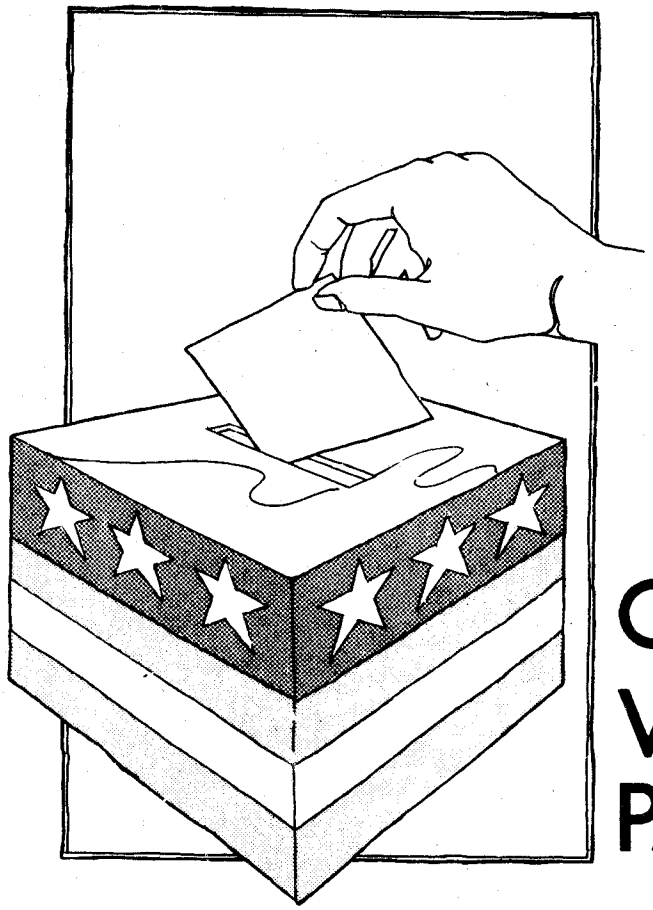
1978

Voter Information Guide for 1978, General Election



CALIFORNIA VOTERS PAMPHLET

GENERAL ELECTION NOVEMBER 7, 1978

COMPILED BY MARCH FONG EU · SECRETARY OF STATE

ANALYSES BY WILLIAM G. HAMM · LEGISLATIVE ANALYST

AVISO

Una traducción al español de este folleto del votante puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 24 y 25. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 27 de octubre de 1978.

NOTICE

A Spanish translation of this ballot pamphlet may be obtained by completing and returning the postage-paid card which you will find between pages 24 and 25. Please PRINT your name and mailing address on the card and return it no later than October 27, 1978.

Secretary of State

SACRAMENTO 95814

Estimados Californianos:

Esta es la versión en inglés del folleto del votante de California para la Elección General de noviembre de 1978. Contiene el título de la balota, un corto resumen, el análisis del Analista Legislativo, los razonamientos a favor y en contra y las refutaciones, y el texto completo de cada proposición; y también contiene el voto legislativo vertido a favor y en contra de toda medida propuesta por la Legislatura.

Si desea recibir un folleto del votante en español, simplemente complete y envíe la tarjeta adjunta entre las páginas 24 y 25. No se necesitan estampillas.

Lea cuidadosamente cada una de las medidas y la información respecto a las mismas contenidas en este folleto. Las proposiciones legislativas y las iniciativas patrocinadas por ciudadanos están diseñadas específicamente para darle a Ud., el votante, la oportunidad de influir las leyes que nos gobiernan a todos.

Aproveche esta oportunidad y vote el 7 de noviembre de 1978.

SECRETARIA DEL ESTADO

Secretary of State

SACRAMENTO 95814

Dear Californians:

This is the English version of the California ballot pamphlet for the November, 1978, General Election. It contains the ballot title, short summary, the Legislative Analyst's analysis, the pro and con arguments and rebuttals, and the complete text of each proposition; also it contains the legislative vote cast for and against any measure proposed by the Legislature.

If you wish to receive a Spanish language ballot pamphlet simply fill out and mail the card enclosed between pages 24 and 25. No postage is needed.

Read carefully each of the measures and the information about them contained in this pamphlet. Legislative propositions and citizen-sponsored initiatives are designed specifically to give you, the electorate, the opportunity to influence the laws which regulate us all.

Take advantage of this opportunity and vote on November 7, 1978.

SECRETARY OF STATE

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QUESTIONS AND ANSWERS ABOUT VOTING

Q—Who can answer questions about voter registration, voting, or elections?
A—Each county in California has a county clerk or a registrar of voters who can answer questions concerning registration, voting, or elections. The telephone number of the clerk or registrar is listed in the white pages of your telephone directory under the listings for county offices.

Q—Who can vote?
A—You can vote at the General Election on November 7, 1978, only if you have registered to vote by October 9, 1978.

Q—Who can register to vote?
A—You can register to vote if you:
- are at least 18 years of age on election day,
- are a citizen of the United States,
- are a resident of California, and
- are not imprisoned or on parole for the conviction of a felony.

Q—How can I register to vote?
A—You can register to vote at the office of the clerk or registrar in the county where you live, or at various other publicized locations throughout the state. You can register in person, or fill out a registration-by-mail form and drop it in a mailbox. Registration-by-mail forms may be obtained by writing your clerk or registrar.

However, you *must* register by October 9, 1978, in order to vote in the General Election held November 7, 1978.

When you register, you must provide:
- your name,
- your present address,
- your occupation,
- your date of birth, and
- where you were born.

Q—Do I have to belong to one of the four "qualified" political parties in order to register to vote? (The "qualified" political parties in California are American Independent Party, Democratic Party, Peace and Freedom Party, and Republican Party.)
A—No. If you do not want to, or if you are not sure, you can check the "decline to state" space on the form, or you may write in the name of any other party that you want to register with in the space labeled "other."

Q—If I don't indicate my political party when I register, can I still vote in every election?
A—Yes. The only thing you cannot vote on is which candidate will be a political party's choice in a Primary Election.

For example: Only people who register as Republicans can vote in the Primary Election to select Republican Party candidates for the November General Election. Primary Elections are held in June of even-numbered years. You *can* still vote on all the nonpartisan offices and whatever measures appear on the ballot.

Q—If I have picked a party, can I change it later?
A—Yes, but you must register again.

Q—Can I still vote in the November General Election if I am registered but I move between October 10 and election day?
A—Yes, but you must vote at the polling place where you would vote if you had not moved, or by "absentee ballot."

Q—If I have been convicted of a crime, can I register to vote?
A—Yes, unless you are imprisoned or on parole for conviction of a felony.

Q—What information will I get before the election?
A—You should get this "California Voters Pamphlet" and a mailing containing a sample ballot and related material.

This Voters Pamphlet gives you information on all statewide measures to be voted on. The sample ballot gives you information on the candidates you will vote for and any local measures.

Q—Where do I go to vote?
A—Your polling place address is printed in the material you receive with your sample ballot.

Q—If I don't know what to do when I get to my polling place, is there someone there to help me?
A—Yes, the workers at the polling place will help you. If they cannot help you, call your clerk or registrar.

Q—When do I vote?
A—The General Election will be Tuesday, November 7, 1978. Your polling place is open from 7 a.m. to 8 p.m. that day.

Q—What do I do if my polling place is not open?
A—Call your clerk or registrar.

Q—Can I take my sample ballot into the voting booth even if I've written on it?
A—Yes.

Q—What do I do if I cannot work the voting machine?
A—Ask the polling place workers, and they will help you.

Q—Can a worker at the polling place ask me to take any test?
A—No.

Q—Can I take time off from my job to vote on election day?

A—Yes, you may take time off if you do not have enough time outside of working hours to vote. You may take off enough working time which, when added to the voting time available outside of working hours, will enable you to vote. The time must be at the beginning or end of your regular work shift and may not be more than two hours without loss of pay. You must tell your employer at least two working days before the election if you need time off.

Q—Can I vote if I know I will be away from home on election day?

A—Yes. You can vote early by:

- going to the office of your clerk or registrar and voting there; or
- mailing in the application form for an absentee ballot sent with your sample ballot.

Q—What if I do not have an application form?

A—You can send a letter or postcard asking for an absentee ballot. This letter or postcard should be sent to your clerk or registrar. The request for an absentee ballot must be *received* by the clerk or registrar by October 31, 1978.

Q—What do I say when I ask for an absentee ballot?

A—You must write:

- that you need to vote early;
- the reason for the request—such as absence from your precinct;
- your address when you registered to vote;
- the address where you want the ballot mailed;
- your signature, and also print your name underneath.

Q—If I have a physical handicap which makes it difficult to vote in person, can I vote absentee?

A—Yes. Call or write your clerk or registrar after October 9 to request an absentee ballot.

Q—If I am injured or disabled and go into a hospital or nursing home *after* the October 31 deadline can I still vote?

A—Yes. You can sign a special request asking the clerk or registrar to deliver an absentee ballot to you or your representative. Call your clerk or registrar for details.

Q—When do I mail my absentee ballot back to the clerk or registrar?

A—You can mail your absentee ballot back as soon as you want. You must be sure your absentee ballot gets to the clerk or registrar's office from where it was sent by 8 p.m. on election day, November 7, 1978. Or you may leave the absentee ballot with any polling place worker before the polls close in the county where you are registered.

IF YOU HAVE OTHER QUESTIONS ON VOTING, CALL YOUR COUNTY CLERK OR REGISTRAR OF VOTERS.

Vote on Election Day
November 7, 1978

1 Veterans Bond Act of 1978

Official Title and Summary Prepared by the Attorney General

FOR THE VETERANS BOND ACT OF 1978. This Act provides for a bond issue of five hundred million dollars ($500,000,000) to provide farm and home aid for California veterans.	
AGAINST THE VETERANS BOND ACT OF 1978. This Act provides for a bond issue of five hundred million dollars ($500,000,000) to provide farm and home aid for California veterans.	

FINAL VOTE CAST BY LEGISLATURE ON AB 340 (PROPOSITION 1)

Assembly—Ayes, 73 Noes, 0

Senate—Ayes, 30 Noes, 3

Analysis by Legislative Analyst

Background:

Since 1921, the state has been authorized to sell bonds in order to finance the veterans' farm and home loan programs. The proceeds from the bond sales are used by the Department of Veterans Affairs to purchase farms, homes and mobilehomes on behalf of qualified California veterans. These properties are then resold to the veterans. Each participating veteran makes monthly payments designed to (1) reimburse the department for the costs it incurs in purchasing the farm, home or mobilehome, (2) cover all costs resulting from the sale of the bonds, including the bond interest, and (3) cover the costs of operating the loan program. Because the state is able to borrow at interest rates that are well below those charged individuals, the monthly payments in purchasing a home under this program are less than what a veteran would otherwise pay.

The total amount of bonds authorized for this program by the electorate since 1921 is nearly $3.4 billion. In each case, the state guarantees the bondholder that the amount borrowed as well as interest on this amount, will be repaid.

Proposal:

This proposition, the Veterans Bond Act of 1978, would authorize the issuance and sale of $500 million of state bonds to continue the loan program. These bonds would be fully backed by the state.

Fiscal Effect:

Assuming the proposed bonds are sold at an average interest rate of 5.75 percent and are paid off over 25-year period, the total interest cost on the bonds would be about $403 million.

The extent to which the state would incur any net costs under the proposition would depend on how much was recovered from veterans through monthly payments. If payments by veterans participating in the farm and home loan program did not cover the costs of the bonds, the state's taxpayers would be required to pay the difference. However, the loan program has been totally supported throughout its history by the participating veterans at no cost to the general taxpayer.

Study the Issues Carefully

This law proposed by Assembly Bill No. 340 (Statutes of 1978, Chapter 215) is submitted to the people in accordance with the provisions of Article XVI of the Constitution.

This proposed law does not expressly amend any existing law; therefore, the provisions thereof are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Article 5n (commencing with Section 998.021) is added to Chapter 6 of Division 4 of the Military and Veterans Code, to read:

Article 5n. Veterans Bond Act of 1978

998.021. This article may be cited as the Veterans Bond Act of 1978.

998.022. The State General Obligation Bond Law, except as otherwise provided herein, is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this article, and the provisions of that law are included in this article as though set out in full in this article. All references in this article to "herein" shall be deemed to refer both to this article and such law.

998.023. As used in this article and for the purposes of this article as used in the State General Obligation Bond Law, Chapter 4 (commencing with Section 16720), Part 3, Division 4, Title 2 of the Government Code, the following words shall have the following meanings:

(a) "Bond" means veterans bond, a state general obligation bond issued pursuant to this article adopting the provisions of the State General Obligation Bond Law.

(b) "Committee" means the Veterans' Finance Committee of 1943, created by Section 991.

(c) "Board" means the Department of Veterans Affairs.

(d) "Fund" means the Veterans' Farm and Home Building Fund of 1943 created by Section 988.

(e) "Bond Act" means this article authorizing the issuance of state general obligation bonds and adopting Chapter 4 (commencing with Section 16720), Part 3, Division 4, Title 2 of the Government Code by reference.

998.024. For the purpose of creating a fund to provide farm and home aid for veterans in accordance with the provisions of the Veterans' Farm and Home Purchase Act of 1974 and of all acts amendatory thereof and supplemental thereto, the Veterans' Finance Committee of 1943, created by Section 991, shall be and hereby is authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of five hundred million dollars ($500,000,000), in the manner provided herein, but not otherwise, nor in excess thereof.

998.025. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereof.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the principal and interest on such bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collections of such revenue, to do and perform each and every act which shall be necessary to collect such additional sum.

On the several dates on which funds are remitted pursuant to Section 16676 of the Government Code for the payment of the then maturing principal and interest of the bonds in each fiscal year, there shall be returned into the General Fund in the State Treasury, all of the money in the Veterans' Farm and Home Building Fund of 1943, not in excess of the principal of, and interest on, such bonds then due and payable, except as hereinafter provided for the prior redemption of such bonds, and, in the event such money so returned on said remittance dates is less than such principal and interest then due and payable, then the balance remaining unpaid shall be returned into the General Fund in the State Treasury out of the Veterans' Farm and Home Building Fund of 1943 as soon thereafter as it shall become available, together with interest thereon from such dates of maturity until so returned at the same rate as borne by such bonds, compounded semiannually.

998.026. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this article, such an amount as will equal the following:

(a) Such sum annually as will be necessary to pay the principal of, and the interest on, the bonds issued and sold pursuant to the provisions of this article, as such principal and interest become due and payable.

(b) Such sum as is necessary to carry out the provisions of Section 998.027, which sum is appropriated without regard to fiscal years.

998.027. For the purposes of carrying out the provisions of this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which have been authorized to be sold for the purpose of carrying out this article. Any amounts withdrawn shall be deposited in the Veterans' Farm and Home Building Fund of 1943. Any moneys made available under this article to the board shall be returned by the board to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this article, together with interest at the rate of interest fixed in the bonds so sold.

998.028. Upon request of the Department of Veterans Affairs, supported by a statement of the plans and projects of such department with respect thereto, and approved by the Governor, the Veterans' Finance Committee of 1943 shall determine whether or not it is necessary or desirable to issue any bonds authorized under this article in order to carry such plans and projects into execution, and, if so, the amount of bonds then to be issued and sold. Successive issues of bonds may be authorized and sold to carry out said plans and projects progressively, and it shall not be necessary that all the bonds herein authorized to be issued shall be sold at any one time.

998.029. So long as any bonds authorized under this article may be outstanding, the Director of Veterans Affairs shall cause to be made at the close of each fiscal year, a survey of the financial condition of the Division of Farm and Home Purchases, together with a projection of the division's operations, such survey to be made by an independent public accountant of recognized standing. The results of such surveys and projections shall be set forth in written reports, and such independent public accountant shall forward copies of such

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1 Veterans Bond Act of 1978

Argument in Favor of Proposition 1

There are 3.5 million veterans residing in California. The largest number, 900,000, served in the military during the Vietnam era. The smallest number, about 100, served in the Spanish-American War. More than 70,000 of our veterans are women.

For more than half a century, the people of California have recognized the special debt we owe those who have served our country in the armed forces.

One way is the Cal-Vet loan program, which enables California veterans to obtain low-interest loans for the purchase of conventional homes, mobilehomes and farms *without costing the taxpayers of California one cent.*

This program is made possible through voter-approved general obligation bonds. *It is totally self-supporting.* Since 1921, and through 16 previous bond issues, all costs have been paid out of the interest revenues from the veterans holding loans. *There have never been any costs to the taxpayers of California.*

All the taxpayers of California, veterans and non-veterans, benefit greatly from the Cal-Vet program. A healthy housing industry sends a beneficial ripple through the entire economy. Thousands of California jobs and millions of dollars in payroll are directly linked to Cal-Vet home loans.

More than 320,000 California veterans—including those who served in World War I, World War II, Korea and Vietnam—have become farm and homeowners due to the Cal-Vet program.

This is an era of scarce housing at high prices. Your "yes" vote on Proposition 1, the "Veterans Bond Act of 1978," will enable more of our veterans to buy homes in California *at no cost to the taxpayers.*

BOB HOPE
Entertainer

JACK R. FENTON
Member of the Assembly, 59th District

RICHARD ALATORRE
Member of the Assembly, 55th District

Rebuttal to Argument in Favor of Proposition 1

Why should California continue this seemingly never-ending program that closely parallels the federal "VA" loan program operated for *all* military veterans by the Veterans Administration? The total number of these loans made in more than 50 years is less than one tenth of the veteran population in California today. Although it has been beneficial to this small percentage of California veterans, is it equitable to operate a special program for a very small percentage of Californians—and one virtually duplicated on the federal level?

As the proponents point out, the Cal-Vet loan program has existed for 57 years and 16 previous bond issues. During this time the military environment has greatly changed. From the poorly housed, low-paid serviceman of previous wars we now have a professional, well paid, all-volunteer military establishment.

In this "era of scarce housing at high prices" the proponents cite, are we being equitable to *all* California homeowners by providing a 5.6% interest rate for California veterans while all other California home buyers are forced to pay rates approaching 10%?

It is time to ease out of this increasingly outdated government program by voting NO on Proposition No. 1.

DENNIS E. CARPENTER
State Senator, 36th District

Argument Against Proposition 1

While the contributions of California's military veterans deserve to be recognized, the primary question raised by Proposition No. 1 is whether or not continuing the practice of providing lower interest rates for *all* California military veterans is the correct or equitable way of recognition. I contend that the time has come to ease out of this program for the following reasons.

First, it is necessary to note that only those persons whose permanent residence was in California when they joined the military are eligible for Cal-Vet loans. Therefore, those veterans who have chosen to make California their residence *after* they served in the military are not eligible for loans.

Second, the majority of military veterans have *not* served in actual military combat nor were they placed in a position of real danger to their lives. For example, 900,000 Californians served in the military during the Vietnam *era.* Only 276,000 of these veterans served in the Vietnam *war zone,* the majority in clerical and maintenance positions, not in actual combat. However, all of these veterans are eligible for the current 5.6% Cal-Vet interest rate on homes, mobilehomes or farms they purchase. Non-veterans must pay the current interest rate of 9.75%. The federal Veterans Administration will continue to provide lower interest rates for *all* veterans purchasing a home.

Finally, Proposition No. 1 would double the funds authorized for Cal-Vet loans, bringing the total to $1 Billion in the past 2 years. Yet with the liberalization of loan criteria enacted by the legislature last year, the Department of Veterans Affairs estimates Proposition No. 1 will not provide enough funds to operate the program until the next election in 1980, when you will undoubtedly be asked to approve another and perhaps larger bond issue.

California veterans do deserve to be recognized. However, the advantages received through a lower interest rate of a Cal-Vet loan is not providing equity to other California homeowners who may do service to our country through other means. If we provide lower interest rates for these persons, then other potential California homeowners should receive a lower interest rate. For these reasons, I urge a NO vote on Proposition No. 1.

DENNIS E. CARPENTER
State Senator, 36th District

Rebuttal to Argument Against Proposition 1

On November 7, 1922, the people of California authorized the first Cal-Vet bond issue in the amount of $10 million.

It was an expression of gratitude to the residents of our state whose lives had been disrupted by military service during World War I. The citizens of California recognized the special debt owed to their neighbors who made great personal sacrifices in the service of the nation.

We have never failed to honor that commitment. Approval of Proposition 1—on the 56th anniversary of the Cal-Vet program—will prove once again that Californians keep their promises to the men and women who perform the duty of defending our state and country.

Since the inception of Cal-Vet, voters have approved $3.385 billion in bonds to give veterans an opportunity to buy homes and farms. The bonds are self-liquidating, retired through payments made by the veterans themselves. The Cal-Vet home loan program *has never cost the taxpayers of California one cent.*

State Treasurer Jess Unruh has described Cal-Vet as *"one of the soundest housing programs in the nation."*

But as the bonds are issued and repaid, new ones must be authorized to keep the self-supporting program rolling. That's the purpose of Proposition 1.

California economists are predicting a slowdown in new housing growth and a rising inventory of unsold homes. This poses a danger to the economy. But the proven and efficient Cal-Vet Program can help build the homes people need and make it possible for families to move into those already constructed.

Your *"YES"* vote on Proposition 1 will help veterans and the economy.

JACK R. FENTON
Member of the Assembly, 59th District

RICHARD ALATORRE
Member of the Assembly, 55th District

2 Public Utilities Commission

Official Title and Summary Prepared by the Attorney General

PUBLIC UTILITIES COMMISSION. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Deletes constitutional authorization for the Public Utilities Commission to designate a commissioner to hold a hearing or investigation or issue an order subject to Commission approval. Financial impact: No direct effect on state spending or revenues; however, legislative implementation of this measure might result in relatively minor increase in state spending.

FINAL VOTE CAST BY LEGISLATURE ON ACA 34 (PROPOSITION 2)

Assembly—Ayes, 77 Noes, 0

Senate—Ayes, 27 Noes, 2

Analysis by Legislative Analyst

Background:

Unlike most state administrative agencies, the five-member Public Utilities Commission was established by the State Constitution rather than by an act of the Legislature. The Constitution provides that any commissioner, as designated by the commission, may conduct a hearing or investigation, or issue an order subject to final approval by the commission. This constitutional provision may not be changed by legislation.

Using this existing constitutional authority, the commission generally assigns all hearings and investigations to one or more commissioners who then issue individual orders subject to approval by a majority of the commission members. Approximately 1,000 formal administrative actions are allocated annually among the commissioners and processed in this manner.

Proposal:

This proposition would eliminate the commission's specific constitutional authority to designate any commissioner to hold a hearing or investigation, or issue an order subject to commission approval.

Fiscal Effect:

This proposition eliminates constitutional authority but does not *require* any change in existing procedures. Thus, it would not have a direct effect on state spending or revenues. The proposition, however, would allow the Legislature to change existing commission procedures for hearings, investigations and issuance of orders, and such changes could affect state spending. For example, if the Legislature enacted a law requiring the presence of more commissioners during hearings and investigations than the commission now requires, the result might be increased administrative costs. However, we believe any fiscal effect would be relatively minor.

Apply for Your Absentee Ballot Early

This amendment proposed by Assembly Constitutional Amendment No. 34 (Statutes of 1978, Resolution Chapter 6) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~.

PROPOSED AMENDMENT TO ARTICLE XII

SEC. 2. Subject to statute and due process, the commission may establish its own procedures. ~~Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval.~~

2 Public Utilities Commission

Argument in Favor of Proposition 2

Should one man, a political appointee accountable to no one, have effectively total power to determine how much you and I pay for utilities? Should this individual be allowed to operate behind closed doors, free to inject his own personal bias into any proposed decision to increase utility rates? Should five such individuals be left free to engage in "horsetrading," swapping favorable decisions on rate hikes in return for future favors?

Well, that's the way the State Public Utilities Commission could operate.

Right now, utility requests for rate hikes are divided up among the five members of the Public Utilities Commission, with each request becoming the "property" of one commissioner. Then, after a non-partisan, civil service Administrative Law Judge has conducted an investigation and proposed a decision, that one commissioner is free to make any changes he wishes in the proposed decision—before the public, the other commissioners or anyone else has a chance to see it.

This system perverts good decision making. It gives each commissioner a proprietary interest in "his" cases. It enables him to substitute his views for those of the impartial Administrative Law Judge and to bias the proposed decision. It could lead to "horsetrading" between the various commissioners, as each tries to win approval for "his" proposal.

There *is* a better way.

Proposition 2 would eliminate the constitutional authority for the PUC to divide up utility rate hike requests among the individual commissioners. It would force the commission to consider and act on all rate hike requests as a body, without giving any one commissioner the power or opportunity to change or bias any proposed decision.

There could be no "horsetrading" between commissioners. It would reduce their individual power and proprietary interest.

Proposition 2 would also lay the groundwork for other needed improvements in the PUC's decision-making process. These improvements would have the Administrative Law Judge's nonpartisan decision made public for all to see, and would require that the public be given the opportunity to make their feelings known to the commission before any final decision could be made. By opening up the decision-making process, we could go a long way toward insuring that all PUC decisions are fair, unbiased and in the best interests of all concerned parties.

But these improvements can only be made if Proposition 2 passes. The Legislature tried to enact these improvements once already, but Governor Brown vetoed them at the request of his political appointees on the PUC. The commissioners simply did not want their operations made open to the public nor their immense individual powers lessened in any way, and the Governor went along.

Passage of Proposition 2 would tell the Governor and his appointees on the PUC that the public demands open, unbiased decision making. By voting for Proposition 2, the people will make the Governor think twice about vetoing these necessary reforms when the Legislature votes again to enact them next session.

GORDON W. DUFFY
Member of the Assembly, 32nd District

Rebuttal to Argument in Favor of Proposition 2

The wild allegations which the proponent makes on behalf of Proposition 2 are false. He seeks to prevail not by logic, but by mud-slinging.

In reality, the Commission's proceedings are open to full public participation. Like the courts, Commission decisions are available once they are rendered. Moreover, when requested, the Commission often issues a "proposed report". In such a case the parties are afforded additional comment before the Commission renders its final decision. Further, there is a guaranteed right for parties to request Commission and judicial review of any decision. Not even the Legislature operates under such conditions of scrutiny.

The people of California directly established the Public Utilities Commission by constitutional initiative. The people provided for sufficient political accountability in that the Governor appoints each Commissioner *with the consent of the Senate*. The people provided for regulatory independence by setting a definite term of office over which neither the governor nor any other political figure has control. This was to ensure that Commission decisions *not* be influenced by the blowing of political winds.

Proposition 2 would lead to an isolation of decision-makers from the hearing process in which the public participates. It is the Commissioners, not the staff, who should make the decisions and bear the responsibilities for the actions of the Public Utilities Commission.

Don't be misled by *claims* of impropriety. It's an easy allegation to make. The Public Utilities Commission exists to protect the public. Beware of curtailing that protection. Vote no on Proposition 2.

ROBERT BATINOVICH
President, Public Utilities Commission

WILLIAM SYMONS, JR.
Commissioner, Public Utilities Commission

CLAIRE T. DEDRICK
Commissioner, Public Utilities Commission

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Arguments Against Proposition 2

On its surface Proposition 2 merely removes one sentence from the Constitution, and seems a slight matter. *But it is not!* This amendment strikes away a constitutional grant-of-power. In California, this power has fostered a tradition where each of our five public utility Commissioners exercises an individual and active involvement in day-to-day public utility regulation. This is appropriate. The five officials who have ultimate responsibility to the public for reasonable utility regulation should not be assigned a passive role. Moreover, passage of this measure will ultimately cost the taxpayers of the State additional tax dollars by diminishing the ability of the Commissioners of the Public Utilities Commission to participate in and direct the affairs of the Commission.

The Commission and its Commissioners are the most active and effective protection that the people of California have against unreasonable utility and transportation charges and practices. The Commissioners currently are actively engaged in all regulatory affairs of the Commission. If approved, Proposition 2 would allow the Legislature to enact laws which weaken the Commission's vigor, such as prohibiting individual Commissioners from undertaking investigations. It could require investigation and hearing work to be turned over exclusively to Commission hearing officers. It could require participation of a majority of the Commissioners in all these proceedings. These alternatives have been proposed in the Legislature several times. Each time they have either failed to pass or were vetoed by the Governor.

All decisions of the Commission are made by a majority of the Commissioners in an open, public decision-making process. Making all Commissioners attend each and every hearing and investigation would attach needless delay and additional costs to the more than one thousand formal applications, complaints and investigations annually filed with the Commission. Delay is costly to everyone—consumer and utility. On behalf of all the Commissioners we urge you to vote no on Proposition 2 for continued effective regulation and better use of your tax dollars.

ROBERT BATINOVICH
President, Public Utilities Commission

WILLIAM SYMONS, JR.
Commissioner, Public Utilities Commission

I have been a member of the Public Utilities Commission for one year. During that time I have found it is extremely difficult for a Commissioner to hear directly from the public. The best opportunity a Commissioner has is when conducting hearings.

Proposition 2 would remove the constitutional authority for a Commissioner to conduct hearings. It is a serious step backward for public participation and a blow against openness in government.

I urge your NO vote on Proposition 2.

CLAIRE T. DEDRICK
Commissioner, Public Utilities Commission

Rebuttal to Arguments Against Proposition 2

Exactly! The three members of the Public Utilities Commission ask you to vote no "on behalf of all the commissioners". I ask you to vote yes on behalf of the public.

Of course they don't want to lose their power to make individual private decisions on "their case". But, wise public policy dictates that the PUC should operate as an appellate board reviewing the evidence and publicly making a decision.

A yes vote will insure public decision making and is in the best interest of all consumers.

GORDON W. DUFFY
Member of the Assembly, 32nd District

3 State Surplus Coastal Property

Official Title and Summary Prepared by the Attorney General

STATE SURPLUS COASTAL PROPERTY. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Allows the Legislature to authorize the sale of surplus state property located in the coastal zone and acquired with revenues from fuel taxes and motor vehicle taxes. Property may only be sold to Department of Parks and Recreation for state park purposes, Department of Fish and Game for preservation of fish and wildlife habitat, Wildlife Conservation Board, or State Coastal Conservancy for preservation of agricultural lands. Price cannot be less than amount paid by State to acquire property. Financial impact: Depends on legislative action. Any property sold below current market value would result in revenue loss to State Transportation Fund but proportionate savings to purchasing agency.

FINAL VOTE CAST BY LEGISLATURE ON ACA 71 (PROPOSITION 3)

Assembly—Ayes, 77	Senate—Ayes, 28
Noes, 1	Noes, 6

Analysis by Legislative Analyst

Background:

Money collected from state gasoline taxes and vehicle license fees is deposited in the State Transportation Fund. The State Constitution specifies that money in the fund can be spent only for highways and other transportation-related purposes.

Periodically, the state determines that land purchased with State Transportation Fund money is no longer needed and can be put up for sale. The current practice is to sell such lands at current market value, with the proceeds from such sales, under existing law being deposited in the State Transportation Fund.

The California Coastal Act of 1976 provides for the protection and development of the "coastal zone". The coastal zone is defined as the Pacific coastline extending inland about 1,000 yards in urban areas and five miles, or to the highest ridgeline, in recreational and wildlife habitat areas. Within the coastal zone, the state owns land which was purchased with money from the State Transportation Fund, but is no longer needed for transportation-related purposes. Most of this land is highway right-of-way along the coastline in southern California.

Proposal:

This proposition would enable the Legislature, by statute, to authorize the sale of any excess land purchased with State Transportation Fund money, including excess state highway-related lands, located in the coastal zone for a price below current market value, provided the price is at least equal to the state's acquisition cost. Such lands could be sold only to the:

1. Department of Parks and Recreation for state park purposes,
2. Department of Fish and Game for fish and wildlife habitat,
3. Wildlife Conservation Board for fish and wildlife habitat and ocean access, or
4. State Coastal Conservancy for the preservation of agricultural lands.

Fiscal Effect:

Because this measure merely authorizes the Legislature to act, it would not have any impact on state spending or revenues by itself. The fiscal effect of this proposition on state government would depend on action by the Legislature.

The Department of Transportation indicates that as of July 1, 1978, there were about 355 acres of scattered excess rights-of-way located in the coastal zone. These properties had an acquisition cost of about $8.5 million. The department estimates that the current market value of these properties approximates $15 million.

If these properties were sold at acquisition costs rather than current market values, the State Transportation Fund would experience a revenue loss, and the state agencies purchasing these lands would experience cost savings. The maximum amount of such revenue loss or savings would be about $6.5 million based on available information.

This amendment proposed by Assembly Constitutional Amendment No. 71 (Statutes of 1978, Resolution Chapter 54) expressly adds a section to the Constitution; therefore, provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIX

SEC. 9. Notwithstanding any other provision of this Constitution, the Legislature, by statute, with respect to surplus state property acquired by the expenditure of tax revenues designated in Sections 1 and 2 and located in the coastal zone, may authorize the transfer of such property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

As used in this section, "coastal zone" means "coastal zone" as defined by Section 30103 of the Public Resources Code as such zone is described on January 1, 1977.

3 State Surplus Coastal Property

Argument in Favor of Proposition 3

Your YES vote on Proposition 3, will allow for the sale of surplus CALTRANS (Department of Transportation) property within the Coastal Zone for *no less than the original cost* to one of the following entities:

- The DEPARTMENT OF PARKS AND RECREATION for state beach and park purposes;
- The DEPARTMENT OF FISH AND CAME for the protection and preservation of fish and wildlife habitat;
- The WILDLIFE CONSERVATION BOARD for purposes of the Wildlife Conservation Law of 1947;
- The STATE COASTAL CONSERVANCY for the preservation of agricultural lands.

Under this provision the sale of surplus CALTRANS property within the Coastal Zone could occur only after the California Legislature had passed legislation authorizing such a sale and setting the price.

Under existing law there is no constitutional provision specifically permitting the sale of surplus property acquired by motor vehicle taxes at a price equal to the cost of acquisition. Legal questions raised as to the legality of selling this property to another state agency for less than fair market value will be resolved only with the passage of this amendment.

Currently there are some 66 parcels that have been declared surplus by the Department of Transportation within the Coastal Zone. It is important that the state entities specified in this legislation as possible buyers be given the opportunity to purchase those parcels which are of value to all Californians for parks, beaches, or wildlife preserves.

This measure had bi-partisan support when it passed the Legislature.

We urge a YES vote on PROPOSITION 3.

PAUL PRIOLO
Member of the Assembly, 38th District
Assembly Minority Leader

WALT INGALLS
Member of the Assembly, 68th District
Chairman, Assembly Transportation Committee

MICHAEL R. PEEVEY
President, California Council for Economic and Environmental Balance

Rebuttal to Argument in Favor of Proposition 3

To reiterate my opposition to this constitutional amendment, I firmly believe that the original owner ought to have the right to repurchase the property which was taken from them involuntarily through eminent domain. Those persons should have the right to repurchase their property prior to any state agency providing the state is not going to use the acquisition for its original intent.

MIKE D. ANTONOVICH
Member of the Assembly, 41st District

Argument Against Proposition 3

I am opposed to this constitutional amendment because it does not provide the property owner whose property is involuntarily taken through eminent domain the right to reacquire the land if the state is not going to use the acquisition for its original intent.

MIKE D. ANTONOVICH
Member of the Assembly, 41st District

Rebuttal to Argument Against Proposition 3

PROPOSITION 3 pertains to surplus CALTRANS property within the California Coastal Zone, only. It allows the Legislature to authorize the sale of these unique CALTRANS properties declared surplus under the laws and regulations of that agency.

The original owner of the property is not precluded from re-purchasing the property should CALTRANS follow its normal procedures for disposal of surplus property on a bid basis. Only the Legislature can authorize the sale of this property to another agency for a cost of *no less than* the original purchase price.

We urge You to vote YES on Proposition 3.

PAUL PRIOLO
Member of the Assembly, 38th District
Assembly Minority Leader

WALT INGALLS
Member of the Assembly, 68th District
Chairman, Assembly Transportation Committee

MICHAEL R. PEEVEY
President, California Council for Economic and Environmental Balance

4 Chiropractors. School Accreditation and License Revocation—Legislative Initiative Amendment

Official Title and Summary Prepared by the Attorney General

CHIROPRACTORS. SCHOOL ACCREDITATION AND LICENSE REVOCATION. LEGISLATIVE INITIATIVE AMENDMENT. Amends initiative statute relating to chiropractors to modify requirements and procedures for approval of chiropractic schools and colleges. Permits increase in fee for state license to practice chiropractic at discretion of board of examiners. Expands grounds for denial, suspension, or revocation of license to include conviction of any felony, or any offense substantially related to chiropractic, on plea or verdict of guilty or plea of no contest. Financial impact: Insignificant fiscal effect on state and local governments.

FINAL VOTE CAST BY LEGISLATURE ON SB 1671 (PROPOSITION 4)

Assembly—Ayes, 76 Noes, 0

Senate—Ayes, 34 Noes, 0

Analysis by Legislative Analyst

Background:

Licensing. A chiropractor is one who practices the healing arts without the use of drugs or surgery.

Prior to November 1976, any person who graduated from a chiropractic school or college approved by the State Board of Chiropractic Examiners was eligible to be licensed by the state as a chiropractor. In the election of November 1976, the voters approved Proposition 15 which prohibits the State Board from approving any chiropractic school or college that has not been accredited by the Accrediting Commission of the Council on Chiropractic Education, an independent organization recognized by the United States Commissioner of Education. Students already enrolled in approved schools or colleges that had not been accredited would still be eligible to be licensed as chiropractors. However, students entering an unaccredited chiropractic school after November 1976 will not be eligible for a state license unless the school receives accreditation by the time they graduate.

At the present time there are 15 chiropractic schools nationwide, but only 10 are accredited. Only one of the four chiropractic schools in California is accredited; the other three are in the process of obtaining accreditation.

Disciplinary Action. Current law specifies a number of grounds on which the state may deny, suspend, or revoke a chiropractor's license. These include moral turpitude (depraved conduct), practicing under a false name, and presenting false information on the license application. However, the courts have ruled that if a person holding an occupational license is convicted of a crime which is not related to his occupation, the crime cannot be used as grounds for disciplinary action by the licensing agency.

Proposal:

This proposition would redefine "accrediting agency" to include not only the Accrediting Commission of the Council on Chiropractic Education, but all other accrediting agencies recognized by the United States Commissioner of Education or using equivalent standards for accrediting. The proposition would limit the time period during which unaccredited schools are to obtain accreditation, as follows: for schools which were in operation before November 1976, the period would end March 1, 1980; and for schools which commence operation after November 1976, the period would be three years following the commencement of instruction. The proposition would set forth guidelines and procedures for obtaining an extension of time for accreditation. Circumstances warranting an extension would include unreasonable, arbitrary, or capricious action by an accrediting agency. The Legislative Counsel advises us that students who entered chiropractic school before the effective date of this measure would not be affected by the new education requirements needed for a state license.

Additionally, this proposition would eliminate moral turpitude as grounds for denying, suspending, or revoking a license. It would, however, provide for suspension or revocation if a license holder pleads guilty to or is convicted of a felony or of any offense substantially related to the practice of chiropractic. The proposition does not define which offenses would be "substantially related" to the practice of chiropractic. Instead, they would be determined under current law by the Board of Chiropractic Examiners through the adoption of regulations, and could include such offenses as fraud and embezzlement of funds involving the practice of chiropractic.

Fiscal Effect:

The fiscal effect of the measure on state and local government would be insignificant.

This law proposed by Senate Bill No. 1671 (Statutes of 1978, Chapter 307) expressly amends existing sections of the law; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO INITIATIVE ACT

An act to amend an initiative act entitled "An act prescribing the terms upon which licenses may be issued to practitioners of chiropractic, creating the State Board of Chiropractic Examiners and declaring its powers and duties, prescribing penalties for violation hereof, and repealing all acts and parts of acts inconsistent herewith" approved by electors November 7, 1922, by amending Sections 4, 5, and 10 thereof, and by adding Section 20 thereto, relating to the practice of chiropractic, said amendment to take effect upon the approval thereof by the electors, and providing for the submission thereof to the electors pursuant to subdivision (c) of Section 10 of Article II of the State Constitution.

SECTION 1. Section 4 of the act cited in the title is amended to read:

Sec. 4. Powers of board. The board shall have power:

(a) To adopt a seal, which shall be affixed to all licenses issued by the board.

(b) To adopt from time to time such rules and regulations as the board may deem proper and necessary for the performance of its work, the effective enforcement and administration of this act, the establishment of educational requirements for license renewal, and the protection of the public. Such rules and regulations shall be adopted, amended, repealed and established in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code as it now reads or as it may be hereafter amended by the Legislature.

(c) To examine applicants and to issue and revoke licenses to practice chiropractic, as herein provided.

(d) To summon witnesses and to take testimony as to matters pertaining to its duties; and each member shall have power to administer oaths and take affidavits.

(e) To do any and all things necessary or incidental to the exercise of the powers and duties herein granted or imposed.

(f) To determine minimum requirements for teachers in chiropractic schools and colleges.

(g) To approve chiropractic schools and colleges whose graduates may apply for licenses in this state. *The following shall be eligible for approval:*

(1) Any *chiropractic* school or college having status with the ~~Accrediting Commission of the Council on Chiropractic Education or the equivalent criterion thereof,~~ *accrediting agency* and meeting the requirements of Section 5 of this act and the rules and regulations adopted by the board ~~shall be eligible for such approval~~.

(2) Any chiropractic school or college initially commencing instruction prior to the effective date of the amendments to this section approved by the electors at the November, 1976, general election, provided such school or college meets the requirements of Section 5 of this act and the rules and regulations adopted by the board and provided such school or college attains status with the accrediting agency within a time period commencing on the effective date of this provision and ending March 1, 1980.

(3) Any chiropractic school or college initially commencing instruction subsequent to the effective date of the amendments to this section approved by the electors at the November, 1976, general election, provided such school or college meets the requirements of Section 5 of this act and the rules and regulations adopted by the board and provided such school or college attains status with the accrediting agency within a time period not exceeding three years following such commencement of instruction.

Upon submission of evidence satisfactory to the board that the accrediting agency has unreasonably denied status to a chiropractic school or college approved under paragraph (2) or (3) of this subdivision by not considering the application for status submitted by that school or college in a timely manner, by denying the application for status submitted by that school or college without good cause, or by imposing arbitrary and capricious additional requirements upon that school or college as conditions for the attainment of status, the board shall grant an extension of the time period for the attainment of status specified in the paragraph under which that school or college is approved, as it applies to that school or college, of at least six months but no more than one year. Prior to the expiration of such extension or of any additional extension the board grants, the board shall determine whether that school or college has been unreasonably denied status by the accrediting agency for any of the reasons specified in the immediately preceding sentence during the extension. Should the board determine such unreasonable denial of status during the extension has occurred, the board shall grant an additional extension of the time period for the attainment of status, as it applies to that school or college, of at least six months but no more than one year.

As used in this section, "accrediting agency" means (1) the Accrediting Commission of the Council on Chiropractic Education, other chiropractic school and college accrediting agencies as may be recognized by the United States Commissioner of Education, or chiropractic school and college accrediting agencies employing equivalent standards for accreditation as determined by the board, (2) in the event such commission ceases to exist or ceases to be recognized by such commissioner, a chiropractic school and college accrediting agency as may be designated by the board or chiropractic school and college accrediting agencies employing equivalent standards for accreditation as determined by the board, or (3) in the event such commission ceases to exist or ceases to be recognized by such commissioner, no other such accrediting agency is recognized by such commissioner, and no such accrediting agency is acceptable to the board, the board.

As used in this section, "status" means correspondent status, status as a recognized candidate for accreditation, accredited status, or other similar status as may be adopted and used by the accrediting agency.

As used in this section, "in a timely manner" means within the time deadlines as may be established by the accrediting agency for submission of applications, consideration of applications submitted, acceptance or rejection of applications submitted, and other similar functions, as those time deadlines are interpreted by the board.

As used in this section, "without good cause" means not in

Continued on page 38

4 Chiropractors. School Accreditation and License Revocation—Legislative Initiative Amendment

Argument in Favor of Proposition 4

Two years ago, California voters overwhelmingly approved a major reform of the "Chiropractic Initiative Act". Unfortunately, following adoption of the reform measure, it became apparent that the wording of a particular provision was subject to varying interpretations. The Superior Court of Los Angeles County ultimately rendered an opinion resolving the immediate problem with respect to the interpretation. That opinion, however, left unclear the specific conditions under which students entering unaccredited chiropractic colleges would be eligible, upon graduation, for admission to the state licensing examination.

Proposition 4 has been developed and approved by the Legislature and Governor to clarify the situation. At the same time, it has been designed to provide for several additional, prudent revisions in the "Chiropractic Initiative Act". If approved by you, the voters, Proposition 4 will enable all students entering unaccredited chiropractic colleges to determine precisely what requirements their colleges must meet, prior to their graduation time, to provide them eligibility for admission to the state licensing examination. Present uncertainties will be eliminated. In addition, consumer protection will be enhanced.

Your "YES" vote on Proposition 4 will help accomplish these four basic objectives:

(1) Establishment of a "date certain" by which unaccredited chiropractic colleges *now operating* must attain status with a nationally recognized accrediting agency, and establishment of the specific conditions under which that "date certain" can be extended as it pertains to a particular college due to extenuating circumstances, if deemed appropriate by the Board of Chiropractic Examiners.

(2) Establishment of similar "date certain" provisions for chiropractic colleges which may commence operations in the future.

(3) Establishment of authorization for the Board of Chiropractic Examiners to deny, suspend, or revoke licenses to practice for convictions or convictions following pleas of nolo contendere (i.e. no contest) to felonies or to offenses related to the practice of chiropractic.

(4) Establishment of authorization for employment of commissioners to assist members of the Board of Chiropractic Examiners in administering state licensing examinations.

Proposition 4 is supported by the Board of Chiropractic Examiners, the California Chiropractic Association, the Federation of Chiropractic Licensing Boards, and the American Chiropractic Association. It represents a positive, constructive effort to further assure competency in the profession of chiropractic and to provide clear, specific guidance to students seeking entry into that profession.

Your "YES" vote on Proposition 4 is strongly encouraged and would be most sincerely appreciated.

ALBERT S. RODDA
State Senator, 3rd District

ROBERT REED, D.C.
President, Board of Chiropractic Examiners
State of California

RUSSELL A. SMITH, D.C.
President, California Chiropractic Association

Rebuttal to Argument in Favor of Proposition 4

Snap, crackle, and pop my bones;
MAHA thinks these are beautiful tones.
They should not be over-regulated by anymore boards,
Or bureaucrats in droves and hordes.
As to each point by the people for yes,
We say to more regulations, please, please, less.

What is there to guarantee
That a chiropractor from an accredited university
Will be better able to adjust your neck,
And not just take more of your pay check?
The people for yes say more boards, requirements,
commission and mess;
We say to more, please, please, less.

In the book of life it is writ
That the legislature should know when to quit.
In 76 the chiropractic Initiative was passed;
Why wasn't this law the last?
They say more uncertainties will be eliminated;
We say more uncertainties will be created.

Why do we have to vote on trivia like this
When pollution, crime, and high prices have caused our state to go amiss?
What we need to vote on is legislation
To improve our habitation.
We don't need more regulations and rules,
But better housing, transit, and schools.

So let's tell the establishment we don't want more schemes
To fill the files with paper reams
Of needless statutes and codes
When pollution is choking us on the roads.
We are mad as hell on four,
And we aren't going to take it anymore.

JERRY GLAZER
Co-Chairperson, Mad As Hell Association

RICK CUNNINGTON
Co-Chairperson, Mad As Hell Association

WINSTON POTTS
Secretary-Treasurer, Mad As Hell Association

Chiropractors. School Accreditation and License Revocation—Legislative Initiative Amendment

4

Argument Against Proposition 4

The State of California already has enough boards with enough rules. It doesn't need anymore rules or boards. Vote no on proposition 4.

There is a board of cosmetology, a board for embalmers, and there is one for dry cleaners. Do these boards insure that your shirt will come back from the cleaners wrinkle free? The answer is a resounding no.

If proposition 4 is passed, there will be more people added to government. There will be more rules and regulations. Who really needs them? About the only thing the new rules will accomplish will be to raise the price of chiropractic examinations.

Vote no on this proposition and tell your legislature that there are more important problems to be concerned about than whether your chiropractor's license should be suspended because he is guilty of moral turpitude. What difference does it make if a chiropractor is guilty of moral turpitude if he does a good job of cracking your back?

Scream at the top of your lungs and tell the legislature that you are as mad as hell and that you want the legislature to do something about the high price of food, about the high price of housing, and about crime in the streets. Tell the legislature that unimportant issues should not be brought to the public to waste their time and money.

If government legislation continues in the manner of proposition 4, soon it will be necessary to have a doctorate degree from an accredited college to own a dry cleaners. Owners of dry cleaners will have to complete advanced courses in anatomical shirt pressing, synthetic fabric design, and a theoretical physical systems approach to spot removal. Yet your pants will still come back from the cleaners dirty.

Vote no on proposition 4 and tell the legislature that you are as mad as hell and you are not going to take it anymore.

JERRY GLAZER
Co-Chairperson, Mad As Hell Association

RICK CUNNINGTON
Co-Chairperson, Mad As Hell Association

WINSTON POTTS
Secretary-Treasurer, Mad As Hell Association

Rebuttal to Argument Against Proposition 4

We have carefully examined the 315-word argument submitted by the opponents to Proposition 4. We have concluded that it is either a misplaced attempt at humor or a calculated effort to deceive voters.

This ridiculous argument discusses dry cleaners, cosmetology, embalmers, food prices, even crime in the streets. It devotes little space to the subject of Proposition 4—CHIROPRACTIC. What information it does provide is grossly misleading.

The argument intimates that Proposition 4 creates a new board. This is absolutely untrue. It modifies the laws governing chiropractors. These laws are administered by the Board of Chiropractic Examiners which was established *by California voters* through an *initiative* act passed in *1922.*

The argument complains about the Legislature putting this "unimportant issue" on the ballot. But, it fails to mention that, under the provisions of the "Chiropractic *Initiative* Act" of 1922, no substantive changes can be made thereto, *unless approved by the voters.*

The argument states that Proposition 4 would result in "more rules and regulations". This, too, is false. Proposition 4 mandates no new rules or regulations.

The argument discusses the cost of chiropractic examinations. But, it does not indicate that many conscientious students of chiropractic may be denied licenses to practice if Proposition 4 fails.

Please do not be decieved by this frivolous argument. If you have doubts, seek out more information on Proposition 4. We invite *strict scrutiny.* Upon serious consideration, you will find we have told you the truth. *Please join us in voting "YES" on Proposition 4.*

ALBERT S. RODDA
State Senator, 3rd District

ROBERT REED, D.C.
President, Board of Chiropractic Examiners
State of California

RUSSELL A. SMITH, D.C.
President, California Chiropractic Association

5 Regulation of Smoking—Initiative Statute

Official Title and Summary Prepared by the Attorney General

REGULATION OF SMOKING. INITIATIVE STATUTE. Finds and declares that smoking in enclosed areas is detrimental to nonsmokers. With specified exceptions, makes smoking unlawful in enclosed public places, places of employment and educational and health facilities. Requires restaurants to establish nonsmoking sections in dining areas. Prohibits employment discrimination based on exercise of rights provided by this statute. Permits stricter local government smoking regulations. Requires posting of signs designating areas where smoking is unlawful. Allows Legislature to amend consistent with intent of this statute. Provides penalties for violations. Financial impact: Modest cost to state and to individual local governments for purchase, installation of NO SMOKING signs in public buildings. Minor enforcement costs. Possible cost to alter public employee working facilities to accommodate smoking employees. If proposition leads to significant reduction in smoking, could result in substantial reduction in health and other smoking related government costs and would result in substantial reduction in state and local sales, cigarette tax collections.

Analysis by Legislative Analyst

Background:

Some California cities and counties have local ordinances which prohibit smoking in private buildings such as retail stores, in portions of movie theaters, and in portions of restaurants.

At the present time, there is no *state* law which prohibits smoking in *private* buildings and facilities. State law, however, requires various transportation companies including railroads, certain bus operators and limousine services, and airlines to designate not less than 50 percent of their seats for nonsmoking passengers.

The state does *restrict* smoking in certain *publicly* owned buildings. For example, under existing state law:

1. Smoking is prohibited in certain areas within publicly owned health facilities and clinics.
2. Smoking is prohibited within publicly owned buildings (other than in lobbies) when they are used to exhibit motion pictures, present stage dramas, music recitals, and certain other types of performances.
3. At least 50 percent of the meeting space must be designated as a nonsmoking area when a public meeting is held in a government building.

Proposal:

This measure would significantly expand the restrictions on smoking in *enclosed buildings and facilities*, both those owned by the government and those that are privately owned. Subject to the exceptions noted below, this measure would *prohibit* smoking in the following types of enclosed buildings and facilities:

1. Places of employment, including work areas, employee lounges, restrooms, meeting rooms, and employee cafeterias.
2. Educational facilities which include private and public schools, colleges and universities.
3. Health facilities and clinics.
4. Any public place which includes:
   a. arenas, auditoriums, galleries, museums and theaters,
   b. business establishments,
   c. public transportation facilities while operating within California,
   d. doctor and dentist offices,
   e. elevators,
   f. public restrooms.

Smoking would be *permitted* in any of the following areas unless the owner or manager posts a no smoking sign:

(1) bars, (2) retail tobacco stores, (3) hotel and motel rooms rented to guests, (4) rooms or halls used entirely for private social functions, (5) any fully enclosed office occupied exclusively by smokers, (6) any fully enclosed private office normally occupied by only one person, (7) taxicabs when not carrying passengers, (8) any private hospital room, (9) any semi-private hospital room where both patients have requested a room where smoking is permitted, (10) any part of a restaurant which is not designated as a nonsmoking section, (11) sleeping quarters of dormitories in educational facilities, (12) an arena, auditorium or theater when used for a rock concert, professional boxing, wrestling, or roller derby, (13) pool and gambling halls, (14) up to 50 percent of student or employee lounge areas and employee cafeterias, and (15) private compartments in sleeping cars of a railroad train.

Smoking also would be *permitted* in the following places subject to the noted restrictions:

1. Up to 50 percent of any lobby or waiting area, or railroad coach or lounge car, provided such areas are physically separated from the nonsmoking areas by walls or partitions. The physical separation requirement does not apply to the lobby or waiting area of hotels, motels, arenas, auditoriums and theaters.

2. Manufacturing and production areas in which smoking would not be detrimental to the health, comfort and environment of nonsmoking employees because of the distance between workers and the adequacy of ventilation (as determined by the Division of Industrial Safety).

The proposition would require every restaurant to establish a nonsmoking section in its dining area. Size and location would be determined by the owner or manager of the restaurant. A sign indicating the approximate percentage of available seats in the nonsmoking section of the dining area would have to be posted at every public entrance.

With certain exceptions, the proposal would also require the owner or lessee of private property to post signs in all areas where smoking is unlawful. Clearly legible signs would have to be posted at every entrance to a facility owned or leased by a state or local governmental entity.

A fine of $50 would be imposed against anyone violating the provisions of this proposition, with each day of violation considered as a separate and distinct offense. The proposition prohibits discrimination in employment against a person who exercises the rights afforded by the measure.

Local governing bodies would be permitted to make smoking unlawful in areas not regulated by this proposal in any manner that is not inconsistent with the provisions of state law. In addition, the Legislature would be authorized to amend the proposition as long as the amendment is consistent with the intent declared in the proposition.

This proposition would become effective 90 days after its approval by the electorate.

Fiscal Effect:

The direct impact of this measure on state and local government spending would be the cost of purchasing and installing the required no smoking signs in public buildings. We estimate that these costs to the state and individual local governments would be modest.

We estimate that the costs to local government of enforcing the measure, as well as the revenues collected through fines, would be minor. We do not believe that these enforcement activities would cause any increase in existing law enforcement and judicial budgets.

The measure could have significant *indirect* effects on state and local finances. For example,

1. If the proposition leads to a significant reduction in smoking, there could be a substantial reduction in government health related costs over an extended period of time. There also could be reductions in other smoking related costs, such as property loss due to fires.

2. If changes in public employee working environments are necessary to satisfy the needs of smoking employees (for example, through installation of partitions dividing smoking from nonsmoking areas), state and local governments could incur additional costs.

3. If the proposition results in a significant reduction in smoking, there would be a substantial reduction in state and local revenue from lower sales and cigarette tax collections.

In summary, the approval of the proposition very likely will result in some reduction in smoking, especially by persons employed in enclosed areas where smoking would be restricted or prohibited. However, there is not an adequate basis on which to predict the magnitude of this reduction, and therefore we are unable to estimate the net ongoing fiscal impact of this measure. Any loss in revenues from lower cigarette consumption would occur prior to any savings in health related costs.

Text of Proposed Law

This initiative measure proposes to add a Chapter 10.7 to the Health and Safety Code. It does not expressly amend any existing law; therefore, the provisions to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1:

Chapter 10.7 is added to the Health and Safety Code to read:

"CHAPTER 10.7 CLEAN INDOOR AIR

25930 Name

This Chapter shall be known and may be cited as the "Clean Indoor Air Act of 1978."

25931 Findings and Intent

(a) The People of the State of California find and declare that smoking in enclosed areas is detrimental to nonsmokers' health, welfare, comfort, and environment and is particularly harmful to nonsmokers with allergies or with cardiovascular or respiratory disease; that smoking in certain enclosed areas is a public nuisance and a cause of material annoyance, discomfort, and physical irritation to nonsmokers; that nonsmokers have no adequate means to protect themselves from the damages inflicted upon them when they involuntarily inhale smoke emitted from cigarettes, cigars, pipes, and other smoking equipment; and that regulation of smoking in certain enclosed areas including public places, places of employment, educational facilities, health facilities, and clinics is necessary to protect the health, welfare, comfort, and environment of nonsmokers.

(b) It is not the intent of the People of the State of California to deny persons the right to smoke or to prohibit the sale of tobacco products, but rather to recognize that the right of nonsmokers to breathe clean air supersedes the right to smoke where the two rights conflict.

25932 Unlawful Smoking

Subject to the exceptions set forth in Section 25933, smoking is unlawful in any enclosed public place, in any enclosed place of employment, in any enclosed educational facility, in any enclosed health facility, and in any enclosed clinic. No person shall smoke in any area where smoking is unlawful.

25933 Exceptions

Unless such an area is designated by a sign or signs as a nonsmoking area under the authority of the owner or manager thereof, smoking is permitted in any of the following areas:

(a) bars;

(b) retail tobacco stores;

(c) those rooms in hotels and motels rented to guests;

(d) any entire room or hall used for a private social function which function is under the control of the sponsor of the

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5 Regulation of Smoking—Initiative Statute

Argument in Favor of Proposition 5

PROPOSITION 5 PROTECTS EVERYONE'S RIGHTS—SMOKERS AND NONSMOKERS. The Clean Indoor Air Initiative recognizes the right to smoke so it creates smoking as well as nonsmoking sections.

Proposition 5 will protect a smoker's right to smoke freely out-of-doors, in private places and in designated smoking sections.

This is why polls show that most *smokers* favor smoking and nonsmoking sections.

OTHER PEOPLE'S SMOKE CAN BE HARMFUL TO YOUR HEALTH. Smokers risk their own health. And it's their right to do so. But *nonsmokers'* health can also be harmed from smoke. In fact, the American Lung Association and numerous medical experts maintain that unfiltered "second-hand smoke" actually has more harmful substances than the filtered smoke inhaled by a smoker.

Nonsmokers would not have to risk their health in indoor public places if indoor smoking can be confined to designated smoking sections.

OTHER PEOPLE'S SMOKE IS DANGEROUS FOR THOSE WITH HEART OR LUNG DISEASE. More than 2½ million Californians (12% of the population) have heart or lung disease.

> "Persons with [heart] and lung disease are particularly vulnerable to the effects of involuntary smoking, which may significantly exacerbate their medical conditions."
> —Luther L. Terry, M.D.
> former U.S. Surgeon General

PROPOSITION 5 IS NOT CARVED IN STONE. The Clean Indoor Air Initiative allows the Legislature to amend it with a mere majority vote. So, if technology improves or conditions change, it can easily be amended.

PROPOSITION 5 WILL SAVE TAX DOLLARS AND REDUCE BUSINESS COSTS. Proposition 5 will lower Medi-Cal and other health costs paid for by taxpayers and, by reducing illness, will lower the outlays by both government and business for sick leave and disability payments.

Proposition 5 will also reduce the huge annual losses from smoking-related fires; lessen burn damage to carpets, clothing-store merchandise and other retail goods; and lower maintenance costs.

Proposition 5 Will:

- Recognize the right to smoke and the right to breathe clean air
- Establish nonsmoking and smoking sections in restaurants
- Provide areas for smokers and nonsmokers at places of employment
- Create smokefree hospital rooms unless a smoking room is requested

Proposition 5 Will *NOT*:

- Prohibit or restrict the sale of tobacco products
- Regulate smoking out-of-doors
- Restrict smoking in designated smoking sections indoors
- Affect smoking in private places

Share the air. Vote yes on 5!

NICHOLAS P. KRIKES, M.D.
President, California Medical Association

CAROL KAWANAMI, P.H.N.
President-Elect, California Lung Association

JUSTIN J. STEIN, M.D.
President, American Cancer Society, California Division

Rebuttal to Argument in Favor of Proposition 5

The claim by Proposition 5 advocates that it would save tax dollars and business costs is false.

It would COST TAXPAYERS MILLIONS OF DOLLARS. Manufacture and installation of the signs required at every entrance to every governmental facility, plus law enforcement and court costs, are estimated at $43 MILLION for the first year by a national research organization. That does not include construction costs to create segregated smoking and nonsmoking lounges or workplaces.

Their claim that Proposition 5 would save taxpayers money by reducing illness is utterly without evidence to support it. In Minnesota, which has prohibited smoking in most public places for about three years, state authorities report they have no evidence of reduced illness or public health costs.

Construction costs to businesses for smokeproof walls to segregate smoking and nonsmoking customers and employees, plus the productivity losses resulting from segregated smoke-breaks, are estimated at MORE THAN $250 MILLION.

Claims that nonsmokers' health is endangered by other people's smoke are contradicted by many physicians who speak for the anti-smoking organizations. Dr. Jonathan Rhoads, past president of the American Cancer Society, said: "I do not have any hard evidence [that there is a harmful effect from smoke on the nonsmoker]. To my knowledge, it is not, in fact, actually harmful."

Proponents' claims that Proposition 5 could be amended by the Legislature are MISLEADING. The Legislature could enact only amendments "consistent with" the complex legislative intent expressed in Section 25931—which contains most of the RESTRICTIVE MANDATES.

HOUSTON I. FLOURNOY
Dean, University of Southern California Center for Public Affairs

KATHERINE DUNLAP
Co-Chairman, Californians for Common Sense

PETER J. PITCHESS
Sheriff, County of Los Angeles

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Argument Against Proposition 5

When you vote on Proposition 5, you will NOT be voting FOR or AGAINST SMOKING.

You will be voting on whether you want to INCREASE California's TAXPAYER BURDEN with new local and state spending.

The proposed new law would require installation of signs containing about 20 words at EVERY entrance to EVERY facility of EVERY state and local governmental entity. This includes everything from mosquito abatement district offices to school houses and the State Capitol!

Peace officers, under general law, could arrest anyone they see violating the new smoking prohibitions.

A study by a national economics research firm estimates the signs, enforcement, prosecution and court time would cost California taxpayers $43 MILLION in the first year!

You will be voting on whether you approve of putting DISCRIMINATION into California law.

Proposition 5 says you could legally smoke in an auditorium, theater or arena if you're attending a rock concert, professional boxing match, professional wrestling or a professional roller derby.

But the next night, in the same seat, you could be arrested for smoking if you were attending a jazz concert or an amateur event of any kind!

Construction of costly smoke-proof walls would be necessary in many cases to segregate smoking and non-smoking employees and customers.

Executives and supervisors could smoke in their private offices. Employees in work areas could not.

You will be voting on whether you want to further erode California's ability to attract new job-creating business and industry to this state.

A study by a national economics research firm estimates that construction, plus the lost productivity resulting from segregated smoke-breaks, would cost California's private sector TENS OF MILLIONS OF DOLLARS to comply with Proposition 5 in the first year of its operation.

The additional costs in dollars and red-tape time would make California less attractive to the new businesses we must have to create the thousands of new jobs necessary every year to keep unemployment from climbing in our continually increasing labor force.

You will be voting on whether you want a "BIG BROTHER GOVERNMENT" making personal decisions and controlling private property.

Under Proposition 5, a shopkeeper would be deprived of his right to decide whether he wanted to smoke on his own property. Government would substitute its laws for our freedom to make individual decisions. It didn't work with liquor prohibition, it won't work with smoking prohibitions!

You will be voting on whether you want to divert our law enforcement efforts from serious crime and public protection by adding the burden of a "nuisance law."

Leading police chiefs and sheriffs oppose Proposition 5 because it would dilute their available manpower.

Proposition 5 is too extreme in its penalties—a MANDATORY $50 FINE for every violation and even jail if you don't pay! It is too DISCRIMINATORY, OPPRESSIVE AND EXPENSIVE.

Vote for common sense. Vote No on Proposition 5.

HOUSTON I. FLOURNOY
Dean, University of Southern California Center for Public Affairs

KATHERINE DUNLAP
Co-Chairman, Californians for Common Sense

PETER J. PITCHESS
Sheriff, County of Los Angeles

Rebuttal to Argument Against Proposition 5

The tobacco industry claims Proposition 5 will cost taxpayers $43 million for signs and enforcement. The Legislative Analyst, the State's unbiased economic expert, indicates this claim is a wild exaggeration:

"The cost of . . . no smoking signs in public buildings . . . would be modest.

"We do not believe enforcement activities would cause any increase in existing law enforcement and judicial budgets."

University of California professors of medicine and health economics have completed an economic study of Proposition 5. Professors Stanton Glantz and Stuart Schweitzer concluded:

"The one-time cost of Proposition 5 will be modest; the economic savings will be many times greater and will continue indefinitely."

Law enforcement officials in San Diego and Berkeley (cities with nonsmoking ordinances similar to Proposition 5) disagree with the tobacco industry claim that nonsmoking laws divert police from serious crime. The reason—smokers are considerate people who obey the law.

The tobacco industry claims violating Proposition 5 will lead to arrest and possibly jail. This statement is calculated to deceive the public.

Those few who violate Proposition 5 will receive citations similar to parking tickets, if not merely warnings. People would be no more likely to go to jail for violating Proposition 5 than for parking by a fire hydrant.

It's misleading to compare Proposition 5 with alcohol prohibition. Proposition 5 does NOT restrict tobacco sales; Proposition 5 expressly recognizes the RIGHT TO SMOKE.

Proposition 5 protects everyone's rights: Smokers can smoke freely in smoking sections; nonsmokers can breathe freely in nonsmoking sections.

NICHOLAS P. KRIKES, M.D.
President, California Medical Association

CAROL KAWANAMI, P.H.N.
President-Elect, California Lung Association

JUSTIN J. STEIN, M.D.
President, American Cancer Society, California Division

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6 School Employees. Homosexuality—Initiative Statute

Official Title and Summary Prepared by the Attorney General

SCHOOL EMPLOYEES. HOMOSEXUALITY. INITIATIVE STATUTE. Provides for filing charges against schoolteachers, teachers' aides, school administrators or counselors for advocating, soliciting, imposing, encouraging or promoting private or public sexual acts defined in sections 286(a) and 288a(a) of the Penal Code between persons of same sex in a manner likely to come to the attention of other employees or students; or publicly and indiscreetly engaging in said acts. Prohibits hiring and requires dismissal of such persons if school board determines them unfit for service after considering enumerated guidelines. In dismissal cases only, provides for two-stage hearings, written findings, judicial review. Financial impact: Unknown but potentially substantial costs to State, counties and school districts depending on number of cases which receive an administrative hearing.

Analysis by Legislative Analyst

Background:

Current law designates school district employees as either "certificated" or "classified". *Certificated* employees are teachers, counselors, administrators, and certain types of teacher aides. *Classified* employees include janitors, cafeteria workers, clerical employees, and most teacher aides. Both certificated and classified school employees may be dismissed for reasons set forth in state law.

Certificated employees may be dismissed for incompetency, insubordination, unfitness of service, immoral or unprofessional conduct, and conviction of a felony. The law does not specifically list homosexual behavior as a reason for dismissal. However, existing law provides for dismissal in cases where such behavior has led to (1) a felony conviction for crimes such as solicitation, sodomy or perversion, or (2) proven immoral conduct which results in a reduction of the employee's ability to perform effectively.

The law provides that a certificated employee charged with immoral conduct may be dismissed by a majority vote of the district school board following 30 days' notice. If the employee requests a hearing within this period a special commission called the Commission on Professional Competence is directed to hear the dismissal charges. This commission consists of (a) a person appointed by the employee, (b) a person appointed by the district school board, and (c) a state administrative hearing officer. The commission may uphold either the school board or the employee by a majority vote.

Proposal:

This proposition applies to all "certificated" employees and teacher aides, and would revise existing law as follows:

1. A district school board would be *required* to dismiss, or refuse to hire, any person who has engaged in homosexual *activity or conduct* if the board believes such activity renders the person unfit for service.

The proposition defines homosexual *activity* as the public or indiscreet commission of an act of sodomy or perversion (Penal Code Sections 286, 299a).

Homosexual *conduct* is defined as the "advocating, soliciting, imposing, encouraging or promoting private or public homosexual activity directed at, or likely to come to the attention of school children and/or other employees." It is not clear how far the proposition's definition of homosexual conduct would extend current law. This would depend on how broadly or narrowly the "advocacy" or "promotion" of homosexual behavior is interpreted by school boards and the courts.

2. The district school board, rather than the Commission on Professional Competence, would hear the charges and could dismiss the employee by a majority vote of its members. Any judgment by the school board could be appealed to the courts.

Fiscal Effect:

According to the State Office of Administrative Hearings, the cost of a teacher dismissal hearing under existing law has averaged approximately $5,000. This cost is based on all dismissal cases heard in 1976–77, and includes salaries of the hearing officer and court reporter, expenses of the other members of the Commission on Professional Competence, legal fees, and reimbursements to witnesses for lost time. These expenses are shared by the state, the school board, and the employee if the employee's dismissal is upheld. If the employee is reinstated, however, the board pays all expenses. Certain of these expenditures, particularly hearing officer costs and commission expenses, would be eliminated by the simplified hearing procedures contained in this proposal. This would reduce the average cost of dismissal proceedings involving homosexual employees to $3,000–$4,000.

The fiscal impact of the proposition would depend on the total number of hearings initiated. Lacking a precise definition of what constitutes "homosexual conduct", we have no basis on which to make an estimate. Actions by school boards and the courts, especially those that determine what constitutes "homosexual conduct", will play important roles in determining the fiscal effect of this measure. Because the proposition could legalize dismissal for any public homosexual activity or conduct regardless of its criminality, it might result in the initiation of many dismissal proceedings. We thus conclude that the proposition could result in substantial costs to the state, school districts, and school employees due to an increase in dismissal hearings, plus additional court costs to the state and county governments.

This initiative measure proposes to add sections to the Education Code. It does not expressly amend any existing law; therefore, the provisions to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 44837.5 is added to the Education Code, to read:

44837.5 One of the most fundamental interests of the State is the establishment and the preservation of the family unit. Consistent with this interest is the State's duty to protect its impressionable youth from influences which are antithetical to this vital interest. This duty is particularly compelling when the state undertakes to educate its youth, and, by law, requires them to be exposed to the state's chosen educational environment throughout their formative years.

A schoolteacher, teacher's aide, school administrator or counselor has a professional duty directed exclusively towards the moral as well as intellectual, social and civic development of young and impressionable students.

As a result of continued close and prolonged contact with schoolchildren, a teacher, teacher's aide, school administrator or counselor becomes a role model whose words, behavior and actions are likely to be emulated by students coming under his or her care, instruction, supervision, administration, guidance and protection.

For these reasons the state finds a compelling interest in refusing to employ and in terminating the employment of a schoolteacher, a teacher's aide, a school administrator or a counselor, subject to reasonable restrictions and qualifications, who engages in public homosexual activity and/or public homosexual conduct directed at, or likely to come to the attention of, schoolchildren or other school employees.

This proscription is essential since such activity and conduct undermines that state's interest in preserving and perpetuating the conjugal family unit.

The purpose of sections 44837.6 and 44933.5 is to proscribe employment of a person whose homosexual activities or conduct are determined to render him or her unfit for service.

SECTION 2. Section 44837.6 is added to the Education Code, to read:

44837.6 (a) The governing board of a school district shall refuse to hire as an employee any person who has engaged in public homosexual activity or public homosexual conduct should the board determine that said activity or conduct renders the person unfit for service.

(b) For purposes of this section, (1) "public homosexual activity" means the commission of an act defined in subdivision (a) of Section 286 of the Penal Code, or in subdivision (a) of Section 288a of the Penal Code, upon any other person of the same sex, which is not discreet and not practiced in private, whether or not such act, at the time of its commission, constituted a crime;

(2) "Public homosexual conduct" means the advocating, soliciting, imposing, encouraging, or promoting of private or public homosexual activity directed at, or likely to come to the attention of schoolchildren and/or other employees; and

(3) "Employee" means a probationary or permanent certificated teacher, teacher's aide, school administrator or counselor.

(c) In evaluating the public homosexual activity and/or the public homosexual conduct in question for the purposes of determining an applicant's unfitness for service as an employee, a board shall consider the factors delineated in Section 44933.5(f).

SECTION 3. Section 44933.5 is added to the Education Code, to read:

44933.5 (a) In addition to the grounds specified in Sections 44932, 44948 and 44949, or any other provision of law, the commission of "public homosexual activity" or "public homosexual conduct" by an employee shall subject the employee to dismissal upon a determination by the board that said activity or conduct renders the employee unfit for service. Dismissal shall be determined in accordance with the procedures contained in this section.

(b) For the purposes of this section, (1) "public homosexual activity" means the commission of an act defined in subdivision (a) of Section 286 of the Penal Code, or in subdivision (a) of Section 288a of the Penal Code, upon any other person of the same sex, which is not discreet and not practiced in private, whether or not such act, at the time of its commission, constituted a crime;

(2) "public homosexual conduct" means the advocating, soliciting, imposing, encouraging or promoting of private or public homosexual activity directed at, or likely to come to the attention of, schoolchildren and/or other employees; and

(3) "Employee" means a probationary or permanent certificated teacher, teacher's aide, school administrator or counselor.

(c) Notwithstanding any other provision of law regarding dismissal procedures, the governing board, upon the filing of written charges that the person has committed public homosexual activity or public homosexual conduct, duly signed and verified by the person filing the charges, or upon written charges formulated by the governing board, shall set a probable cause hearing on the charges within fifteen (15) working days after the filing or formulation of written charges and forward notice to the employee of the charges not less than ten (10) working days prior to the probable cause hearing. The notice shall inform the employee of the time and place of the governing board's hearing to determine if probable cause exists that the employee has engaged in public homosexual activity or public homosexual conduct. Such notice shall also inform the employee of his or her right to be present with counsel and to present evidence which may have bearing on the board's determination of whether there is probable cause. This hearing shall be held in private session in accordance with Govt. Code § 54957, unless the employee requests a public hearing. A finding of probable cause shall be made within thirty (30) working days after the filing or formulation of written charges by not less than a simple majority vote of the entire board.

(d) Upon a finding of probable cause, the governing board may, if it deems such action necessary, immediately suspend the employee from his or her duties. The board shall, within thirty-two (32) working days after the filing or formulation of written charges, notify the employee in writing of its findings and decision to suspend, if imposed, and the board's reasons therefor.

(e) Whether or not the employee is immediately suspended, and notwithstanding any other provision of law, the governing board shall, within thirty (30) working days after the notice of the finding of probable cause, hold a hearing on the

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6 School Employees. Homosexuality—Initiative Statute

Argument in Favor of Proposition 6

Your rights as a parent, a citizen, and a taxpayer are under attack.

A coalition of homosexual teachers and their allies are trying to use the vast power of our school system to impose their own brand of non-morality on your children. Recently a quarter of a million of these "gay rights" activists demonstrated in San Francisco on behalf of allowing homosexuality to be taught in the classroom.

This year, we taxpayers are paying $11 billion to support our schools. That is more money than we spend on police, fire protection, hospitals, or any other service of government. We have a right to demand that those schools teach our children that there really *is* a difference between right and wrong.

This measure will provide for the removal of any teacher, teacher's aide, school administrator or counselor who advocates, solicits, encourages, or promotes homosexual behavior. In the case of Gaylord vs. Tacoma 1977, the Supreme Court of the United States upheld the right of a local school board to dismiss a homosexual teacher by refusing to review the case.

As parents, we see the symptoms of moral decay all around us: children hooked on hard drugs, sex and violence glorified in the mass media, gang wars, casual pre-marital sex among teenagers, and all the rest.

It is not enough to merely tolerate the family, we must create an atmosphere in which it will flourish.

We want to protect our children against these things, but without the help of the schools, we are helpless. Our teachers spend more time with our children than we do, and if they fail to do the job, what can we do?

We know that the example of an admired teacher can influence an impressionable young mind more than a library full of books. If that teacher respects the essential decencies of American life, he can set the feet of our children on the path of moral responsibility, but if that teacher questions the most elementary truths of our society, his influence can lead to tragedy.

We know that the undermining of traditional values which began in the '60's has left many Americans in a moral vacuum which they attempt to fill with drugs, alcohol, and "alternative life styles". We don't question the right of adults to solve their problems as they see fit, but we do object to their imposing their solutions on our children.

In June, we Californians gave the nation a new idea. The Jarvis Amendment has made fiscal responsibility respectable again and is serving as a model and inspiration for the rest of the nation.

Now the nation is watching us again. We're going to put America back on the high road, not because the politicians want it, but because the people demand it.

Your YES vote on Proposition 6 is a vote for the rights of the next generation of Americans.

JOHN V. BRIGGS
Senator, State of California
35th District

DOCTOR RAY BATEMA
Pastor, Central Baptist Church

F. LA GARD SMITH
Professor of Law

Rebuttal to Argument in Favor of Proposition 6

SENATOR BRIGGS suggests that all of our social evils—drugs—violence—immorality—will be eliminated by his elixir—PROPOSITION 6. THIS IS RIDICULOUS! Shifting the burden of curing society's ills to our teachers is unwarranted and unfair.

SENATOR BRIGGS and his followers would have you believe that teachers are promoting homosexuality in the classroom. THIS IS NONSENSE! Any teacher who did so would be fired, and we have the laws to do so right now.

SENATOR BRIGGS attempts to link his scheme with Proposition 13.

THIS IS A CONTRADICTION! PROPOSITION 6 would add another layer of unneeded and costly bureaucratic procedure to the system. Jarvis/Gann sought to eliminate such unnecessary government interference.

THESE ARE THE FACTS ABOUT PROPOSITION 6:

PROPOSITION 6 IS NOT NEEDED.

PROPOSITION 6 WILL CAUSE PROBLEMS IN SCHOOLS AND COMMUNITIES.

PROPOSITION 6 WILL COST TAXPAYERS MONEY.

PROPOSITION 6 IS BAD LAW.

VOTE NO ON PROPOSITION 6.

JANE McKASKLE MURPHY
San Francisco Police Commissioner

RAOUL TEILHET
President, California Federation of Teachers, AFT, AFL-CIO

EDMUND D. EDELMAN
Los Angeles County Supervisor, 3rd District

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School Employees. Homosexuality—Initiative Statute 6

Argument Against Proposition 6

PROPOSITION 6 WOULD LEGISLATE INTOLERANCE AND HARASSMENT, unnecessarily increasing the power of government to invade the privacy of many of our citizens. If enacted, it would misuse tax dollars and force school boards to ignore educational needs to spend time and money on enforcement of this discriminatory legislation.

Proponents of this initiative mislead the public when they claim legislation must be enacted to protect students against the possibility of educational personnel advocating a particular way of life. The State Department of Education says unequivocally that sufficient and effective laws and regulations now exist to safeguard any student from misconduct by any teacher—homosexual or heterosexual.

Although they are aware that new laws are unnecessary, sponsors of this legislation seek to fire every homosexual teacher, aide, administrator or counselor, no matter how competent, because of some aspect of his or her *private* life. This law will require school boards to invade the privacy and threaten the careers of thousands of teachers and other school employees. Rumors will lead to investigations of families, friendships, home lives, not only of teachers but also of students. As a result the educational process will be severely disrupted.

Not content to legislate such discriminatory power and waste tax dollars, initiative sponsors want to limit the free speech and objective teaching of *all* educators, of any sexual preference.

This proposed law ignores the wishes of those who seek less government in their lives and stifles the voices of those who believe in the right to privacy and civil liberties. *It legislates repression that threatens every individual and group.*

We don't need to squander tax dollars to invade privacy and disrupt school systems. Fair and effective laws now exist to protect our students. DON'T INSTITUTE WITCH HUNTS.

VOTE NO ON SIX.

JANE McKASKLE MURPHY
San Francisco Police Commissioner

RAOUL TEILHET
President, California Federation of Teachers, AFT, AFL-CIO

EDMUND D. EDELMAN
Los Angeles County Supervisor, 3rd District

Rebuttal to Argument Against Proposition 6

The homosexuals and their supporters tell us the present law is just fine.

Well, let them tell that to the citizens of Healdsburg, California. They know better.

This quiet little town in the Sonoma wine country has been fighting unsuccessfully to remove a second grade teacher who has openly admitted his homosexuality and has campaigned publicly to keep homosexual teachers in our public schools.

School officials tell parents their hands are tied; the existing law leaves them powerless to deal with the problem.

In desperation, twelve families have removed their children from the school rather than expose them to the example of an openly homosexual teacher.

Four of the five members of the Healdsburg school board have voted to support Proposition 6. They see it as the last hope for restoring to parents the freedom to control their own schools.

A small but powerful group of militant homosexuals is determined to impose its lifestyle on the majority of decent citizens. Just who is really being harassed, the homosexual advocates or the public?

According to homosexual leaders many homosexual teachers have kept silent until now but if Proposition 6 fails they will "go public" and announce their lifestyle to the world, thus providing their students with a living example of the acceptability of the homosexual way of life.

So the next time someone tells you "It can't happen here" tell him to talk to the parents of Healdsburg. Those parents know we need Proposition 6.

VOTE YES ON PROPOSITION 6.

JOHN V. BRIGGS
Senator, State of California
35th District

DOCTOR RAY BATEMA
Pastor, Central Baptist Church

F. LA GARD SMITH
Professor of Law

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7 Murder. Penalty—Initiative Statute

Official Title and Summary Prepared by the Attorney General

MURDER. PENALTY. INITIATIVE STATUTE. Changes and expands categories of first degree murder for which penalties of death or confinement without possibility of parole may be imposed. Changes minimum sentence for first degree murder from life to 25 years to life. Increases penalty for second degree murder. Prohibits parole of convicted murderers before service of 25 or 15 year terms, subject to good-time credit. During punishment stage of cases in which death penalty is authorized: permits consideration of all felony convictions of defendant; requires court to impanel new jury if first jury is unable to reach a unanimous verdict on punishment. Financial impact: Indeterminable future increase in state costs.

Analysis by Legislative Analyst

Background:

Under existing law, a person convicted of *first degree murder* can be punished in one of three ways: (1) by death, (2) by a sentence of life in prison without the possibility of parole, or (3) by a life sentence with the possibility of parole, in which case the individual would become eligible for parole after serving seven years. A person convicted of *second degree murder* can be sentenced to 5, 6, or 7 years in prison. Up to one-third of a prison sentence may be reduced through good behavior. Thus, a person sentenced to 6 years in prison may be eligible for parole after serving 4 years.

Generally speaking, the law requires a sentence of death *or* life without the possibility of parole when an individual is convicted of first degree murder under one or more of the following special circumstances: (1) the murderer was hired to commit the murder; (2) the murder was committed with explosive devices; (3) the murder involved the killing of a specified peace officer or witness; (4) the murder was committed during the commission or attempted commission of a robbery, kidnapping, forceable rape, a lewd or lascivious act with a child, or first degree burglary; (5) the murder involved the torture of the victim; or (6) the murderer has been convicted of more than one offense of murder in the first or second degree. If any of these special circumstances is found to exist, the judge or jury must "take into account and be guided by" aggravating or mitigating factors in sentencing the convicted person to either death or life in prison without the possibility of parole. "Aggravating" factors which might warrant a death sentence include brutal treatment of the murder victim. "Mitigating" factors, which might warrant life imprisonment, include extreme mental or emotional disturbance when the murder occurred.

Proposal:

This proposition would: (1) increase the penalties for first and second degree murder, (2) expand the list of special circumstances requiring a sentence of either death or life imprisonment without the possibility of parole, and (3) revise existing law relating to mitigating or aggravating circumstances.

The measure provides that individuals convicted of first degree murder and sentenced to life imprisonment shall serve a minimum of 25 years, less whatever credit for good behavior they have earned, before they can be eligible for parole. Accordingly, anyone sentenced to life imprisonment would have to serve at least 16 years and eight months. The penalty for second degree murder would be increased to 15 years to life imprisonment. A person sentenced to 15 years would have to serve at least 10 years before becoming eligible for parole.

The proposition would also expand and modify the list of special circumstances which require either the death penalty or life without the possibility of parole. As revised by the measure, the list of special circumstances would, generally speaking, include the following: (1) murder for any financial gain; (2) murder involving concealed explosives or explosives that are mailed or delivered; (3) murder committed for purposes of preventing arrest or aiding escape from custody; (4) murder of any peace officer, federal law enforcement officer, fireman, witness, prosecutor, judge, or elected or appointed official with respect to the performance of such person's duties; (5) murder involving particularly heinous, atrocious, or cruel actions; (6) killing a victim while lying in wait; (7) murder committed during or while fleeing from the commission or attempted commission of robbery, kidnapping, specified sex crimes (including those sex crimes that now represent "special circumstances"), burglary, arson, and trainwrecking; (8) murder in which the victim is tortured or poisoned; (9) murder based on the victim's race, religion, nationality, or country of origin; or (10) the murderer has been convicted of more than one offense of murder in the first or second degree.

Also, this proposition would specifically make persons involved in the crime other than the actual murderer subject to the death penalty or life imprisonment without possibility of parole under specified circumstances.

Finally, the proposition would make the death sentence *mandatory* if the judge or jury determines that the aggravating circumstances surrounding the crime *outweigh* the mitigating circumstances. If aggravating circumstances are found *not* to outweigh mitigating circumstances, the proposition would require a life sentence without the possibility of parole. Prior to weighing the aggravating and mitigating factors, the jury

would have to be informed that life without the possibility of parole might at a later date be subject to commutation or modification, thereby allowing parole.

Fiscal Effect:

We estimate that, over time, this measure would increase the number of persons in California prisons, and thereby increase the cost to the state of operating the prison system.

The increase in the prison population would result from:

- the longer prison sentences required for first degree murder (a minimum period of imprisonment equal to 16 years, eight months, rather than seven years);
- the longer prison sentences required for second degree murder (a minimum of ten years, rather than four years); and
- an increase in the number of persons sentenced to life without the possibility of parole.

There could also be an increase in the number of executions as a result of this proposition, offsetting part of the increase in the prison population. However, the number of persons executed as a result of this measure would be significantly less than the number required to serve longer terms.

The Department of Corrections states that a small number of inmates can be added to the prison system at a cost of $2,575 per inmate per year. The additional costs resulting from this measure would not begin until 1983. This is because the longer terms would only apply to crimes committed after the proposition became effective, and it would be four years before any person served the minimum period of imprisonment required of second degree murderers under existing law.

Text of Proposed Law

This initiative measure proposes to repeal and add sections of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

Section 1. Section 190 of the Penal Code is repealed.

~~190. Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in state prison for life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5. Every person guilty of murder in the second degree is punishable by imprisonment in the state prison for five, six, or seven years.~~

Sec. 2. Section 190 is added to the Penal Code, to read:

190. Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall apply to reduce any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

Sec. 3. Section 190.1 of the Penal Code is repealed.

~~190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:~~

~~(a) The defendant's guilt shall first be determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2, except for a special circumstance charged pursuant to paragraph (5) of subdivision (c) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree.~~

~~(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (5) of subdivision (c) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.~~

~~(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.~~

Sec. 4. Section 190.1 is added to the Penal Code, to read:

190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:

(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.

(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.

(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is

Continued on page 41

7 Murder. Penalty—Initiative Statute

Argument in Favor of Proposition 7

CHARLES MANSON, SIRHAN SIRHAN, THE ZODIAC KILLER, THE SKID-ROW SLASHER, THE HILLSIDE STRANGLER.

These infamous names have become far too familiar to every Californian. They represent only a small portion of the deadly plague of violent crime which terrorizes law-abiding citizens.

Since 1972, the people have been demanding a tough, effective death penalty law to protect our families from ruthless killers. But, every effort to enact such a law has been thwarted by powerful anti-death penalty politicians in the State Legislature.

In August of 1977, when the public outcry for a capital punishment law became too loud to ignore, the anti-death penalty politicians used their influence to make sure that the death penalty law passed by the State Legislature was as weak and ineffective as possible.

That is why 470,000 concerned citizens signed petitions to give you the opportunity to vote on this new, tough death penalty law.

Even if the President of the United States were assassinated in California, his killer would not receive the death penalty in some circumstances. Why? Because the Legislature's weak death penalty law does not apply. Proposition 7 would.

If Charles Manson were to order his family of drug-crazed killers to slaughter your family, Manson would not receive the death penalty. Why? Because the Legislature's death penalty law does not apply to the master mind of a murder such as Manson. Proposition 7 would.

And, if you were to be killed on your way home tonight simply because the murderer was high on dope and wanted the thrill, that criminal would not receive the death penalty. Why? Because the Legislature's weak death penalty law does not apply to every murderer. Proposition 7 would.

Proposition 7 would also apply to the killer of a judge, a prosecutor, or a fireman. It would apply to a killer who murders a citizen in cold blood because of his race or religion or nationality. And, it would apply to all situations which are covered by our current death penalty law.

In short, your YES vote on Proposition 7 will give every Californian the protection of the nation's toughest, most effective death penalty law.

A long and distinguished list of judges and law enforcement officials have agreed that Proposition 7 will provide them with a powerful weapon of deterrence in their war on violent crime.

Your YES vote on Proposition 7 will help law enforcement officials to stop violent crime—NOW.

JOHN V. BRIGGS
Senator, State of California
35th District

DONALD H. HELLER
Attorney at Law
Former Federal Prosecutor

DUANE LOWE
President, California Sheriffs' Association
Sheriff of Sacramento County

Rebuttal to Argument in Favor of Proposition 7

The argument for Proposition 7 is strictly false advertising.

- It would not affect the Charles Manson and Sirhan Sirhan cases. They were sentenced under an old law, thrown out by the courts because it was improperly written.
- As for the "zodiac killer", "hillside strangler" and "skid-row slasher", *they were never caught.* Even the nation's "toughest" death penalty law cannot substitute for the law enforcement work necessary to apprehend suspects still on the loose.

But you already know that.

Regardless of the proponents' claim, no death penalty law—neither Proposition 7 nor the current California law—can guarantee the *automatic* execution of all convicted murderers, let alone suspects not yet apprehended.

California has a strong death penalty law. Two-thirds of the Legislature approved it in August, 1977, after months of careful drafting and persuasive lobbying by law enforcement officials and other death penalty advocates.

The present law is *not* "weak and ineffective" as claimed by Proposition 7 proponents. It applies to murder cases like the ones cited.

Whether or not you believe that a death penalty law is necessary to our system of justice, you should vote NO on Proposition 7. It is so confusing that the courts may well throw it out. Your vote on the murder penalty initiative will not be a vote on the death penalty; it will be a vote on a carelessly drafted, dangerously vague and possibly invalid statute.

Don't be fooled by false advertising. READ Proposition 7. VOTE NO.

MAXINE SINGER
President, California Probation, Parole and Correctional Association

NATHANIEL S. COLLEY
Board Member, National Association for the Advancement of Colored People

JOHN PAIRMAN BROWN
Board Member, California Church Council

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Argument Against Proposition 7

DON'T BE FOOLED BY FALSE ADVERTISING. The question you are voting on is NOT whether California should have the death penalty. California ALREADY has the death penalty.

The question is NOT whether California should have a tough, effective death penalty. California ALREADY has the death penalty for more different kinds of crimes than any other State in the country.

The question you are voting on is whether to repeal California's present death-penalty law and replace it with a new one. Don't be fooled by false advertising. If somebody tried to sell you a new car, you'd compare it with your present automobile before paying a higher price for a worse machine.

Whether or not you agree with California's present law, it was written carefully by people who believed in the death penalty and wanted to see it used effectively. It was supported by law enforcement officials familiar with criminal law.

The new law proposed by Proposition 7 is written carelessly and creates problems instead of solving them. For example, it does not even say what happens to people charged with murder under the present law if the new one goes into effect.

As another example, it first says that "aggravating circumstances" must outweigh "mitigating circumstances" to support a death sentence. Then it says that mitigating circumstances" must outweigh "aggravating circumstances" to support a life sentence. This leaves the burden of proof unclear. As a result, court processes would become even more complicated.

Proposition 7 does allow the death penalty in more cases than present law. But what cases?

Under Proposition 7, a man or woman could be sentenced to die for lending another person a screwdriver to use in a burglary, if the other person accidentally killed someone during the burglary. Even if the man or woman was not present during the burglary, had no intention that anyone be killed or hurt, in fact urged the burglar not to take a weapon along, they could still be sentenced to die.

This is the kind of law that wastes taxpayers' money by putting counties to the expense of capital trials in many cases where the death penalty is completely inappropriate. To add to the waste, Proposition 7 requires two or more jury trials in some cases where present law requires only one.

Don't let yourself be fooled by claims that Proposition 7 will give California a more effective penalty for murder. It won't. DON'T BE FOOLED BY FALSE ADVERTISING. Vote NO on Proposition 7.

MAXINE SINGER
President, California Probation, Parole and Correctional Association

NATHANIEL S. COLLEY
Board Member, National Association for the Advancement of Colored People

JOHN PAIRMAN BROWN
Board Member, California Church Council

Rebuttal to Argument Against Proposition 7

ALRIGHT, LET'S TALK ABOUT FALSE ADVERTISING.

The opposition maintains if someone were to lend a screwdriver to his neighbor and the neighbor used it to commit a murder, the poor lender could get the death penalty, even though "he had NO INTENTION that anyone be killed."

Please turn back and read Section 6b of the Proposition 7. It says that the person must have INTENTIONALLY aided in the commission of a murder to be subject to the death penalty under this initiative.

They say that Proposition 7 doesn't specify what happens to those who have been charged with murder under the old law. Any first-year law student could have told them Proposition 7 will not be applied retroactively. Anyone arrested under an *old* law will be tried and sentenced under the *old* law.

The opposition can't understand why we included the aggravating vs. mitigating circumstances provision in Proposition 7. Well, that same first-year law student could have told them this provision is required by the U.S. Supreme Court. The old law does not meet this requirement and might be declared unconstitutional, leaving us with no death penalty at all!

If we are to turn back the rising tide of violent crime that threatens each and every one of us, we must act NOW.

This citizen's initiative will give your family the protection of the strongest, most effective death penalty law in the nation.

JOHN V. BRIGGS
Senator, State of California
35th District

DONALD H. HELLER
Attorney at Law
Former Federal Prosecutor

DUANE LOWE
President, California Sheriffs' Association
Sheriff of Sacramento County

8 Property Taxation

Official Title and Summary Prepared by the Attorney General

PROPERTY TAXATION. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends Constitution, article XIIIA, section 2. Provides that real property reconstructed after a disaster, as declared by the Governor, shall not be considered "newly constructed" for property tax purposes if the fair market value of such property, as reconstructed, is comparable to its fair market value prior to the disaster. Authorizes reduction in full cash value of real property for property tax purposes to reflect substantial damages, destruction or other factors causing a decline in value. Revises existing terms relating to the valuation of real property for property tax purposes. Financial impact: In the absence of a major disaster, the adoption of this proposal would have a minor impact on local property tax revenues statewide. It should have no significant impact on state revenues or costs.

FINAL VOTE CAST BY LEGISLATURE ON SCA 67 (PROPOSITION 8)

Assembly—Ayes, 69 Noes, 0

Senate—Ayes, 32 Noes, 0

Analysis by Legislative Analyst

Background:

Proposition 13 on the June 1978 ballot substantially changed provisions in the California Constitution regarding the valuation of property for property tax purposes. In general, Proposition 13 requires county assessors to use 1975–76 property values as the basis for determining real property assessments in 1978–79 and subsequent years. The 1975–76 values may be increased by an inflation factor of no more than 2 percent per year. However, if the property is "newly constructed", or if ownership of the property changes, the assessment is based *not* on the property's value in 1975–76, but on its value at the time of construction or change in ownership.

Proposal:

This proposition would affect the determination of assessed value in three ways:

1. *Allowed adjustments to 1975–76 property values.* Proposition 13 specifies that the county assessors' determination of 1975–76 assessments can now be increased if these values were "not already assessed up to the 1975–76 tax levels". These adjusted values then would constitute the basis for computing future assessments.

This constitutional amendment substitutes the term "full cash value" for "tax levels". The Legislative Counsel advises us that this terminology change is a clarifying amendment to the Constitution, and as such it would not have any direct fiscal effect.

2. *Treatment of "reconstructed" property.* The Legislative Counsel advises us that, as used in Proposition 13, the term "newly constructed" real property covers additions or renovations to real property as well as newly built structures. Thus, property which has not been sold since 1975, but is substantially "reconstructed" following a flood, fire or other disaster would have to be reassessed at its new market value.

This proposal specifies that real property which is reconstructed after a disaster shall not be reassessed at its new market value if (1) it is in a disaster area, as proclaimed by the Governor and (2) its value is comparable to the fair market value of the original property prior to the disaster. This would prevent the assessed value of such property from being increased by more than the 2 percent annual inflation factor.

3. *Property which has declined in value since 1975.* Proposition 13 does not allow the assessor to reduce the assessed value of property which declines in value while it is still owned by the same taxpayer. This proposal would allow the assessor to make such reductions when it has been substantially damaged or its value has been reduced by "other factors" such as economic conditions.

Fiscal Effect:

In the absence of a major disaster, the adoption of this proposal would have a minor impact on local property tax revenues statewide. It should have no significant impact on state revenues or costs.

Argument in Favor of Proposition 8

This past June, the voters of California overwhelmingly passed Proposition 13 (the Jarvis-Gann initiative), thereby significantly reducing a property tax burden that had become increasingly unfair.

The purpose of this measure, Proposition 8, is to further the intent of Proposition 13 by easing the property tax burden of disaster victims who have recently lost their homes or suffered real property damage.

Although Proposition 13 rolled back assessments to 1975–76 values, it overlooked the possibility that a person's property might have been damaged to the extent that it has actually *declined* in value since 1976. Proposition 8 on this ballot would allow assessors to further reduce assessments if such damage has, in fact, occurred.

Moreover, some California families have recently been the victims of large-scale disasters, officially recognized as state emergencies. To cite but one example, more than 200 families saw their homes completely destroyed by fire in Santa Barbara in 1977, and other Californians have suffered similarly from extensive floods, mudslides, and earthquakes.

But when these victims of disasters rebuild their homes or businesses, they come under the provision of Proposition 13 which requires that "new construction" be assessed at current market value, thus causing a major reassessment *upward.* Without Proposition 8, those who cannot afford to rebuild at all presumably will still have to pay the 1975-76 assessed value of the home or business as though it were still standing.

So, although the "new construction" provision will generally be appropriate, for disaster victims forced to rebuild it is terribly unfair. Proposition 8 simply says that these unfortunate citizens should be allowed the same 1975–76 rollback that the rest of us receive, on condition that the new structure is comparable in value to the one being replaced.

Again, in keeping with the spirit and intent of Proposition 13, Proposition 8 will allow assessors to *reduce* assessments to reflect substantial damage, destruction or other factors which cause a decline in property value. This will insure equal treatment under the law, and will prevent additional tax burdens from falling on those who have suffered major property losses, damage or property depreciation since 1976.

Please join the undersigned individuals who have worked so very hard to provide property tax relief for *all* Californians, and VOTE YES ON PROPOSITION 8.

OMER L. RAINS
State Senator, 18th District
Chairman, Senate Majority Caucus

PAUL GANN
President, Peoples Advocate
(Co-author of Proposition 13, the Jarvis-Gann Initiative)

PETER BEHR
State Senator, 2nd District
Chairman, Committee on Insurance and Financial Institutions

No argument against Proposition 8 was submitted

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment No. 67 (Statutes of 1978, Resolution Chapter 76) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII A

Section 2. (a) The full cash value means the ~~County Assessors~~ *county assessor's* valuation of real property as shown on the 1975–76 tax bill under "full cash value"; or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has ~~occured~~ *occurred* after the 1975 assessement. All real property not already assessed up to the 1975–76 ~~tax levels~~ *full cash value* may be reassessed to reflect that valuation. *For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster.*

(b) The ~~fair market~~ *full cash* value base may reflect from year to year the inflationary rate not to exceed ~~two~~ *2* percent ~~(2%)~~ for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction*, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.*

Argument printed on this page is the opinion of the authors and has not been checked for accuracy by any official agency.

TEXT OF PROPOSITION 1—*Continued from page 9*

reports to the Director of Veterans Affairs, the members of the California Veterans Board, and to the members of the Veterans' Finance Committee of 1943. The Division of Farm and Home Purchases shall reimburse such independent public accountant for his services out of any funds which such division may have available on deposit with the Treasurer of the State of California.

998.030. The committee may authorize the State Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the State Treasurer.

998.031. Whenever bonds are sold, out of the first money realized from their sale, there shall be redeposited in the General Obligation Bond Expense Revolving Fund established by Section 16724.5 of the Government Code such sums as have been expended for the purposes specified in Section 16724.5 of the Government Code, which may be used for the same purpose and repaid in the same manner whenever additional sales are made.

TEXT OF PROPOSITION 4—*Continued from page 21*

accordance with rules and regulations that may be established by the accrediting agency as conditions for the attainment of status, as those rules and regulations are interpreted by the board.

As used in this section, "arbitrary and capricious additional requirements" means requirements which may be imposed by the accrediting agency as conditions for the attainment of status during the time period specified for the attainment of status by a chiropractic school or college that, in the board's judgement, cannot be satisfied within such time period or do not serve to improve the educational standards or quality of such school or college.

(h) The board may employ such investigators, clerical assistants, *commissioners on examination* and other employees as it may deem necessary to carry into effect the provisions of this act, and shall prescribe the duties of such employees.

SEC. 2.5. Section 5 of the act cited in the title is amended to read:

Sec. 5. License to Practice: Fee: Educational Requirements. It shall be unlawful for any person to practice chiropractic in this state without a license so to do. Any person wishing to practice chiropractic in this state shall make application to the board 45 days prior to any meeting thereof, upon such form and in such manner as may be provided by the board. Proof of graduation from an approved chiropractic school or college, *as defined in Section 4,* must reach the board 15 days prior to any meeting thereof. Each application must be accompanied by a licensee fee of not more than seventy-five dollars ($75), as determined by the board. Except in the cases herein otherwise prescribed, each applicant shall present ~~evidence of having attended, and graduated from, a chiropractic college accredited by or recognized as a candidate for accreditation by the Accrediting Commission of the Council on Chiropractic Education, or the equivalent thereof, and shall present~~ to the board at the time of making such application a diploma from a high school and a transcript of 60 prechiropractic college credits satisfactory to the board, or proof, satisfactory to the board, of education equivalent in training power to such high school and college courses.

The schedule of minimum educational requirements to enable any person to practice chiropractic in this state is as follows, except as herein otherwise provided:

Group 1	
Anatomy, including embryology and histology	14%
Group 2	
Physiology	6%
Group 3	
Biochemistry and clinical nutrition	6%
Group 4	
Pathology and bacteriology	10%
Group 5	
Public health, hygiene and sanitation	3%
Group 6	
Diagnosis, dermatology, syphilology and geriatrics, and radiological technology, safety, and interpretation	18%
Group 7	
Obstetrics and gynecology and pediatrics	3%
Group 8	
Principles and practice of chiropractic, physical therapy, psychiatry, and office procedure	25%
Total	85%
Electives	15%

Any applicant who had matriculated at a chiropractic college prior to the effective date of the amendments to this section submitted to the electors by the ~~1975/1976~~ *1977–1978* Regular Session of the Legislature shall meet all requirements ~~that~~ *than* existed immediately prior to the effective date of those amendments but need not meet the change in requirements made by said amendments.

SEC. 3. Section 10 of the act cited in the title is amende to read:

Sec. 10. (a) The board may by rule or regulation adopt, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of professional service and the protection of the public. Such rules or regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code as it now reads or as it may be hereafter amended by the Legislature.

(b) The board ~~shall~~ *may* refuse to grant, or may suspend or revoke, a license to practice chiropractic in this state, or may place the licensee upon probation or issue a reprimand to him, for violation of the rules and regulations adopted by the board in accordance with this act, or for any cause specified in this act, including, but not limited to: The employment of fraud or deception in applying for a license or in passing an examination as provided in this act; the practice of chiropractic under a false or assumed name; or the personation of another practitioner of like or different name; ~~the conviction of a crime involving moral turpitude;~~ *a plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense substantially related to the practice of chiropractic;* habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate him for the performance of his professional duties; the advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed; or the advertising, directly, indirectly or in substance, upon any card, sign, newspaper advertisement, or other written or printed sign or advertisement, that th holder of such license or any other person, company or association by which he or she is employed, or in whose services he or she is, will treat, cure, or attempt to treat or cure, any

venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, for lost manhood, sexual weakness or sexual disorder or any disease of the sexual organs; or being employed by, or being in the service of any person, company or association so advertising.

The proceedings for the refusal to grant, suspension or revocation of a license upon any of the foregoing grounds shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code as it now reads or as it may be hereafter amended by the Legislature, and the board shall have all the powers granted therein. The secretary on all cases of revocation shall enter on his register the fact of such revocation, and shall certify the fact of such revocation under the seal of the board to the county clerk of the counties in which the certificates of the person whose certificate has been revoked is recorded; and said clerk must thereupon write upon the margin or across the face of his register of the certificate of such person the following: "This certificate was revoked on the _____ day of _____," giving the day, month and year of such revocation in accordance with said certification to him by said secretary. The record of such revocation so made by said county clerk shall be prima facie evidence of the fact thereof, and of the regularity of all proceedings of said board in the matter of said revocation.

(c) At any time after two years following the revocation or cancellation of a license or registration under this section, the board may, by a majority vote, reissue said license to the person affected, restoring him to, or conferring on him all the rights and privileges granted by his original license or certificate. Any person to whom such rights have been restored shall pay to the secretary the fee specified in Section 5 upon the issuance of a new license.

SEC. 4. Section 20 is added to the act cited in the title, to read:

Sec. 20. Intent of the amendments approved by the electors at the November 1978, general election. In approving the amendments to this act submitted to the electors at the November 1978, general election, it is the intent of the people of the State of California to respond to a decision of the Superior Court of the County of Los Angeles which held that the board's interpretation of the amendments to this act approved by the electors at the November 1976, general election did not reasonably provide adequate opportunity for two chiropractic colleges then instructing students in California to apply for and obtain status as Recognized Candidates for Accreditation by the Accrediting Commission of the Council on Chiropractic Education. The people deem the amendments to the act approved by the electors at the November 1978, general election to reasonably provide adequate opportunity for the two chiropractic colleges which were the subject of the aforementioned decision, other chiropractic schools and colleges instructing students as of the effective date of the amendments to this act approved by the electors at the November 1976, general election, and chiropractic schools and colleges which may be established and commence instruction following the effective date of the amendments to this act approved by the electors at the November 1976, general election, to attain status with the accrediting agency, as those terms are defined in subdivision (g) of Section 4. All courts shall be guided by this statement of intent in any decisions they may render relative to this act, but nothing in this act shall be construed to proscribe judicial review of any actions of the board relative to the administration and enforcement of this act.

TEXT OF PROPOSITION 5—***Continued from page 25***

function and not under the control of the owner or manager of the room or hall, but only while any such room or hall is used for a private social function. That the owner or manager of any such room or hall provides food or entertainment to the participants of a private social function does not mean said owner or manager has control of the function;

(e) any lobby area or waiting area in a facility designated by the owner or manager of said facility as a smoking area; provided, however, that any such designated smoking area shall be contiguous and shall not comprise more than 50 per cent of the entire lobby area or waiting area in said facility; and provided further, that except in hotels, motels, arenas, auditoriums, and theaters, any such designated smoking area shall be physically separated by walls or partitions from the remainder of the facility so that smoke does not permeate areas where smoking is unlawful;

(f) that portion of an educational facility designated by the authority having control of said facility as a student smoking lounge; provided, however, that any such smoking lounge shall not comprise more than 50 per cent of the entire student lounge area in said facility; provided further, that such entire lounge area shall not include restrooms; and provided further that, where reasonably practicable, presently existing walls, partitions, and other physical barriers shall be used to prevent or minimize the permeation of smoke from any student smoking lounge into any area where smoking is unlawful;

(g) that portion of an employer's facility designated by the employer as an employee smoking lounge; provided, however, that any such smoking lounge shall not comprise more than 50 per cent of the entire employee lounge area in said facility; provided further, that such entire lounge area shall not include restrooms; and provided further that, where reasonably practicable, presently existing walls, partitions, and other physical barriers shall be used to prevent or minimize the permeation of smoke from any employee smoking lounge into any area where smoking is unlawful;

(h) private compartments in sleeping cars in a railroad train and those coach or lounge cars or sections thereof in a railroad train designated by the management of the railroad as smoking areas; provided, however, that any such designated smoking areas shall not contain more than 50 per cent of the total seats in the coach and lounge cars in said train; and provided further, that any such smoking areas shall be physically separated by walls or partitions from the remainder of the seats so that smoke does not permeate areas where smoking is unlawful and that a fixed-rail rapid transit system is not a "railroad" for purposes of this subsection;

(i) any fully enclosed office or room occupied exclusively by smokers who generally do not meet with members of the public in such office or room;

(j) any fully enclosed private office normally occupied by only one person;

(k) taxicabs when not carrying one or more passengers for hire;

(l) those manufacturing or production areas, or those sections of the manufacturing or production areas, of factories which the Department of Industrial Safety may by regulation exempt from the prohibitions of this Chapter on the grounds that, because of the distance between workers and the adequacy of ventilation, smoking in such areas or sections is not detrimental to the health, comfort, and environment of nonsmoking employees in such areas or sections;

(m) any private hospital room;

(n) any semi-private hospital room if both patients in such room have requested in writing to be placed in a room where smoking is permitted;

(o) any part of a restaurant which is not designated as a nonsmoking section;

(p) that portion of the dining area in an employee cafeteria designated by the employer as a smoking section; provided, however, that any such smoking section shall be contiguous and shall not contain more than 50 per cent of the available seats in said dining area; and provided further, that smoking is not permitted in any food-service line;

(q) sleeping quarters of dormitories in educational facilities;

(r) an arena, auditorium, or theater when used for a rock concert, a professional boxing contest, a professional wrestling exhibition, or a professional roller derby, but only during the hours of any such events;

(s) pool halls other than family billiard parlors;

(t) gambling halls.

25934 Restaurants

(a) Every restaurant shall establish a nonsmoking section in its dining area in which signs or placards referred to in Section 25935 shall be posted or placed. Although the size and location of any such nonsmoking section shall be determined by the owner or manager of the restaurant, who may adjust the size of the section to accommodate the needs of the patrons, any such section shall be one contiguous area. Any other provision of this Chapter notwithstanding, smoking is unlawful in any food-service line in a cafeteria.

(b) A conspicuous and clearly legible sign shall be posted at every public entrance to a restaurant indicating the approximate percentage of available seats in the nonsmoking section of the dining area; provided, however, that such sign may indicate that the approximate percentage is subject to change on any particular day if the needs of the restaurant owner or manager so require.

(c) It is the intent of the People of the State of California to encourage restaurant owners and managers to use reasonable efforts to provide seating in a nonsmoking section for any patron who desires such seating and to encourage restaurant owners and managers to use presently existing physical barriers and ventilation systems to minimize the permeation of smoke from adjacent smoking sections into nonsmoking sections.

25935 Posting of Signs

(a) Except in auditoriums of motion-picture theaters as provided for in Subsection (b), in restaurants which use individual placards as provided for in Subsection (c), and in facilities owned and used or leased and used by state or local governmental entities as provided for in Subsection (d), clearly legible signs stating that smoking is unlawful and citing Health and Safety Code Section 25932 shall be conspicuously posted in all areas where smoking is unlawful. Such signs shall have lettering no less than two inches in height, with the exception of that lettering citing Health and Safety Code Section 25932, which shall be no less than one-half inch in height. Such signs shall be posted in sufficient number and in such locations as to be readily visible and as to give reasonable notice to all persons in an area that smoking is unlawful in said area. Such signs shall be in English and, where appropriate, may also be in Spanish, Chinese, or any other language. Posting of signs shall be the obligation of the lessee of leased premises and the obligation of the owner of premises which are not leased.

(b) Illuminated "No Smoking" signs shall be installed and maintained in the auditoriums of all motion-picture theaters so as to be readily visible along the normal sightlines from all seats. Installation and maintenance of signs shall be the obligation of the lessee of leased premises and the obligation of the owner of premises which are not leased.

(c) In restaurants, individual signs or placards stating in lettering no less than three-eighths inch in height that smoking is unlawful and citing Health and Safety Code Section 25932 may be placed on every table and counter in the nonsmoking section of the dining area instead of or in addition to the signs otherwise required in Subsection (a). Such signs and placards shall be in English and, where appropriate, may also be in any other language.

(d) In any facility owned and used or leased and used by a state or local governmental entity, clearly legible signs shall be conspicuously posted at every entrance to the facility. Such signs shall state that smoking is unlawful throughout the facility except in single-occupant offices and in designated smoking areas and shall cite Health and Safety Code Section 25932. Such signs shall be in English and, where appropriate, may also be in Spanish, Chinese, or any other language.

(e) Nothwithstanding any other provisions of this Section, in any area where signs are posted stating that smoking is unlawful, citing a federal, state, or local law, other than this Chapter, and otherwise complying with the requirements of this Section, the citing of Health and Safety Code Section 25932 on signs in such areas shall not be required so long as said federal, state, or local law remains in effect.

25936 Violations

(a) Any person who violates any provision of this Chapter is guilty of an infraction and shall be fined fifty dollars ($50) per violation.

(b) Each day on which a violation of any provision of Section 25934 or Section 25935 of this Chapter occurs is a separate and distinct offense and shall be punishable as such.

25936.1 Discrimination Against Employees or Applicants

No person shall discharge, refuse to hire, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises on behalf of himself, herself, or others any rights afforded him or her by this Chapter.

25937 No Preemption

It is the intent of the People of the State of California to preempt the field of regulation of smoking. A local governing body may make smoking unlawful in areas not regulated by this Chapter or regulate smoking in any manner not inconsistent with this Chapter or any other provision of State law. This Chapter does not permit smoking where otherwise restricted by law.

25938 Amendment

With the exception of this Section and the legislative intent expressed in Sections 25931, 25934(c), and 25937, this Chapter may be amended by the State Legislature; provided, however, that any amendment to this Chapter shall be consistent with such legislative intent.

25939 Definitions

The definitions set forth in this Section shall govern the construction and interpretation of this Chapter.

(a) "Bar" means an area used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food or the presentation of entertainment is incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar, the term "bar" does not include a restaurant.

(b) "Clinic" has the meaning set forth in Section 1202 of the Health and Safety Code, whether operated by a public or private entity.

(c) "Courtesy Vehicle" means any vehicle used by a business enterprise or a public entity in the course of its operations to transport persons without charge.

(d) "Educational Facility" means any building of a public or private school, college, or university.

(e) "Enclosed" means closed in by a ceiling or roof and by walls on at least three sides.

(f) "Factory" means any manufacturing establishment where five or more persons are employed.

(g) "Fully Enclosed" means closed in by a ceiling or roof and by walls on all sides.

(h) "Health Facility" has the meaning set forth in Section 1250 of the Health and Safety Code, whether operated by a public or private entity.

(i) "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment but to which members of the public are not normally invited, including, but not limited to, work areas, employee lounges, restrooms, meeting rooms, and employee cafeterias. A private residence is not a "place of employment."

(j) "Polling Place" means the entire room, hall, garage, or other facility in which persons cast ballots in an election, but only during such time as election business is being conducted.

(k) "Private Hospital Room" means a room in a health facility containing one bed for patients of such facility.

(l) "Public Place" means any area to which the public is invited or in which the public is permitted or which serves as a place of volunteer service. A private residence is not a "public place." Without limiting the generality of the foregoing, "public place" includes:

(i) arenas, auditoriums, galleries, museums, and theaters;

(ii) business establishments dealing in goods or services to which the public is invited or in which the public is permitted;

(iii) instrumentalities of public transportation while operating within the boundaries of the State of California;

(iv) facilities or offices of physicians, dentists, and other persons licensed to practice any of the healing arts regulated under Division 2 of the Business and Professions Code;

(v) elevators in commercial, governmental, office, and residential buildings;

(vi) public restrooms;

(vii) jury rooms and juror waiting rooms;

(viii) polling places;

(ix) courtesy vehicles.

(m) "Restaurant" has the meaning set forth in Section 28522 of the Health and Safety Code except that the term "restaurant" does not include an employee cafeteria or a tavern or cocktail lounge if such tavern or cocktail lounge is a "bar" pursuant to Section 25939(a).

(n) "Retail Tobacco Store" means a retail store used primarily for the sale of smoking products and smoking accessories and in which the sale of other products is incidental. "Retail tobacco store" does not include a tobacco department of a retail store commonly known as a department store.

(o) "Rock Concert" means a live musical performance commonly known as a rock concert and at which the musicians use sound amplifiers.

(p) "Semi-Private Hospital Room" means a room in a health facility containing two beds for patients of such facility.

(q) "Smoking" means and includes the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment used for the practice commonly known as smoking, or the intentional inhalation or exhalation of smoke from any such lighted smoking equipment."

SECTION 2: Severability

If any provision of Chapter 10.7 of the Health and Safety Code or the application thereof to any person or circumstance is held invalid, any such invalidity shall not affect other provisions or applications of said Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of said Chapter are severable.

SECTION 3: Effective Date

Chapter 10.7 of the Health and Safety Code becomes effective 90 days after approval by the electorate.

TEXT OF PROPOSITION 6—*Continued from page 29*

truth of the charges upon which a finding of probable cause was based and whether such charges, if found to be true, render the employee unfit for service. This hearing shall be held in private session in accordance with Govt. Code § 54957, unless the employee requests a public hearing. The governing board's decision as to whether the employee is unfit for service shall be made within thirty (30) working days after the conclusion of this hearing. A decision that the employee is unfit for service shall be determined by not less than a simple majority vote of the entire board. The written decision shall include findings of fact and conclusions of law.

(f) Factors to be considered by the board in evaluating the charges of public homosexual activity or public homosexual conduct in question and in determining unfitness for service shall include, but not be limited to: (1) the likelihood that the activity or conduct may adversely affect students or other employees; (2) the proximity or remoteness in time or location of the conduct to the employee's responsibilities; (3) the extenuating or aggravating circumstances which, in the judgment of the board, must be examined in weighing the evidence; and (4) whether the conduct included acts, words or deeds, of a continuing or comprehensive nature which would tend to encourage, promote, or dispose schoolchildren toward private or public homosexual activity or private or public homosexual conduct.

(g) If, by a preponderance of the evidence, the employee is found to have engaged in public homosexual activity or public homosexual conduct which renders the employee unfit for service, the employee shall be dismissed from employment. The decision of the governing board shall be subject to judicial review.

SECTION 4. Severability Clause

If any provision of this enactment or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this enactment which can be given effect without the invalid provision of application, and to this end the provisions of this enactment are severable.

TEXT OF PROPOSITION 7—*Continued from page 33*

found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.

Sec. 5. Section 190.2 of the Penal Code is repealed.

~~190.2. The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in the state prison for life without possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found, in a proceeding under Section 190.4, to be true:~~

~~(a) The murder was intentional and was carried out pursuant to agreement by the person who committed the murder to accept a valuable consideration for the act of murder from any person other than the victim;~~

~~(b) The defendant, with the intent to cause death, physi-~~

~~cally aided or committed such act or acts causing death, and the murder was willful, deliberate, and premeditated, and was perpetrated by means of a destructive device or explosive:~~

~~(c) The defendant was personally present during the commission of the act or acts causing death, and with intent to cause death physically aided or committed such act or acts causing death and any of the following additional circumstances exists:~~

~~(1) The victim is a peace officer as defined in Section 830.1, subdivision (a) or (b) of Section 830.2, subdivision (a) or (b) of Section 830.3, or subdivision (b) of Section 830.5, who, while engaged in the performance of his duty was intentionally killed, and the defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties.~~

~~(2) The murder was willful, deliberate, and premeditated, the victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding, and the killing was not committed during the commission or attempted commission of the crime to which he was a witness.~~

~~(3) The murder was willful, deliberate, and premeditated and was committed during the commission or attempted commission of any of the following crimes:~~

~~(i) Robbery in violation of Section 211;~~

~~(ii) Kidnapping in violation of Section 207 or 209. Brief movements of a victim which are merely incidental to the commission of another offense and which do not substantially increase the victim's risk of harm over that necessarily inherent in the other offense do not constitute a violation of Section 209 within the meaning of this paragraph.~~

~~(iii) Rape by force or violence in violation of subdivision (2) of Section 261, or by threat of great and immediate bodily harm in violation of subdivision (3) of Section 261;~~

~~(iv) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288;~~

~~(v) Burglary in violation of subdivision (1) of Section 460 of an inhabited dwelling house with an intent to commit grand or petit larceny or rape.~~

~~(4) The murder was willful deliberate, and premeditated, and involved the infliction of torture. For purposes of this section, torture requires proof of an intent to inflict extreme and prolonged pain.~~

~~(5) The defendant has in this proceeding been convicted of more than one offense of murder of the first or second degree, or has been convicted in a prior proceeding of the offense of murder of the first or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed to be murder in the first or second degree.~~

~~(d) For the purposes of subdivision (c), the defendant shall be deemed to have physically aided in the act or acts causing death only if it is proved beyond a reasonable doubt that his conduct constitutes an assault or a battery upon the victim or if by word or conduct he orders, initiates, or coerces the actual killing of the victim.~~

Sec. 6. Section 190.2 is added to the Penal Code, to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a peace officer engaged in the performance of his duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his official duties.

(9) The victim was a fireman as defined in Section 245.1, who while engaged in the course of the performance of his duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his testimony in any criminal proceeding, and the killing was not committed during the commission, or attempted commission or the crime to which he was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his testimony in any criminal proceeding.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the Federal Government, a local or State government of California, or of any local or state government of any other state in the United States and the killing was

intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity, as utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211.

(ii) Kidnapping in violation of Sections 207 and 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of Section 447.

(ix) Train wrecking in violation of Section 219.

(18) The murder was intentional and involved the infliction of torture. For the purpose of this section torture requires proof of the infliction of extreme physical pain no matter how long its duration.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in paragraphs (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of subdivision (a) of this section has been charged and specially found under Section 190.4 to be true.

The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Sec. 7. Section 190.3 of the Penal Code is repealed.

~~190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code, or Section 37, 128, 219 or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or life imprisonment without possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence, including, but not limited to, the nature and circumstances of the present offense, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the expressed or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.~~

~~However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the expressed or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.~~

~~However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and was acquitted. The restriction on the use of this evidence is intended to apply only to proceedings conducted pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in other proceedings.~~

~~Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time, as determined by the court, prior to the trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.~~

~~In determining the penalty the trier of fact shall take into account any of the following factors if relevant:~~

~~(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.~~

~~(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the expressed or implied threat to use force or violence.~~

~~(c) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.~~

~~(d) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.~~

~~(e) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.~~

~~(f) Whether or not the defendant acted under extreme duress or under the substantial domination of another person.~~

~~(g) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or the affects of intoxication.~~

~~(h) The age of the defendant at the time of the crime.~~

~~(i) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.~~

~~(j) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.~~

~~After having heard and received all of the evidence, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall determine whether the penalty shall be death or life imprisonment without the possibility of parole.~~

Sec. 8. Section 190.3 is added to the Penal Code, to read:

190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved

the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.

Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.

The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.

In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:

(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.

(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.

(c) The presence or absence of any prior felony conviction.

(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.

(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.

(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.

(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.

(i) The age of the defendant at the time of the crime.

(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.

(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.

Sec. 9. Section 190.4 of the Penal Code is repealed.

~~190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to subdivision (b) of Section 190.1.~~

~~In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that it is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Wherever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.~~

~~If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.~~

~~If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of the separate penalty hearing.~~

~~In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach a unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by a unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and impose a punishment of confinement in state prison for life.~~

~~(b) If defendant was convicted by the court sitting without a jury, the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.~~

~~If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and impose a punishment of confinement in state prison for life without possibility of parole.~~

~~(c) If the trier of fact which convicted the defendant of a crime for which he may be subjected to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cau upon the record and cause them to be entered into the minutes.~~

~~(d) In any case in which the defendant may be subjected to the death penalty, evidence presented at any prior phase of the trial, including any proceeding upon a plea of not guilty by reason of insanity pursuant to Section 1026, shall be considered at any subsequent phase of the trial, if the trier of fact the prior phase is the same trier of fact at the subsequent phase.~~

~~(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to subdivision (7) of Section 1181. In ruling on the application the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make an independent determination as to whether the weight of the evidence supports the jury's findings and verdicts. He shall state on the record the reason for his findings.~~

~~The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes.~~

~~The denial of the modification of a death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the peoples appeal pursuant to paragraph (6) of subdivision (a) of Section 1238.~~

~~The proceedings provided for in this subdivision are in addition to any other proceedings on a defendant's application for a new trial.~~

Sec. 10. Section 190.4 is added to the Penal Code, to read:

190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to Subdivision (b) of Section 190.1.

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.

(c) If the trier of fact which convicted the defendant of a crime for which he may be subject to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to Section 1026 shall be considered an any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11. In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).

Sec. 11. Section 190.5 of the Penal Code is repealed.

~~190.5. (a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 years at the time of commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.~~

~~(b) Except when the trier of fact finds that a murder was committed pursuant to an agreement as defined in subdivision (a) of Section 190.2, or when a person is convicted of a violation of subdivision (a) of Section 1672 of the Military and~~

~~Veterans Code, or Section 37, 128, 1500, or subdivision (b) of Section 190.2 of this code, the death penalty shall not be imposed upon any person who was a principal in the commission of a capital offense unless he was personally present during the commission of the act or acts causing death, and intentionally physically aided or committed such act or acts causing death.~~

~~(c) For the purposes of subdivision (b), the defendant shall be deemed to have physically aided in the act or acts causing death only if it is proved beyond a reasonable doubt that his conduct constitutes an assault or a battery upon the victim or if by word or conduct he orders, initiates, or coerces the actual killing of the victim.~~

Sec. 12. Section 190.5 is added to the Penal Code, to read:

190.5. Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

Sec. 13. If any word, phrase, clause, or sentence in any section amended or added by this initiative, or any section or provision of this initiative, or application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other word, phrase, clause, or sentence in any section amended or added by this initiative, or any other section, provisions or application of this initiative, which can be given effect without the invalid word, phrase, clause, sentence, section, provision or application and to this end the provisions of this initiative are declared to be severable.

Sec. 14. If any word, phrase, clause, or sentence in any section amended or added by this initiative or any section or provision of this initiative, or application thereof to any person or circumstance is held invalid, and a result thereof, a defendant who has been sentenced to death under the provisions of this initiative will instead be sentenced to life imprisonment, such life imprisonment shall be without the possibility of parole.

If any word, phrase, clause, or sentence in any section amended or added by this initiative or any section or provision of this initiative, or application thereof to any person or circumstance is held invalid, and a result thereof, a defendant who has been sentenced to confinement in the state prison for life without the possibility of parole under the provisions of this initiative shall instead be sentenced to a term of 25 years to life in a state prison.

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CERTIFICATE OF SECRETARY OF STATE

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 7, 1978, and that the foregoing pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this first day of August, 1978.

March Fong Eu

MARCH FONG EU
Secretary of State