. It needs to go into effect as soon as possible after the signing period and that an additional 90 days would be too long. For example, increase in benefits for recipients of public assistance and this sort of thing.

HAMM: I have no quarrel with that type of legislation that has an urgency measure at all.

CHAIRMAN ELLIOTT: This would not be urgency legislation, it would not be legislation that could be enacted as urgency legislation but still needs to go into effect within the 90-day period or as soon as possible after it is signed If the period were automatically extended another 90 days then it would have the effect of delaying the effective date of these statutes that need to go into effect earlier.

HAMM· Yes, this is true. However, I think the Legislature has the power to make an effective date on any legislation if it so desires based upon the knowledge of the Legislature and the needs of the legislation

CHAIRMAN ELLIOTT No, we don't have that power unless it is an urgency measure

HAMM That's right

CHAIRMAN ELLIOTT There are certain prohibitions against passing an urgency measure There are certain measures that wouldn't be proper to pass as urgency measures even if we might technically get by and pass them as urgency measures.

HAMM Oh, you can put an effective date in the bill.

CHAIRMAN ELLIOTT After the 90-day period We could not make it effective prior to that, unless it was an urgency measure

COLLIER Mr Chairman, this is just an administrative problem in carrying out the functions up there of getting it in the mail and that is a simple thing because if the counties would supply a self-addressed envelope and you had a mailing, like the sergeant at arms gets the bills and puts them on our desks, this thing could be resolved so simply It is just a case of manpower right now, as I see it, or maybe we have the manpower and it is not being used. So I think this is a simple thing If it passes today and you had it in the mail by day after tomorrow, your problem would be solved, would it not?

HAMM: Yes, I hope you appreciate, Mr Collier, that we don't get the same kind of service that you get in Sacramento.

COLLIER· I'm saying now, provided we had that service to you that you would get it day after tomorrow

HAMM· It would be a big help, and I think that perhaps the idea of an automatic distribution might be the thing

COLLIER That is what I am talking about

HAMM: Where it is automatically distributed to those responsible for implementing the legislation

COLLIER Right I see nothing wrong with that and if it takes legislation for us to do it, I would certainly cooperate with you to give them that kind of legislation

HAMM· If there were an automatic distribution this would be real helpful I take the legislative histories home at night, there isn't time during the day, and read them over and check them off and then I ask my secretary to send for the bills You can't always tell from the synopsis of the bill that has been introduced whether it affects you or not There are many times when you read the brief synopsis of the bill and it still doesn't tell you So she sends to Sacramento, through either Assemblyman Henson or Senator Lagomarsino, we get them back and it is just an automatic back and forth If we had an automatic distribution then we are not going to have to read 5,000 bills to cull out the 500 that we are interested in and are affected by

CHAIRMAN ELLIOTT· It is very important that you get the bills as introduced, as amended, and then as passed I assume you want to follow the bill

HAMM Yes, very definitely
CHAIRMAN ELLIOTT Then, if there is action on the bill you would want to obtain the final form of the bill
HAMM: Yes.

In the delineation of this problem through this testimony, corrective measures are suggested Changes in Article IV contained in the first phase constitutional revision approved by the voters on November 8, 1966, also render the proposed change embodied in ACA 21 less certain of achieving its objective The committee does deduce from testimony given at its hearings and other information it received that there is a problem and that consideration should be given to amending the Joint Rules of the Legislature so as to facilitate information to public agencies regarding legislation that would affect them.

APPENDICES

Assembly Constitutional Amendment No. 3

Introduced by Assemblyman Winton

January 4, 1965

REFERRED TO COMMITTEE ON RULES

Assembly Constitutional Amendment No 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by amending the first, second, and sixth paragraphs of Section 1, and amending Section 1b of Article IV, thereof, relating to the initiative.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1965 Regular Session commencing on the 4th day of January 1965, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the state be amended as follows:

First—That the first paragraph of Section 1 of Article IV be amended to read:

SECTION 1 The legislative power of this state shall be vested in a Senate and Assembly which shall be designated "The Legislature of the State of California," but the people reserve to themselves the power to propose laws ~~and amendments to the Constitution~~, and to adopt or reject the same, at the polls independent of the Legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the Legislature The enacting clause of every law shall be "The people of the State of California do enact as follows:".

LEGISLATIVE COUNSEL'S DIGEST

ACA 3, as introduced, Winton (Rls). Initiatives

Amends Secs. 1 and 1b, Art IV, Cal. Const

Limits initiative petitions to the proposing of statutes, thus restricting the proposing of constitutional amendments to the Legislature

Authorizes Legislature, by a two-thirds vote, to repeal or amend an initiative statute without a vote of the electorate.

Requires initiative proposals to receive a majority vote of those voting at the election at which the measure is submitted, rather than only a majority of those voting on the particular proposition

Second—That the second paragraph of Section 1 of Article IV be amended to read:

The first power reserved to the people shall be known as the initiative. Upon the presentation to the Secretary of State of a petition certified as herein provided to have been signed by qualified electors, equal in number to 8 percent of all the votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law ~~or amendment to the Constitution~~, set forth in full in said petition, the Secretary of State shall submit the said proposed law ~~or amendment to the Constitution~~ to the electors at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the Governor in his discretion prior to such general election. All such initiative petitions shall have printed across the top thereof in 12-point blackface type the following: "Initiative measure to be submitted directly to the electors."

Third—That the sixth paragraph of Section 1 of Article IV be amended to read:

Any act, *or* law ~~or amendment to the Constitution~~ submitted to the people by ~~either initiative or~~ referendum petition and approved by a majority of the votes cast thereon, at any election, *and any act or law submitted to the people by initiative petition and approved by a vote equal in number to a majority of the voters voting at the particular election at which the act or law is voted upon,* shall take effect five days after the date of the official declaration of the vote by the Secretary of State. No act, *or* law ~~or amendment to the Constitution,~~ initiated or adopted by the people, shall be subject to the veto power of the Governor, and no act, *or* law ~~or amendment to the Constitution,~~ adopted by the people at the polls under the initiative provisions of this section, shall be amended or repealed except by a vote of the electors, *or by a two-thirds vote of the members elected to each house,* unless otherwise provided in said initiative measure; but acts and laws adopted by the people under the referendum provisions of this section may be amended by the Legislature at any subsequent session thereof. If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail. Until otherwise provided by law, all measures submitted to a vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by those in favor of, and those opposed to, it shall be mailed to each elector in the same manner as now provided by law as to amendments to the Constitution, proposed by the Legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the Senate.

Fourth—That Section 1b of Article IV be amended to read:

SEC. 1b. Laws may be enacted by the Legislature to amend or repeal any act adopted by vote of the people under the initiative, to become effective only when submitted to and approved by the electors unless the initiative act affected permits the amendment or the repeal without such approval. The Legislature shall by law prescribe the method and manner of submitting such a proposal to the electors. *A law may be enacted by the Legislature to amend or repeal any act adopted by vote of the people under the initiative, without submitting such law to the electors, if the law is passed by a two-thirds vote of all the members elected to each house*

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

Assembly Constitutional Amendment No. 7

Introduced by Assemblyman Gonsalves

January 6, 1965

REFERRED TO COMMITTEE ON RULES

Assembly Constitutional Amendment No 7—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by adding to Article IV thereof a new section to be numbered 1e, relating to initiative measures.

Resolved by the Assembly of the State of California, the Senate concurring, That the Legislature of the State of California, at its 1965 Regular Session commencing on the 4th day of January, 1965, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by adding Section 1e to Article IV thereof, to read.

SEC. 1e. An initiative measure proposing to prohibit a specified activity or terminate an existing right or privilege shall be submitted to the people in such form that they may vote in the affirmative if they favor the right to engage in the activity or the continuance of the right or privilege.

At the time the Attorney General prepares a title and summary of the chief purpose and points of any such initiative measure, he shall also prepare the question to be submitted to the people, which question shall be so framed that the people will be enabled to vote in the affirmative if they favor the right to engage in the activity proposed to be prohibited or the continuance of the right or privilege proposed to be terminated. The question shall be printed on the ballots immediately to the right of the ballot title of the measure

LEGISLATIVE COUNSEL'S DIGEST

ACA 7, as introduced, Gonsalves (Rls.). Initiatives.

Adds Sec 1e, Art IV, Const

Provides that if initiative measure proposes to prohibit a specified activity or to terminate an existing right or privilege, the measure shall be submitted to the voters in such form that they may vote in the affirmative if they favor the right to engage in the activity or the continuance of the right or privilege.

Requires the Attorney General to frame the question to be submitted to the people with respect to any such measure

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

Assembly Constitutional Amendment No. 21

Introduced by Assemblyman Henson
(Senator Lagomarsino, coauthor)

February 4, 1965

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Assembly Constitutional Amendment No. 21—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by amending the fourth paragraph of Section 1 of Article IV thereof, relating to the effective dates of statutes.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1965 Regular Session commencing on the 4th day of January, 1965, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the state be amended by amending the fourth paragraph of Section 1 of Article IV, to read:

The second power reserved to the people shall be known as the referendum No act passed by the Legislature *at a budget session or an extraordinary session* shall go into effect until 90 days after the final adjournment of the session of the Legislature which passed such act, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the state, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all the members elected to each house *Acts passed by the Legislature at any general session shall go into effect on the 1st day of January after final*

LEGISLATIVE COUNSEL'S DIGEST

ACA 21, as introduced, Henson (C A) Statutes effective dates.

Amends par 4, Sec 1, Art. IV, Cal Const

Changes effective date of statutes passed at general sessions to January 1, after final adjournment, except that Legislature may by majority vote specify in any statute an effective date between the 90th day after final adjournment and the following January 1 Retains effective date of 91st day after final adjournment for statutes passed at budget sessions and extraordinary sessions

adjournment, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the state, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all the members elected to each house; provided, however, that the Legislature at any general session by a majority vote of all the members elected to each house may specify in any act that it shall go into effect on any date between the 90th day after final adjournment and the 1st day of January, after final adjournment Whenever it is deemed necessary for the immediate preservation of the public peace, health or safety that a law shall go into immediate effect, a statement of the facts constituting such necessity shall be set forth in one section of the act, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon; provided, however, that no measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be construed to be an urgency measure Any law so passed by the Legislature and declared to be an urgency measure shall go into immediate effect.

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

Assembly Constitutional Amendment No. 23

Introduced by Assemblyman Alquist

February 9, 1965

REFERRED TO COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Assembly Constitutional Amendment No. 23—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by amending the sixth paragraph of Section 1 of Article IV thereof, relating to initiative measures.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1965 Regular Session commencing on the 4th day of January, 1965, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the state be amended by amending the sixth paragraph of Section 1 of Article IV thereof to read:

An initiative measure which proposes an act or law shall be adopted if approved by a majority of the electors voting thereon. An initiative measure which proposes an amendment to the Constitution shall be adopted if approved by two-thirds of the electors voting thereon Any act, law or amendment to the Constitution submitted to the people by either initiative or referendum petition ~~and approved by a majority of the votes cast thereon,~~ at any election, shall take effect five days after the date of the official declaration of the vote by the Secretary of State. No act, law or amendment to the Constitution, initiated or adopted by the people, shall be subject to the veto power of the Governor, and no act, law or amendment to the Constitution, adopted by the people at the polls under the initiative provi-

LEGISLATIVE COUNSEL'S DIGEST

ACA 23, as introduced, Alquist (C A). Initiative measures.

Amends 6th para , Sec 1, Art IV, Const

Provides that initiative measure proposing constitutional amendment shall not be adopted unless approved by two-thirds, rather than a majority, of the electors voting thereon.

sions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure; but acts and laws adopted by the people under the referendum provisions of this section may be amended by the Legislature at any subsequent session thereof If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail. Until otherwise provided by law, all measures submitted to a vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by those in favor of, and those opposed to, it shall be mailed to each elector in the same manner as now provided by law as to amendments to the Constitution, proposed by the Legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the Senate

States Having Provision for the Initiative in Their Constitutions

TABLE VI

State and year accepted	*Statutory initiative*	*Constitutional initiative*
Alaska 1959	Direct, 100 electors, then 10% electors from ⅘ election districts	No constitutional initiative
Arizona 1911	Direct, 10% electors	Direct; 15% electors
Arkansas 1910	Direct; 8% electors, ¼ signatures from at least 15 counties	Direct; 10% electors, ¼ signatures from at least 15 counties
California 1911	Direct and Indirect; 8% electors for direct, 5% for indirect	Direct; 8% electors
Colorado 1910	Direct; 8% electors	Direct; 8% electors
Idaho 1912	Direct; as determined by Legislature Stat Sec. 34-180. 10% electors	No constitutional initiative
Maine 1908	Indirect; 10% electors	No constitutional initiative
Massachusetts 1918	Indirect; 3% electors	Indirect; 25,000 electors
Michigan 1913	Indirect; 8% electors	None (eliminated in 1962 revised constitution)
Missouri 1908	Direct, 5% electors in each of ⅔ Congressional districts	Direct; 8% electors in each of ⅔ Congressional districts
Montana 1911	Direct; 8% electors in at least ⅔ of counties	No constitutional initiative
Nebraska 1912	Direct; 7% electors, with 5% in each of ⅔ counties	Direct; 10% electors, with 5% in each of ⅔ counties
Nevada 1912	Indirect; 10% electors	Direct; same as for statutory initiative
New Mexico 1911	No statutory initiative	None (banned from any future initiative clause added to Constitution)
North Dakota 1914	Direct; 10,000 electors at large	Direct; 20,000 electors at large
Ohio 1912	Indirect; 3% electors, plus 3% if Legislature fails to act	Direct and Indirect; 10% electors
Oklahoma 1907	Direct, 8% electors	Direct; 15% electors
Oregon 1902	Direct; 8% electors	Direct; 10% electors
South Dakota 1898	Indirect; 5% electors	No constitutional initiative
Utah 1900	Direct and Indirect; as determined by Legislature, Stats. Sec 20-11, 10% electors for direct, 5% for indirect from majority of counties	No constitutional initiative
Washington 1912	Direct and Indirect; 8% electors	No constitutional initiative

NOTE In most states percentage of signatures on petitions is based on total vote for Governor in preceding general election In Colorado the basis is total vote for Secretary of State, in Oklahoma the basis is highest total vote cast for any state office, in Oregon the basis is total vote for Supreme Court Justice

SOURCE "Initiative and Referendum in Wisconsin and Other States," Wisconsin Legislative Reference Bureau, Informational Bulletin 65-4, July 1965

Statutory Provisions Pertaining to Paid Signatures on Initiative and Referendum Provisions

Colorado

"There shall also be attached to each such petition a further affidavit of each person circulating such petition, that he has neither received nor entered into any contract whereby in the future he will receive any money or other thing of value in consideration of or as an inducement to the circulating of such petition by him, and that he has not directly or indirectly paid and has not entered into any contract whereby he will in the future pay any money or other thing of value to any qualified elector for the purpose of inducing or causing such elector to affix his signature to such petition." (*1960 Perm Supp. Colorado Revised Stats.*, sec 70-1-6)

"Any person, corporation, or association of persons who shall directly or indirectly pay to or receive from, or agree to pay to or receive from any other person, corporation or association or persons, any moneys or other thing of value in consideration of or as an inducement to the circulation of any initiative or referendum petition, or consideration of or as an inducement to the signing of any such petition, shall be guilty of a felony . . ." (*Rev. Stats.*, 1963, sec 70-1-10.)

Idaho

"It shall be a felony for any person to offer, propose or threaten to do any act mentioned in this section of or concerning any petition mentioned in sections 34-1801–34-1822, for any pecuniary reward or consideration. (a) To offer, propose, threaten or attempt to sell, hinder or delay any petition or any part thereof or of any signatures thereon mentioned in sections 34-1801–34-1822; (b) To offer, propose, or threaten to desist, for a valuable consideration from beginning, promoting or circulating any petition mentioned in sections 34-1801–34-1822, or soliciting signatures to any such petition; (c) To offer, propose, attempt or threaten in any manner or form to use any petition or power of promotion or opposition in any manner or form for extortion, blackmail or secret or private intimidation of any person or business interest." (*Rev. Code*, 1963, sec 34-1821.)

"Any person, either as principal or agent violating any of the provisions of sections 34-1801–34-1822 shall be punished upon conviction by imprisonment in the penitentiary or in the county jail not exceeding two (2) years, or by a fine not exceeding $5,000.00, or by both, excepting that imprisonment in the penitentiary and punishment by a fine shall be the only penalty for violation of any provision of section 34-1821." (*Rev Code*, 1963, sec. 34-1822)

Ohio

"Immediately above the heading of the place for signatures on each part of the petition the following notice shall be printed in red.

NOTICE

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a qualified voter, is liable to prosecution.

In consideration of his services in soliciting signatures to this petition the solicitor has received or expects to receive_____
from _____
(Whose address is)_____

Before any elector signs the part-petition, the solicitor shall completely fill in the above blanks if the solicitor has received or will receive any consideration and if the solicitor has not received and will not receive any consideration he shall insert 'nothing'." (*Rev. Code*, 1953, sec 3519.05.)

Washington

"Every person shall be guilty of a gross misdemeanor who: (1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or (2) Advertises in any manner that for or without consideration, he will solicit or procure signatures upon or influence or attempt to influence persons to sign or not to sign, to vote or not to vote upon an initiative or referendum petition or to vote for or against any initiative or referendum; or (3) For any consideration or gratuity or promise thereof solicits or procures signatures upon an initiative or referendum petition; or (4) Gives or offers any consideration or gratuity to any person to induce him to sign or not to sign, or to solicit or procure signatures upon an initiative or referendum petition or to vote for or against any initiative or referendum measure; or (5) Interferes with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation or any other corrupt means or practice; or (6) Receives, handles, distributes, pays out or gives away, directly or indirectly money or anything of value contributed by or received from any person, firm, association, or corporation whose residence as principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure" (*Rev Code*, 1964, sec. 29.79.490.)

Constitutional Provisions Pertaining to Paid Signatures on Initiative and Referendum Petitions [1, 2]

Arkansas

"No law shall be passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions, but laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices in the securing of signatures or filing of petitions" (Const Art. V, sec. 1, Am. 7.)

[1] Legislative Drafting Research Fund of Columbia University, *Constitutions of the United States—National and State* (2d ed., New York: Oceana Press, Inc., 1958)
[2] Legislative Drafting Research Fund of Columbia University, *Index Digest of State Constitutions—Cumulative Supplement*, September 1, 1958, to December 31, 1962 (2d ed.; New York: Oceana Press, Inc., 1961).

Massachusetts

"Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto . . . The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward" (Const Articles of Amendment, Art XLVIII, General Provision 1)

North Dakota

"Nor shall any law be enacted prohibiting any person from giving or receiving compensation for circulating the petitions, nor in any manner interfering with the freedom in securing signatures to petitions." (Const. Art. 25, Am. 26)

Initiative Constitutional Amendments
1912–1964

Year of election		Vote (in thousands) Yes	No
1912	To permit San Francisco to annex across county lines	174	280
	To permit county and city home rule in taxation	169	243
1914	Prohibition	355	524
	To abolish poll tax	405	374
	To limit suffrage at bond elections to property owners	312	337
	To make requirements for security for public deposits less stringent	236	324
	To permit San Francisco to annex territory on the peninsula	248	318
	To suspend prohibition amendment until February 15, 1915, if adopted	448	226
	To prohibit prohibition elections for eight years	355	435
1916	Prohibition	436	538
	To close saloons	461	505
	Single tax	260	576
	Ineligibility of legislators to hold any state office or employment	414	230
1918	Single tax	118	360
1920	To raise judicial salaries	232	538
	To limit use of initiative	298	431
	Prohibiting compulsory vaccination	359	468
	To make highway bonds salable by increasing interest rate	435	311
	To levy mill tax for university support	380	384
	To increase state aid to schools	506	268
	Single tax	196	563
1922	Validating veterans bond issue	562	226
	To tax publicly owned utilities	258	429
	To regulate public owned utilities	232	415
	State executive budget	451	183
	State water and power system	243	597
	Weakening initiative	258	378
	Single tax	124	515
	To give Railroad Commission power to grant indeterminate franchises to transportation utilities	136	499
1924	To tax highway transportation companies 4 percent of gross receipts in lieu of other tax	457	541
	State water and power system	320	751
1926	Highway finance plan of Automobile Club of Southern California	337	611
	To permit Bible in schools	439	571
	State water and power system	253	671
	Reapportionment of Legislature according to population	319	492
	Federal plan of apportionment	437	363
1930	To give Fish and Game Commission extensive ordinance power	440	650
1932	State liquor control	1,308	730
	Income tax and sales tax for schools	552	1,144
	Tideland grant to Huntington Beach	709	1,079

Initiative Constitutional Amendments—Continued

Year of election		Vote (in thousands)	
		Yes	No
1934	Regulating sale of liquor	1,262	714
	Selection of judges	810	734
	Increase power of Attorney General	1,063	449
	Permitting comment on evidence and on failure of defendant to testify	1,087	406
	Permitting felony defendants to plead guilty before examining magistrate	1,173	317
	Strengthening state merit system	1,216	382
	Providing for elective State Board of Education	577	938
	Permitting local option on liquor	497	1,362
1936	Repealing personal income tax	737	1,174
	Creating Alcohol Beverage Commission	748	1,432
	Making merit system compulsory for county and municipal civil service	670	1,174
	Permitting local option on liquor	719	1,474
	Preventing diversion of gasoline tax	829	1,061
	Regulating instructor's tenure in public schools	438	1,259
1938	Create Highway and Traffic Safety Commission	904	1,358
	Single tax	372	1,836
	Retirement life payments	1,143	1,398
1939	Retirement life payments	993	1,933
1942	Repeal state income tax	763	907
1944	Increase elementary school support	1,753	996
	Retirement payments, repeal sales tax	1,017	2,089
	Declares right to employment	1,304	1,893
1946	Increase state school support	1,771	610
1948	Extend liquor regulation responsibilities	1,122	2,521
	Increase aged and blind aid, change welfare administration	1,837	1,800
	Require local approval for state liquor license	1,085	2,598
	Reapportion of State Senate	1,069	2,250
	Create state housing authority	1,042	2,372
1949	Repeal of aged and blind amendment	1,560	1,152
1950	Personal property taxation	310	1,319
	Legalizing and licensing gambling	406	1,336
	Public housing projects	788	776
1952	Public school funds	2,603	1,432
	Public funds, certain expenditures prohibited	747	1,104
1954	Aid to needy aged	1,300	1,600
1958	Taxation of school property	1,686	3,447
	Right to work	2,080	3,071
1960	Senate reapportionment	715	2,100
1962	Senate reapportionment	2,074	2,387
	Subversive activities	1,862	2,796
1964	Sales and rental of residential property	4,526	2,396
	Lottery	2,064	4,606

Statutory Initiatives
1912–1964

Year of election		Passed	Failed
1912	To license horseracing and permit wagering		Failed
1914	Eight-hour law		Failed
	Regulating the sale of securities		Failed
	University of California building bonds	Passed	
	Absent voting		Failed
	To prohibit prizefights	Passed	
	To amend unworkable Torrens Title Law	Passed	
	Los Angeles state building bonds		Failed
	One day rest in seven		Failed
	To license drugless physicians		Failed
1918	Liquor control, permitting wines and beer		Failed
	Usury law	Passed	
	Limiting tax increases		Failed
	To ease dental licensure requirements		Failed
	"Bone dry" prohibition		Failed
1920	To strengthen alien land law	Passed	
	To create board of chiropractic examiners		Failed
	Antivivisection act		Failed
1922	To create board of chiropractic examiners	Passed	
	To create board of osteopathic examiners	Passed	
	Antivivisection act		Failed
1924	To permit boxing and wrestling for purses	Passed	
	To create Klamath Fish and Game District	Passed	
1926	Highway finance plan of California State Automobile Association		Failed
	Licensing horseracing and legalizing betting		Failed
	To repeal state prohibition act		Failed
1928	To repeal act of 1924 permitting prizefights		Failed
	To prohibit rodeos, bulldogging, etc		Failed
1930	To adopt daylight saving time		Failed
	To weaken usury law		Failed
	To adopt permanent registration	Passed	
	To close barbershops on Sunday		Failed
1932	To repeal state prohibition act	Passed	
	To require mortgage foreclosures through courts		Failed
	To license racing and wagering		Failed
1934	To amend chiropractic act		Failed
	To license "naturopaths"		Failed
1936	To prohibit tideland oil drilling		Failed
1938	To regulate picketing and boycotting		Failed
	To regulate pounds and disposal of animals		Failed
	To prohibit operation of fishing boats that supply fertilizer reduction plants	Passed	
1939	To amend chiropractic act		Failed
1940	To adopt daylight saving time		Failed
1942	To alter the powers of the state building and loan commissioner		Failed
	To provide a single licensing board to license practitioners of the basic sciences		Failed
1946	To establish board to license betting on greyhound racing		Failed
	To declare state fair employment practices policy		Failed

Statutory Initiatives—Continued

Year of election		Passed	Failed
1948	To amend full train crew law of 1911	Passed	
	To regulate commercial fishing in San Francisco Bay area		Failed
	To prohibit the use of nets in fishing in one coastal area		Failed
1949	To adopt daylight saving time	Passed	
1952	Prohibiting crossfiling		Failed
	Aid to the aged		Failed
1956	Oil and gas conservation		Failed
1958	State sales, use and income tax rates		Failed
1964	Prohibits pay television	Passed	
	Railroad tram crews	Passed	

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