Government

Chapter 13: More Money to Players, Brighter Future for Schools

Megan Cosgrove

Code Sections Affected

Government Code §§ 8880.4, 8880.63, 880.64 (amended, repealed, and added), § 8880.4.5 (added and repealed)

AB 142 (Hayashi); 2010 STAT. Ch. 13

I. INTRODUCTION

Each May, Carolynn Miller hosts her annual “Pink Slip Party” to celebrate the approaching end of another school year. That is because each May, Miller, who is a young, talented, and tenured teacher in the California public school system, gets laid off.¹ California law requires that teachers with the least amount of experience get laid off first, regardless of the quality of their teaching, leaving excellent teachers out of work and in constant search of a job.² These unfortunate layoffs are the result of budget cuts; in fact, California schools have received seventeen billion dollars less than expected over the last two years, resulting in not only mass layoffs, but also larger classes sizes, fewer school days, smaller opportunity for summer school, and a decrease in extracurricular programs.³ According to Frank Pugh, president of the California School Boards Association, “[t]hese unprecedented cuts are changing the face of education for an entire generation of students.”⁴ The state’s current budget crisis is harming public education in literally hundreds of school districts across California in numerous ways.⁵

Last year, the Legislature cut $9 billion from the education budget for grades K through 12, leading to almost 30,000 layoffs statewide.⁶ Many of those

¹. Interview with Carolynn Miller, Cal. Pub. Sch. Teacher, in Sacramento, Calif. (July 10, 2010) (notes on file with the McGeorge Law Review) (noting that teachers must be told by May 15 of each year whether their position is available the following school year). Contrary to what many people believe, tenure does not guarantee a teacher job security during times of economic turmoil. Id. Despite having tenure, schools lay off teachers with less experience first when the state is facing a budget crisis. Id. Tenure makes it more difficult to fire teachers, but does not protect them from seniority-based layoffs. Id.
⁴. Id.
⁵. See id. (discussing the record-high 174 school districts that may not be able to meet their financial obligations over the next two years).
⁶. Robert Cruckshank, Mass Teacher Layoffs Loom Again for California Schools, CALITICS (Feb. 23, 2010, 10:00 AM), http://calitics.com/diary/11153/mass-teacher-layoffs-loom-again-for-california-schools (on
teachers were eventually rehired—the payment of their salaries made possible by federal stimulus funds. But the federal government has not renewed stimulus funds for education this year; furthermore, the Governor’s 2010-2011 budget proposes further education cuts, leading one commentator to note that “[t]he economic picture for our schools regrettably is bleak.”

School officials do not question that California public schools need more money. Teacher layoffs, increased class sizes, program cuts, and shorter school weeks are ultimately harming the future of the state. Where that money will come from is another question.

One source of funding for California public schools is the California State Lottery. As Governor Schwarzenegger noted in May 2007, however, the California Lottery is “an underperforming asset and is not run in the most efficient way.” As a result, the Lottery does not provide the school system with the funding it so desperately needs. By enacting Chapter 13, the Legislature hopes to ultimately increase the amount of funding allocated to California public schools.

II. LEGAL BACKGROUND

In 1984, voters passed Proposition 37, creating the California State Lottery. Its purpose was to provide supplemental (not replacement) funding for California public schools. Since its inception, however, the California Lottery has proven to be less than effective in providing the funding that schools need. As a result, the Lottery has been the subject of various proposals for reform, none of which
have taken effect, until now.\textsuperscript{19} Multiple other states, quicker to enact amendments to their lotteries, have experienced successes still foreign to the California Lottery.\textsuperscript{20} Chapter 13 is a response to this currently failing system.\textsuperscript{21}

A. The California State Lottery

Between October 1985 (when lottery ticket sales began) and June 2009, the Lottery has raised over twenty-three billion dollars for public schools.\textsuperscript{22} Unfortunately, it simply has not been enough.\textsuperscript{23} According to one registered supporter of Chapter 13, “the California Lottery currently has the lowest per capita sales, the lowest per capita net transfers to beneficiaries (public schools), and the lowest prize percentage payout of the ten most populous lottery states.”\textsuperscript{24} Additionally, California’s Scratchers prize payout of 58% is lower than all but four of the forty-four states that have lotteries.\textsuperscript{25} Lower prize payouts equate to lower sales, lower net revenue, and therefore less money to the beneficiary.\textsuperscript{26}

B. Other Proposed Changes

In response to the California Lottery’s underperformance, and its impact on public school funding, the Legislature and Governor Schwarzenegger proposed a number of measures in an effort to improve Lottery performance.\textsuperscript{27} These proposals included leasing the lottery (to maintain education funds) and privatizing it (to replace Lottery funding with General Funding for education).\textsuperscript{28} Though ultimately rejected, each proposal attempted to revamp the California

\textsuperscript{19} See id. at 6-7 (noting the four amendments to the Lottery Act have been proposed and subsequently rejected in the last five years in addition to the Governor’s proposals to either lease or privatize the lottery, neither of which has occurred).

\textsuperscript{20} See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010) (mentioning that Massachusetts has the highest returns per capita); SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 3 (Mar. 15, 2010) (noting New York’s improvements to lottery sales).

\textsuperscript{21} Jeb Bing, Governor Signs Hayashi’s Bill to Increase School Funding from Lottery Proceeds, PLEASANTON WEEKLY, Apr. 10, 2010, available at http://www.pleasantonweekly.com/news/story_print.php?story_id=3845 (on file with the McGeorge Law Review) (“The bill brings California’s lottery structure in line with other large state lottery systems, including Texas, North Carolina, and Florida, which have shown an increase in revenue through similar changes.”).

\textsuperscript{22} ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 5 (Mar. 24, 2010).

\textsuperscript{23} See id. at 6 (noting the Governor’s comment that the Lottery is run inefficiently).

\textsuperscript{24} SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010).

\textsuperscript{25} Id.

\textsuperscript{26} Id.

\textsuperscript{27} See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 6-7 (Mar. 24, 2010) (describing legislative amendments proposed in 2005/06, 2007/08, 2008, and 2009/10, in addition to the Governor’s ideas of leasing or privatizing the lottery; that were all rejected).

\textsuperscript{28} Id.
Lottery, seeking to raise it to the level of efficiency and productivity of other state lotteries.\textsuperscript{29}

Most significantly, the Legislature chaptered AB 1654 in 2008.\textsuperscript{30} The bill would have modernized the Lottery if voters had passed Proposition 1C, but voters rejected Proposition 1C in May of 2009.\textsuperscript{31} Among other changes, Proposition 1C would have allocated a larger percentage of Lottery revenue toward actual prizes.\textsuperscript{32} This expansion would have hypothetically enticed more people to play, thus generating greater revenue.\textsuperscript{33}

Additionally, Proposition 1C would have ended Lottery funding to public schools altogether, requiring that equivalent funding come from the state general fund.\textsuperscript{34} The Lottery’s revenue would have instead gone toward financing a $5 billion loan intended to boost the general fund that was described by one author as "sagging."\textsuperscript{35} The Legislative Analyst’s Office estimated that borrowing so much money would have resulted in hundreds of millions of dollars of debt payments that would have been made over many decades.\textsuperscript{36} Voters most likely rejected Proposition 1C for this reason.\textsuperscript{37}

\section*{C. But Other States Can Do It}

Though it seems that California has struggled to revamp the Lottery’s productivity,\textsuperscript{38} other states have managed to do just that.\textsuperscript{39} For example, “Massachusetts has [both] the highest per capita return to beneficiaries and the highest Scratchers prize payout at 76%.”\textsuperscript{40} According to one supporter of Chapter 13, “[v]irtually every U.S. lottery has implemented higher prize payouts in their Scratchers-type games and, every time without exception, raising the payout has increased sales and profits returned to beneficiaries.”\textsuperscript{41} When New York increased prize payouts in 1999, it experienced a “progressive increase” in ticket

\begin{thebibliography}{1}
\bibitem{29} Id.
\bibitem{30} Id. at 7.
\bibitem{31} Id.
\bibitem{33} Id.
\bibitem{34} Id.
\bibitem{35} Id. The author notes that Proposition 1C was intended to “expand” the lottery in order to “help plug a multibillion-dollar hole in the state’s sagging general fund.” Id.
\bibitem{36} Id.
\bibitem{37} See \textit{ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142}, at 6-7 (Mar. 24, 2010) (revealing statistics from an exit poll that indicated 61\% approval of modernizing the Lottery, but only 35\% approval of borrowing from future profits and “debt-service payments on this borrowing”).
\bibitem{38} See \textit{id.} at 6-7 (March 24, 2010) (explaining numerous rejected amendments proposed since 2005).
\bibitem{39} See \textit{SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142}, at 6 (Mar. 17, 2010) (noting that almost every other state has raised their prize payouts and increased profits as a result).
\bibitem{40} Id.
\bibitem{41} Id.
\end{thebibliography}
sales over the next eight years.\textsuperscript{42} Supporters of Chapter 13 hope to make the California Lottery system as productive as those of states like Massachusetts, New York, Texas, North Carolina, and Florida—all of which experience greater success with their respective lottery systems.\textsuperscript{43}

III. CHAPTER 13

Chapter 13 makes significant changes to Government Code section 8880 and others which make up the California State Lottery Act of 1984.\textsuperscript{44} In an effort to “maximize lottery revenues available to supplement funding for public education,”\textsuperscript{45} Chapter 13 raises the percentage of revenues from the sale of lottery tickets that goes back to the public as prizes or to benefit public education from 84\% to 87\% percent,\textsuperscript{46} meaning that only 13\%, as opposed to 16\%, will go toward paying for the expenses of running the lottery itself.\textsuperscript{47} Additionally, instead of mandating a 50\% return in the form of prizes, Chapter 13 allows for but does not mandate a greater percentage.\textsuperscript{48}

Most importantly, Chapter 13 explicitly requires that the percentage of total revenues allocated to public education be set at a level that maximizes the benefit to education.\textsuperscript{49} Furthermore, when setting this number, Chapter 13 requires the California State Lottery Commission to “ensure that net revenues allocated to public schools are at least as much as were allocated on average in the prior five fiscal years, and increased in proportion to any upward increases in lottery net revenues.”\textsuperscript{50}

To ensure that the new provisions of Chapter 13 succeed in allocating more money to education, the Legislature added section 8880.4.5, mandating that each year, the commission report to the Controller and to the Legislature, the amount given to California public schools that year.\textsuperscript{51} Within the first five years, if the

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\item \textsuperscript{42} \textit{SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 3 (Mar. 15, 2010).}
\item \textsuperscript{43} \textit{Id.; SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010); Bing, supra note 21.}
\item \textsuperscript{44} \textit{CAL. GOV’T CODE §§ 8880.4, 8880.4.5, 8880.63, 8880.64 (amended and enacted by Chapter 13).}
\item \textsuperscript{45} \textit{Id. § 8880.4 (amended by Chapter 13).}
\item \textsuperscript{46} \textit{Compare id. § 8880.4(a) (amended by Chapter 13) (“Not less than 87 percent of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education.”), with CAL. GOV’T CODE § 8880.4(a) (West 2005) (“Not less than 84 percent of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education.”).}
\item \textsuperscript{47} \textit{Compare CAL. GOV’T CODE § 8880.4(a)(5) (amended by Chapter 13) (“No more than 16 percent of the total annual revenues shall be allocated for payment of expenses of the lottery . . .”), with CAL. GOV’T CODE § 8880.4(a)(5) (West 2005) (“No more than 13 percent of the total annual revenues shall be allocated for payment of expenses of the lottery . . .”).}
\item \textsuperscript{48} \textit{Id. § 8880.4(a)(1) (amended by Chapter 13).}
\item \textsuperscript{49} \textit{Id. § 8880.4(a)(2)(A) (amended by Chapter 13).}
\item \textsuperscript{50} \textit{Id. § 8880.4.5(d) (enacted by Chapter 13).}
\item \textsuperscript{51} \textit{Id. § 8880.4.5(a)-(b) (enacted by Chapter 13).}
\end{enumerate}
total net revenues paid to schools and the average net revenues of all post-enactment years are less than the total net revenues for the year prior to the enactment of Chapter 13, the amendments made by Chapter 13 will become inoperative, affected sections will return to their previous form, and the bill will operate as it did prior to these new provisions. 52

Finally, Chapter 13 mandates that the Controller assemble a “lottery review group to consist of the Controller, the Superintendent of Public Instruction, and the chairperson of the commission[,]” to report to the Legislature on whether Chapter 13 has in fact “furthered the purposes of the California State Lottery Act of 1984 as intended.” 53

IV. ANALYSIS

By raising the percentage of income returned to the public by just 3% and allowing the percentage returned as prizes to be flexible, supporters of Chapter 13 hope that it will ultimately increase the amount of Lottery dollars given to benefit public education in California. 54 Because this amendment implicates only one risk 55 and its costs are minimal, 56 Chapter 13 has wide support and little criticism. 57

A. The Hopeful Impact

Chapter 13 makes “‘minor changes to the lottery act’s funding formula’” that will ideally result in big changes to the total income that benefits public education in California. 58 By giving more money back in the form of prizes, more people will be interested in buying lottery tickets, resulting in more sales and an increase in the amount of money from those sales that goes to benefit education. 59 As one Chapter 13 supporter noted, “[t]he formula is simple—higher prize payouts equal more sales and more net revenue.” 60 The Legislature has noted, however, that the actual impact of Chapter 13 will be determined by a number of other factors, such as “incentives to retailers and other marketing events,” which

52. Id. § 8880.4.5(b)-(c) (enacted by Chapter 13).
53. Id. § 8880.4.5(e) (enacted by Chapter 13).
54. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 5 (Mar. 17, 2010) (“The intent of this bill is to allocate more money to prizes which in turn is expected to generate an increase in total sales revenue, allowing for an increase in the current level of funding allocated to public education.”).
55. See id. (noting that the bill “leave[s] the allocation [of funds] to public education vulnerable for one year . . . .”).
56. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 4 (Mar. 24, 2010) (noting that the costs relating to the reporting requirement are “minor and absorbable”).
57. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (MAR. 17, 2010) (showing no registered opponents of the bill).
58. Id. at 5.
59. Id.
60. Id. at 6.
will “influence the consumers’ behavior on lottery spending.” Essentially, the success of Chapter 13 is contingent upon more people buying lottery tickets; hypothetically, if the prize is higher, more people will invest their hopes in a ticket. In turn, an increase in lottery ticket buyers equates to an increase in public school funding.

If the successes experienced by other states are any indication, Chapter 13 should succeed in ultimately giving more funding to public schools.

B. There is Just One Risk

The Legislature admits that Chapter 13 is risky; it leaves public school funding vulnerable for the first year. “[I]n the event that a determination is made that funding provided to schools was less than the amount in [fiscal year] 2008-2009[,]” Chapter 13 becomes inoperative, but public schools will have already lost out on that money. Because of the built-in contingency plan that would make Chapter 13 disappear if it proves unsuccessful, the real risk exists only in that very first year, but it is still a risk. If Chapter 13 is unsuccessful, the bill will cause no additional harm after year one, but by that point the schools would have already lost the money for that year.

Nevertheless, because the effects have been positive in every other state that has implemented such a change, supporters are hopeful. In fact, “a profit forecast predicts the lottery will increase annual profit by $400 million, bringing total Lottery profits for public education to $1.5 billion annually.”

C. And What Will It Cost?

Because Chapter 13 requires the Commission to gather and report data to the Controller and Legislature regarding the amount of total revenues given to public education for that year, the financial impact of Chapter 13 is a natural concern. The process of collecting and compiling data will certainly cost the state, and in a time of financial crisis, any spending may be worrisome. The Senate

61. Id. at 5.
62. See id. (noting the external factors that will affect the ultimate success of Chapter 13).
63. Id.
64. Id. at 6 (“[I]n all states implementing changes] every time without exception, raising the payout has increased sales and profits returned to beneficiaries.”).
65. Id. at 5.
66. Id.
67. Id.
68. Id.
69. Id. at 6 (listing numerous people and agencies in support of the bill, with no recording opposition).
70. Id. at 6-7.
71. See Cal. Gov’t Code § 8880.4.5(a) (enacted by Chapter 13) (mandating that the commission make yearly reports to the Controller and the Legislature).
Appropriations Committee, however, estimates that these costs will be “minor and absorbable.”\(^\text{72}\) Thus, the only real financial concern, should Chapter 13 fail to increase the allocation of funding to schools, will likely belong to California’s public schools.\(^\text{73}\)

V. CONCLUSION

Chapter 13 has a very good chance of succeeding and thereby providing California schools with much needed funding to help combat teacher layoffs, larger class sizes, program cuts, and shorter school weeks.\(^\text{74}\) Additionally, since the estimated costs of data gathering will be “minor and absorbable,” California seems to have nothing to lose.\(^\text{75}\) Still, the possible drawback—that Chapter 13 may fail and schools will lose some of the meager funding they currently have—could be devastating.\(^\text{76}\) Regardless, the lack of registered opponents suggests that Chapter 13 has a bright future.\(^\text{77}\) Hopefully one can say the same for California’s public school system and the teachers who make it run. With a little luck, Miss Miller may be able to give the pink slip to her annual “Pink Slip Parties.”

\(^{72}\) Assembly Floor, Committee Analysis of AB 142, at 4 (Mar. 24, 2010).

\(^{73}\) Id. at 5 (commenting that the costs are “minor and absorbable” and that the bill has great potential to increase funding to schools, but also mentioning the potential for a “one-time” failure).

\(^{74}\) Senate Rules Committee, Committee Analysis of AB 142, at 6 (Mar. 17, 2010) (quoting a supporter as saying that every U.S. lottery that has raised prize payouts has experienced greater revenue and greater benefits to the beneficiary as a result); More Calif. Schools Facing Fiscal Crisis, supra note 3 (noting the negative impact of budget cuts on schools).

\(^{75}\) Assembly Floor, Committee Analysis of AB 142, at 5 (Mar. 24, 2010).

\(^{76}\) Id.

\(^{77}\) See Senate Rules Committee, Committee Analysis of AB 142, at 6 (Mar. 17, 2010) (showing no opponents to Chapter 13).
Chapter 18: Enhancing Government Transparency

Julia DeVos

Code Sections Affected
Government Code §§ 84203-84204, 84215, 84218, 84225, 84605, 85200, 86100, 86107, and 86118 (amended).
AB 1181 (Huber); 2010 STAT. Ch. 18.

I. INTRODUCTION

In the June 2010 election, $46 million in cash went to support Proposition 16, a ballot initiative sponsored by Pacific Gas and Electric Company (PG&E).\(^1\) 100% of these funds came from PG&E.\(^2\) Proposition 16 failed, possibly due to the public’s knowledge that only the company proposing the initiative provided all of the funding for it.\(^3\) Elections such as this demonstrate the need for greater public access and transparency in relation to campaign contributions.\(^4\)

Despite efforts to increase the transparency of government activities, many California voters lack knowledge and awareness of the spending activities of government entities, especially those of that support candidates and lobbying organizations.\(^5\) Assembly Member Alyson Huber introduced Chapter 18 in order to “provide[] the openness and political disclosure envisioned by the voters when they approved the Political Reform Act.”\(^6\)

II. LEGAL BACKGROUND

In 1974, California enacted the Political Reform Act, creating the Fair Political Practices Commission and requiring the disclosure of contributions and expenditures in connection with campaigns, ballot measures, and lobbying efforts.\(^7\) In an attempt to improve public access to contribution and expenditure information, the California Legislature enacted the Online Disclosures Act in

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1. Michael Hiltzik, Power Grab Hits a Wall, L.A. TIMES (June 13, 2010), at B1. Proposition 16 was an initiative on the June 2010 ballot proposing a constitutional amendment requiring a two-thirds vote for local governments to start up public electricity providers. LEGISLATIVE ANALYST’S OFFICE, ANALYSIS OF PROPOSITION 16 (Feb. 17, 2010) (on file with the McGeorge Law Review).
3. See id. (“We may finally have discovered a remedy for corporate executives with more greed than brains: Let them invest corporate funds by the millions in California ballot initiatives, then vote the things down.”).
4. See id. (“[T]he antidote to unrestrained corporate political spending is to make sure that voters know that a corporate interest is behind an ad, an issue campaign or a candidate.”).
5. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF AB 1181, at 3 (Apr. 21, 2009).
6. Id. (quoting Assembly Member Alyson Huber).
7. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 3 (May 20, 2010).
1997. The Online Disclosures Act requires the Secretary of State to develop and implement a process for filing reports and statements online, and to provide public access to those documents. This legislation required candidates, committees, and slate mailer organizations with expenditures or contributions of $50,000 or more to file either electronically or online. Additionally, it required lobbyists, lobbyist employers, and lobbying firms with $5,000 or more in reportable payments, expenses, gifts, or other items in a calendar year to file either electronically or online. The Online Disclosures Act, however, had a loophole; it allowed entities to avoid filing electronically or online by staying under the $50,000 or $5,000 triggering amounts.

In 2001, the California Legislature passed Chapter 917, which was aimed at making online reporting less costly for those required to report electronically or online. The statute requires the Secretary of State to provide a free method for mandatory electronic or online filing, and appropriated funds for the purpose of developing the free filing system. Although the deadline for completing the free online system was December 2002, the Secretary of State did not accomplish it until February 2007.

III. CHAPTER 18

Chapter 18 adds additional requirements to the Political Reform Act of 1974 and the Online Disclosures Act. These requirements affect the filing of late contributions and independent expenditures, the monetary thresholds triggering required electronic reporting of campaign contributions and expenditures, the

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9. Id. § 84602.
10. Id. § 84605.
11. Id.
13. See SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 2-3 (July 7, 2009) (describing Chapter 917 requiring the Secretary of State to provide a free online filing system for individuals required to file electronically or online); see also SENATE FLOOR, COMMITTEE ANALYSIS OF AB 696, at 2-3 (Sept. 9, 2001) (describing the costs for electronic filing “from $50 to $2,000 per filing”).
15. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 3 (July 7, 2009).
16. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 1181, at 1-2 (May 20, 2009).
filing of campaign reports, and state lobbying.\textsuperscript{17} Under Chapter 18, it is likely that more candidates and other entities will be required to file spending reports and statements online or by electronic transmission.\textsuperscript{18} Electronic filing is accomplished when a document is uploaded over the Internet to a specified file server.\textsuperscript{19} Cumulative campaign contributions and expenditures over $25,000 must be filed online or by electronic transmission.\textsuperscript{20} Lobbyists, lobbying firms, lobbyist employers, and others\textsuperscript{21} must report, online or electronically, reportable payments, expenses, contributions, gifts, and other items exceeding $2,500 in a calendar quarter.\textsuperscript{22}

Lobbyists must also file their registration statements, and any amendments to those statements, either online or by electronic transmission, and in a paper format.\textsuperscript{23} Candidates and committees must report late contributions and independent expenditures by facsimile, guaranteed overnight delivery, or personal delivery within twenty-four hours of when the contribution was received or the expenditure was made.\textsuperscript{24} Independent expenditures must be reported either online or by electronic transmission to the Secretary of State, if their reporting is mandatory.\textsuperscript{25}

Additionally, Chapter 18 limits the entities with whom a candidate or elected official is required to file a paper copy of their campaign statements, and requires

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  \item Id.
  \item \textit{See Assembly Committee on Elections and Redistricting, Committee Analysis of AB 1181}, at 3 (Apr. 21, 2009) (quoting Assembly Member Huber: "'Thus, thousands of candidates, donors, campaign officials, and special interests are still allowed to submit disclosure forms that are not available online.'"); see also \textit{Senate Committee on Elections, Reapportionment and Constitutional Amendments, Committee Analysis of AB 1181}, at 4-5 (July 7, 2009) (stating that one of the effects of the bill will likely be that entities that are not currently required to file electronically or online will be required to do so).
  \item \textit{California Secretary of State, Political Reform Division, Electronic Filing Information, Frequently Asked Questions}, http://www.sos.ca.gov/prd/faqs.htm (last visited Feb. 5, 2011) (on file with the \textit{McGeorge Law Review}). The Secretary of State limits electronic filing to the above definition and does not consider fax, e-mail, floppy disks or compact disks to be proper filing methods. \textit{Id}.
  \item CAL. GOV'T CODE § 84605 (amended by Chapter 18). This requirement applies to candidates, committees, general purpose committees that support or oppose candidates, and slate mailer organizations connected with state elective offices or state measures. \textit{Id}.
  \item Id. § 86115(b) (amended by Chapter 18) ("Other" entities this provision applies to include: "Any person who directly or indirectly makes payments to influence legislative or administrative action of five thousand dollars ($5,000) or more in value in any calendar quarter, unless all of the payments are of the type described in subdivision (c) of Section 82045.").
  \item Id. § 84605 (amended by Chapter 18).
  \item Id. § 86100(e) (amended by Chapter 18).
  \item Id. §§ 84203-84204 (amended by Chapter 18). The California Secretary of State defines late contributions and expenditures as those made in the sixteen days prior to an election up to the day before the election. \textit{California Secretary of State, Political Reform Division, Campaign Disclosure and Requirements}, http://www.sos.ca.gov/prd/campaign_info/filing_requirements/bmc_campaign_and_registration_requirements.htm (last visited Feb. 5, 2010) (on file with the \textit{McGeorge Law Review}).
  \item CAL. GOV'T CODE §§ 84203-84204 (amended by Chapter 18). It is not necessary to file a paper copy of a late contribution or independent expenditure report if the report is filed online or by electronic transmission. \textit{Id}
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some candidates or elected officials to file campaign statements online or electronically.\textsuperscript{26} Candidates and elected officials must file paper copies of their campaign statements in the county in which they are domiciled.\textsuperscript{27} Statewide elected officers must file a paper copy of their campaign statements with the Secretary of State, but no longer have to file a paper copy of campaign statements with Los Angeles and San Francisco Counties.\textsuperscript{28} Candidates or committees in jurisdictions that contain part of two or more counties are still required to file paper copies of their campaign statements in the county with the largest number of registered voters within that jurisdiction.\textsuperscript{29}

\section*{IV. Analysis of Chapter 18}

Chapter 18 aims to increase transparency of government actions by requiring online or electronic transmission for contributions and expenditures at lower monetary thresholds, and requiring more entities to file online or by electronic transmission.\textsuperscript{30} The author of Chapter 18, Assembly Member Huber, stated: “This bill will improve transparency by making it easier for the public to track how money is raised and spent. . . . We should be doing everything we can to make government as open as possible and this bill moves us in that direction.”\textsuperscript{31} There was no registered opposition to Chapter 18.\textsuperscript{32}

\subsection*{A. Support for Enhancing Government Transparency}

The Office of the Secretary of State sponsored Chapter 18, with support stemming from California Common Cause, Fair Political Practices Commission, League of Women Voters of California, and CALPIRG.\textsuperscript{33} These organizations support Chapter 18, in part, because of its potential for enhancing government transparency and increasing public awareness.\textsuperscript{34} Because of the high ($50,000 and

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\bibitem{26} \textit{Senate Committee on Elections, Reapportionment and Constitutional Amendments, Committee Analysis of AB 1181}, at 1-2 (July 7, 2009).
\bibitem{27} \textit{Cal. Gov’t Code} § 84215 (amended by Chapter 18). Officers, candidates, and committees of counties must file in the county, while officers, candidates, and committees of cities must file in the city in which they are domiciled. \textit{Id.}
\bibitem{28} \textit{Id.}; \textit{Assembly Floor, Committee Analysis of AB 1181}, at 2 (Apr. 16, 2010).
\bibitem{29} \textit{Cal. Gov’t Code} § 84215 (amended by Chapter 18). Candidates in legislative districts, State Board of Equalization districts, or appellate court districts do not have to file in the county with the largest number of registered voters. \textit{Id.}
\bibitem{30} \textit{Background Sheet AB 1181 (Huber) Campaign Electronic Disclosures} (June 6, 2010) [hereinafter \textit{Background Sheet}] (on file with the \textit{McGeorge Law Review}).
\bibitem{31} Press Release, Office of Assemblywoman Alyson Huber, Huber Bill to Increase Government Transparency Signed by Governor (May 10, 2010) (on file with the \textit{McGeorge Law Review}).
\bibitem{32} \textit{See generally Senate Floor, Committee Analysis of AB 1181}, at 2 (Aug. 19, 2009) (showing no recorded opposition to Chapter 18).
\bibitem{33} \textit{Background Sheet, supra} note 30.
\bibitem{34} \textit{Id.}
\end{thebibliography}
$5,000) monetary thresholds triggering online filing, previous law allowed many candidates, committees, slate mailer organizations, and lobbying entities to submit disclosure forms that were not available online.\textsuperscript{35} Supporters believe that Chapter 18 closes a loophole which exempted some entities from filing electronic reports, and that closing that loophole will increase public access to those reports.\textsuperscript{36}

In addition to the increase in the transparency of campaign funds, proponents of Chapter 18 also support the increased availability of campaign, ballot, and lobbyist statements.\textsuperscript{37} Candidates for the Legislature and Board of Equalization, court of appeal justices, and superior court judges must file their campaign statements online or by electronic transmission, and in paper format with the Secretary of State.\textsuperscript{38} Candidates for the Board of Administration of the Public Employees Retirement System must also file their campaign reports online or by electronic transmission with the Secretary of State.\textsuperscript{39} One supporter, Secretary of State Debra Bowen, stated: “‘These common-sense bills will make it easier for Californians to exercise their constitutional right to vote, to ensure that election results are accurate, and to access key records.’”

\textbf{B. Concerns Regarding the Online Disclosure System}

While Chapter 18 has no official opposition, there are concerns regarding the bill.\textsuperscript{41} One concern is that expanding the online disclosure system is inappropriate at this time.\textsuperscript{42} This concern arises because, in the twelve years since the Legislature mandated an online disclosure system, there has been no determination that the system operates effectively.\textsuperscript{43} While the Secretary of State and Fair Practices Commission did hold a public hearing to assess the operations of the online disclosure system, the Secretary of State failed to make a determination about the effectiveness of the system.\textsuperscript{44} It remains questionable

\begin{itemize}
\item[35.] See Senate Floor, Committee Analysis of AB 1181, at 2 (Aug. 19, 2009) (“This bill lowers the monetary threshold which triggers mandatory electronic reporting.”).
\item[36.] See Bowen Press Release, supra note 12 (describing the exemption from electronic filing as a loophole); see also Background Sheet, supra note 30 (stating that AB 1181 would limit the exemptions from electronic or online filing by lowering the thresholds that trigger electronic or online filing and therefore improve public access to campaign statements and reports).
\item[37.] See Bowen Press Release, supra note 12 (listing AB 1181 among bills providing “access [to] key records”).
\item[38.] Cal. Gov’t Code § 84215 (amended by Chapter 18).
\item[39.] Id. § 84225 (amended by Chapter 18).
\item[40.] Bowen Press Release, supra note 12.
\item[41.] See Senate Committee on Elections, Reapportionment and Constitutional Amendments, Committee Analysis of AB 1181, at 4-5 (July 7, 2009) (questioning whether the online disclosure system can operate effectively).
\item[42.] Id.
\item[43.] Id.
\item[44.] Id.
\end{itemize}
whether a system that has not been determined to be effective should be expanded.\textsuperscript{45}

V. CONCLUSION

Prior to Chapter 18, the threshold limits for triggering online or electronic transmission of expenditures and contributions for candidates, committees, slate mailer organizations, and lobbying entities were high, resulting in many exemptions from electronic filing.\textsuperscript{46} Those exemptions became unnecessary with the implementation of free online filing.\textsuperscript{47} Chapter 18 lowers those monetary thresholds and requires more documents to be filed online or by electronic transmission.\textsuperscript{48} Supporters believe requiring online or electronic filing at lower thresholds will create greater transparency in government actions.\textsuperscript{49} While more information will be available to inform voters, it remains unclear whether the availability of this information will actually result in a greater number of educated voters or better-educated voters.

\textsuperscript{45} Id.
\textsuperscript{46} BACKGROUND SHEET, supra note 30.
\textsuperscript{47} Id.
\textsuperscript{48} SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF AB 1181, at 1 (July 7, 2009).
\textsuperscript{49} BACKGROUND SHEET, supra note 30.
Chapter 167: Taking Court Records Management from the Stone Age to the Digital Age

Brian E. Hamilton

Code Sections Affected
AB 1926 (Evans); 2010 STAT. Ch. 167.

I. INTRODUCTION

A decade into the twenty-first century, California courts are taking the leap from paper to digital.\(^1\) California has long been the epicenter of technological innovation, and it is appropriate that the birthplace of Apple Computer’s revolutionary iPad will also be the home of the paperless courthouse.\(^2\)

Society is witnessing a revolutionary shift away from paper as a medium for transmitting and recording information.\(^3\) This shift is occurring despite apprehension over the reliability and resilience of electronic data storage.\(^4\) Digital storage devices are able to store extremely large quantities of data within increasingly smaller spaces.\(^5\)

California’s court system, the largest in the United States, utilizes almost two million linear feet of shelf space for storage of court records.\(^6\) Statutes governing the storage of court records require retention of this vast amount of paper documents.\(^7\) The number and variety of records that courts must retain is stunning.\(^8\) The importance of keeping accurate and complete judicial records, as well as the rigid statutory requirements for document retention, demands that courts preserve court records with security and fidelity.\(^9\)

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3. Id.
4. See, e.g., Brad Reagan, The Digital Ice Age, POPULAR MECHANICS, Oct. 1, 2009, http://www.popularmechanics.com/technology/gadgets/news/4201645 (on file with the McGeorge Law Review). In 1986, the B.B.C. sought to create a modern-era version of William the Conqueror’s Domesday Book, preserved entirely on laser discs. Id. After fifteen years, the discs were unusable, whereas the original Domesday Book, which was “written on parchment in 1086,” is still legible. Id.
6. ASSEMBLY COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF AB 1926, at 5 (Mar. 23, 2010).
7. CAL GOV’T CODE § 68152 (West 2009).
8. See, e.g., id. § 68152(e)(9) (requiring retention for three years of any misdemeanor, infraction, or civil action record alleging a violation of section 30951 of the California Food and Agriculture Code). Section 30951 states that it is unlawful to own, harbor or keep a dog over four months old without proper tags. CAL. FOOD & AGRIC. CODE § 30951 (West 2001).
Chapter 167 brings California courts one step closer to a system more commensurate with its position as a leader in the digital age.\textsuperscript{10}

\section*{II. LEGAL BACKGROUND}

California’s Government Code requires state courts to retain certain records permanently and to retain other records for a predetermined period of time.\textsuperscript{11} Upon expiration of the retention period, these records must be destroyed by certain prescribed means.\textsuperscript{12} This requirement contributes to the burden that paper records impose.\textsuperscript{13} Prior to Chapter 167, the Judicial Council of California, the administrative and rule-making body of the state court system, lacked clear authority to promulgate rules that would allow courts to minimize this burden by becoming paper-free.\textsuperscript{14}

In 1996, the Legislature amended Government Code section 68150 in an attempt to enable the Judicial Council to ease the burden of record retention.\textsuperscript{15} This amendment deemed electronic reproductions of court records to be original court records.\textsuperscript{16} While earlier amendments to the section permitted court records to be preserved in forms other than paper, it remained uncertain whether courts could originate and maintain all-electronic records.\textsuperscript{17} Courts presumed that the law merely allowed electronic records to be used as backups of paper records, not as outright replacements.\textsuperscript{18} Thus, the Judicial Council needed additional legislative action before it could implement any widespread transition from paper to electronic court records.

Complicating modernization even further, the Government Code required that the courts’ record management retention policies conform to national standards.\textsuperscript{19} Courts found this requirement problematic, as the propagating

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\textsuperscript{10.} See Judicial Council of Cal., Justice in Focus: The Strategic Plan for California’s Judicial Branch, 2006-2012 36 (2006) [hereinafter Justice in Focus] (asserting the need for innovative practices as a facet of its goal to modernize court administration and management).

\textsuperscript{11.} Cal. Gov’t Code § 68152. This section establishes the retention period for certain categories of cases. \textit{Id.} For example, courts must retain the record of a parking infraction for three years. \textit{Id.} § 68152(c)(11). Courts must retain certain other records, such as name changes, permanently. \textit{Id.} § 68152(b).

\textsuperscript{12.} \textit{Id.} § 68153 (“Destruction shall be by shredding, burial, burning, erasure, obliteration, recycling, or other method approved by the court, except confidential and sealed records, which shall not be buried or recycled unless the text of the records is first obliterated.”).

\textsuperscript{13.} \textit{Id.}


\textsuperscript{15.} \textit{Id.} at 2.

\textsuperscript{16.} \textit{Id.}

\textsuperscript{17.} \textit{Id.} at 3.

\textsuperscript{18.} \textit{Id.}

\textsuperscript{19.} \textit{Id.} at 2-3.

\textsuperscript{20.} See Cal. Gov’t Code § 68150(a) (West 2009) (specifying that records must be preserved according to standards or guidelines established by the American National Standards Institute or the American Association for Information and Image Management).
\end{flushleft}
organizations did not adopt standards sufficiently tailored to the needs of courts.\(^{21}\) This lack of flexibility, in part, prompted the Judicial Council to initiate its proposal for a change to the current retention requirements of the Government Code.\(^{22}\)

Also prompting the Judicial Council’s proposal was the wholesale destruction of court records in the aftermath of Hurricane Katrina and other disasters.\(^{23}\) Such calamities have caused records management professionals to re-evaluate the vulnerability of fixed paper records and the need to create more robust systems to ensure the preservation of essential records.\(^{24}\) Losing records can damage any organization, but the impact of the destruction of official court documents is especially severe.\(^{25}\)

In addition to the various non-fiscal considerations driving courts towards adopting electronic records, the dramatic effect of the recent economic downturn created an urgent need to cut costs throughout the government.\(^{26}\) The current paper-records regime has created a budgetary pressure that has made modernization imperative to the efficient operation of the judiciary amid government-wide cuts.\(^{27}\)

### III. CHAPTER 167

Chapter 167 authorizes California’s courts to convert to an electronic records management system.\(^{28}\) It also allows the courts to destroy original records as long as the records have been electronically retained in a manner consistent with the Judicial Council’s standards.\(^{29}\) Additionally, Chapter 167 maintains public access to all electronic court records for viewing and duplicating.\(^{30}\) This accessibility requirement allows the public to view the electronic records at the court, even if

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\(^{21}\) A.O.C. REPORT, supra note 14, at 3.

\(^{22}\) Id.

\(^{23}\) AB 1926 FACT SHEET, supra note 9; see also C.J. Wallace B. Jefferson, The State of the Judiciary in Texas, Presented to the Texas Legislature (Feb. 11, 2009), in 72 TEXAS B. J. 286, 287 (2009) (relating the devastation that Hurricane Katrina wreaked upon Gulf Coast courts and the need for adequate measures to minimize the impact of future disasters).

\(^{24}\) See generally Bruce W. Dearstyne, Taking Charge: Disaster Fallout Reinforces RIM’s Importance, 40 INFO. MGMT. J. 37 (2006) (examining the impact of disasters from the perspective of records and information management professionals).

\(^{25}\) See e.g., AB 1926 FACT SHEET, supra note 9 (describing the extensive loss of court records after flooding in Linn County, Ohio to illustrate the vulnerability of on-site paper court records).

\(^{26}\) See JUDICIAL COUNCIL OF CAL., IN THE NAME OF JUSTICE: REPORT ON THE CALIFORNIA COURTS 5 (2008) (detailing the effect of the state’s budget crisis on courts, and efforts by the Judicial Council to cut costs while maintaining services) [hereinafter JUDICIAL COUNCIL REPORT].

\(^{27}\) See, e.g., Philip R. Carrizosa, Editor’s Note, CAL. CTS. REV., Winter 2009, at 3 (“As this year’s state budget troubles have demonstrated, when the state suffers, the courts will suffer, too.”).

\(^{28}\) CAL. GOV’T CODE §§ 68150-68151 (amended by Chapter 167).

\(^{29}\) Id. § 68151(d) (amended by Chapter 167). Chapter 167 explicitly charges the Judicial Council with the responsibility of setting the standards to govern the new system. Id. § 68150(c) (amended by Chapter 167).

\(^{30}\) Id. § 68150(l) (amended by Chapter 167).
records are available by other means. Chapter 167 also allows the court to retain only the electronic images of original paper records and to substitute original electronic records where paper records were otherwise required. These changes to the record management system, however, explicitly do not apply to court reporters’ transcripts or to recordings used as the official records of oral proceedings.

IV. ANALYSIS

A. Streamlining Courthouses

Proponents of Chapter 167 sought to improve the efficiency of court operations. The extent of public support for the judicial process is shaped by how well the public can view and assess the administration of justice by courts. By making records accessible, and routine interactions simple, courts reduce the strain on individual citizens while improving the ability of courts to adequately serve the public in their most basic task—providing justice.

Remote access to court records allows interested parties to view documents from their homes or offices. Attorneys often originate documents electronically, and courts have already been converting paper records to digital copies for both storage and dissemination. By allowing parties to file documents electronically, the need to retain paper copies of certain documents is eliminated, and a court record may never need to be printed. Instead of preparing a brief on the computer, printing it out, driving to the courthouse, and filing it with the clerk—an attorney may now simply submit the brief directly to the court without ever leaving the office.
B. Improving Accessibility to Courts

The Judicial Council, in sponsoring Chapter 167, also sought to improve the general public’s access to court records. Chapter 167 builds upon existing efforts toward court records modernization. Since 2002, the courts have been implementing a new Court Case Management System (CCMS). This system is designed to simplify case management with electronic court records that will be accessible state-wide. The CCMS process has put in place much of the technology necessary for electronic case management.

Proponents cited improved public access as an enormous advantage of digitization. Preservation of court records is vital to public confidence in the judiciary. The Judicial Council acknowledged this reality, and sought to improve the public’s access to court records by implementing an electronic court records management system. As entities such as news organizations often serve as proxies for the general public, their improved access to court records facilitates more favorable perceptions of the judicial branch.

Outright opposition to Chapter 167 was minimal; however, there were concerns about its implementation. The Courthouse News Service, a nationwide legal news service, warned that the implementation of electronic court records may result in significant delays in accessing those records. Citing the importance of public access, the Courthouse News Service implored the Judicial Council to ensure that the implementation of electronic court records does not result in delayed access to court records.

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41. **Assembly Committee on the Judiciary, Committee Analysis of AB 1926, at 6 (Mar. 23, 2010).**
42. See, e.g., **Admin. Office of the Courts, Fact Sheet: Court Case Management System (CCMS) 1 (2009) (on file with the McGeorge Law Review)** (describing a related program to implement a uniformly accessible and effective system for electronically managing cases).
43. Id. at 5.
44. Id. at 4.
45. Id. at 3.
46. See **Justice in Focus, supra note 10, at 24-41** (identifying public access to the court and modernization of management and administration as two of five strategic goals for guiding the judicial branch’s progress).
47. See **Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 584 (1980) (Stevens, J., concurring)** (“[T]he First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of their government, including the Judicial Branch . . . .”).
48. See **A.O.C. Report, supra note 14, at 15-20** (reciting Courthouse News Services’ explanation of the importance of accessing court records to the media and the media’s role in public understanding of court proceedings).
49. Id.
50. See **A.O.C. Report, supra note 14, at 10-32** (summarizing comments received on the legislative proposal, in addition to the Judicial Council’s response).
51. See id. at 12-22 (noting the Courthouse News Service’s belief that other jurisdictions’ similar efforts to convert to electronic records have resulted in the media not having access to documents for days after filing, due to the increased administrative burden of making documents available electronically, where paper records were otherwise available the day of filing). The Courthouse News Service does not assert that this counterintuitive result is inevitable, only that the Judicial Council should possibly take measures to avoid it. Id.
Council to adopt measures to prevent such delays.\textsuperscript{52} In response to these concerns, the Judicial Council stated that their current proposal’s scope was too broad to address them.\textsuperscript{53}

Chapter 167 is intended to be a starting point for the Judicial Council to develop more specific rules and guidelines for electronic court records.\textsuperscript{54} The concern over access to court records, though valid, is largely addressed in the language of Chapter 167 that allows the Judicial Council to retain current standards, which provides for a more seamless transition from the antiquated but reliable processes already in place.\textsuperscript{55}

\textbf{C. Anticipated Fiscal Benefits}

Chapter 167 is partially a response to the sustained budgetary crisis that California currently faces.\textsuperscript{56} Fiscal pressures have driven courts to find ways to reduce spending while maintaining operations.\textsuperscript{57} By reducing the costs of record management, proponents hope to bring additional savings in a time of strained budgets.\textsuperscript{58}

Proponents expect a positive fiscal impact from Chapter 167—the Judicial Council and the Legislature each foresee significant long-term savings, while the existing budget will absorb the up-front costs of implementation.\textsuperscript{59} These cost-savings, in addition to the anticipated gains in efficiency, bolster the broad public support for this measure.\textsuperscript{60}

\textbf{V. CONCLUSION}

Chapter 167 is merely one step on the road to bringing California court records into the modern age.\textsuperscript{61}

\textsuperscript{52} See id. at 20 (relating Courthouse News Service’s support for Chapter 167 and electronic records generally, but expressing the need to address potential roadblocks to effective implementation).

\textsuperscript{53} Id. at 12 (“Courthouse News Service’s specific comments go beyond the scope of the present proposal, which simply provides a sound legal foundation for modernizing court records.”).

\textsuperscript{54} Id. at 4 n.3.

\textsuperscript{55} CAL. GOV’T CODE § 68150(c) (amended by Chapter 167).

\textsuperscript{56} ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1926, at 2 (Apr. 14, 2010).

\textsuperscript{57} JUDICIAL COUNCIL REPORT, supra note 26, at 5.

\textsuperscript{58} ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1926, at 2 (Apr. 14, 2010).

\textsuperscript{59} A.O.C. REPORT, supra note 14, at 6; ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1926, at 2 (Apr. 14, 2010).

\textsuperscript{60} See, e.g., AB 1926 FACT SHEET, supra note 9 (“Switching to electronic records as the official records would allow the courts to operate in a more efficient, cost-effective manner.”); see also A.O.C. REPORT, supra note 14, at 2 (“Authorizing records to be created, maintained, and preserved in electronic forms is practical and makes common sense.”).

\textsuperscript{61} See A.O.C. REPORT, supra note 14, at 4 n.3 (“[A] companion proposal for rules to establish standards or guidelines for the creation, maintenance, reproduction, and preservation of court records will be
Now that the Legislature has eliminated one barrier, the Judicial Council must implement a coherent, effective program that realizes the benefits of modern technology.\(^6\) Strong budgetary pressures at the time of Chapter 167’s enactment underscore the cost-saving aspects of the legislation.\(^6\) Additionally, proponents expect modernization to bring improvements in the preservation of vital court records.\(^6\)

Another benefit of Chapter 167 is that California’s judicial branch will better reflect the state’s worldwide reputation as a leader in innovation.\(^6\) While originating court records electronically creates significant advantages within courthouses, the general public may also benefit from the improved access and efficiency that comes with an all-electronic court records system.\(^6\)

\(^6\) See ASSEMBLY COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF AB 1926, at 1 (Mar. 23, 2010) (“This bill . . . requires the Judicial Council to develop standards that will protect the accuracy, integrity, and accessibility of the electronic records.”).

\(^6\) A.O.C. REPORT, supra note 14, at 2.

\(^6\) See AB 1926 FACT SHEET, supra note 9 (citing as a significant justification for electronic records the ability to store records in multiple locations in order to hedge against the impact of disasters). But cf. Reagan, supra note 4 (discussing vulnerabilities in electronic data-storage and examples of over-reliance on technology to preserve vital, irreplaceable information).

\(^6\) ASSEMBLY COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF AB 1926, at 1 (Mar. 23, 2010) (“[T]his bill seeks to bring California’s nineteenth century system of court record preservation into the twenty-first century.”).

\(^6\) Id. at 5.
Chapter 25: One More Step Toward Cityhood for East Los Angeles

Brian E. Hamilton

AB 711 (Calderon); 2010 Stat. Ch. 25 (Effective June 7, 2010).

I. INTRODUCTION

The unincorporated community of East Los Angeles is familiar to many Americans as a symbolic center of Mexican-American culture. An epicenter of the Chicano movement of the 1960s and 1970s, ninety-six percent of today’s residents in East Los Angeles identify as Hispanic. Many of the figures that represent America’s wider Latino culture, including the band Los Lobos, the boxer Oscar De La Hoya, and the actor Edward James Olmos, come from East Los Angeles. East Los Angeles’ low-riders and vibrant murals have also carved a niche in the nation’s popular consciousness of Mexican-American culture.

East Los Angeles’ only traditional public high school, James D. Garfield High School, earned renown as the home of Jaime Escalante’s AP Calculus program, made famous in the film Stand and Deliver. This film helped implant an image of both the problems and the promise of East Los Angeles in the mind of the greater population. Meanwhile, community leaders such as Escalante have sought to distance the community from the harmful effects of stereotypes and low expectations.

1. IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE 86 (2003) (“Los Angeles was home to the largest Mexican community in the world, save Mexico City, and East Los Angeles formed its heart.”).
4. Id.
5. Id.
6. Id.; STAND AND DELIVER (Warner Bros. Pictures 1988). This popular and critically-acclaimed movie depicts Escalante, a Bolivian immigrant and high school mathematics teacher, striving to teach Advanced Placement Calculus in an inner-city high school. Id. Despite the doubts of parents, other teachers, administrators, and the student themselves, the students passed the AP test. Id. The passage rate of the students was so high, and the confidence in the students (and by inference, the community) so low, the students were accused of cheating. Id. They retook the exam and upended perceptions of what they and their community were capable of. Id.
7. See, e.g., Chon Noriega, Chicano Cinema and the Horizon of Expectations: A Discursive Analysis of Recent Film Reviews in the Mainstream, Alternative and Hispanic Press 32-7 (Stanford Ctr. for Chicano Research, Working Paper No. 30, 1990) (describing the film’s impact on perceptions of Hispanic barrios within popular media).
8. Diana Tarango, vice president of the East Los Angeles Resident’s Association (ELARA) states: “We’re a nationally branded area . . . We should be making our own decisions about planting trees on the street or putting up light poles.” Hoag, supra note 2; see also Jaime Escalante & Jack Dirmann, The Jaime Escalante Math Problem, 59 J. NEGRO EDUC. 407, 416 (1990) (“When students of any race, ethnicity, or economic status are expected to work hard, they usually rise to the occasion, devote themselves to the task, and do the work. If
Despite numerous failed efforts to establish cityhood for East Los Angeles, a new push for incorporation has arised. A somewhat recent overhaul of the legislative mechanism for incorporation has helped to make the current drive towards cityhood the most promising yet. Chapter 25 provides the proponents of incorporation with a $45,000 loan to help pay for an essential study to determine the feasibility of incorporation.

East Los Angeles is an unincorporated region in Los Angeles County, situated directly east of the City of Los Angeles. While East Los Angeles is closely associated with the greater Los Angeles area, its nature as an unincorporated community makes it difficult for its nearly 143,000 residents have their needs reflected in the political process.

II. LEGAL BACKGROUND

Carving out a new city from existing political boundaries is an extensive process. The expense and effort of navigating this process requires adequate funding and a well-organized support base. In addition, the proponents of cityhood for East Los Angeles have sought legislative support in completing this process.

A. Mastering the Process of Changing Local Boundaries

The Cortese-Knox-Hertzberg Government Reorganization Act of 2000 revised and updated the previously Byzantine process for creating and changing

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9. BURR REPORT, supra note 3, at 6 (noting that incorporation was sought unsuccessfully in 1961, 1963, and 1974).
11. See generally Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, CAL. GOV’T CODE §§ 56000-56001 (2010) (streamlining and simplifying the incorporation process; this act, discussed in more detail infra, has provided the framework for the current cityhood effort in East Los Angeles).
14. See Daniel B. Wood, East L.A., Latino Heartland, Revives Its Dream of Cityhood, CHRISTIAN SCI. MONITOR, Dec. 9, 2008 at 2 (reciting the belief by proponents that cityhood would result in “better local representation and services—including parks, public safety, street maintenance—captured revenues, and national recognition.”).
15. See BURR REPORT, supra note 3, at 2-5 (detailing the fiscal requirements, consideration factors, and the incorporation process).
16. Id.
17. Patrick McGreevy, Funds OK’d to Explore Cityhood for East L.A., L.A. TIMES, Apr. 27, 2010, at A3; see also ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 711, at 2 (Apr. 29, 2010) (noting that existing law allows the legislature to allocate funds for this purpose).
local government boundaries. These comprehensive reforms created the current framework for incorporation. Under this act, each county has a Local Agency Formation Commission (LAFCO), which is responsible for facilitating the incorporation process. Proponents of incorporation, such as the East Los Angeles Residents Association (ELARA), are responsible for funding the incorporation process and mustering the necessary public and political support. Upon successful completion of the proponent’s application for incorporation, the LAFCO prepares a Comprehensive Fiscal Analysis (CFA). This expansive analysis provides a sweeping understanding of the effect and feasibility of incorporation to those potentially affected. There are other vital steps following the CFA, but the CFA is an extraordinary hurdle for proponents due to its cost and the impact of its conclusions on the subsequent incorporation vote.
B. The Drive for East Los Angeles’ Incorporation

East Los Angeles has unsuccessfully attempted to incorporate three times before, all during the 1960s and the 1970s. Many blamed the failed attempts on either poor organization by the proponents, hostility to the perceived radicalism of the burgeoning Chicano movement, or concern that cityhood would result in new tax burdens.

During the previous campaigns, neither the Los Angeles Board of Supervisors nor the Los Angeles City Council had any Latino members. Now, however, incorporation has broader and more effective support. The current mayor of the City of Los Angeles is Latino, as are four members of the City Council, and one County Supervisor. The increase of Latino elected officials are likely to result in policies that better reflect the particular concerns of the Latino community. Many incorporation supporters expect such officials to be responsive to the arguments in favor of incorporation. There are also numerous supporters on the state level. ELARA has led the incorporation campaign, with assistance and support from the community, politicians, and businesses. Many in this overwhelmingly Latino community feel that control of the local government would “provide much needed representation for Mexican-Americans long marginalized from politics.”

C. The Costs of Incorporation

Despite public support for incorporation, securing funding for the CFA has been difficult. ELARA secured $100,000 of the $145,000 needed to pay for the
Unable to raise more, it reached out to state legislators to secure the remaining funds through emergency legislation. While many politicians actively support the incorporation effort and others agree in principle, some legislators are reluctant to spend state money on a project that is uncertain to come to fruition.

However, supporters point out that the state provided $1.8 million to fund a CFA for the proposed incorporation of the San Fernando Valley (though that effort ultimately failed). Pointing to their own preliminary fiscal analysis and desire for local control, many East Los Angelinos feel that the campaign is both fiscally viable and good policy, and thus would justify the much cheaper $45,000 price tag for their own CFA.

III. CHAPTER 25

Chapter 25 allocates $45,000 from the State’s General Fund to LAFCO for a loan to ELARA. To fund this allocation, Chapter 25 transfers $45,000 from the Environmental Enhancement and Mitigation Program (EEMP) Fund to the General Fund. By transferring funds from EEMP, Chapter 25 originates a loan the new city must repay within two years of its incorporation date. This one-time loan only requires repayment if the proponents of incorporation are successful. If incorporation does not occur, the state will forgive the loan.

Chapter 25 enacts a law that applies only to a specific locality, thus it is considered a “special law” under California’s Constitution. In order to keep the incorporation process within deadlines, and due to ELARA’s contractual
obligations, the Legislature passed Chapter 25 as urgency legislation.\textsuperscript{49} Chapter 25 took effect on June 7, 2010.\textsuperscript{50}

IV. ANALYSIS

While backers of incorporation are passionate in their support, worries exist about the ability to both fund the incorporation process and to create a self-sustaining city.\textsuperscript{51} These worries have led to questions about the underlying wisdom of incorporation.\textsuperscript{52}

A. Paying to Make a New City

Even during a time of intense budget pressures, the Legislature was able to raise the relatively small amount necessary to complete the CFA.\textsuperscript{53} Some opponents of Chapter 25 see ELARA’s inability to raise $45,000 as an indication that the incorporation effort will likely fail.\textsuperscript{54} However, the financial capacity of this organization is not especially salient to the question of whether East Los Angeles should be incorporated as its own city, and community leaders are more concerned with the ability of the new City of East Los Angeles to provide the benefits promised by proponents of incorporation.\textsuperscript{55} The desire for local control over local issues does not necessarily mean an independent city would be better suited to address such local concerns.\textsuperscript{56}

B. Paying to Keep a New City

The CFA required by the Cortese-Knox-Hertzberg Act would permit community members to take a serious look at the costs and benefits of incorporation.\textsuperscript{57} Preliminary studies envision Los Angeles County continuing to

\textsuperscript{49} 2010 Stat. ch. 25, § 3 (enacted by Chapter 25).
\textsuperscript{50} Id.
\textsuperscript{51} See, e.g., Wood, supra note 14 (describing the support for incorporation as well as the worries about the process).
\textsuperscript{52} See, e.g., McGreevy, supra note 17 (depicting the worry of one lawmaker that the new city will not be able to sustain itself).
\textsuperscript{53} ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 711, at 2 (Apr. 29, 2010) (describing how Chapter 25 would deduct the needed funds from a surplus in an unrelated environmental mitigation program).
\textsuperscript{54} McGreevy, supra note 17.
\textsuperscript{55} Joel Russell, Checked In, L.A. BUS. J., Feb. 22, 2010, at 12. Jesse Torres, chief executive of Pan American Bank, the only bank headquartered in East Los Angeles, states that “[i]f it’s feasible, great, because self-governance is great for the community. But if it’s not feasible, people can shift resources to improving the community within the existing political framework. My support is to get it resolved, once and for all. The sooner the association conducts a fiscal analysis, the sooner we’ll know.” Id.
\textsuperscript{56} Wood, supra note 14 (“We don’t have a mayor or city council, so when the community goes to the state capital or Washington to bring back money, nobody is out there fighting for us.”).
\textsuperscript{57} McGreevy, supra note 17.
provide many of the municipal services currently provided. For example, a new City of East Los Angeles would contract with the County to provide police and fire protection, as it does now. Unlike other similar-sized municipalities that create independent public safety services, cities that contract with larger organizations or join forces with neighboring municipalities realize an economy of scale for a quality of service that, without the collective effort, would otherwise be cost-prohibitive. This is but one example of the future city finding the best of both worlds through incorporation.

With its own city government, East Los Angeles could enhance both the quality of the public services and enable more opportunities for participation by the new city’s residents.

The CFA process would provide a more in-depth understanding of a new city’s ability to raise the necessary revenue. Such an analysis is critical in ironing out issues that might arise during the transition to cityhood. While proponents expect that the County of Los Angeles would see a positive fiscal impact if East Los Angeles were to become a city, such a result is not certain.

Also, other constituencies may oppose the formation of a new political entity within greater Los Angeles. Competition for scarce resources at the local, state, and federal levels may cause other political units to view the incorporation of East Los Angeles as a threat to their diminishing resources and seek to prevent incorporation. Moreover, some local leaders feel that the lack of larger

58. See BURR REPORT, supra note 3, at 16-17 (stating that the new city would contract with Los Angeles County for police, fire protection, animal control, and other services).
59. Id. at 16.
61. See, e.g., BURR REPORT, supra note 3, at 29 (noting that a City of East Los Angeles could generate $1.2 million in additional revenue through traffic enforcement alone).
62. See Laurie Reynolds, Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism, 78 WASH. L. REV. 93, 102-3 (2003) (discussing the arguments that “localism” both promotes more efficient services and empowers local communities).
63. BURR REPORT, supra note 3, at 44 (“East Los Angeles appears to be viable as a new city in spite of its relatively modest tax base and the County’s reported subsidy of the area. However, data, legal and political ambiguities create uncertainty as to whether or not a CFA would reach the same conclusion.”).
64. See LAFCO GUIDE, supra note 19, at 23-50 (detailing how, if incorporation succeeds, the CFA becomes the template for the organization of a new city).
65. BURR REPORT, supra note 3, at 43.
66. Mary M. Edwards & Yu Xiao, Annexation, Local Government Spending, and the Complicating Role of Density, 45 URB. AFF. REV. 147, 148 (2009) (explaining “[a]nnexation often is an intensely volatile local issue. As an area of public policy, it is full of potential conflict and hostility, and compromise can be difficult to achieve . . . detachment or the removal of land area from an existing tax or service district has serious consequences on district finances”).
67. See Raphael J. Sonenshein & Tom Hogen-Esch, Bring the State (Government) Back In: Home Rule and the Politics of Secession in Los Angeles and New York City, 41 URB. AFF. REV. 467, 477-78 (2006) (relating the political melodrama between the City of Los Angeles, state government leaders, and surrounding municipalities during the LAFCO CFA process in the unsuccessful campaign for a City of San Fernando).
businesses in East Los Angeles, such as Costco or car dealerships, limits the tax-base of the proposed city.68

V. CONCLUSION

Legislators in Sacramento are concerned that ELARA’s inability to raise sufficient funds on their own suggests a lack of support for the incorporation initiative and insufficient resources to sustain the new city.69

On the other hand, the history of East Los Angeles is largely a history of a community overcoming the burden of low expectations.70 The opponents of past incorporation movements were primarily absentee owners of business along East Los Angeles’ main commercial strip.71 Now, though, locally-owned “mom-and-pop” shops comprise many of the businesses in the commercial corridors of the proposed city.72

While residents of East Los Angeles appear enthusiastic about the prospect of cityhood, economic considerations will likely determine the final outcome of this recent incorporation effort.73 State Senator Gloria Romero expressed the optimism and ganas74 of the community she represents, stating: “We the people of East L.A. have not only stood up, but we have delivered. . . . What a vibrant city East L.A. can be.”75

69. ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT, COMMITTEE ANALYSIS OF AB 711, at 3 (Apr. 29, 2010).
70. See generally LÓPEZ, supra note 1 (discussing the struggle of a community which, though existing long before California’s annexation by the United States in the nineteenth century, has often been treated as second-class or other).
71. Fine, supra note 27 (“A hastily-organized cityhood campaign in 1961 nearly won the day, falling short by just 340 votes. Property owners—many of them absentee landlords—on the community’s main commercial strip, Whittier Boulevard, led the opposition, using the argument that cityhood would lead to higher taxes.”).
72. Becerra, supra note 68.
74. Escalante & Dirman, supra note 8, at 408-09 (“[G]anas . . . translates loosely from Spanish as “desire” or the “wish to succeed . . . .”).
75. Becerra, supra note 68 (referencing, not-so-subtly, STAND AND DELIVER, supra note 6).
Chapter 22: Another Step Toward Curing Constitutional Deficiencies in California’s Prisons

Kirk Wilbur

Code Sections Affected


AB 552 (Solorio); 2010 STAT. Ch. 22 (Effective June 3, 2010).

I. INTRODUCTION

California prisons are severely overcrowded and operate “at almost double their intended capacity.”¹ Some facilities even house three times their intended population.² The California Department of Corrections and Rehabilitation (CDCR) has used temporary beds—beds placed in hallways, classrooms, gyms, and other open spaces—to meet the demands of this immense prison population.³ This dense housing of inmates hastens the spread of infectious illnesses, and renders inmate-on-inmate violence inevitable.⁴

Overcrowding has significant effects on prisoners’ medical care.⁵ In 2005, the District Court for the Northern District of California found that, on average, one inmate died every six to seven days because of constitutional deficiencies in the medical care delivery system.⁶ In Coleman v. Wilson, the court found that CDCR’s lack of adequate screening mechanisms for mentally ill inmates and delays in transferring inmates to mental health facilities constituted Eighth Amendment violations.⁷

Chapter 22 addresses the health care problems created by California’s overcrowded prisons by making substantive and technical changes to the law, permitting construction of 1,722 health care beds at a prison facility in Stockton.⁸

². Id. at *40.
³. Id.; SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 552, at C (Mar. 23, 2010).
⁶. Id. at *25.
⁸. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 552, at 3 (May 21, 2010).
II. LEGAL BACKGROUND

Chapter 22 modifies the Public Safety and Offender Rehabilitation Services Act of 2007. That Act was largely a response to years of litigation relating to prisoners’ physical, mental, and dental health treatment, and non-compliance with the Americans with Disability Act (ADA) in California prisons.

A. Plata v. Schwarzenegger and Related Litigation

On April 5, 2001, Marciano Plata and other California prisoners filed a class action lawsuit against then-Governor Gray Davis in federal court, alleging substandard healthcare in the California prison system. Judge Thelton Henderson found that medical treatment at CDCR facilities violated the Eighth Amendment by seriously threatening inmates with harm or death. Among other constitutional inadequacies, the court found a lack of medical leadership at nearly all CDCR facilities. The court also noted a lack of qualified medical staff, with an 80% vacancy rate in high-level management positions and 20% to 50% of physicians providing poor, or even grossly negligent, medical treatment to prisoners. As a result of these and other constitutional violations, as well as the State’s failure to comply with court orders to remedy constitutional inadequacies, Judge Henderson placed CDCR’s health care system under federal receivership.

In addition to overseeing efforts to remedy the health care violations in Plata, the Receiver must also oversee remedial efforts related to three other cases: Coleman v. Wilson, Perez v. Tilton, and Armstrong v. Schwarzenegger. In
Coleman v. Wilson, the court found that CDCR lacked (and has lacked since 1987) adequate means of screening prisoners for mental illness at intake. In Perez v. Tilton, Carlos Perez and other prisoners sued the Secretary of CDCR, alleging that dental care in California prisons was constitutionally deficient. In Armstrong v. Davis, the court found widespread discrimination against disabled prisoners in violation of the ADA and the Rehabilitation Act of 1973. The Armstrong court held that CDCR violated the ADA when it failed to make restrooms and showers in county jails handicap-accessible and did not provide mobility-impaired inmates with canes or wheelchairs.

In January 2007, the judges in Plata, Coleman, and Perez issued an order requiring the federal receiver in Plata, the special master in Coleman, and a court appointed representative in Perez to hold monthly meetings to coordinate their remedial efforts to complement one another, with the intent of reducing duplication and excessive use of taxpayer money. The Armstrong court later joined these coordinating efforts. These individuals continue to meet regularly in an effort to implement remedial efforts for medical, dental, and mental health care issues, as well as ADA compliance.

B. The Public Safety and Offender Rehabilitation Services Act of 2007

Facing the threat of federal orders to cap inmate population in Plata, Coleman, and Armstrong, in 2007, the California Legislature passed the Public Safety and Offender Rehabilitation Services Act (the “Rehabilitation Services Act”). The Rehabilitation Services Act authorized lease-revenue bond financing to construct new inmate beds, broken down into two phases. Phase I authorized

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21. Armstrong v. Davis, 275 F.3d 849, 854 (9th Cir. 2001). Armstrong was first filed against then-Governor Wilson in 1994 and continues to be litigated as Armstrong v. Schwarzenegger. Id.
24. CALIFORNIA PRISON HEALTH CARE SERVICES, supra note 23.
25. Id.
27. See generally id. at 1-4 (describing in detail the operation of the two phases of the Rehabilitation Services Act).
funding for additional inmate beds in state prisons and county jails and instituted a series of anti-recidivism and rehabilitation measures. 28 Phase II authorized additional inmate beds, but conditioned funding for these beds on compliance with the anti-recidivism measures of Phase I. 29

1. Phase I

Phase I of the Rehabilitation Services Act authorized $3.6 billion in lease-revenue bond financing for 24,000 new beds in state prisons. 30 Among these were 12,000 infill beds (intended to replace temporary beds), 31 6,000 re-entry facility beds (intended for inmates housed at small, secure facilities who have less than one year left to serve), 32 and 6,000 beds for medical, dental, and mental health care treatment. 33 Phase I additionally authorized $750 million for the creation of 8,000 county jail beds. 34

Phase I also established a number of anti-recidivism and rehabilitation initiatives in an effort to reduce the problem of prison overcrowding. 35 These initiatives increased the availability of substance abuse treatment, work and educational programs, and mental health care, 36 sought to address staffing deficiencies, 37 and created the California Rehabilitation Oversight Board. 38

28 Id. at 1-2.
29 Id. at 3-4.
30 CAL. GOV’T CODE §§ 15819.40(a)-(c), 15189.403(a) (West 2009).
31 Id. § 15819.40(a)(1)(A). “Infill” refers to the process of developing (or filling in) unoccupied spaces within particular areas. In the context of the Rehabilitation Services Act, infill is the process of constructing beds in underutilized areas of existing correctional facilities. California Department of Corrections and Rehabilitation, AB 900: Providing Solutions - Progress in Action, http://www.cdcr.ca.gov/News/AB_900_Achvements/Providing_Solutions.html (last visited Apr. 4, 2011) (on file with the McGeorge Law Review).
32 Id. § 15819.40(b).
33 Id. § 15819.40(c).
34 Id. § 15820.903(a); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 900, at 4 (Apr. 26, 2007).
36 See CAL. GOV’T CODE § 15819.40(a)(2) (requiring that all beds include treatment for substance abuse, work programs, academic and vocational opportunities, and mental health care); CAL. PENAL CODE § 2694 (West Supp. 2010) (requiring creation of 4,000 additional substance abuse treatment beds); id. § 3020 (requiring implementation of an individualized needs assessment for inmates); id. § 3105 (requiring creation of a prison-to-employment program to ensure successful re-entry and employment for prisoners); id. § 3073 (requiring creation of mental health day programs for parolees); id. § 2054.2 (requiring creation of an incentive program to increase participation in educational programs); id. § 10007 (authorizing use of portable buildings to ensure adequate space for treatment and rehabilitation programs).
37 See CAL. PENAL CODE § 2062(a)(1)-(4) (requiring staffing plans to fill vacant staff positions and address other staffing deficiencies).
38 Id. §§ 6140-6141.
2. **Phase II**

The second phase of the Rehabilitation Services Act authorized the creation of 16,000 additional state prison beds, but conditioned funding for these beds upon CDCR fulfilling thirteen statutorily created criteria. Phase II authorizes $2.5 billion in lease-revenue bond financing for 4,000 infill beds, 10,000 re-entry beds, and 2,000 medical, dental, and mental health care beds (a total of 16,000). However, Phase II prohibits the State Public Works Board from releasing these funds until CDCR meets the criteria designed to ensure compliance with the anti-recidivism and rehabilitation initiatives enumerated in Phase I.

These criteria include requirements that 4,000 of the 12,000 infill beds that Phase I authorized must be under construction or sited, at least 2,000 re-entry beds are under construction or sited, and 2,000 of the mandated 4,000 drug treatment spaces be established. These criteria also require, among other things, that CDCR serve at least 300 parolees a month at mental-health day centers and that CDCR establish a plan to deal with management deficiencies. Only upon the three-person panel finding that all thirteen criteria are met, may the State Public Works Board release funding for Phase II construction to CDCR.

C. **Compromise Between Federal Receiver and CDCR for New Health Care Prison**

On October 20, 2009, Receiver J. Clark Kelso and CDCR Secretary Matthew Cate signed a joint resolution for the construction of the California Health Care Facility in Stockton, intended to house 1,734 beds serving prisoners’ medical and mental health care needs. However, in February 2010, the Public Works Board pulled the review of the Health Care Facility from its agenda at the behest of the

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39. CAL. GOV’T CODE § 15819.41(a)-(c); CAL. PENAL CODE § 7021(a).
40. CAL. GOV’T CODE §§ 15819.41, 15819.413.
41. CAL PENAL CODE § 7021(a)(1)-(13).
42. Id. § 7021(a)(1).
43. Id. § 7021(a)(3). “Sited” in this context refers to setting aside land for the construction of these beds. See BLACK’S LAW DICTIONARY 1420 (8th ed. 2004) (defining “site” as “a piece of property set aside for a specific use”).
44. Id. § 7021(a)(4).
45. Id. § 7021(a)(8).
46. Id. § 7021(a)(10).
47. Id. § 7021(a). The three members of the panel which determines compliance with section 7021(a)(1)-(13) are the State Auditor, the General Inspector, and an appointee of the Judicial Council of California. Id.
Joint Legislative Budget Committee. Shortly thereafter, Assembly Member Solorio introduced Chapter 22 to clarify use of AB 900 bond funding to finance the Health Care Facility.

III. CHAPTER 22

Chapter 22 provides that CDCR may create up to 12,000 new inmate beds to accommodate inmates who require mental health services and medical services. Beds constructed for mental health or medical services must be accompanied by rehabilitative programming, including educational and vocational programs, drug treatment programs, employment programs, and prerelease planning. Chapter 22 also allows CDCR to renovate existing facilities to provide medical, dental, and mental health services.

Additionally, Chapter 22 amends Government Code section 15819.41, authorizing CDCR to construct or renovate housing units to add an additional 4,000 inmate beds, permitting CDCR to provide these beds for medical and mental health services along with rehabilitative programming support.

Chapter 22 also authorizes the State Public Works Board to enlarge funding for the additional 12,000 beds authorized by Government Code section 15819.40 and the 4,000 beds authorized by section 15819.41.

Finally, Chapter 22 revises one of the thirteen prerequisites under Penal Code section 7021, by requiring that at least 4,000 of the 12,000 beds authorized by Government Code section 15819.40(a) must be established before the State Public Works Board may release funds to CDCR for projects permitted under existing law.

IV. ANALYSIS

Chapter 22 permits CDCR to allocate AB 900 bond funding to create California Health Care Facility-Stockton (CHCFS), which will have a 1,722-bed

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51. CAL. GOV’T CODE § 15819.40(a)(4) (amended by Chapter 22).

52. Id.

53. Id. § 15819.40(b)-(c) (amended by Chapter 22).

54. Id. § 15819.41(a) (amended by Chapter 22).

55. Id. §§ 15819.401, 15819.411 (amended by Chapter 22).

56. CAL. PENAL CODE § 7021(a)(1) (amended by Chapter 22). The previous version of section 7021 had required that the 4,000 beds authorized under Government Code section 15819.41 be under construction. Id. § 7021 (West Supp. 2010).
capacity. By amending the Rehabilitation Services Act to allow renovation of existing facilities, Chapter 22 permits CDCR to develop the CHCFS at the former Karl Holton Youth Correctional Facility. Officials expect contractors to finish the renovations in three years. Proponents argue that renovating existing facilities cuts expenses because renovation usually costs less than new construction.

Supporters claim that CHFCS is necessary because the treatment of ill prisoners is a matter of basic decency and because it is necessary to ensure that prisoners do not bring their illnesses into California communities upon their release. The federal Receiver has said that CHFCS “brings California one step closer to complying with federal court orders for inmate health care.” Such compliance with court orders is essential to terminate the receivership and restore control over prison health care to CDCR. Thus, proponents argue that Chapter 22 aids in cutting the operational costs of the receivership.

Proponents also argue that construction of CHFCS will be a boon to the San Joaquin County economy. Supporters claim that construction will support upwards of 5,500 local jobs and introduce $220 million into the San Joaquin County economy each year. Furthermore, San Joaquin County could obtain as much as $1 million in sales tax revenue from supplies the contractors will use to convert the former youth correctional facility to California Health Care Facility-Stockton.

CDCR also estimates that by altering Phase II criteria to require that 4,000 beds be “established” instead of “under construction,” Chapter 22 will result in CDCR completing Phase II projects twelve-to-eighteen months earlier than under AB 900. This is because the amendment permits release of Phase II funding

57. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 552, at 3 (May 21, 2010).
59. Press Release, supra note 58.
60. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 552, at 2 (Apr. 26, 2010).
63. Id.
64. Id.
65. Press Release, supra note 58 (discussing economic benefits relating to job creation and tax revenue).
66. Id.
67. Id.
68. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 552, at 3 (Apr. 26, 2010).
Once CDCR is functionally committed to a construction project, rather than once the project is completed.  

Doubts exist regarding the alleged benefits of Chapter 22, however. At least one commentator has noted that the economic benefits of CHCFS are far from certain, as the facility may “siphon health care professionals from other hospitals” and employees may not spend locally-earned wages in the San Joaquin community. The Service Employees International Union Local 1000 has voiced opposition to Chapter 22, citing CDCR’s failure to adequately implement rehabilitation programs thus far under AB 900.

V. CONCLUSION

Chapter 22 permits allocation of AB 900 bond funds for the renovation of existing facilities. This authorizes CDCR to house health care beds at the California Health Care Facility-Stockton in accordance with the 2009 agreement between the federal Receiver and CDCR. Chapter 22 also allows the State Public Works Board to potentially release funding for Phase II beds twelve-to-eighteen months earlier, because CDCR meets the criteria when it establishes 4,000 beds, rather than when it initiates construction. While Chapter 22 may be a step in the right direction, the legal battle over prison overcrowding and health care will likely continue well into the future, including a pending case in front of the United States Supreme Court to determine whether the federal judiciary can order the reduction of California’s inmate population.

69. Id.
71. Id.
73. CAL. GOV’T CODE § 15819.40(c) (amended by Chapter 22).
74. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 552, at 3 (May 21, 2010).
75. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 552, at 3 (Apr. 26, 2010).
76. Press Release, supra note 58 (stating that CHCFS brings California one step closer to complying with federal court orders).