Pursuant to Executive Order N-25-20, members of the Beverly Hills City Council and staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public can view this meeting through live webcast at www.beverlyhills.org/live and on BH Channel 10 or Channel 35 on Spectrum Cable, and can participate in the teleconference/video conference by using the link above. Written comments may be emailed to mayorandcitycouncil@beverlyhills.org.

AGENDA

A. Oral Communications

1. Public Comment
   Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.

B. Direction

1. H.R.613 - SALT Deductibility Act and S. 85 - SALT Deductibility Act

   Comment: This item seeks direction on H.R. 613, which would amend the Internal Revenue Code of 1986 to repeal the limitation on the deduction for certain taxes, including State and local property and income taxes. S. 85 is the U.S. Senate’s companion bill introducing similar legislation for consideration.

2. H.R.1280 - George Floyd Justice in Policing Act of 2021

   Comment: This item seeks direction on H.R. 1280, which increases accountability for law enforcement misconduct; restricts the use of certain policing practices; enhances transparency and data collection; and establishes best practices and training requirements.

3. Assembly Bill 14 (Aguiar-Curry) - Communications: broadband services: California Advanced Services Fund
Comment: This item seeks direction AB 14, which would prioritize deployment of broadband infrastructure in unserved and underserved communities throughout California through the ongoing collection of the California Advanced Services Fund (CASF) surcharge.

4. Senate Bill 4 (Gonzalez) - Communications: California Advanced Services Fund: deaf and disabled telecommunications program: surcharges

Comment: This item seeks direction on SB 4, which would prioritize deployment of broadband infrastructure in unserved and underserved communities throughout California through the ongoing collection of the California Advanced Services Fund (CASF) surcharge.

5. Assembly Bill 48 (Gonzalez, Lorena) - Law enforcement: kinetic energy projectiles and chemical agent

Comment: This item seeks direction on AB 48. This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer.

6. Assembly Bill 537 (Quirk) - Communications: wireless telecommunications and broadband facilities

Comment: This item seeks direction on AB 537. Pursuant to existing federal law, the Federal Communications Commission (FCC) has adopted decisions and rules establishing reasonable time periods within which a local government is required to act on a collocation or siting application for certain wireless communications facilities. This bill would remove the exemption for eligible facilities requests. The bill would require the time periods described above be determined pursuant to specified FCC rules. The bill would require a city, county, or city and county notify the applicant of the incompleteness of an application within the time periods established by applicable FCC rules. The bill would require the time period for a city or county to approve or disapprove a collocation or siting application commence when the applicant makes the first required submission or takes the first required step. The bill would prohibit, where a city or county requires a traffic control plan or other submission or permit related to safety or obstruction in the public right-of-way, the applicant from beginning construction before complying with that requirement, and the city or county would be prohibited from unreasonably withholding, conditioning, or delaying the approval of any submission related to this requirement. The bill would require that a city or county not prohibit or unreasonably discriminate in favor of, or against, any particular technology.

7. Assembly Bill 989 (Gabriel) - Housing Accountability Act: appeals: Housing Accountability Committee

Comment: This item is a request by Councilmember Mirisch for the Legislative/Lobby Liaison Committee to consider taking a position on AB 989. This bill would create a new state appeals committee within the California Department of Housing and Community Development (HCD), comprised of five members, all appointed by the Governor. The bill would authorize an applicant who proposes a housing development project pursuant to the Housing Accountability Act to appeal a local agency's decision on the project application to the committee.
8. Assembly Bill 1276 (Carrillo) - Single-use food accessories

Comment: This item seeks direction on AB 1276, which would prohibit a food facility or a third-party food delivery platform from providing any single-use food accessories to a consumer unless requested by the consumer.

9. Assembly Bill 1401 (Friedman) - Residential and commercial development: parking requirements

Comment: This item seeks direction on AB 1401, which would prohibit a local government from imposing a minimum automobile parking requirement, or enforcing a minimum automobile parking requirement, on residential, commercial, or other development if the development is located on a parcel that is within one-half mile walking distance of public transit.

10. Senate Bill 2 (Bradford) - Peace officers: certification; civil rights

Comment: This item seeks direction on SB 2, which would eliminate certain immunity provisions for peace officers and custodial officers, or public entities employing peace officers or custodial officers sued under the Tom Bane Civil Rights Act.

11. Senate Bill 12 (McGuire) - Local government: planning and zoning: wildfires

Comment: This item seeks direction on SB 12. This bill would require the safety element; upon the next revision of the housing element or the hazard mitigation plan, on or after July 1, 2024, whichever occurs first, to be reviewed and updated as necessary to include a comprehensive retrofit strategy to reduce the risk of property loss and damage during wildfires, as specified, and would require the planning agency to submit the adopted strategy to the Office of Planning and Research for inclusion into the above-described clearinghouse.

12. Senate Bill 16 (Skinner) - Peace officers: release of records

Comment: This item seeks direction on SB 16. This bill would make every incident involving force that is unreasonable or excessive, and any sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force, subject to disclosure. The bill would require records relating to sustained findings of unlawful arrests and unlawful searches to be subject to disclosure. The bill would also require the disclosure of records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes.

13. Senate Bill 49 (Umberg) - Income taxes: credits; California Fair Fees Tax Credit

Comment: The City has adopted a Support if Amended position on SB 49. The bill has been substantially amended since this position was adopted; therefore, staff is seeking new direction on SB 49 as it now only applies to those license fees collected by the state and no longer impacts a City’s ability to collect license fees.

14. Senate Bill 519 (Wiener) - Controlled substances: decriminalization of certain hallucinogenic substances

Comment: This item seeks direction on SB 59. Current law categorizes certain drugs and other substances as controlled substances and prohibits various actions related to those substances, including their manufacture, transportation, sale, possession, and ingestion. This bill would make lawful the possession for personal use and the social sharing of psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, mescaline, lysergic acid diethylamide (LSD), ketamine,
and 3,4-methylenedioxymethamphetamine (MDMA), by and with persons 21 years of age or older.

15. Senate Bill 693 (Stern) - Pupil instruction: genocide education: the Holocaust

Comment: This item is a request by Councilmember Gold for the City to consider taking a position on SB 693. This bill would establish the Governor's Council on Genocide and Holocaust Education to, among other things, establish best practices for, and promote implementation of, education on genocide, including the Holocaust, and submit an annual report to the Legislature, as specified. The bill would strongly encourage school districts and charter schools with pupils in grades 4 to 12, inclusive, to integrate the best practices into instruction on genocide, including the Holocaust, that meets existing academic content standards and the history-social science curriculum framework for these pupils.


Comment: To comply with state housing law, jurisdictions within California must update their housing element every eight (8) years. The Southern California Association of Governments has sent a letter to the State requesting an extension of the October 15, 2021 deadline to adopt an updated housing element. The Westside Cities Council of Governments (WSCCOG) would also like to send a letter on behalf of the four member cities. This item seeks direction to sign on to this letter.

17. State and Federal Legislative Updates

Comment: The City's state and federal lobbyists will provide a verbal update to the Liaisons on various legislative issues.

C. Adjournment

Huma Ahmed
City Clerk

Posted: June 4, 2021

A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT WWW.BEVERLYHILLS.ORG

Pursuant to the Americans with Disabilities Act, the City of Beverly Hills will make reasonable efforts to accommodate persons with disabilities. If you require special assistance, please call (310) 285-1014 (voice) or (310) 285-6881 (TTY). Providing at least forty-eight (48) hours advance notice will help to ensure availability of services.
Item B-1
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 7, 2021
SUBJECT: H.R.613 - SALT Deductibility Act and S. 85 - SALT Deductibility Act

ATTACHMENTS: 1. Summary Memo
2. 2017 Letter Opposing SALT
3. Bill Text – H.R. 613
4. Bill Text – S. 85

On November 16, 2017, the United States House of Representatives passed HR 1, the “Tax Cuts and Jobs Act”. This bill amended the tax code to dramatically reduce corporate and individual income taxes; however, numerous items within the legislation significantly impacted local governments in California and their residents. These impacts included:

- The elimination of the tax-exempt status for Private Activity Bonds. These bonds are used to finance activities of, or loans to, private entities with indirect benefits occurring to the state/locality that issues the bond;
- Limits on mortgage interest deductions;
- The repeal of the deduction for state and local income or sales tax (known as SALT) which has been a part of the federal tax code since its adoption in 1913;
- The repeal of the casualty loss for deduction for wildfires and earthquakes not associated with federal disaster relief legislation while allowing those affected by hurricanes to still claim this deduction; and
- The elimination of the tax exempt status for interest on advance refunding of municipal bonds.

On November 28, 2017, the City Council Legislative/Lobby/Liaisons recommended the City Council oppose the proposed federal tax reform. On December 5, 2017, the City Council authorized the Mayor to sign a letter of opposition. On December 8, 2017, the City sent letters to Congressman Lieu, Senator Feinstein, and Senator Harris. However, the Republican held House of Representatives and United States Senate passed the legislation. President Donald Trump then signed the bill into law.

The House of Representatives has introduced H.R. 613, the SALT Deductibility Act and the Senate has introduced an identical bill, known as S. 85. These bills, should they pass, would repeal the $10,000 limit on SALT deductions.

The City’s federal lobbyist, David Turch & Associates, has provided a summary memo for H.R. 613 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of H.R. 613 and S. 85, the Liaisons may recommend the following actions:
1) Support H.R. 613 and S. 85;
2) Support if amended H.R. 613 and S. 85;
3) Oppose H.R. 613 and S. 85;
4) Oppose unless amended H.R. 613 and S. 85;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 613 and S. 85, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
Democratic Representative Tom Suozzi of New York introduced H.R. 613, the SALT Deductibility Act, on January 28, 2021. The bill repeals the current cap on State and Local Taxes (SALT) which limits these deductions to $10,000. Should the bill be enacted into law, the repeal would take effect in 2021. There are 106 House cosponsors including Congressman Ted Lieu. Senate Majority Leader Chuck Schumer of New York has introduced a companion bill, S. 85, which has been cosponsored by twelve senators including Dianne Feinstein and senators from Connecticut, Maryland, New Jersey, New York, Illinois, and Vermont.

The Republican controlled House and Senate passed the SALT cap as part of their 2017 tax reform bill. The legislation was signed into law by President Donald Trump. Congress adopted the measure through the reconciliation process, which only required a simple majority vote to pass in the Senate. The SALT cap is in effect from 2018 through 2025. Congressional Republicans argued that SALT deductions almost entirely benefited wealthy households in high-tax, high-costs states and cities, helping to subsidize government growth in mostly “blue” states. Democrats from high-tax states such as California and New York argued that capping the SALT deduction unfairly hurt middle-class and upper-middle class taxpayers who were being taxed twice on their income, once by the state and once by the federal government. Advocates for repealing the SALT cap also argue that middle-class homeowners have been hurt by the cap because it has reduced the market value of their homes.

In 2019, the Democratically controlled House barely passed legislation to repeal the cap, but the bill was blocked by a then Republican-controlled Senate. Now that Democrats narrowly control both chambers of Congress, Representative Suozzi and his allies are pushing to include his bill in the next economic stimulus/infrastructure bill. Most GOP congressional members are dead-set against repealing SALT. In addition, Democratic progressives, like Alexandria Ocasio-Cortez (D-NY), also oppose repealing the cap, contending that it would only benefit rich taxpayers. Complicating matters for the White House is that a SALT fix is estimated to cost over $600 billion – revenue President Biden can’t afford to lose if he wants to pay for a massive infrastructure bill. If matters weren’t dicey enough, Representatives Suozzi and his allies are vowing to oppose Biden’s infrastructure bill if it doesn’t repeal the SALT cap. With the House almost evenly divided, such a threat, were it to be carried out, would doom Biden’s multi-trillion dollar initiative.
Outlook – Democratic leaders will have to thread the needle on this issue. Pelosi and Schumer are both on record supporting repeal of the SALT cap. Biden also spoke in favor of repealing the cap on the campaign trail. One possible fix would be to do a one-year repeal. However, repealing the cap may prove to be mission impossible since Schumer cannot count on the support of all his Senate Democratic colleagues. Folks like West Virginia Joe Manchin have been reluctant to tackle the issue.
The Honorable Ted Lieu  
236 Cannon House Office Building  
Washington, DC 20515

RE: OPPOSE - H.R.1 and S.1 - Tax Cuts and Jobs Act

Dear Congressman Lieu:

On behalf of the City of Beverly Hills, I write to urge your opposition to the House tax reform proposal, H.R. 1, and its Senate counterpart, S.1,-the Tax Cuts and Jobs Act. Both measures, as currently drafted, will undermine the City’s ability to raise money for critical capital improvement projects and will negatively impact the tax exempt status of refunding municipal bonds.

Our primary concern with the House and Senate legislative tax plans is they both propose to eliminate the tax exempt status of interest on advance refunding bonds. This may cause our City to lose the ability, and the tax exempt benefit associated with, the advance refunding of bonds. To take advantage of interest rate fluctuations, the City has used advance refunding for water revenue bonds, wastewater revenue bonds, and lease revenue bonds. For the City’s current bonds, this has resulted in a total economic gain of $7.9 million (the difference between the present value of debt service payments on the old and new debt) and a total reduction of debt service payments of $10.65 million. Should the tax exempt status of interest on these bonds be eliminated, our City would lose the ability to see these types of significant savings in the future.

Additionally, tax exempt private activity bonds (PABs), an important tool for state and local governments, help finance major public projects, including transportation and water infrastructure, affordable housing construction, schools — all of which are essential for job growth, healthy economies, safe communities and the nation’s economy. Eliminating PABs’ tax-
exempt status, as proposed by the House-passed bill, would drive up the costs of borrowing for these projects by 25–35 percent.

Furthermore, since one in three California taxpayers take deductions for state and local taxes, including many Beverly Hills residents, we are opposed to the Senate’s provision entirely eliminating these deductions. Moreover, we also oppose the House version which, like the Senate measure, eliminates state and local income tax deductions but caps property tax deductions at $10,000. Eliminating these deductions, which have been part of our tax code since 1913, will penalize millions of Californian taxpayers while potentially jeopardizing the local tax base that helps pay for a myriad of municipal services.

This also is a very large and complex bill that lacks true transparency. There were no public hearings conducted, nor were there any attempts to appropriately vet the short term and long term impacts of the proposed tax reform to our nation’s economy. It is important to note that the last major overall to the federal tax laws occurred in the 1980’s. It took over six years to carefully craft the language of that reform, conduct multiple public hearings, and listen to numerous organizations’ concerns with the proposed changes. It also had bipartisan participation. The Tax Cuts and Jobs Act was crafted in just a few short months, with handwritten notes in the margins of the bill on the evening it passed in the U.S. Senate. This legislation lacks the foresight and public input of the previous tax overhaul under President Reagan’s Administration.

For these and other reasons, the City of Beverly Hills urges you to vote against H.R.1 and S.1 - Tax Cuts and Jobs Act and any subsequent conference agreement that is reached between the House and Senate that fails to address our concerns. Thank you for your consideration.

Sincerely,

[Signature]

Lili Bosse
Mayor, City of Beverly Hills
Attachment 3
To amend the Internal Revenue Code of 1986 to repeal the limitation on the deduction for certain taxes, including State and local property and income taxes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2021

Mr. SUOZZI (for himself, Mr. SCHNEIDER, Mr. GARBARINO, Mr. GOTTHEIMER, Mr. JONES, Mrs. KIM of California, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to repeal the limitation on the deduction for certain taxes, including State and local property and income taxes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Securing Access to Lower Taxes by ensuring Deductibility Act” or the “SALT Deductibility Act”.

SEC. 2. REPEAL OF LIMITATION ON DEDUCTION FOR STATE AND LOCAL, ETC. TAXES.

(a) In General.—Section 164(b) of the Internal Revenue Code of 1986 is amended by striking paragraph (6).

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.
Attachment 4
To amend the Internal Revenue Code of 1986 to repeal the limitation on the deduction for certain taxes, including State and local property and income taxes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 2021

Mr. SCHUMER (for himself, Mr. WYDEN, Mr. MENENDEZ, Mrs. GILLIBRAND, Mr. BOOKER, Mr. DURBIN, and Ms. DUCKWORTH) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to repeal the limitation on the deduction for certain taxes, including State and local property and income taxes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Securing Access to
5 Lower Taxes by ensuring Deductibility Act” or the
6 “SALT Deductibility Act”.

S. 85
SEC. 2. REPEAL OF LIMITATION ON DEDUCTION FOR STATE AND LOCAL, ETC. TAXES.

(a) IN GENERAL.—Section 164(b) of the Internal Revenue Code of 1986 is amended by striking paragraph (6).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2020.
Item B-2
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

H.R.1280 - George Floyd Justice in Policing Act of 2021 (H.R.1280) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

On April 28, 2021, the City Council Liaison/Legislative/Lobby Committee recommended the City remain neutral on H.R. 1280 until the full impacts of the portion of the bill addressing the demilitarization of police departments could be researched. This position was affirmed by the City Council on May 13, 2021.

The City’s federal lobbyist, David Turch & Associates, has provided a summary memo for H.R. 1280 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee specifically addressing the demilitarization component of the bill.

After discussion of H.R. 1280, the Liaisons may recommend the following actions:

1) Support H.R. 1280;
2) Support if amended H.R. 1280;
3) Oppose H.R. 1280;
4) Oppose unless amended H.R. 1280;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 1280, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
Per Beverly Hills City Council Liaison/Legislative/Lobby Committee request, this memorandum focuses on addressing specific restrictions/prohibitions included in H.R. 1280, the George Floyd Justice in Policing Act of 2021, on the transfer of military-grade equipment from the Department of Defense (DOD) to State, local and Tribal law enforcement agencies.

I. Pentagon’s 1033 Program – Transfer of Military-Grade Equipment to Law Enforcement Agencies

Under section 2576a of Title 10, United States Code, the Department of Defense (DOD) is authorized to provide excess property to local law enforcement agencies. The Defense Logistics Agency administers this section by operating the Law Enforcement Support Office (1033) Program.

The Department of Defense categorizes equipment eligible for transfer to state and local law enforcement agencies as “controlled” and “un-controlled” equipment. Controlled equipment refers to weapons, explosives such as flash-bang grenades, mine-resistant ambush-protected vehicles, long-range acoustic devices, aircraft capable of being modified to carry armament that are combat coded, and silencers, among other military grade items. Local law enforcement agencies, including police and sheriff’s departments across the nation, are acquiring these types of military-grade equipment for use in their normal operations.

- Police and Sheriff’s Departments have accessed the 1033 program to acquire a myriad of military surplus equipment including boots and parkas, firearms, bayonets, knives, armored vehicles, forced-entry tools, bomb suits, night-vision items, surveillance equipment, helicopters, planes and high powered, large caliber machine guns.

- In Fiscal Year 2017, $504 million worth of property was transferred to law enforcement agencies.
• To date, more than $6.8 billion worth of weapons and equipment have been transferred to police organizations.

II. H.R. 1280 1033 Program Restrictions

In an effort to address what many Democratic Members of Congress perceive to be police militarization through the 1033 program, Section 365 of H.R. 1280 limits DOD transfer of surplus military property to local law enforcement agencies by imposing the following requirements and restrictions:

• In order to access the 1033 program, local law enforcement agencies must receive approval of the city council or other local governing body for the specific items to be acquired.

• Local law enforcement agencies must notify the local community of the request for personal property under the 1033 program and must publish a notice of their request on a publicly accessible Internet website.

• Such notice must be posted at several prominent locations in the law enforcement area of jurisdiction for a period of not less than 30 days.

• The following military-grade equipment may not be transferred to state and local law enforcement agencies:
  o Firearms
  o Ammunition
  o Bayonets
  o Grenade launchers
  o Grenades (including stun and flash-bang) and explosives.
  o Vehicles, except for passenger automobiles and bucket trucks.
  o Drones
  o Silencers
  o Long-range acoustic devices
  o Controlled aircraft that are combat configured or combat coded or have no commercial flight application.
Attachment 2
117th Congress
1st Session

H. R. 1280

AN ACT

To hold law enforcement accountable for misconduct in court,
 improve transparency through data collection, and reform
 police training and policies.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
SECTION I. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “George Floyd Justice in Policing Act of 2021”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—POLICE ACCOUNTABILITY

Subtitle A—Holding Police Accountable in the Courts

Sec. 101. Deprivation of rights under color of law.
Sec. 102. Qualified immunity reform.
Sec. 103. Pattern and practice investigations.
Sec. 104. Independent investigations.

Subtitle B—Law Enforcement Trust and Integrity Act

Sec. 111. Short title.
Sec. 112. Definitions.
Sec. 113. Accreditation of law enforcement agencies.
Sec. 114. Law enforcement grants.
Sec. 115. Attorney General to conduct study.
Sec. 117. National task force on law enforcement oversight.
Sec. 118. Federal data collection on law enforcement practices.

TITLE II—POLICING TRANSPARENCY THROUGH DATA

Subtitle A—National Police Misconduct Registry

Sec. 201. Establishment of National Police Misconduct Registry.
Sec. 202. Certification requirements for hiring of law enforcement officers.

Subtitle B—PRIDE Act

Sec. 221. Short title.
Sec. 222. Definitions.
Sec. 223. Use of force reporting.
Sec. 224. Use of force data reporting.
Sec. 225. Compliance with reporting requirements.
Sec. 226. Federal law enforcement reporting.
Sec. 227. Authorization of appropriations.

TITLE III—IMPROVING POLICE TRAINING AND POLICIES

Subtitle A—End Racial and Religious Profiling Act

Sec. 301. Short title.
Sec. 302. Definitions.

PART I—PROHIBITION OF RACIAL PROFILING
Sec. 311. Prohibition.
Sec. 312. Enforcement.

PART II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

Sec. 321. Policies to eliminate racial profiling.

PART III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

Sec. 331. Policies required for grants.
Sec. 332. Involvement of Attorney General.
Sec. 333. Data collection demonstration project.
Sec. 334. Development of best practices.
Sec. 335. Authorization of appropriations.

PART IV—DATA COLLECTION

Sec. 341. Attorney General to issue regulations.
Sec. 342. Publication of data.
Sec. 343. Limitations on publication of data.

PART V—DEPARTMENT OF JUSTICE REGULATIONS AND REPORTS ON RACIAL PROFILING IN THE UNITED STATES

Sec. 351. Attorney General to issue regulations and reports.

Subtitle B—Additional Reforms

Sec. 361. Training on racial bias and duty to intervene.
Sec. 362. Ban on no-knock warrants in drug cases.
Sec. 363. Incentivizing banning of chokeholds and carotid holds.
Sec. 364. PEACE Act.
Sec. 365. Stop Militarizing Law Enforcement Act.
Sec. 366. Public safety innovation grants.

Subtitle C—Law Enforcement Body Cameras

PART 1—FEDERAL POLICE CAMERA AND ACCOUNTABILITY ACT

Sec. 371. Short title.
Sec. 372. Requirements for Federal law enforcement officers regarding the use of body cameras.
Sec. 373. Patrol vehicles with in-car video recording cameras.
Sec. 374. Facial recognition technology.
Sec. 375. GAO study.
Sec. 376. Regulations.
Sec. 377. Rule of construction.

PART 2—POLICE CAMERA ACT

Sec. 381. Short title.
Sec. 382. Law enforcement body-worn camera requirements.

TITLE IV—CLOSING THE LAW ENFORCEMENT CONSENT LOOPHOLE

Sec. 401. Short title.

•HR 1280 EH
Sec. 402. Prohibition on engaging in sexual acts while acting under color of law.
Sec. 403. Enactment of laws penalizing engaging in sexual acts while acting under color of law.
Sec. 404. Reports to Congress.
Sec. 405. Definition.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Severability.
Sec. 502. Savings clause.

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) BYRNE GRANT PROGRAM.—The term “Byrne grant program” means any grant program under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.), without regard to whether the funds are characterized as being made available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.


5 (3) FEDERAL LAW ENFORCEMENT AGENCY.—The term “Federal law enforcement agency” means
any agency of the United States authorized to en-
gege in or supervise the prevention, detection, inves-
tigation, or prosecution of any violation of Federal
criminal law.

(4) FEDERAL LAW ENFORCEMENT OFFICER.—
The term “Federal law enforcement officer” has the
meaning given the term in section 115 of title 18,
United States Code.

(5) INDIAN TRIBE.—The term “Indian Tribe”
has the meaning given the term “Indian tribe” in
section 901 of title I of the Omnibus Crime Control

(6) LOCAL LAW ENFORCEMENT OFFICER.—The
term “local law enforcement officer” means any offi-
cer, agent, or employee of a State or unit of local
government authorized by law or by a government
agency to engage in or supervise the prevention, de-
tection, or investigation of any violation of criminal
law.

(7) STATE.—The term “State” has the mean-
ing given the term in section 901 of title I of the
Omnibus Crime Control and Safe Streets Act of

(8) TRIBAL LAW ENFORCEMENT OFFICER.—
The term “tribal law enforcement officer” means
any officer, agent, or employee of an Indian tribe, or
the Bureau of Indian Affairs, authorized by law or
by a government agency to engage in or supervise
the prevention, detection, or investigation of any vio-
lation of criminal law.

(9) UNIT OF LOCAL GOVERNMENT.—The term
“unit of local government” has the meaning given
the term in section 901 of title I of the Omnibus
Crime Control and Safe Streets Act of 1968 (34

(10) DEADLY FORCE.—The term “deadly
force” means that force which a reasonable person
would consider likely to cause death or serious bodily
harm, including—

(A) the discharge of a firearm;

(B) a maneuver that restricts blood or oxy-
gen flow to the brain, including chokeholds,
strangleholds, neck restraints, neckholds, and
carotid artery restraints; and

(C) multiple discharges of an electronic
control weapon.

(11) USE OF FORCE.—The term “use of force”
includes—

(A) the use of a firearm, electronic control
weapon, explosive device, chemical agent (such
as pepper spray), baton, impact projectile, blunt instrument, hand, fist, foot, canine, or vehicle against an individual;

(B) the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against an individual; or

(C) any intentional pointing of a firearm at an individual.

(12) LESS LETHAL FORCE.—The term “less lethal force” means any degree of force that is not likely to cause death or serious bodily injury.

(13) FACIAL RECOGNITION.—The term “facial recognition” means an automated or semiautomated process that analyzes biometric data of an individual from video footage to identify or assist in identifying an individual.

TITLE I—POLICE ACCOUNTABILITY
Subtitle A—Holding Police Accountable in the Courts

SEC. 101. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.

Section 242 of title 18, United States Code, is amended—
(1) by striking “willfully” and inserting “knowingly or recklessly”;
(2) by striking “, or may be sentenced to death”; and
(3) by adding at the end the following: “For purposes of this section, an act shall be considered to have resulted in death if the act was a substantial factor contributing to the death of the person.”.

SEC. 102. QUALIFIED IMMUNITY REFORM.

Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by adding at the end the following: “It shall not be a defense or immunity in any action brought under this section against a local law enforcement officer (as such term is defined in section 2 of the George Floyd Justice in Policing Act of 2021), or in any action under any source of law against a Federal investigative or law enforcement officer (as such term is defined in section 2680(h) of title 28, United States Code), that—

“(1) the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when the conduct was committed; or

“(2) the rights, privileges, or immunities secured by the Constitution and laws were not clearly
established at the time of their deprivation by the
defendant, or that at such time, the state of the law
was otherwise such that the defendant could not rea-
sonably have been expected to know whether his or
her conduct was lawful.”.

SEC. 103. PATTERN AND PRACTICE INVESTIGATIONS.

(a) SUBPOENA AUTHORITY.—Section 210401 of the
Violent Crime Control and Law Enforcement Act of 1994
(34 U.S.C. 12601) is amended—

(1) in subsection (a), by inserting “, by pros-
ecutors,” after “conduct by law enforcement offi-
cers”;

(2) in subsection (b), by striking “paragraph
(1)” and inserting “subsection (a)”;

(3) by adding at the end the following:

“(c) SUBPOENA AUTHORITY.—In carrying out the
authority in subsection (b), the Attorney General may re-
quire by subpoena the production of all information, docu-
ments, reports, answers, records, accounts, papers, and
other data in any medium (including electronically stored
information), as well as any tangible thing and documen-
tary evidence, and the attendance and testimony of wit-
nesses necessary in the performance of the Attorney Gen-
eral under subsection (b). Such a subpoena, in the case
of contumacy or refusal to obey, shall be enforceable by
order of any appropriate district court of the United States.

“(d) CIVIL ACTION BY STATE ATTORNEYS GENERAL.—Whenever it shall appear to the attorney general of any State, or such other official as a State may designate, that a violation of subsection (a) has occurred within their State, the State attorney general or official, in the name of the State, may bring a civil action in the appropriate district court of the United States to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice. In carrying out the authority in this subsection, the State attorney general or official shall have the same subpoena authority as is available to the Attorney General under subsection (e).

“(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the authority of the Attorney General under subsection (b) in any case in which a State attorney general has brought a civil action under subsection (d).

“(f) REPORTING REQUIREMENTS.—On the date that is one year after the enactment of the George Floyd Justice in Policing Act of 2021, and annually thereafter, the Civil Rights Division of the Department of Justice shall make publicly available on an internet website a report on, during the previous year—
“(1) the number of preliminary investigations
of violations of subsection (a) that were commenced;
“(2) the number of preliminary investigations
of violations of subsection (a) that were resolved;
and
“(3) the status of any pending investigations of
violations of subsection (a).”.
(b) GRANT PROGRAM.—

(1) GRANTS AUTHORIZED.—The Attorney Gen-
eral may award a grant to a State to assist the
State in conducting pattern and practice investiga-
tions under section 210401(d) of the Violent Crime
Control and Law Enforcement Act of 1994 (34

(2) APPLICATION.—A State seeking a grant
under paragraph (1) shall submit an application in
such form, at such time, and containing such infor-
mation as the Attorney General may require.

(3) FUNDING.—There are authorized to be ap-
propriated $100,000,000 to the Attorney General for
each of fiscal years 2022 through 2024 to carry out
this subsection.

(c) DATA ON EXCESSIVE USE OF FORCE.—Section
210402 of the Violent Crime Control and Law Enforce-
ment Act of 1994 (34 U.S.C. 12602) is amended—
(1) in subsection (a)—

(A) by striking “The Attorney General”

and inserting the following:

“(1) Federal collection of data.—The
Attorney General”; and

(B) by adding at the end the following:

“(2) State collection of data.—The attor-
ney general of a State may, through appropriate
means, acquire data about the use of excessive force
by law enforcement officers and such data may be
used by the attorney general in conducting investiga-
tions under section 210401. This data may not con-
tain any information that may reveal the identity of
the victim or any law enforcement officer.”; and

(2) by amending subsection (b) to read as fol-
lows:

“(b) Limitation on use of data acquired by
the attorney general.—Data acquired under sub-
section (a)(1) shall be used only for research or statistical
purposes and may not contain any information that may
reveal the identity of the victim or any law enforcement
officer.”.

(d) Enforcement of pattern or practice rel-
ief.—Beginning in the first fiscal year that begins after
the date that is one year after the date of enactment of
this Act, a State or unit of local government that receives
funds under the Byrne grant program or the COPS grant
program during a fiscal year may not make available any
amount of such funds to a local law enforcement agency
if that local law enforcement agency enters into or renews
any contractual arrangement, including a collective bar-
gaining agreement with a labor organization, that—

(1) would prevent the Attorney General from
seeking or enforcing equitable or declaratory relief
against a law enforcement agency engaging in a pat-
tern or practice of unconstitutional misconduct; or

(2) conflicts with any terms or conditions con-
tained in a consent decree.

SEC. 104. INDEPENDENT INVESTIGATIONS.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this subsection:

(A) INDEPENDENT INVESTIGATION.—The
term “independent investigation” means a
criminal investigation or prosecution of a law
enforcement officer’s use of deadly force, in-
cluding one or more of the following:

(i) Using an agency or civilian review
board that investigates and independently
reviews all allegations of use of deadly
force made against law enforcement officers in the jurisdiction.

(ii) Assigning of the attorney general of the State in which the alleged use of deadly force was committed to conduct the criminal investigation and prosecution.

(iii) Adopting a procedure under which an independent prosecutor is assigned to investigate and prosecute the case, including a procedure under which an automatic referral is made to an independent prosecutor appointed and overseen by the attorney general of the State in which the alleged use of deadly force was committed.

(iv) Adopting a procedure under which an independent prosecutor is assigned to investigate and prosecute the case.

(v) Having law enforcement agencies agree to and implement memoranda of understanding with other law enforcement agencies under which the other law enforcement agencies—
(I) shall conduct the criminal investigation into the alleged use of deadly force; and

(II) upon conclusion of the criminal investigation, shall file a report with the attorney general of the State containing a determination regarding whether—

(aa) the use of deadly force was appropriate; and

(bb) any action should be taken by the attorney general of the State.

(vi) Any substantially similar procedure to ensure impartiality in the investigation or prosecution.

(B) INDEPENDENT INVESTIGATION OF LAW ENFORCEMENT STATUTE.—The term “independent investigation of law enforcement statute” means a statute requiring an independent investigation in a criminal matter in which—

(i) one or more of the possible defendants is a law enforcement officer;
(ii) one or more of the alleged offenses involves the law enforcement officer’s use of deadly force in the course of carrying out that officer’s duty; and

(iii) the non-Federal law enforcement officer’s use of deadly force resulted in a death or injury.

C Independent Prosecutor.—The term “independent prosecutor” means, with respect to a criminal investigation or prosecution of a law enforcement officer’s use of deadly force, a prosecutor who—

(i) does not oversee or regularly rely on the law enforcement agency by which the law enforcement officer under investigation is employed; and

(ii) would not be involved in the prosecution in the ordinary course of that prosecutor’s duties.

(2) Grant Program.—The Attorney General may award grants to eligible States and Indian Tribes to assist in implementing an independent investigation of law enforcement statute.

(3) Eligibility.—To be eligible for a grant under this subsection, a State or Indian Tribe shall
have in effect an independent investigation of law
enforcement statute.

(4) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated to the At-
torney General $750,000,000 for fiscal years 2022
through 2024 to carry out this subsection.

(b) COPS GRANT PROGRAM USED FOR CIVILIAN RE-
VIEW BOARDS.—Part Q of title I of the of the Omnibus
10381 et seq.) is amended—

(1) in section 1701(b) (34 U.S.C. 10381(b))—

(A) by redesignating paragraphs (22) and

(23) as paragraphs (23) and (24), respectively;

(B) in paragraph (23), as so redesignated,

by striking “(21)” and inserting “(22)” ; and

(C) by inserting after paragraph (21) the

following:

“(22) to develop best practices for and to create
civilian review boards;” ; and

(2) in section 1709 (34 U.S.C. 10389), by add-
ing at the end the following:

“(8) ‘civilian review board’ means an adminis-
trative entity that investigates civilian complaints
against law enforcement officers and—
“(A) is independent and adequately funded;

“(B) has investigatory authority and subpoena power;

“(C) has representative community diversity;

“(D) has policy making authority;

“(E) provides advocates for civilian complainants;

“(F) may conduct hearings; and

“(G) conducts statistical studies on prevailing complaint trends.”.

Subtitle B—Law Enforcement Trust and Integrity Act

SEC. 111. SHORT TITLE.

This subtitle may be cited as the “Law Enforcement Trust and Integrity Act of 2021”.

SEC. 112. DEFINITIONS.

In this subtitle:

(1) Community-based organization.—The term “community-based organization” means a grassroots organization that monitors the issue of police misconduct and that has a local or national presence and membership, such as the National Association for the Advancement of Colored People
(NAACP), the American Civil Liberties Union
(ACLU), UnidosUS, the National Urban League,
the National Congress of American Indians, or the
National Asian Pacific American Legal Consortium
(NAPALC).

(2) LAW ENFORCEMENT ACCREDITATION ORGA-
NIZATION.—The term "law enforcement accredita-
tion organization" means a professional law enforce-
ment organization involved in the development of
standards of accreditation for law enforcement agen-
cies at the national, State, regional, or Tribal level,
such as the Commission on Accreditation for Law
Enforcement Agencies (CALEA).

(3) LAW ENFORCEMENT AGENCY.—The term
"law enforcement agency" means a State, local, In-
dian tribal, or campus public agency engaged in the
prevention, detection, investigation, prosecution, or
adjudication of violations of criminal laws.

(4) PROFESSIONAL LAW ENFORCEMENT ASSO-
CIATION.—The term "professional law enforcement
association" means a law enforcement membership
association that works for the needs of Federal,
State, local, or Indian tribal law enforcement agen-
cies and with the civilian community on matters of
common interest, such as the Hispanic American
Police Command Officers Association (IIAPCOA),
the National Asian Pacific Officers Association
(NAPOA), the National Black Police Association
(NBPA), the National Latino Peace Officers Asso-
ciation (NLPOA), the National Organization of
Black Law Enforcement Executives (NOBLE),
Women in Law Enforcement, the Native American
Law Enforcement Association (NALEA), the Inter-
national Association of Chiefs of Police (IACP), the
National Sheriffs' Association (NSA), the Fraternal
Order of Police (FOP), or the National Association
of School Resource Officers.

(5) PROFESSIONAL CIVILIAN OVERSIGHT ORGA-
NIZATION.—The term "professional civilian oversight
organization" means a membership organization
formed to address and advance civilian oversight of
law enforcement and whose members are from Fed-
eral, State, regional, local, or Tribal organizations
that review issues or complaints against law enforce-
ment agencies or officers, such as the National Asso-
ciation for Civilian Oversight of Law Enforcement
(NACOLE).

SEC. 113. ACCREDITATION OF LAW ENFORCEMENT AGEN-
CIES.

(a) STANDARDS.—
(1) **Initial Analysis.**—The Attorney General shall perform an initial analysis of existing accreditation standards and methodology developed by law enforcement accreditation organizations nationwide, including national, State, regional, and Tribal accreditation organizations. Such an analysis shall include a review of the recommendations of the Final Report of the President’s Taskforce on 21st Century Policing, issued by the Department of Justice, in May 2015.

(2) **Development of Uniform Standards.**—After completion of the initial review and analysis under paragraph (1), the Attorney General shall—

(A) recommend, in consultation with law enforcement accreditation organizations and community-based organizations, the adoption of additional standards that will result in greater community accountability of law enforcement agencies and an increased focus on policing with a guardian mentality, including standards relating to—

(i) early warning systems and related intervention programs;

(ii) use of force procedures;

(iii) civilian review procedures;
(iv) traffic and pedestrian stop and
search procedures;
(v) data collection and transparency;
(vi) administrative due process re-
quirements;
(vii) video monitoring technology;
(viii) youth justice and school safety;
and
(ix) recruitment, hiring, and training;
and
(B) recommend additional areas for the
development of national standards for the ac-
creditation of law enforcement agencies in con-
sultation with existing law enforcement accredi-
tation organizations, professional law enforce-
ment associations, labor organizations, commu-
nity-based organizations, and professional civil-
ian oversight organizations.

(3) CONTINUING ACCREDITATION PROCESS.—
The Attorney General shall adopt policies and proce-
dures to partner with law enforcement accreditation
organizations, professional law enforcement associa-
tions, labor organizations, community-based organi-
izations, and professional civilian oversight organiza-
tions to—
(A) continue the development of further accreditation standards consistent with paragraph (2); and

(B) encourage the pursuit of accreditation of Federal, State, local, and Tribal law enforcement agencies by certified law enforcement accreditation organizations.

(b) USE OF FUNDS REQUIREMENTS.—Section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)) is amended by adding at the end the following:

“(7) An assurance that, for each fiscal year covered by an application, the applicant will use not less than 5 percent of the total amount of the grant award for the fiscal year to assist law enforcement agencies of the applicant, including campus public safety departments, gain or maintain accreditation from certified law enforcement accreditation organizations in accordance with section 113 of the Law Enforcement Trust and Integrity Act of 2021.”.

(c) ELIGIBILITY FOR CERTAIN GRANT FUNDS.—The Attorney General shall, as appropriate and consistent with applicable law, allocate Department of Justice discretionary grant funding only to States or units of local government that require law enforcement agencies of that
State or unit of local government to gain and maintain accreditation from certified law enforcement accreditation organizations in accordance with this section.

SEC. 114. LAW ENFORCEMENT GRANTS.

(a) USE OF FUNDS REQUIREMENT.—Section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)), as amended by section 113, is amended by adding at the end the following:

“(8) An assurance that, for each fiscal year covered by an application, the applicant will use not less than 5 percent of the total amount of the grant award for the fiscal year to study and implement effective management, training, recruiting, hiring, and oversight standards and programs to promote effective community and problem solving strategies for law enforcement agencies in accordance with section 114 of the Law Enforcement Trust and Integrity Act of 2021.”.

(b) GRANT PROGRAM FOR COMMUNITY ORGANIZATIONS.—The Attorney General may make grants to community-based organizations to study and implement—

(1) effective management, training, recruiting, hiring, and oversight standards and programs to promote effective community and problem solving strategies for law enforcement agencies; or
(2) effective strategies and solutions to public safety, including strategies that do not rely on Federal and local law enforcement agency responses.

(c) USE OF FUNDS.—Grant amounts described in paragraph (8) of section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)), as added by subsection (a) of this section, and grant amounts awarded under subsection (b) shall be used to—

(1) study management and operations standards for law enforcement agencies, including standards relating to administrative due process, residency requirements, compensation and benefits, use of force, racial profiling, early warning and intervention systems, youth justice, school safety, civilian review boards or analogous procedures, or research into the effectiveness of existing programs, projects, or other activities designed to address misconduct; and

(2) develop pilot programs and implement effective standards and programs in the areas of training, hiring and recruitment, and oversight that are designed to improve management and address misconduct by law enforcement officers.
(d) COMPONENTS OF PILOT PROGRAM.—A pilot program developed under subsection (c)(2) shall include implementation of the following:

(1) TRAINING.—The implementation of policies, practices, and procedures addressing training and instruction to comply with accreditation standards in the areas of—

(A) the use of deadly force, less lethal force, and de-escalation tactics and techniques;

(B) investigation of officer misconduct and practices and procedures for referring to prosecuting authorities allegations of officer use of excessive force or racial profiling;

(C) disproportionate contact by law enforcement with minority communities;

(D) tactical and defensive strategy;

(E) arrests, searches, and restraint;

(F) professional verbal communications with civilians;

(G) interactions with—

(i) youth;

(ii) individuals with disabilities;

(iii) individuals with limited English proficiency; and

(iv) multi-cultural communities;
(II) proper traffic, pedestrian, and other
enforcement stops; and

(I) community relations and bias aware-
ness.

(2) Recruitment, hiring, retention, and
promotion of diverse law enforcement offi-
cers.—Policies, procedures, and practices for—

(A) the hiring and recruitment of diverse
law enforcement officers who are representative
of the communities they serve;

(B) the development of selection, pro-
motion, educational, background, and psycho-
logical standards that comport with title VII of
the Civil Rights Act of 1964 (42 U.S.C. 2000e
et seq.); and

(C) initiatives to encourage residency in
the jurisdiction served by the law enforcement
agency and continuing education.

(3) Oversight.—Complaint procedures, in-
cluding the establishment of civilian review boards or
analogous procedures for jurisdictions across a range
of sizes and agency configurations, complaint proce-
dures by community-based organizations, early
warning systems and related intervention programs,
video monitoring technology, data collection and
transparency, and administrative due process re-
quirements inherent to complaint procedures for
members of the public and law enforcement.

(4) YOUTH JUSTICE AND SCHOOL SAFETY.—
Uniform standards on youth justice and school sa-
ety that include best practices for law enforcement
interaction and communication with children and
youth, taking into consideration adolescent develop-
ment and any disability, including—

(A) the right to effective and timely notifi-
cation of a parent or legal guardian of any law
enforcement interaction, regardless of the immi-
gration status of the individuals involved; and

(B) the creation of positive school climates
by improving school conditions for learning
by—

(i) eliminating school-based arrests
and referrals to law enforcement;

(ii) using evidence-based preventative
measures and alternatives to school-based
arrests and referrals to law enforcement,
such as restorative justice and healing
practices; and

(iii) using school-wide positive behav-
ioral interventions and supports.
(5) VICTIM SERVICES.—Counseling services, including psychological counseling, for individuals and communities impacted by law enforcement misconduct.

(e) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Attorney General may provide technical assistance to States and community-based organizations in furtherance of the purposes of this section.

(2) MODELS FOR REDUCTION OF LAW ENFORCEMENT MISCONDUCT.—The technical assistance provided by the Attorney General may include the development of models for States and community-based organizations to reduce law enforcement officer misconduct. Any development of such models shall be in consultation with community-based organizations.

(f) USE OF COMPONENTS.—The Attorney General may use any component or components of the Department of Justice in carrying out this section.

(g) APPLICATIONS.—An application for a grant under subsection (b) shall be submitted in such form, and contain such information, as the Attorney General may prescribe by rule.

(h) PERFORMANCE EVALUATION.—
(1) MONITORING COMPONENTS.—

(A) IN GENERAL.—Each program, project, or activity funded under this section shall contain a monitoring component, which shall be developed pursuant to rules made by the Attorney General.

(B) REQUIREMENT.—Each monitoring component required under subparagraph (A) shall include systematic identification and collection of data about activities, accomplishments, and programs throughout the duration of the program, project, or activity and presentation of such data in a usable form.

(2) EVALUATION COMPONENTS.—

(A) IN GENERAL.—Selected grant recipients shall be evaluated on the local level or as part of a national evaluation, pursuant to rules made by the Attorney General.

(B) REQUIREMENTS.—An evaluation conducted under subparagraph (A) may include independent audits of police behavior and other assessments of individual program implementations. For community-based organizations in selected jurisdictions that are able to support outcome evaluations, the effectiveness of funded
programs, projects, and activities may be re-
quired.

(3) Periodic review and reports.—The At-
torney General may require a grant recipient to sub-
mit biannually to the Attorney General the results of
the monitoring and evaluations required under para-
graphs (1) and (2) and such other data and infor-
mation as the Attorney General determines to be
necessary.

(i) Revocation or Suspension of Funding.—If
the Attorney General determines, as a result of monitoring
under subsection (h) or otherwise, that a grant recipient
under the Byrne grant program or under subsection (b)
is not in substantial compliance with the requirements of
this section, the Attorney General may revoke or suspend
funding of that grant, in whole or in part.

(j) Civilian Review Board Defined.—In this sec-
tion, the term “civilian review board” means an adminis-
trative entity that investigates civilian complaints against
law enforcement officers and—

(1) is independent and adequately funded;

(2) has investigatory authority and subpoena
power;

(3) has representative community diversity;

(4) has policy making authority;
(5) provides advocates for civilian complainants;
(6) may conduct hearings; and
(7) conducts statistical studies on prevailing complaint trends.

(k) **Authorization of Appropriations.**—There are authorized to be appropriated to the Attorney General $25,000,000 for fiscal year 2022 to carry out the grant program authorized under subsection (b).

**SEC. 115. ATTORNEY GENERAL TO CONDUCT STUDY.**

(a) **Study.**—

(1) **In General.**—The Attorney General shall conduct a nationwide study of the prevalence and effect of any law, rule, or procedure that allows a law enforcement officer to delay the response to questions posed by a local internal affairs officer, or review board on the investigative integrity and prosecution of law enforcement misconduct, including pre-interview warnings and termination policies.

(2) **Initial Analysis.**—The Attorney General shall perform an initial analysis of existing State laws, rules, and procedures to determine whether, at a threshold level, the effect of the type of law, rule, or procedure that raises material investigatory issues that could impair or hinder a prompt and thorough
investigation of possible misconduct, including criminal conduct.

(3) Data Collection.—After completion of the initial analysis under paragraph (2), and considering material investigatory issues, the Attorney General shall gather additional data nationwide on similar laws, rules, and procedures from a representative and statistically significant sample of jurisdictions, to determine whether such laws, rules, and procedures raise such material investigatory issues.

(b) Reporting.—

(1) Initial Analysis.—Not later than 120 days after the date of the enactment of this Act, the Attorney General shall—

(A) submit to Congress a report containing the results of the initial analysis conducted under subsection (a)(2);

(B) make the report submitted under subparagraph (A) available to the public; and

(C) identify the jurisdictions for which the study described in subsection (a)(3) is to be conducted.

(2) Data Collected.—Not later than 2 years after the date of the enactment of this Act, the Attorney General shall submit to Congress a report
containing the results of the data collected under
this section and publish the report in the Federal
Register.

SEC. 116. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal
year 2022, in addition to any other sums authorized to
be appropriated—

(1) $25,000,000 for additional expenses relat-
ing to the enforcement of section 210401 of the Vio-
 lent Crime Control and Law Enforcement Act of
1994 (34 U.S.C. 12601), criminal enforcement
under sections 241 and 242 of title 18, United
States Code, and administrative enforcement by the
Department of Justice of such sections, including
compliance with consent decrees or judgments en-
tered into under such section 210401; and

(2) $3,300,000 for additional expenses related
to conflict resolution by the Department of Justice’s
Community Relations Service.

SEC. 117. NATIONAL TASK FORCE ON LAW ENFORCEMENT
OVERSIGHT.

(a) ESTABLISHMENT.—There is established within
the Department of Justice a task force to be known as
the Task Force on Law Enforcement Oversight (herein-
after in this section referred to as the “Task Force”).
(b) COMPOSITION.—The Task Force shall be composed of individuals appointed by the Attorney General, who shall appoint not less than 1 individual from each of the following:

1. The Special Litigation Section of the Civil Rights Division.
2. The Criminal Section of the Civil Rights Division.
3. The Federal Coordination and Compliance Section of the Civil Rights Division.
4. The Employment Litigation Section of the Civil Rights Division.
5. The Disability Rights Section of the Civil Rights Division.
6. The Office of Justice Programs.
7. The Office of Community Oriented Policing Services (COPS).
8. The Corruption/Civil Rights Section of the Federal Bureau of Investigation.
10. The Office of Tribal Justice.
11. The unit within the Department of Justice assigned as a liaison for civilian review boards.

(c) POWERS AND DUTIES.—The Task Force shall consult with professional law enforcement associations,
labor organizations, and community-based organizations
to coordinate the process of the detection and referral of
complaints regarding incidents of alleged law enforcement
misconduct.

(d) **Authorization of Appropriations.**—There
are authorized to be appropriated $5,000,000 for each fis-
cal year to carry out this section.

**SEC. 118. FEDERAL DATA COLLECTION ON LAW ENFORCE-
MENT PRACTICES.**

(a) **Agencies To Report.**—Each Federal, State,
Tribal, and local law enforcement agency shall report data
of the practices enumerated in subsection (c) of that agen-
chy to the Attorney General.

(b) **Breakdown of Information by Race, Eth-
nicity, and Gender.**—For each practice enumerated in
subsection (c), the reporting law enforcement agency shall
provide a breakdown of the numbers of incidents of that
practice by race, ethnicity, age, and gender of the officers
of the agency and of members of the public involved in
the practice.

(c) **Practices To Be Reported On.**—The prac-
tices to be reported on are the following:

(1) Traffic violation stops.

(2) Pedestrian stops.

(3) Frisk and body searches.
(4) Instances where law enforcement officers used deadly force, including—

   (A) a description of when and where deadly force was used, and whether it resulted in death;

   (B) a description of deadly force directed against an officer and whether it resulted in injury or death; and

   (C) the law enforcement agency’s justification for use of deadly force, if the agency determines it was justified.

(d) RETENTION OF DATA.—Each law enforcement agency required to report data under this section shall maintain records relating to any matter reported for not less than 4 years after those records are created.

(e) PENALTY FOR STATES FAILING TO REPORT AS REQUIRED.—

   (1) IN GENERAL.—For any fiscal year, a State shall not receive any amount that would otherwise be allocated to that State under section 505(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10156(a)), or any amount from any other law enforcement assistance program of the Department of Justice, unless the State has ensured, to the satisfaction of the Attor-
ney General, that the State and each local law en-
forcement agency of the State is in substantial com-
pliance with the requirements of this section.

(2) REALLOCATION.—Amounts not allocated by
reason of this subsection shall be reallocated to
States not disqualified by failure to comply with this
section.

(f) REGULATIONS.—The Attorney General shall pre-
scribe regulations to carry out this section.

TITLE II—POLICING TRANSPARENCY THROUGH DATA
Subtitle A—National Police Misconduct Registry

SEC. 201. ESTABLISHMENT OF NATIONAL POLICE MIS-
CONDUCT REGISTRY.

(a) IN GENERAL.—Not later than 180 days after the
date of enactment of this Act, the Attorney General shall
establish a National Police Misconduct Registry to be com-
piled and maintained by the Department of Justice.

(b) CONTENTS OF REGISTRY.—The Registry re-
quired to be established under subsection (a) shall contain
the following data with respect to all Federal and local
law enforcement officers:

(1) Each complaint filed against a law enforce-
ment officer, aggregated by—
(A) complaints that were found to be credible or that resulted in disciplinary action against the law enforcement officer, disaggregated by whether the complaint involved a use of force or racial profiling (as such term is defined in section 302);

(B) complaints that are pending review, disaggregated by whether the complaint involved a use of force or racial profiling; and

(C) complaints for which the law enforcement officer was exonerated or that were determined to be unfounded or not sustained, disaggregated by whether the complaint involved a use of force or racial profiling.

(2) Discipline records, disaggregated by whether the complaint involved a use of force or racial profiling.

(3) Termination records, the reason for each termination, disaggregated by whether the complaint involved a use of force or racial profiling.

(4) Records of certification in accordance with section 202.

(5) Records of lawsuits against law enforcement officers and settlements of such lawsuits.
(6) Instances where a law enforcement officer resigns or retires while under active investigation related to the use of force.

(c) Federal Agency Reporting Requirements.—Not later than 1 year after the date of enactment of this Act, and every 6 months thereafter, the head of each Federal law enforcement agency shall submit to the Attorney General the information described in subsection (b).

(d) State and Local Law Enforcement Agency Reporting Requirements.—Beginning in the first fiscal year that begins after the date that is one year after the date of enactment of this Act and each fiscal year thereafter in which a State receives funds under the Byrne grant program, the State shall, once every 180 days, submit to the Attorney General the information described in subsection (b) for the State and each local law enforcement agency within the State.

(e) Public Availability of Registry.—

(1) In general.—In establishing the Registry required under subsection (a), the Attorney General shall make the Registry available to the public on an internet website of the Attorney General in a manner that allows members of the public to search for an individual law enforcement officer’s records of
misconduct, as described in subsection (b), involving
a use of force or racial profiling.

(2) PRIVACY PROTECTIONS.—Nothing in this
subsection shall be construed to supersede the re-
quirements or limitations under section 552a of title
5, United States Code (commonly known as the
“Privacy Act of 1974”).

SEC. 202. CERTIFICATION REQUIREMENTS FOR HIRING OF
LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—Beginning in the first fiscal year
that begins after the date that is one year after the date
of the enactment of this Act, a State or unit of local gov-
ernment, other than an Indian Tribe, may not receive
funds under the Byrne grant program for that fiscal year
if, on the day before the first day of the fiscal year, the
State or unit of local government has not—

(1) submitted to the Attorney General evidence
that the State or unit of local government has a cer-
tification and decertification program for purposes
of employment as a law enforcement officer in that
State or unit of local government that is consistent
with the rules made under subsection (c); and

(2) submitted to the National Police Mis-
conduct Registry established under section 201
records demonstrating that all law enforcement offi-
cers of the State or unit of local government have completed all State certification requirements during the 1-year period preceding the fiscal year.

(b) Availability of Information.—The Attorney General shall make available to law enforcement agencies all information in the registry under section 201 for purposes of compliance with the certification and decertification programs described in subsection (a)(1) and considering applications for employment.

(c) Rules.—The Attorney General shall make rules to carry out this section and section 201, including uniform reporting standards.

Subtitle B—PRIDE Act

Sec. 221. Short Title.

This subtitle may be cited as the “Police Reporting Information, Data, and Evidence Act of 2021” or the “PRIDE Act of 2021”.

Sec. 222. Definitions.

In this subtitle:

(1) Local Educational Agency.—The term “local educational agency” has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) Local Law Enforcement Officer.—The term “local law enforcement officer” has the mean-
ing given the term in section 2, and includes a school resource officer.

(3) SCHOOL.—The term "school" means an elementary school or secondary school (as those terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

(4) SCHOOL RESOURCE OFFICER.—The term "school resource officer" means a sworn law enforcement officer who is——

(A) assigned by the employing law enforcement agency to a local educational agency or school;

(B) contracting with a local educational agency or school; or

(C) employed by a local educational agency or school.

SEC. 223. USE OF FORCE REPORTING.

(a) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Beginning in the first fiscal year that begins after the date that is one year after the date of enactment of this Act and each fiscal year thereafter in which a State or Indian Tribe receives funds under a Byrne grant program, the State or Indian Tribe shall——
(A) report to the Attorney General, on a quarterly basis and pursuant to guidelines established by the Attorney General, information regarding—

(i) any incident involving the use of deadly force against a civilian by—

(I) a local law enforcement officer who is employed by the State or by a unit of local government in the State; or

(II) a tribal law enforcement officer who is employed by the Indian Tribe;

(ii) any incident involving the shooting of a local law enforcement officer or tribal law enforcement officer described in clause (i) by a civilian;

(iii) any incident involving the death or arrest of a local law enforcement officer or tribal law enforcement officer;

(iv) any incident during which use of force by or against a local law enforcement officer or tribal law enforcement officer described in clause (i) occurs, which is not reported under clause (i), (ii), or (iii);
(v) deaths in custody; and

(vi) uses of force in arrests and booking;

(B) establish a system and a set of policies to ensure that all use of force incidents are reported by local law enforcement officers or tribal law enforcement officers; and

(C) submit to the Attorney General a plan for the collection of data required to be reported under this section, including any modifications to a previously submitted data collection plan.

(2) REPORT INFORMATION REQUIRED.—

(A) IN GENERAL.—The report required under paragraph (1)(A) shall contain information that includes, at a minimum—

(i) the national origin, sex, race, ethnicity, age, disability, English language proficiency, and housing status of each civilian against whom a local law enforcement officer or tribal law enforcement officer used force;

(ii) the date, time, and location, including whether it was on school grounds, and the zip code, of the incident and
whether the jurisdiction in which the incident occurred allows for the open-carry or concealed-carry of a firearm;

(iii) whether the civilian was armed, and, if so, the type of weapon the civilian had;

(iv) the type of force used against the officer, the civilian, or both, including the types of weapons used;

(v) the reason force was used;

(vi) a description of any injuries sustained as a result of the incident;

(vii) the number of officers involved in the incident;

(viii) the number of civilians involved in the incident; and

(ix) a brief description regarding the circumstances surrounding the incident, which shall include information on—

(I) the type of force used by all involved persons;

(II) the legitimate police objective necessitating the use of force;

(III) the resistance encountered by each local law enforcement officer
or tribal law enforcement officer involved in the incident;

(IV) the efforts by local law enforcement officers or tribal law enforcement officers to—

(aa) de-escalate the situation in order to avoid the use of force;

or

(bb) minimize the level of force used; and

(V) if applicable, the reason why efforts described in subclause (IV) were not attempted.

(B) INCIDENTS REPORTED UNDER DEATH IN CUSTODY REPORTING ACT.—A State or Indian Tribe is not required to include in a report under subsection (a)(1) an incident reported by the State or Indian Tribe in accordance with section 20104(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. 12104(a)(2)).

(C) RETENTION OF DATA.—Each law enforcement agency required to report data under this section shall maintain records relating to
any matter so reportable for not less than 4
years after those records are created.

(3) Audit of use-of-force reporting.—Not
later than 1 year after the date of enactment of this
Act, and each year thereafter, each State or Indian
Tribe described in paragraph (1) shall—

(A) conduct an audit of the use of force in-
cident reporting system required to be estab-
lished under paragraph (1)(B); and

(B) submit a report to the Attorney Gen-
eral on the audit conducted under subpara-
graph (A).

(4) Compliance procedure.—Prior to sub-
mitting a report under paragraph (1)(A), the State
or Indian Tribe submitting such report shall com-
pare the information compiled to be reported pursu-
ant to clause (i) of paragraph (1)(A) to publicly
available sources, and shall revise such report to in-
clude any incident determined to be missing from
the report based on such comparison. Failure to
comply with the procedures described in the previous
sentence shall be considered a failure to comply with
the requirements of this section.

(b) Ineligibility for funds.—
(1) IN GENERAL.—For any fiscal year in which a State or Indian Tribe fails to comply with this section, the State or Indian Tribe, at the discretion of the Attorney General, shall be subject to not more than a 10-percent reduction of the funds that would otherwise be allocated for that fiscal year to the State or Indian Tribe under a Byrne grant program.

(2) REALLOCATION.—Amounts not allocated under a Byrne grant program in accordance with paragraph (1) to a State for failure to comply with this section shall be reallocated under the Byrne grant program to States that have not failed to comply with this section.

(3) INFORMATION REGARDING SCHOOL RESOURCE OFFICERS.—The State or Indian Tribe shall ensure that all schools and local educational agencies within the jurisdiction of the State or Indian Tribe provide the State or Indian Tribe with the information needed regarding school resource officers to comply with this section.

(c) PUBLIC AVAILABILITY OF DATA.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Attorney General shall publish, and make available to the public, a report containing the
data reported to the Attorney General under this section.

(2) PRIVACY PROTECTIONS.—Nothing in this subsection shall be construed to supersede the requirements or limitations under section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974").

(d) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in coordination with the Director of the Federal Bureau of Investigation, shall issue guidance on best practices relating to establishing standard data collection systems that capture the information required to be reported under subsection (a)(2), which shall include standard and consistent definitions for terms.

SEC. 224. USE OF FORCE DATA REPORTING.

(a) TECHNICAL ASSISTANCE GRANTS AUTHORIZED.—The Attorney General may make grants to eligible law enforcement agencies to be used for the activities described in subsection (c).

(b) ELIGIBILITY.—In order to be eligible to receive a grant under this section a law enforcement agency shall—
(1) be a tribal law enforcement agency or be located in a State that receives funds under a Byrne grant program;

(2) employ not more that 100 local or tribal law enforcement officers;

(3) demonstrate that the use of force policy for local law enforcement officers or tribal law enforcement officers employed by the law enforcement agency is publicly available; and

(4) establish and maintain a complaint system that—

(A) may be used by members of the public to report incidents of use of force to the law enforcement agency;

(B) makes all information collected publicly searchable and available; and

(C) provides information on the status of an investigation related to a use of force complaint.

(e) ACTIVITIES DESCRIBED.—A grant made under this section may be used by a law enforcement agency for—

(1) the cost of assisting the State or Indian Tribe in which the law enforcement agency is located
in complying with the reporting requirements described in section 223;

(2) the cost of establishing necessary systems required to investigate and report incidents as required under subsection (b)(4);

(3) public awareness campaigns designed to gain information from the public on use of force by or against local and tribal law enforcement officers, including shootings, which may include tip lines, hotlines, and public service announcements; and

(4) use of force training for law enforcement agencies and personnel, including training on de-escalation, implicit bias, crisis intervention techniques, and adolescent development.

SEC. 225. COMPLIANCE WITH REPORTING REQUIREMENTS.

(a) In General.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Attorney General shall conduct an audit and review of the information provided under this subtitle to determine whether each State or Indian Tribe described in section 223(a)(1) is in compliance with the requirements of this subtitle.

(b) Consistency in Data Reporting.—

(1) In General.—Any data reported under this subtitle shall be collected and reported—
(A) in a manner consistent with existing programs of the Department of Justice that collect data on local law enforcement officer encounters with civilians; and

(B) in a manner consistent with civil rights laws for distribution of information to the public.

(2) GUIDELINES.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall—

(A) issue guidelines on the reporting requirement under section 223; and

(B) seek public comment before finalizing the guidelines required under subparagraph (A).

SEC. 226. FEDERAL LAW ENFORCEMENT REPORTING.

The head of each Federal law enforcement agency shall submit to the Attorney General, on a quarterly basis and pursuant to guidelines established by the Attorney General, the information required to be reported by a State or Indian Tribe under section 223.

SEC. 227. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Attorney General such sums as are necessary to carry out this subtitle.
TITLE III—IMPROVING POLICE TRAINING AND POLICIES
Subtitle A—End Racial and Religious Profiling Act

SEC. 301. SHORT TITLE.
This subtitle may be cited as the “End Racial and Religious Profiling Act of 2021” or “ERRPA”.

SEC. 302. DEFINITIONS.
In this subtitle:

(1) COVERED PROGRAM.—The term “covered program” means any program or activity funded in whole or in part with funds made available under—
(A) a Byrne grant program; and
(B) the COPS grant program, except that no program, project, or other activity specified in section 1701(b)(13) of part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10381 et seq.) shall be a covered program under this paragraph.

(2) GOVERNMENTAL BODY.—The term “governmental body” means any department, agency, special purpose district, or other instrumentality of Federal, State, local, or Indian Tribal government.

(3) HIT RATE.—The term “hit rate” means the percentage of stops and searches in which a law en-
forensic agent finds drugs, a gun, or something else that leads to an arrest. The hit rate is calculated by dividing the total number of searches by the number of searches that yield contraband. The hit rate is complementary to the rate of false stops.

4. Law Enforcement Agency.—The term “law enforcement agency” means any Federal, State, or local public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

5. Law Enforcement Agent.—The term “law enforcement agent” means any Federal, State, or local official responsible for enforcing criminal, immigration, or customs laws, including police officers and other agents of a law enforcement agency.

6. Racial Profiling.—

(A) In General.—The term “racial profiling” means the practice of a law enforcement agent or agency relying, to any degree, on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the
initial investigatory procedure, except when
there is trustworthy information, relevant to the
locality and timeframe, that links a person with
a particular characteristic described in this
paragraph to an identified criminal incident or
scheme.

(B) EXCEPTION.—For purposes of sub-
paragraph (A), a tribal law enforcement officer
exercising law enforcement authority within In-
dian country, as that term is defined in section
1151 of title 18, United States Code, is not
considered to be racial profiling with respect to
making key jurisdictional determinations that
are necessarily tied to reliance on actual or per-
ceived race, ethnicity, or tribal affiliation.

(7) ROUTINE OR SPONTANEOUS INVESTIGATORY
ACTIVITIES.—The term "routine or spontaneous in-
vestigatory activities" means the following activities
by a law enforcement agent:

(A) Interviews.

(B) Traffic stops.

(C) Pedestrian stops.

(D) Frisks and other types of body
searches.
(E) Consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians.

(F) Data collection and analysis, assessments, and predicated investigations.

(G) Inspections and interviews of entrants into the United States that are more extensive than those customarily carried out.

(H) Immigration-related workplace investigations.

(I) Such other types of law enforcement encounters compiled for or by the Federal Bureau of Investigation or the Department of Justice Bureau of Justice Statistics.

(8) REASONABLE REQUEST.—The term “reasonable request” means all requests for information, except for those that—

(A) are immaterial to the investigation;

(B) would result in the unnecessary disclosure of personal information; or

(C) would place a severe burden on the resources of the law enforcement agency given its size.
PART I—PROHIBITION OF RACIAL PROFILING

SEC. 311. PROHIBITION.

No law enforcement agent or law enforcement agency shall engage in racial profiling.

SEC. 312. ENFORCEMENT.

(a) REMEDY.—The United States, or an individual injured by racial profiling, may enforce this part in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States.

(b) PARTIES.—In any action brought under this part, relief may be obtained against—

(1) any governmental body that employed any law enforcement agent who engaged in racial profiling;

(2) any agent of such body who engaged in racial profiling; and

(3) any person with supervisory authority over such agent.

(c) NATURE OF PROOF.—Proof that the routine or spontaneous investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on individuals with a particular characteristic described in section 302(6) shall constitute prima facie evidence of a violation of this part.
(d) ATTORNEY’S FEES.—In any action or proceeding to enforce this part against any governmental body, the court may allow a prevailing plaintiff, other than the United States, reasonable attorney’s fees as part of the costs, and may include expert fees as part of the attorney’s fee. The term “prevailing plaintiff’’ means a plaintiff that substantially prevails pursuant to a judicial or administrative judgment or order, or an enforceable written agreement.

PART II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

SEC. 321. POLICIES TO ELIMINATE RACIAL PROFILING.

(a) IN GENERAL.—Federal law enforcement agencies shall—

(1) maintain adequate policies and procedures designed to eliminate racial profiling; and

(2) cease existing practices that permit racial profiling.

(b) POLICIES.—The policies and procedures described in subsection (a)(1) shall include—

(1) a prohibition on racial profiling;

(2) training on racial profiling issues as part of Federal law enforcement training;
(3) the collection of data in accordance with the regulations issued by the Attorney General under section 341;

(4) procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents; and

(5) any other policies and procedures the Attorney General determines to be necessary to eliminate racial profiling by Federal law enforcement agencies.

PART III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

SEC. 331. POLICIES REQUIRED FOR GRANTS.

(a) IN GENERAL.—An application by a State or a unit of local government for funding under a covered program shall include a certification that such State, unit of local government, and any law enforcement agency to which it will distribute funds—

(1) maintains adequate policies and procedures designed to eliminate racial profiling; and

(2) has eliminated any existing practices that permit or encourage racial profiling.

(b) POLICIES.—The policies and procedures described in subsection (a)(1) shall include—

(1) a prohibition on racial profiling;
(2) training on racial profiling issues as part of law enforcement training;

(3) the collection of data in accordance with the regulations issued by the Attorney General under section 341; and

(4) participation in an administrative complaint procedure or independent audit program that meets the requirements of section 332.

(c) EFFECTIVE DATE.—This section shall take effect 12 months after the date of enactment of this Act.

SEC. 332. INVOLVEMENT OF ATTORNEY GENERAL.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act and in consultation with stakeholders, including Federal, State, and local law enforcement agencies and community, professional, research, and civil rights organizations, the Attorney General shall issue regulations for the operation of administrative complaint procedures and independent audit programs to ensure that such procedures and programs provide an appropriate response to allegations of racial profiling by law enforcement agents or agencies.

(2) GUIDELINES.—The regulations issued under paragraph (1) shall contain guidelines that
ensure the fairness, effectiveness, and independence
of the administrative complaint procedures and inde-
pendent auditor programs.

(b) NONCOMPLIANCE.—If the Attorney General de-
determines that the recipient of a grant from any covered
program is not in compliance with the requirements of sec-
tion 331 or the regulations issued under subsection (a),
the Attorney General shall withhold, in whole or in part
(at the discretion of the Attorney General), funds for one
or more grants to the recipient under the covered pro-
gram, until the recipient establishes compliance.

(c) PRIVATE PARTIES.—The Attorney General shall
provide notice and an opportunity for private parties to
present evidence to the Attorney General that a recipient
of a grant from any covered program is not in compliance
with the requirements of this part.

SEC. 333. DATA COLLECTION DEMONSTRATION PROJECT.

(a) TECHNICAL ASSISTANCE GRANTS FOR DATA
COLLECTION.—

(1) IN GENERAL.—The Attorney General may,
through competitive grants or contracts, carry out a
2-year demonstration project for the purpose of de-
veloping and implementing data collection programs
on the hit rates for stops and searches by law en-
forcement agencies. The data collected shall be
disaggregated by race, ethnicity, national origin, gender, and religion.

(2) **NUMBER OF GRANTS.**—The Attorney General shall provide not more than 5 grants or contracts under this section.

(3) **ELIGIBLE GRANTEES.**—Grants or contracts under this section shall be awarded to law enforcement agencies that serve communities where there is a significant concentration of racial or ethnic minorities and that are not already collecting data voluntarily.

(b) **REQUIRED ACTIVITIES.**—Activities carried out with a grant under this section shall include—

(1) developing a data collection tool and reporting the compiled data to the Attorney General; and

(2) training of law enforcement personnel on data collection, particularly for data collection on hit rates for stops and searches.

(c) **EVALUATION.**—Not later than 3 years after the date of enactment of this Act, the Attorney General shall enter into a contract with an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) to analyze the data collected by each of the grantees funded under this section.
(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out activities under this section—

(1) $5,000,000, over a 2-year period, to carry out the demonstration program under subsection (a); and

(2) $500,000 to carry out the evaluation under subsection (c).

SEC. 334. DEVELOPMENT OF BEST PRACTICES.

(a) Use of Funds Requirement.—Section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)), as amended by sections 113 and 114, is amended by adding at the end the following:

"(9) An assurance that, for each fiscal year covered by an application, the applicant will use not less than 10 percent of the total amount of the grant award for the fiscal year to develop and implement best practice devices and systems to eliminate racial profiling in accordance with section 334 of the End Racial and Religious Profiling Act of 2021.".

(b) Development of Best Practices.—Grant amounts described in paragraph (9) of section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)), as added by subsection (a)
of this section, shall be for programs that include the fol-
lowing:

(1) The development and implementation of
training to prevent racial profiling and to encourage
more respectful interaction with the public.

(2) The acquisition and use of technology to fa-
cilitate the accurate collection and analysis of data.

(3) The development and acquisition of feed-
back systems and technologies that identify law en-
forcement agents or units of agents engaged in, or
at risk of engaging in, racial profiling or other mis-
conduct.

(4) The establishment and maintenance of an
administrative complaint procedure or independent
auditor program.

SEC. 335. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Attor-
ney General such sums as are necessary to carry out this
part.

PART IV—DATA COLLECTION

SEC. 341. ATTORNEY GENERAL TO ISSUE REGULATIONS.

(a) REGULATIONS.—Not later than 6 months after
the date of enactment of this Act, the Attorney General,
in consultation with stakeholders, including Federal,
State, and local law enforcement agencies and community,
professional, research, and civil rights organizations, shall
issue regulations for the collection and compilation of data
under sections 321 and 331.

(b) REQUIREMENTS.—The regulations issued under
subsection (a) shall—

(1) provide for the collection of data on all rou-
tine and spontaneous investigatory activities;

(2) provide that the data collected shall—

(A) be disaggregated by race, ethnicity, na-
tional origin, gender, disability, and religion;

(B) include the date, time, and location of
such investigatory activities;

(C) include detail sufficient to permit an
analysis of whether a law enforcement agency is
engaging in racial profiling; and

(D) not include personally identifiable in-
formation;

(3) provide that a standardized form shall be
made available to law enforcement agencies for the
submission of collected data to the Department of
Justice;

(4) provide that law enforcement agencies shall
compile data on the standardized form made avail-
able under paragraph (3), and submit the form to
the Civil Rights Division and the Department of
Justice Bureau of Justice Statistics;

(5) provide that law enforcement agencies shall
maintain all data collected under this subtitle for not
less than 4 years;

(6) include guidelines for setting comparative
benchmarks, consistent with best practices, against
which collected data shall be measured;

(7) provide that the Department of Justice Bu-
reau of Justice Statistics shall—

(A) analyze the data for any statistically
significant disparities, including—

(i) disparities in the percentage of
drivers or pedestrians stopped relative to
the proportion of the population passing
through the neighborhood;

(ii) disparities in the hit rate; and

(iii) disparities in the frequency of
searches performed on racial or ethnic mi-
nority drivers and the frequency of
searches performed on nonminority drivers;

and

(B) not later than 3 years after the date
of enactment of this Act, and annually there-
after—
(i) prepare a report regarding the
findings of the analysis conducted under
subparagraph (A);

(ii) provide such report to Congress;

and

(iii) make such report available to the
public, including on a website of the De-
partment of Justice, and in accordance
with accessibility standards under the
Americans with Disabilities Act of 1990
(42 U.S.C. 12101 et seq.); and

(8) protect the privacy of individuals whose
data is collected by—

(A) limiting the use of the data collected
under this subtitle to the purposes set forth in
this subtitle;

(B) except as otherwise provided in this
subtitle, limiting access to the data collected
under this subtitle to those Federal, State, or
local employees or agents who require such ac-
cess in order to fulfill the purposes for the data
set forth in this subtitle;

(C) requiring contractors or other non-
governmental agents who are permitted access
to the data collected under this subtitle to sign
use agreements incorporating the use and disclosure restrictions set forth in subparagraph (A); and

(D) requiring the maintenance of adequate security measures to prevent unauthorized access to the data collected under this subtitle.

SEC. 342. PUBLICATION OF DATA.

The Director of the Bureau of Justice Statistics of the Department of Justice shall provide to Congress and make available to the public, together with each annual report described in section 341, the data collected pursuant to this subtitle, excluding any personally identifiable information described in section 343.

SEC. 343. LIMITATIONS ON PUBLICATION OF DATA.

The name or identifying information of a law enforcement agent, complainant, or any other individual involved in any activity for which data is collected and compiled under this subtitle shall not be—

(1) released to the public;

(2) disclosed to any person, except for—

(A) such disclosures as are necessary to comply with this subtitle;

(B) disclosures of information regarding a particular person to that person; or

(C) disclosures pursuant to litigation; or
(3) subject to disclosure under section 552 of
title 5, United States Code (commonly known as the
Freedom of Information Act), except for disclosures
of information regarding a particular person to that
person.

PART V—DEPARTMENT OF JUSTICE REGULA-
TIONS AND REPORTS ON RACIAL PROFILING
IN THE UNITED STATES

SEC. 351. ATTORNEY GENERAL TO ISSUE REGULATIONS
AND REPORTS.

(a) Regulations.—In addition to the regulations re-
quired under sections 333 and 341, the Attorney General
shall issue such other regulations as the Attorney General
determines are necessary to implement this subtitle.

(b) Reports.—

(1) In general.—Not later than 2 years after
the date of enactment of this Act, and annually
thereafter, the Attorney General shall submit to
Congress a report on racial profiling by law enforce-
ment agencies.

(2) Scope.—Each report submitted under
paragraph (1) shall include—

(A) a summary of data collected under sec-
tions 321(b)(3) and 331(b)(3) and from any
other reliable source of information regarding racial profiling in the United States;

(B) a discussion of the findings in the most recent report prepared by the Department of Justice Bureau of Justice Statistics under section 341(b)(7);

(C) the status of the adoption and implementation of policies and procedures by Federal law enforcement agencies under section 321 and by the State and local law enforcement agencies under sections 331 and 332; and

(D) a description of any other policies and procedures that the Attorney General believes would facilitate the elimination of racial profiling.

Subtitle B—Additional Reforms

SEC. 361. TRAINING ON RACIAL BIAS AND DUTY TO INTERVENE.

(a) IN GENERAL.—The Attorney General shall establish—

(1) a training program for law enforcement officers to cover racial profiling, implicit bias, and procedural justice; and

(2) a clear duty for Federal law enforcement officers to intervene in cases where another law en-
enforcement officer is using excessive force against a
civilian, and establish a training program that covers
the duty to intervene.

(b) MANDATORY TRAINING FOR FEDERAL LAW EN-
FORCEMENT OFFICERS.—The head of each Federal law
enforcement agency shall require each Federal law en-
forcement officer employed by the agency to complete the
training programs established under subsection (a).

(c) LIMITATION ON ELIGIBILITY FOR FUNDS.—Be-
ginning in the first fiscal year that begins after the date
that is one year after the date of enactment of this Act,
a State or unit of local government may not receive funds
under the Byrne grant program for a fiscal year if, on
the day before the first day of the fiscal year, the State
or unit of local government does not require each law en-
forcement officer in the State or unit of local government
to complete the training programs established under sub-
section (a).

(d) GRANTS TO TRAIN LAW ENFORCEMENT OFFI-
CERS ON USE OF FORCE.—Section 501(a)(1) of title I of
the Omnibus Crime Control and Safe Streets Act of 1968
(34 U.S.C. 10152(a)(1)) is amended by adding at the end
the following:
“(I) Training programs for law enforce-
ment officers, including training programs on
use of force and a duty to intervene.”.

SEC. 362. BAN ON NO-KNOCK WARRANTS IN DRUG CASES.

(a) Ban on Federal Warrants in Drug Cases.—
Section 509 of the Controlled Substances Act (21 U.S.C. 879) is amended by adding at the end the following: “A search warrant authorized under this section shall require that a law enforcement officer execute the search warrant only after providing notice of his or her authority and pur-
pose.”.

(b) Limitation on Eligibility for Funds.—Be-
ginning in the first fiscal year that begins after the date that is one year after the date of enactment of this Act, a State or unit of local government may not receive funds under the COPS grant program for a fiscal year if, on the day before the first day of the fiscal year, the State or unit of local government does not have in effect a law that prohibits the issuance of a no-knock warrant in a drug case.

(c) Definition.—In this section, the term “no-
knock warrant” means a warrant that allows a law en-
forcement officer to enter a property without requiring the law enforcement officer to announce the presence of the
law enforcement officer or the intention of the law enforce-
ment officer to enter the property.

SEC. 363. INCENTIVIZING BANNING OF CHOKEHOLDS AND
CAROTID HOLDS.

(a) DEFINITION.—In this section, the term
“chokehold or carotid hold” means the application of any
pressure to the throat or windpipe, the use of maneuvers
that restrict blood or oxygen flow to the brain, or carotid
artery restraints that prevent or hinder breathing or re-
duce intake of air of an individual.

(b) LIMITATION ON ELIGIBILITY FOR FUNDS.—Be-
ginning in the first fiscal year that begins after the date
that is one year after the date of enactment of this Act,
a State or unit of local government may not receive funds
under the Byrne grant program or the COPS grant pro-
gram for a fiscal year if, on the day before the first day
of the fiscal year, the State or unit of local government
does not have in effect a law that prohibits law enforce-
ment officers in the State or unit of local government from
using a chokehold or carotid hold.

(c) CHOKEHOLDS AS CIVIL RIGHTS VIOLATIONS.—

(1) SHORT TITLE.—This subsection may be
cited as the “Eric Garner Excessive Use of Force
Prevention Act”.

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(2) Chokeholds as Civil Rights Violations.—Section 242 of title 18, United States Code, as amended by section 101, is amended by adding at the end the following: “For the purposes of this section, the application of any pressure to the throat or windpipe, use of maneuvers that restrict blood or oxygen flow to the brain, or carotid artery restraints which prevent or hinder breathing or reduce intake of air is a punishment, pain, or penalty.”.

SEC. 364. PEACE ACT.

(a) Short Title.—This section may be cited as the “Police Exercising Absolute Care With Everyone Act of 2021” or the “PEACE Act of 2021”.

(b) Use of Force by Federal Law Enforcement Officers.—

(1) Definitions.—In this subsection:

(A) Deescalation Tactics and Techniques.—The term “deescalation tactics and techniques” means proactive actions and approaches used by a Federal law enforcement officer to stabilize the situation so that more time, options, and resources are available to gain a person’s voluntary compliance and reduce or eliminate the need to use force, including verbal persuasion, warnings, tactical tech-
niques, slowing down the pace of an incident, waiting out a subject, creating distance between the officer and the threat, and requesting additional resources to resolve the incident.

(B) NECESSARY.—The term "necessary" means that another reasonable Federal law enforcement officer would objectively conclude, under the totality of the circumstances, that there was no reasonable alternative to the use of force.

(C) REASONABLE ALTERNATIVES.—

(i) IN GENERAL.—The term "reasonable alternatives" means tactics and methods used by a Federal law enforcement officer to effectuate an arrest that do not unreasonably increase the risk posed to the law enforcement officer or another person, including verbal communication, distance, warnings, deescalation tactics and techniques, tactical repositioning, and other tactics and techniques intended to stabilize the situation and reduce the immediacy of the risk so that more time, options, and resources can be called upon to resolve the situation without the use of force.
(ii) **DEADLY FORCE.**—With respect to the use of deadly force, the term “reasonable alternatives” includes the use of less lethal force.

(D) **TOTALITY OF THE CIRCUMSTANCES.**—

The term “totality of the circumstances” means all credible facts known to the Federal law enforcement officer leading up to and at the time of the use of force, including the actions of the person against whom the Federal law enforcement officer uses such force and the actions of the Federal law enforcement officer.

(2) **PROHIBITION ON LESS LETHAL FORCE.**—A Federal law enforcement officer may not use any less lethal force unless—

(A) the form of less lethal force used is necessary and proportional in order to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense; and

(B) reasonable alternatives to the use of the form of less lethal force have been exhausted.
(3) Prohibition on deadly use of force.—A Federal law enforcement officer may not use deadly force against a person unless—

(A) the form of deadly force used is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person;

(B) the use of the form of deadly force creates no substantial risk of injury to a third person; and

(C) reasonable alternatives to the use of the form of deadly force have been exhausted.

(4) Requirement to give verbal warning.—When feasible, prior to using force against a person, a Federal law enforcement officer shall identify himself or herself as a Federal law enforcement officer, and issue a verbal warning to the person that the Federal law enforcement officer seeks to apprehend, which shall—

(A) include a request that the person surrender to the law enforcement officer; and

(B) notify the person that the law enforcement officer will use force against the person if the person resists arrest or flees.
(5) GUIDANCE ON USE OF FORCE.—Not later than 120 days after the date of enactment of this Act, the Attorney General, in consultation with impacted persons, communities, and organizations, including representatives of civil and human rights organizations, victims of police use of force, and representatives of law enforcement associations, shall provide guidance to Federal law enforcement agencies on—

(A) the types of less lethal force and deadly force that are prohibited under paragraphs (2) and (3); and

(B) how a Federal law enforcement officer can—

(i) assess whether the use of force is appropriate and necessary; and

(ii) use the least amount of force when interacting with—

(I) pregnant individuals;

(II) children and youth under 21 years of age;

(III) elderly persons;

(IV) persons with mental, behavioral, or physical disabilities or impairments;
(V) persons experiencing perceptual or cognitive impairments due to use of alcohol, narcotics, hallucinogens, or other drugs;

(VI) persons suffering from a serious medical condition; and

(VII) persons with limited English proficiency.

(6) TRAINING.—The Attorney General shall provide training to Federal law enforcement officers on interacting people described in subclauses (I) through (VII) of paragraph (5)(B)(ii).

(7) LIMITATION ON JUSTIFICATION DEFENSE.—

(A) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

“§ 1123. Limitation on justification defense for Federal law enforcement officers

“(a) IN GENERAL.—It is not a defense to an offense under section 1111 or 1112 that the use of less lethal force or deadly force by a Federal law enforcement officer was justified if—
“(1) that officer’s use of use of such force was inconsistent with section 364(b) of the George Floyd Justice in Policing Act of 2021; or

“(2) that officer’s gross negligence, leading up to and at the time of the use of force, contributed to the necessity of the use of such force.

“(b) DEFINITIONS.—In this section—

“(1) the terms ‘deadly force’ and ‘less lethal force’ have the meanings given such terms in section 2 and section 364 of the George Floyd Justice in Policing Act of 2021; and

“(2) the term ‘Federal law enforcement officer’ has the meaning given such term in section 115.”.

(B) CLERICAL AMENDMENT.—The table of sections for chapter 51 of title 18, United States Code, is amended by inserting after the item relating to section 1122 the following:

“1123. Limitation on justification defense for Federal law enforcement officers.”.

(c) LIMITATION ON THE RECEIPT OF FUNDS UNDER THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM.—

(1) LIMITATION.—A State or unit of local government, other than an Indian Tribe, may not receive funds that the State or unit of local government would otherwise receive under a Byrne grant
program for a fiscal year if, on the day before the first day of the fiscal year, the State or unit of local government does not have in effect a law that is consistent with subsection (b) of this section and section 1123 of title 18, United States Code, as determined by the Attorney General.

(2) Subsequent enactment.—

(A) In general.—If funds described in paragraph (1) are withheld from a State or unit of local government pursuant to paragraph (1) for 1 or more fiscal years, and the State or unit of local government enacts or puts in place a law described in paragraph (1), and demonstrates substantial efforts to enforce such law, subject to subparagraph (B), the State or unit of local government shall be eligible, in the fiscal year after the fiscal year during which the State or unit of local government demonstrates such substantial efforts, to receive the total amount that the State or unit of local government would have received during each fiscal year for which funds were withheld.

(B) Limit on amount of prior year funds.—A State or unit of local government may not receive funds under subparagraph (A)
in an amount that is more than the amount
withheld from the State or unit of local govern-
ment during the 5-fiscal-year period before the
fiscal year during which funds are received
under subparagraph (A).

(3) GUIDANCE.—Not later than 120 days after
the date of enactment of this Act, the Attorney Gen-
eral, in consultation with impacted persons, commu-
nities, and organizations, including representatives
of civil and human rights organizations, individuals
against whom a law enforcement officer used force,
and representatives of law enforcement associations,
shall make guidance available to States and units of
local government on the criteria that the Attorney
General will use in determining whether the State or
unit of local government has in place a law described
in paragraph (1).

(4) APPLICATION.—This subsection shall apply
to the first fiscal year that begins after the date that
is 1 year after the date of the enactment of this Act,
and each fiscal year thereafter.

SEC. 365. STOP MILITARIZING LAW ENFORCEMENT ACT.

(a) FINDINGS.—Congress makes the following find-
ings:
(1) Under section 2576a of title 10, United States Code, the Department of Defense is authorized to provide excess property to local law enforcement agencies. The Defense Logistics Agency, administers such section by operating the Law Enforcement Support Office program.

(2) New and used material, including mine-resistant ambush-protected vehicles and weapons determined by the Department of Defense to be "military grade" are transferred to Federal, Tribal, State, and local law enforcement agencies through the program.

(3) As a result local law enforcement agencies, including police and sheriff’s departments, are acquiring this material for use in their normal operations.

(4) As a result of the wars in Iraq and Afghanistan, military equipment purchased for, and used in, those wars has become excess property and has been made available for transfer to local and Federal law enforcement agencies.

(5) In Fiscal Year 2017, $504,000,000 worth of property was transferred to law enforcement agencies.
(6) More than $6,800,000,000 worth of weapons and equipment have been transferred to police organizations in all 50 States and four territories through the program.

(7) In May 2012, the Defense Logistics Agency instituted a moratorium on weapons transfers through the program after reports of missing equipment and inappropriate weapons transfers.

(8) Though the moratorium was widely publicized, it was lifted in October 2013 without adequate safeguards.

(9) On January 16, 2015, President Barack Obama issued Executive Order No. 13688 to better coordinate and regulate the federal transfer of military weapons and equipment to State, local, and Tribal law enforcement agencies.

(10) In July, 2017, the Government Accountability Office reported that the program’s internal controls were inadequate to prevent fraudulent applicants’ access to the program.

(12) As a result, Federal, State, and local law enforcement departments across the country are eligible again to acquire free “military-grade” weapons and equipment that could be used inappropriately during policing efforts in which people and taxpayers could be harmed.

(13) The Department of Defense categorizes equipment eligible for transfer under the 1033 program as “controlled” and “un-controlled” equipment. “Controlled equipment” includes weapons, explosives such as flash-bang grenades, mine-resistant ambush-protected vehicles, long-range acoustic devices, aircraft capable of being modified to carry armament that are combat coded, and silencers, among other military grade items.

(b) LIMITATION ON DEPARTMENT OF DEFENSE TRANSFER OF PERSONAL PROPERTY TO LOCAL LAW ENFORCEMENT AGENCIES.—

(1) IN GENERAL.—Section 2576a of title 10, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)(A), by striking “counterdrug, counterterrorism, and border security activities” and inserting “counterterrorism”; and
(ii) in paragraph (2), by striking “,
the Director of National Drug Control Pol-
icy,”;

(B) in subsection (b)—

(i) in paragraph (5), by striking
“and” at the end;

(ii) in paragraph (6), by striking the
period and inserting a semicolon; and

(iii) by adding at the end the fol-
lowing new paragraphs:

“(7) the recipient submits to the Department of
Defense a description of how the recipient expects to
use the property;

“(8) the recipient certifies to the Department of
Defense that if the recipient determines that the
property is surplus to the needs of the recipient, the
recipient will return the property to the Department
of Defense;

“(9) with respect to a recipient that is not a
Federal agency, the recipient certifies to the Depart-
ment of Defense that the recipient notified the local
community of the request for personal property
under this section by—

“(A) publishing a notice of such request on
a publicly accessible Internet website;
“(B) posting such notice at several prominent locations in the jurisdiction of the recipient; and

“(C) ensuring that such notices were available to the local community for a period of not less than 30 days; and

“(10) the recipient has received the approval of the city council or other local governing body to acquire the personal property sought under this section.”;

(C) by striking subsection (d);

(D) by redesignating subsections (e) and (f) as subsections (o) and (p), respectively; and

(E) by inserting after subsection (c) the following new subsections:

“(d) ANNUAL CERTIFICATION ACCOUNTING FOR TRANSFERRED PROPERTY.—(1) For each fiscal year, the Secretary shall submit to Congress certification in writing that each Federal or State agency to which the Secretary has transferred property under this section—

“(A) has provided to the Secretary documentation accounting for all controlled property, including arms and ammunition, that the Secretary has transferred to the agency, including any item described in subsection (f) so transferred before the date of the
enactment of the George Floyd Justice in Policing Act of 2021; and

“(B) with respect to a non-Federal agency, carried out each of paragraphs (5) through (8) of subsection (b).

“(2) If the Secretary does not provide a certification under paragraph (1) for a Federal or State agency, the Secretary may not transfer additional property to that agency under this section.

“(e) ANNUAL REPORT ON EXCESS PROPERTY.—Before making any property available for transfer under this section, the Secretary shall annually submit to Congress a description of the property to be transferred together with a certification that the transfer of the property would not violate this section or any other provision of law.

“(f) LIMITATIONS ON TRANSFERS.—(1) The Secretary may not transfer to Federal, Tribal, State, or local law enforcement agencies the following under this section:

“(A) Firearms, ammunition, bayonets, grenade launchers, grenades (including stun and flash-bang), and explosives.

“(B) Vehicles, except for passenger automobiles (as such term is defined in section 32901(a)(18) of title 49, United States Code) and bucket trucks.

“(C) Drones.
“(D) Controlled aircraft that—

“(i) are combat configured or combat
coded; or

“(ii) have no established commercial flight
application.

“(E) Silencers.

“(F) Long-range acoustic devices.

“(G) Items in the Federal Supply Class of
banned items.

“(2) The Secretary may not require, as a condition
of a transfer under this section, that a Federal or State
agency demonstrate the use of any small arms or ammuni-
tion.

“(3) The limitations under this subsection shall also
apply with respect to the transfer of previously transferred
property of the Department of Defense from one Federal
or State agency to another such agency.

“(4)(A) The Secretary may waive the applicability of
paragraph (1) to a vehicle described in subparagraph (B)
of such paragraph (other than a mine-resistant ambush-
protected vehicle), if the Secretary determines that such
waiver is necessary for disaster or rescue purposes or
for another purpose where life and public safety are at
risk, as demonstrated by the proposed recipient of the ve-
hicle.
“(B) If the Secretary issues a waiver under subparagraph (A), the Secretary shall—

“(i) submit to Congress notice of the waiver, and post such notice on a public Internet website of the Department, by not later than 30 days after the date on which the waiver is issued; and

“(ii) require, as a condition of the waiver, that the recipient of the vehicle for which the waiver is issued provides public notice of the waiver and the transfer, including the type of vehicle and the purpose for which it is transferred, in the jurisdiction where the recipient is located by not later than 30 days after the date on which the waiver is issued.

“(5) The Secretary may provide for an exemption to the limitation under subparagraph (D) of paragraph (1) in the case of parts for aircraft described in such subparagraph that are transferred as part of regular maintenance of aircraft in an existing fleet.

“(6) The Secretary shall require, as a condition of any transfer of property under this section, that the Federal or State agency that receives the property shall return the property to the Secretary if the agency—

“(A) is investigated by the Department of Justice for any violation of civil liberties; or
“(B) is otherwise found to have engaged in widespread abuses of civil liberties.

“(g) CONDITIONS FOR EXTENSION OF PROGRAM.—Notwithstanding any other provision of law, amounts authorized to be appropriated or otherwise made available for any fiscal year may not be obligated or expended to carry out this section unless the Secretary submits to Congress certification that for the preceding fiscal year that—

“(1) each Federal or State agency that has received controlled property transferred under this section has—

“(A) demonstrated 100 percent accountability for all such property, in accordance with paragraph (2) or (3), as applicable; or

“(B) been suspended from the program pursuant to paragraph (4);

“(2) with respect to each non-Federal agency that has received controlled property under this section, the State coordinator responsible for each such agency has verified that the coordinator or an agent of the coordinator has conducted an in-person inventory of the property transferred to the agency and that 100 percent of such property was accounted for during the inventory or that the agency has been
suspended from the program pursuant to paragraph (4);

“(3) with respect to each Federal agency that has received controlled property under this section, the Secretary of Defense or an agent of the Secretary has conducted an in-person inventory of the property transferred to the agency and that 100 percent of such property was accounted for during the inventory or that the agency has been suspended from the program pursuant to paragraph (4);

“(4) the eligibility of any agency that has received controlled property under this section for which 100 percent of the property was not accounted for during an inventory described in paragraph (1) or (2), as applicable, to receive any property transferred under this section has been suspended; and

“(5) each State coordinator has certified, for each non-Federal agency located in the State for which the State coordinator is responsible that—

“(A) the agency has complied with all requirements under this section; or

“(B) the eligibility of the agency to receive property transferred under this section has been suspended; and
“(6) the Secretary of Defense has certified, for each Federal agency that has received property under this section that—

“(A) the agency has complied with all requirements under this section; or

“(B) the eligibility of the agency to receive property transferred under this section has been suspended.

“(h) Prohibition on Ownership of Controlled Property.—A Federal or State agency that receives controlled property under this section may not take ownership of the property.

“(i) Notice to Congress of Property Downgrades.—Not later than 30 days before downgrading the classification of any item of personal property from controlled or Federal Supply Class, the Secretary shall submit to Congress notice of the proposed downgrade.

“(j) Notice to Congress of Property Cannibalization.—Before the Defense Logistics Agency authorizes the recipient of property transferred under this section to cannibalize the property, the Secretary shall submit to Congress notice of such authorization, including the name of the recipient requesting the authorization, the purpose of the proposed cannibalization, and the type of property proposed to be cannibalized.
“(k) Quarterly Reports on Use of Controlled Equipment.—Not later than 30 days after the last day of a fiscal quarter, the Secretary shall submit to Congress a report on any uses of controlled property transferred under this section during that fiscal quarter.

“(l) Reports to Congress.—Not later than 30 days after the last day of a fiscal year, the Secretary shall submit to Congress a report on the following for the preceding fiscal year:

“(1) The percentage of equipment lost by recipients of property transferred under this section, including specific information about the type of property lost, the monetary value of such property, and the recipient that lost the property.

“(2) The transfer of any new (condition code A) property transferred under this section, including specific information about the type of property, the recipient of the property, the monetary value of each item of the property, and the total monetary value of all such property transferred during the fiscal year.”.

(2) Effective Date.—The amendments made by paragraph (1) shall apply with respect to any transfer of property made after the date of the enactment of this Act.
SEC. 366. PUBLIC SAFETY INNOVATION GRANTS.

(a) BYRNE GRANTS USED FOR LOCAL TASK FORCES ON PUBLIC SAFETY INNOVATION.—Section 501(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151(a)), as amended by this Act, is further amended by adding at the end the following:

“(3) LOCAL TASK FORCES ON PUBLIC SAFETY INNOVATION.—

“(A) IN GENERAL.—A law enforcement program under paragraph (1)(A) may include the development of best practices for and the creation of local task forces on public safety innovation, charged with exploring and developing new strategies for public safety, including non-law enforcement strategies.

“(B) DEFINITION.—The term ‘local task force on public safety innovation’ means an administrative entity, created from partnerships between community-based organizations and other local stakeholders, that may develop innovative law enforcement and non-law enforcement strategies to enhance just and equitable public safety, repair breaches of trust between law enforcement agencies and the community they pledge to serve, and enhance accountability of law enforcement officers.”.
(b) Crisis Intervention Teams.—Section 501(c) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10152(c)) is amended by adding at the end the following:

"(3) In the case of crisis intervention teams funded under subsection (a)(1)(H), a program assessment under this subsection shall contain a report on best practices for crisis intervention."

(c) Use of COPS Grant Program to Hire Law Enforcement Officers Who Are Residents of the Communities They Serve.—Section 1701(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10381(b)), as amended by this Act, is further amended—

(1) by redesignating paragraphs (23) and (24) as paragraphs (26) and (27), respectively;

(2) in paragraph (26), as so redesignated, by striking ""(22)"" and inserting ""(25)""; and

(3) by inserting after paragraph (22) the following:

""(23) to recruit, hire, incentivize, retain, develop, and train new, additional career law enforcement officers or current law enforcement officers who are willing to relocate to communities—""
“(A) where there are poor or fragmented relationships between police and residents of the community, or where there are high incidents of crime; and

“(B) that are the communities that the law enforcement officers serve, or that are in close proximity to the communities that the law enforcement officers serve;

“(24) to collect data on the number of law enforcement officers who are willing to relocate to the communities where they serve, and whether such law enforcement officer relocations have impacted crime in such communities;

“(25) to develop and publicly report strategies and timelines to recruit, hire, promote, retain, develop, and train a diverse and inclusive law enforcement workforce, consistent with merit system principles and applicable law;”.

Subtitle C—Law Enforcement Body Cameras

PART 1—FEDERAL POLICE CAMERA AND ACCOUNTABILITY ACT

SEC. 371. SHORT TITLE.

This part may be cited as the “Federal Police Camera and Accountability Act”.
SEC. 372. REQUIREMENTS FOR FEDERAL LAW ENFORCEMENT OFFICERS REGARDING THE USE OF BODY CAMERAS.

(a) Definitions.—In this section:

(1) Minor.—The term “minor” means any individual under 18 years of age.

(2) Subject of the Video Footage.—The term “subject of the video footage”—

(A) means any identifiable Federal law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording; and

(B) does not include people who only incidentally appear on the recording.

(3) Video Footage.—The term “video footage” means any images or audio recorded by a body camera.

(b) Requirement to Wear Body Camera.—

(1) In General.—Federal law enforcement officers shall wear a body camera.

(2) Requirement for Body Camera.—A body camera required under paragraph (1) shall—

(A) have a field of view at least as broad as the officer’s vision; and
(B) be worn in a manner that maximizes
the camera's ability to capture video footage of
the officer's activities.

(c) Requirement To Activate.—
(1) In General.—Both the video and audio re-
cording functions of the body camera shall be acti-
vated whenever a Federal law enforcement officer is
responding to a call for service or at the initiation
of any other law enforcement or investigative stop
(as such term is defined in section 373) between a
Federal law enforcement officer and a member of
the public, except that when an immediate threat to
the officer's life or safety makes activating the cam-
era impossible or dangerous, the officer shall acti-
vate the camera at the first reasonable opportunity
to do so.

(2) Allowable Deactivation.—The body
camera shall not be deactivated until the stop has
fully concluded and the Federal law enforcement of-
ficer leaves the scene.

(d) Notification Of Subject Of Recording.—A
Federal law enforcement officer who is wearing a body
camera shall notify any subject of the recording that he
or she is being recorded by a body camera as close to the
inception of the stop as is reasonably possible.
(e) REQUIREMENTS.—Notwithstanding subsection (c), the following shall apply to the use of a body camera:

   (1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a Federal law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer’s body camera. If the occupant responds affirmatively, the Federal law enforcement officer shall immediately discontinue use of the body camera.

   (2) When interacting with an apparent crime victim, a Federal law enforcement officer shall, as soon as practicable, ask the apparent crime victim if the apparent crime victim wants the officer to discontinue use of the officer’s body camera. If the apparent crime victim responds affirmatively, the Federal law enforcement officer shall immediately discontinue use of the body camera.

   (3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a Federal law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer’s body camera. If
the person seeking to remain anonymous responds affirmatively, the Federal law enforcement officer shall immediately discontinue use of the body camera.

(f) Recording of Offers To Discontinue Use of Body Camera.—Each offer of a Federal law enforcement officer to discontinue the use of a body camera made pursuant to subsection (e), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

(g) Limitations on Use of Body Camera.—Body cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative stop between a law enforcement officer and a member of the public, and shall not be equipped with or employ any facial recognition technologies.

(h) Exceptions.—Federal law enforcement officers—

(1) shall not be required to use body cameras during investigative or enforcement stops with the public in the case that—
(A) recording would risk the safety of a confidential informant, citizen informant, or undercover officer;

(B) recording would pose a serious risk to national security; or

(C) the officer is a military police officer, a member of the United States Army Criminal Investigation Command, or a protective detail assigned to a Federal or foreign official while performing his or her duties; and

(2) shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

(i) RETENTION OF FOOTAGE.—

(1) IN GENERAL.—Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for 6 months after the date it was recorded, after which time such footage shall be permanently deleted.

(2) RIGHT TO INSPECT.—During the 6-month retention period described in paragraph (1), the following persons shall have the right to inspect the body camera footage:
(A) Any person who is a subject of body
camera video footage, and their designated legal
counsel.

(B) A parent or legal guardian of a minor
subject of body camera video footage, and their
designated legal counsel.

(C) The spouse, next of kin, or legally au-
thorized designee of a deceased subject of body
camera video footage, and their designated legal
counsel.

(D) A Federal law enforcement officer
whose body camera recorded the video footage,
and their designated legal counsel, subject to
the limitations and restrictions in this part.

(E) The superior officer of a Federal law
enforcement officer whose body camera re-
corded the video footage, subject to the limita-
tions and restrictions in this part.

(F) Any defense counsel who claims, pur-
suant to a written affidavit, to have a reason-
able basis for believing a video may contain evi-
dence that exculpates a client.

(3) LIMITATION.—The right to inspect subject
to subsection (j)(1) shall not include the right to
possess a copy of the body camera video footage, un-
less the release of the body camera footage is other-
wise authorized by this part or by another applicable
law. When a body camera fails to capture some or
all of the audio or video of an incident due to mal-
function, displacement of camera, or any other
cause, any audio or video footage that is captured
shall be treated the same as any other body camera
audio or video footage under this part.

(j) ADDITIONAL RETENTION REQUIREMENTS.—Not-
withstanding the retention and deletion requirements in
subsection (i), the following shall apply to body camera
video footage under this part:

(1) Body camera video footage shall be auto-
matically retained for not less than 3 years if the
video footage captures an interaction or event involv-
ing—

(A) any use of force; or

(B) an stop about which a complaint has
been registered by a subject of the video foot-
age.

(2) Body camera video footage shall be retained
for not less than 3 years if a longer retention period
is voluntarily requested by—

(A) the Federal law enforcement officer
whose body camera recorded the video footage,
if that officer reasonably asserts the video foot-
age has evidentiary or exculpatory value in an
ongoing investigation;

(B) any Federal law enforcement officer
who is a subject of the video footage, if that of-
fer reasonably asserts the video footage has
evidentiary or exculpatory value;

(C) any superior officer of a Federal law
enforcement officer whose body camera re-
corded the video footage or who is a subject of
the video footage, if that superior officer rea-
sonably asserts the video footage has evi-
dentiary or exculpatory value;

(D) any Federal law enforcement officer, if
the video footage is being retained solely and
exclusively for police training purposes;

(E) any member of the public who is a
subject of the video footage;

(F) any parent or legal guardian of a
minor who is a subject of the video footage; or

(G) a deceased subject’s spouse, next of
kin, or legally authorized designee.

(k) Public Review.—For purposes of subpara-
graphs (E), (F), and (G) of subsection (j)(2), any member
of the public who is a subject of video footage, the parent
or legal guardian of a minor who is a subject of the video
footage, or a deceased subject’s next of kin or legally au-
thorized designee, shall be permitted to review the specific
video footage in question in order to make a determination
as to whether they will voluntarily request it be subjected
to a minimum 3-year retention period.

(1) DISCLOSURE.—

(1) IN GENERAL.—Except as provided in para-
graph (2), all video footage of an interaction or
event captured by a body camera, if that interaction
or event is identified with reasonable specificity and
requested by a member of the public, shall be pro-
vided to the person or entity making the request in
accordance with the procedures for requesting and
providing government records set forth in the section
552a of title 5, United States Code.

(2) EXCEPTIONS.—The following categories of
video footage shall not be released to the public in
the absence of express written permission from the
non-law enforcement subjects of the video footage:

(A) Video footage not subject to a min-
imum 3-year retention period pursuant to sub-
section (j).

(B) Video footage that is subject to a min-
imum 3-year retention period solely and exclu-
sively pursuant to paragraph (1)(B) or (2) of subsection (j).

(3) PRIORITY OF REQUESTS.—Notwithstanding any time periods established for acknowledging and responding to records requests in section 552a of title 5, United States Code, responses to requests for video footage that is subject to a minimum 3-year retention period pursuant to subsection (j)(1)(A), where a subject of the video footage is recorded being killed, shot by a firearm, or grievously injured, shall be prioritized and, if approved, the requested video footage shall be provided as expeditiously as possible, but in no circumstances later than 5 days following receipt of the request.

(4) USE OF REDACTION TECHNOLOGY.—

(A) IN GENERAL.—Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person’s voice, provided the redaction does not interfere with a viewer’s ability to fully,
completely, and accurately comprehend the
events captured on the video footage.

(B) REQUIREMENTS.—The following re-
quirements shall apply to redactions under sub-
paragraph (A):

(i) When redaction is performed on
video footage pursuant to this paragraph,
an unedited, original version of the video
footage shall be retained pursuant to the
requirements of subsections (i) and (j).

(ii) Except pursuant to the rules for
the redaction of video footage set forth in
this subsection or where it is otherwise ex-
pressly authorized by this Act, no other ed-
iting or alteration of video footage, includ-
ing a reduction of the video footage’s reso-
lution, shall be permitted.

(m) PROHIBITED WITHHOLDING OF FOOTAGE.—
Body camera video footage may not be withheld from the
public on the basis that it is an investigatory record or
was compiled for law enforcement purposes where any per-
son under investigation or whose conduct is under review
is a police officer or other law enforcement employee and
the video footage relates to that person’s conduct in their
official capacity.
(n) ADMISSIBILITY.—Any video footage retained beyond 6 months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

(o) CONFIDENTIALITY.—No government agency or official, or law enforcement agency, officer, or official may publicly disclose, release, or share body camera video footage unless—

(1) doing so is expressly authorized pursuant to this part or another applicable law; or

(2) the video footage is subject to public release pursuant to subsection (l), and not exempted from public release pursuant to subsection (l)(1).

(p) LIMITATION ON FEDERAL LAW ENFORCEMENT OFFICER VIEWING OF BODY CAMERA FOOTAGE.—No Federal law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to a minimum 3-year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

(q) ADDITIONAL LIMITATIONS.—Video footage may not be—
(1) in the case of footage that is not subject to a minimum 3-year retention period, viewed by any superior officer of a Federal law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct; or

(2) divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.

(r) **Third Party Maintenance of Footage.**—Where a law enforcement agency authorizes a third party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

(s) **Enforcement.**—

(1) **In General.**—If any Federal law enforcement officer, or any employee or agent of a Federal law enforcement agency fails to adhere to the recording or retention requirements contained in this part, intentionally interferes with a body camera’s ability to accurately capture video footage, or otherwise manipulates the video footage captured by a body camera during or after its operation—
(A) appropriate disciplinary action shall be taken against the individual officer, employee, or agent;

(B) a rebuttable evidentiary presumption shall be adopted in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and

(C) a rebuttable evidentiary presumption shall be adopted on behalf of a civil plaintiff suing the Government, a Federal law enforcement agency, or a Federal law enforcement officer for damages based on misconduct who reasonably asserts that evidence supporting their claim was destroyed or not captured.

(2) **Proof Compliance was Impossible.**—The disciplinary action requirement and rebuttable presumptions described in paragraph (1) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.

(t) **Use of Force Investigations.**—In the case that a Federal law enforcement officer equipped with a body camera is involved in, a witness to, or within viewable sight range of either the use of force by another law enforcement officer that results in a death, the use of force by another law enforcement officer, during which the dis-
charge of a firearm results in an injury, or the conduct
of another law enforcement officer that becomes the sub-
ject of a criminal investigation—

(1) the law enforcement agency that employs
the law enforcement officer, or the agency or depart-
ment conducting the related criminal investigation,
as appropriate, shall promptly take possession of the
body camera, and shall maintain such camera, and
any data on such camera, in accordance with the ap-
licable rules governing the preservation of evidence;

(2) a copy of the data on such body camera
shall be made in accordance with prevailing forensic
standards for data collection and reproduction; and

(3) such copied data shall be made available to
the public in accordance with subsection (l).

(u) LIMITATION ON USE OF FOOTAGE AS EVI-
DENCE.—Any body camera video footage recorded by a
Federal law enforcement officer that violates this part or
any other applicable law may not be offered as evidence
by any government entity, agency, department, prosecu-
torial office, or any other subdivision thereof in any crimi-
nal or civil action or proceeding against any member of
the public.

(v) PUBLICATION OF AGENCY POLICIES.—Any Fed-
eral law enforcement agency policy or other guidance re-
garding body cameras, their use, or the video footage therefrom that is adopted by a Federal agency or depart-
ment, shall be made publicly available on that agency’s website.

(w) **Rule of Construction.**—Nothing in this part shall be construed to preempt any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

**Sec. 373. Patrol Vehicles with In-Car Video Recording Cameras.**

(a) **Definitions.**—In this section:

(1) **Audio Recording.**—The term “audio record-
ing” means the recorded conversation between a Federal law enforcement officer and a second party.

(2) **Emergency Lights.**—The term “emerg-
cency lights” means oscillating, rotating, or flashing lights on patrol vehicles.

(3) **Enforcement or Investigative Stop.**— The term “enforcement or investigative stop” means an action by a Federal law enforcement officer in relation to enforcement and investigation duties, in-
cluding traffic stops, pedestrian stops, abandoned vehicle contacts, motorist assists, commercial motor vehicle stops, roadside safety checks, requests for
identification, or responses to requests for emergency assistance.

(4) **IN-CAR VIDEO CAMERA.**—The term “in-car video camera” means a video camera located in a patrol vehicle.

(5) **IN-CAR VIDEO CAMERA RECORDING EQUIPMENT.**—The term “in-car video camera recording equipment” means a video camera recording system located in a patrol vehicle consisting of a camera assembly, recording mechanism, and an in-car video recording medium.

(6) **RECORDING.**—The term “recording” means the process of capturing data or information stored on a recording medium as required under this section.

(7) **RECORDING MEDIUM.**—The term “recording medium” means any recording medium for the retention and playback of recorded audio and video including VIHS, DVD, hard drive, solid state, digital, or flash memory technology.

(8) **WIRELESS MICROPHONE.**—The term “wireless microphone” means a device worn by a Federal law enforcement officer or any other equipment used to record conversations between the officer and a
second party and transmitted to the recording equipment.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Each Federal law enforcement agency shall install in-car video camera recording equipment in all patrol vehicles with a recording medium capable of recording for a period of 10 hours or more and capable of making audio recordings with the assistance of a wireless microphone.

(2) RECORDING EQUIPMENT REQUIREMENTS.—
In-car video camera recording equipment with a recording medium capable of recording for a period of 10 hours or more shall record activities—

(A) whenever a patrol vehicle is assigned to patrol duty;

(B) outside a patrol vehicle whenever—

(i) a Federal law enforcement officer assigned that patrol vehicle is conducting an enforcement or investigative stop;

(ii) patrol vehicle emergency lights are activated or would otherwise be activated if not for the need to conceal the presence of law enforcement; or

(iii) an officer reasonably believes recording may assist with prosecution, en-
hance safety, or for any other lawful purpose; and

(C) inside the vehicle when transporting an arrestee or when an officer reasonably believes recording may assist with prosecution, enhance safety, or for any other lawful purpose.

(3) REQUIREMENTS FOR RECORDING.—

(A) IN GENERAL.—A Federal law enforce-
ment officer shall begin recording for an en-
forcement or investigative stop when the officer
determines an enforcement stop is necessary
and shall continue until the enforcement action
has been completed and the subject of the en-
forcement or investigative stop or the officer
has left the scene.

(B) ACTIVATION WITH LIGHTS.—A Fed-
eral law enforcement officer shall begin record-
ing when patrol vehicle emergency lights are ac-
tivated or when they would otherwise be acti-
vated if not for the need to conceal the presence
of law enforcement, and shall continue until the reason for the activation ceases to exist, regard-
less of whether the emergency lights are no
longer activated.
(C) PERMISSIBLE RECORDING.—A Federal law enforcement officer may begin recording if the officer reasonably believes recording may assist with prosecution, enhance safety, or for any other lawful purpose; and shall continue until the reason for recording ceases to exist.

(4) ENFORCEMENT OR INVESTIGATIVE STOPS.—A Federal law enforcement officer shall record any enforcement or investigative stop. Audio recording shall terminate upon release of the violator and prior to initiating a separate criminal investigation.

(c) RETENTION OF RECORDINGS.—Recordings made on in-car video camera recording medium shall be retained for a storage period of at least 90 days. Under no circumstances shall any recording made on in-car video camera recording medium be altered or erased prior to the expiration of the designated storage period. Upon completion of the storage period, the recording medium may be erased and reissued for operational use unless otherwise ordered or if designated for evidentiary or training purposes.

(d) ACCESSIBILITY OF RECORDINGS.—Audio or video recordings made pursuant to this section shall be available under the applicable provisions of section 552a of title 5,
United States Code. Only recorded portions of the audio
recording or video recording medium applicable to the re-
quest will be available for inspection or copying.

(e) MAINTENANCE REQUIRED.—The agency shall en-
sure proper care and maintenance of in-car video camera
recording equipment and recording medium. An officer op-
erating a patrol vehicle must immediately document and
notify the appropriate person of any technical difficulties,
failures, or problems with the in-car video camera record-
ing equipment or recording medium. Upon receiving no-
tice, every reasonable effort shall be made to correct and
repair any of the in-car video camera recording equipment
or recording medium and determine if it is in the public
interest to permit the use of the patrol vehicle.

SEC. 374. FACIAL RECOGNITION TECHNOLOGY.

No camera or recording device authorized or required
to be used under this part may be equipped with or employ
facial recognition technology, and footage from such a
camera or recording device may not be subjected to facial
recognition technology.

SEC. 375. GAO STUDY.

Not later than 1 year after the date of enactment
of this Act, the Comptroller General of the United States
shall conduct a study on Federal law enforcement officer
training, vehicle pursuits, use of force, and interaction
with citizens, and submit a report on such study to—

(1) the Committees on the Judiciary of the
House of Representatives and of the Senate;

(2) the Committee on Oversight and Reform of
the House of Representatives; and

(3) the Committee on Homeland Security and
Governmental Affairs of the Senate.

SEC. 376. REGULATIONS.

Not later than 6 months after the date of the enact-
ment of this Act, the Attorney General shall issue such
final regulations as are necessary to carry out this part.

SEC. 377. RULE OF CONSTRUCTION.

Nothing in this part shall be construed to impose any
requirement on a Federal law enforcement officer outside
of the course of carrying out that officer’s duty.

PART 2—POLICE CAMERA ACT

SEC. 381. SHORT TITLE.

This part may be cited as the “Police Creating Ac-
countability by Making Effective Recording Available Act
of 2021” or the “Police CAMERA Act of 2021”.

SEC. 382. LAW ENFORCEMENT BODY-WORN CAMERA RE-
QUIREMENTS.

(a) USE OF FUNDS REQUIREMENT.—Section 502(a)
of title I of the Omnibus Crime Control and Safe Streets
Act of 1968 (34 U.S.C. 10153(a)), as amended by section 334, is amended by adding at the end the following:

“(10) An assurance that, for each fiscal year covered by an application, the applicant will use not less than 5 percent of the total amount of the grant award for the fiscal year to develop policies and protocols in compliance with part OO.”.

(b) REQUIREMENTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) is amended by adding at the end the following:

“PART OO—LAW ENFORCEMENT BODY-WORN CAMERAS AND RECORDED DATA

“SEC. 3051. USE OF GRANT FUNDS.

“(a) IN GENERAL.—Grant amounts described in paragraph (10) of section 502(a) of this title—

“(1) shall be used—

“(A) to purchase or lease body-worn cameras for use by State, local, and tribal law enforcement officers (as defined in section 2503);

“(B) for expenses related to the implementation of a body-worn camera program in order to deter excessive force, improve accountability and transparency of use of force by law enforcement officers, assist in responding to com-
plaints against law enforcement officers, and
improve evidence collection; and

"(C) to implement policies or procedures to
comply with the requirements described in sub-
section (b); and

"(2) may not be used for expenses related to fa-
cial recognition technology.

"(b) REQUIREMENTS.—A recipient of a grant under
subpart 1 of part E of this title shall—

"(1) establish policies and procedures in accord-
ance with the requirements described in subsection
(c) before law enforcement officers use of body-worn
cameras;

"(2) adopt recorded data collection and reten-
tion protocols as described in subsection (d) before
law enforcement officers use of body-worn cameras;

"(3) make the policies and protocols described
in paragraphs (1) and (2) available to the public;
and

"(4) comply with the requirements for use of
recorded data under subsection (f).

"(c) REQUIRED POLICIES AND PROCEDURES.—A re-
cipient of a grant under subpart 1 of part E of this title
shall—
“(1) develop with community input and publish
for public view policies and protocols for—

“(A) the safe and effective use of body-

worn cameras;

“(B) the secure storage, handling, and de-

struction of recorded data collected by body-

worn cameras;

“(C) protecting the privacy rights of any

individual who may be recorded by a body-worn

camera;

“(D) the release of any recorded data col-

lected by a body-worn camera in accordance

with the open records laws, if any, of the State;

and

“(E) making recorded data available to

prosecutors, defense attorneys, and other offi-
cers of the court in accordance with subpara-

graph (E); and

“(2) conduct periodic evaluations of the security

of the storage and handling of the body-worn camera
data.

“(d) Recorded Data Collection and Reten-
tion Protocol.—The recorded data collection and reten-
tion protocol described in this paragraph is a protocol

that—
“(1) requires—

“(A) a law enforcement officer who is wearing a body-worn camera to provide an explanation if an activity that is required to be recorded by the body-worn camera is not recorded;

“(B) a law enforcement officer who is wearing a body-worn camera to obtain consent to be recorded from a crime victim or witness before interviewing the victim or witness;

“(C) the collection of recorded data unrelated to a legitimate law enforcement purpose be minimized to the greatest extent practicable;

“(D) the system used to store recorded data collected by body-worn cameras to log all viewing, modification, or deletion of stored recorded data and to prevent, to the greatest extent practicable, the unauthorized access or disclosure of stored recorded data;

“(E) any law enforcement officer be prohibited from accessing the stored data without an authorized purpose; and

“(F) the law enforcement agency to collect and report statistical data on—
“(i) incidences of use of force, disaggregated by race, ethnicity, gender, and age of the victim;

“(ii) the number of complaints filed against law enforcement officers;

“(iii) the disposition of complaints filed against law enforcement officers;

“(iv) the number of times camera footage is used for evidence collection in investigations of crimes; and

“(v) any other additional statistical data that the Director determines should be collected and reported;

“(2) allows an individual to file a complaint with a law enforcement agency relating to the improper use of body-worn cameras; and

“(3) complies with any other requirements established by the Director.

“(e) REPORTING.—Statistical data required to be collected under subsection (d)(1)(D) shall be reported to the Director, who shall—

“(1) establish a standardized reporting system for statistical data collected under this program; and

“(2) establish a national database of statistical data recorded under this program.
“(f) Use or Transfer of Recorded Data.—

“(1) In general.—Recorded data collected by an entity receiving a grant under a grant under subpart 1 of part E of this title from a body-worn camera shall be used only in internal and external investigations of misconduct by a law enforcement agency or officer, if there is reasonable suspicion that a recording contains evidence of a crime, or for limited training purposes. The Director shall establish rules to ensure that the recorded data is used only for the purposes described in this paragraph.

“(2) Prohibition on Transfer.—Except as provided in paragraph (3), an entity receiving a grant under subpart 1 of part E of this title may not transfer any recorded data collected by the entity from a body-worn camera to another law enforcement or intelligence agency.

“(3) Exceptions.—

“(A) Criminal investigation.—An entity receiving a grant under subpart 1 of part E of this title may transfer recorded data collected by the entity from a body-worn camera to another law enforcement agency or intelligence agency for use in a criminal investigation if the requesting law enforcement or intelligence agen-
cy has reasonable suspicion that the requested
data contains evidence relating to the crime
being investigated.

"(B) CIVIL RIGHTS CLAIMS.—An entity re-
ceiving a grant under subpart 1 of part E of
this title may transfer recorded data collected
by the law enforcement agency from a body-
worn camera to another law enforcement agen-
cy for use in an investigation of the violation of
any right, privilege, or immunity secured or
protected by the Constitution or laws of the
United States.

"(g) AUDIT AND ASSESSMENT.—

"(1) IN GENERAL.—Not later than 2 years
after the date of enactment of this part, the Director
of the Office of Audit, Assessment, and Management
shall perform an assessment of the use of funds
under this section and the policies and protocols of
the grantees.

"(2) REPORTS.—Not later than September 1 of
each year, beginning 2 years after the date of enact-
ment of this part, each recipient of a grant under
subpart 1 of part E of this title shall submit to the
Director of the Office of Audit, Assessment, and
Management a report that—
“(A) describes the progress of the body-worn camera program; and

“(B) contains recommendations on ways in which the Federal Government, States, and units of local government can further support the implementation of the program.

“(3) REVIEW.—The Director of the Office of Audit, Assessment, and Management shall evaluate the policies and protocols of the grantees and take such steps as the Director of the Office of Audit, Assessment, and Management determines necessary to ensure compliance with the program.

“SEC. 3052. BODY-WORN CAMERA TRAINING TOOLKIT.

“(a) IN GENERAL.—The Director shall establish and maintain a body-worn camera training toolkit for law enforcement agencies, academia, and other relevant entities to provide training and technical assistance, including best practices for implementation, model policies and procedures, and research materials.

“(b) MECHANISM.—In establishing the toolkit required to under subsection (a), the Director may consolidate research, practices, templates, and tools that been developed by expert and law enforcement agencies across the country.
“SEC. 3053. STUDY.

“(a) In General.—Not later than 2 years after the date of enactment of the Police CAMERA Act of 2021, the Director shall conduct a study on—

“(1) the efficacy of body-worn cameras in deterring excessive force by law enforcement officers;

“(2) the impact of body-worn cameras on the accountability and transparency of the use of force by law enforcement officers;

“(3) the impact of body-worn cameras on responses to and adjudications of complaints of excessive force;

“(4) the effect of the use of body-worn cameras on the safety of law enforcement officers on patrol;

“(5) the effect of the use of body-worn cameras on public safety;

“(6) the impact of body-worn cameras on evidence collection for criminal investigations;

“(7) issues relating to the secure storage and handling of recorded data from the body-worn cameras;

“(8) issues relating to the privacy of individuals and officers recorded on body-worn cameras;

“(9) issues relating to the constitutional rights of individuals on whom facial recognition technology is used;
“(10) issues relating to limitations on the use of facial recognition technology;

“(11) issues relating to the public’s access to body-worn camera footage;

“(12) the need for proper training of law enforcement officers that use body-worn cameras;

“(13) best practices in the development of protocols for the safe and effective use of body-worn cameras;

“(14) a review of law enforcement agencies that found body-worn cameras to be unhelpful in the operations of the agencies; and

“(15) any other factors that the Director determines are relevant in evaluating the efficacy of body-worn cameras.

“(b) REPORT.—Not later than 180 days after the date on which the study required under subsection (a) is completed, the Director shall submit to Congress a report on the study, which shall include any policy recommendations that the Director considers appropriate.”
TITLE IV—CLOSING THE LAW ENFORCEMENT CONSENT LOOPOLE

SEC. 401. SHORT TITLE.

This title may be cited as the “Closing the Law Enforcement Consent Loophole Act of 2021”.

SEC. 402. PROHIBITION ON ENGAGING IN SEXUAL ACTS WHILE ACTING UNDER COLOR OF LAW.

(a) In General.—Section 2243 of title 18, United States Code, is amended—

(1) in the section heading, by adding at the end the following: “or by any person acting under color of law”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(3) by inserting after subsection (b) the following:

“(c) Of an Individual by Any Person Acting Under Color of Law.—

“(1) In General.—Whoever, acting under color of law, knowingly engages in a sexual act with an individual, including an individual who is under arrest, in detention, or otherwise in the actual custody of any Federal law enforcement officer, shall be
fined under this title, imprisoned not more than 15 years, or both.

“(2) DEFINITION.—In this subsection, the term ‘sexual act’ has the meaning given the term in section 2246.”; and

(4) in subsection (d), as so redesignated, by adding at the end the following:

“(3) In a prosecution under subsection (e), it is not a defense that the other individual consented to the sexual act.”.

(b) DEFINITION.—Section 2246 of title 18, United States Code, is amended—

(1) in paragraph (5), by striking “and” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “; and”; and

(3) by inserting after paragraph (6) the following:

“(7) the term ‘Federal law enforcement officer’ has the meaning given the term in section 115.”.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 109A of title 18, United States Code, is amended by amending the item related to section 2243 to read as follows:

“2243. Sexual abuse of a minor or ward or by any person acting under color of law.”.
SEC. 403. ENACTMENT OF LAWS PENALIZING ENGAGING IN
SEXUAL ACTS WHILE ACTING UNDER COLOR
OF LAW.

(a) IN GENERAL.—Beginning in the first fiscal year
that begins after the date that is one year after the date
of enactment of this Act, in the case of a State or unit
of local government that does not have in effect a law de-
scribed in subsection (b), if that State or unit of local gov-
ernment that would otherwise receive funds under the
COPS grant program, that State or unit of local govern-
ment shall not be eligible to receive such funds. In the
case of a multi-jurisdictional or regional consortium, if any
member of that consortium is a State or unit of local gov-
ernment that does not have in effect a law described in
subsection (b), if that consortium would otherwise receive
funds under the COPS grant program, that consortium
shall not be eligible to receive such funds.

(b) DESCRIPTION OF LAW.—A law described in this
subsection is a law that—

(1) makes it a criminal offense for any person
acting under color of law of the State or unit of local
government to engage in a sexual act with an indi-
vidual, including an individual who is under arrest,
in detention, or otherwise in the actual custody of
any law enforcement officer; and

•HR 1280 EH
(2) prohibits a person charged with an offense described in paragraph (1) from asserting the consent of the other individual as a defense.

(c) REPORTING REQUIREMENT.—A State or unit of local government that receives a grant under the COPS grant program shall submit to the Attorney General, on an annual basis, information on—

(1) the number of reports made to law enforcement agencies in that State or unit of local government regarding persons engaging in a sexual act while acting under color of law during the previous year; and

(2) the disposition of each case in which sexual misconduct by a person acting under color of law was reported during the previous year.

SEC. 404. REPORTS TO CONGRESS.

(a) REPORT BY ATTORNEY GENERAL.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Attorney General shall submit to Congress a report containing—

(1) the information required to be reported to the Attorney General under section 403(b); and

(2) information on—

(A) the number of reports made, during the previous year, to Federal law enforcement
agencies regarding persons engaging in a sexual
act while acting under color of law; and
(B) the disposition of each case in which
sexual misconduct by a person acting under
color of law was reported.
(b) REPORT BY GAO.—Not later than 1 year after
the date of enactment of this Act, and each year there-
after, the Comptroller General of the United States shall
submit to Congress a report on any violations of section
2243(c) of title 18, United States Code, as amended by
section 402, committed during the 1-year period covered
by the report.

SEC. 405. DEFINITION.

In this title, the term “sexual act” has the meaning
given the term in section 2246 of title 18, United States
Code.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. SEVERABILITY.

If any provision of this Act, or the application of such
a provision to any person or circumstance, is held to be
unconstitutional, the remainder of this Act and the appli-
cation of the remaining provisions of this Act to any per-
son or circumstance shall not be affected thereby.
Nothing in this Act shall be construed—


(2) to affect any Federal, State, or Tribal law that applies to an Indian Tribe because of the political status of the Tribe; or

(3) to waive the sovereign immunity of an Indian Tribe without the consent of the Tribe.


Attest:

Clerk.
Item B-3
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 7, 2021

SUBJECT: Assembly Bill 14 (Aguiar-Curry) - Communications: broadband services: California Advanced Services Fund

ATTACHMENTS: 1. Summary Memo – AB 14
2. League of California Cities – Support Letter
3. Bill Text – AB 14

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 14 (Aguiar-Curry) - Communications: broadband services: California Advanced Services Fund (AB 14) involves a policy matter that has a nexus to the City’s adopted Legislative Platform language. Specifically, the following statements may apply to AB 14 as it relates to state funding for broadband access:

- Support state funding and a statewide policy for broadband access for all, which would allow remote access for at home education and telework. This will reduce vehicle miles traveled and assist with reducing climate change.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 14 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 14, the Liaisons may recommend the following actions:
1) Oppose AB 14;
2) Support AB 14;
3) Support if amended AB 14;
4) Oppose unless amended AB 14;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position of support, then staff will prepare a letter for the Mayor to sign as the legislation appears to be consistent with the City’s Legislative Platform. Any other positions recommended by the Liaisons will require the concurrence of the City Council and staff will place this item on a future City Council agenda.
Attachment 1
June 1, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
      Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
      Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 14 (Aguiar-Curry) Broadband Communications Services: California Advanced Services Fund

Version: As Introduced on December 20, 2020. Twenty-four other legislators have added their name to this bill. See list on front page of bill text.

Summary

Makes permanent the California Advanced Services Fund (CASF) program—the state’s program to expand broadband service—and makes significant modifications to the CASF program. Specifically, this bill:

1) Continues funding of the CASF beyond 2022, in perpetuity, with a surcharge not to exceed an unspecified percentage of an end user’s intrastate telecommunications service costs.

2) Modifies broadband project eligibility to infrastructure capable of providing broadband access at speeds of at least 25 megabits per second (Mbps) downstream and 25 Mbps upstream with a goal of 100 Mbps downstream.

3) Directs the California Public Utilities Commission (CPUC) to prioritize specified broadband infrastructure grants to projects in unserved and high poverty areas ahead of projects in underserved and higher income areas.

4) Precludes the funding of middle-mile infrastructure until no less than 98% of households in each consortia have broadband access.

5) Specifies that tribal governments, special districts, and joint powers authorities are eligible for grants.

6) Expands the costs eligible to be covered by a grant to include deployment to anchor institutions, such as schools maintaining kindergarten or any of grades 1 to 12, community colleges, libraries, hospitals, health clinics, fairgrounds, public safety entities, government buildings, and community organizations in the area under specified conditions.

7) Requires the CPUC to make a finding that an existing facility-based broadband provider is unwilling or unable to deploy broadband through the project area before funding a grant.
8) Creates a sixth account, the Broadband Bond Financing and Securitization account, to facilitate the use of bond funds paid for by future surcharge collections to enable earlier funding of broadband projects.

9) Eliminates specific, capped allocations to each broadband account, requiring the Legislature to appropriate funding to each account through the annual state budget.

10) Authorizes a local education agency (LEA) to report pupil computing and internet needs for distance learning to the California Department of Education (CDE). CDE must compile this reported computer and internet needs and annually post this information on CDE’s website.

11) Requires the Governor’s Office of Business and Economic Development (GO-Biz) to work with stakeholders to develop recommendations and a model for streamlined local permit processes for broadband infrastructure deployment by June 30, 2022. GO-Biz must post this information on its website, update the recommendations and model, and provide technical assistance to local governments that adopt the model and recommendations.

12) Permits the board of supervisors of any county to acquire, construct, improve, maintain, or operate broadband internet access service, and any other communications service necessary to obtain federal or state support for the acquisition, construction, improvement, maintenance, or operation of broadband internet access service and subjects these counties to the net neutrality rules that apply to local agencies that provide broadband service.

13) Makes several technical and conforming changes and includes findings and declarations regarding the purposes and intent of this bill.

14) Contains an urgency clause which requires 2/3rds approval on the floor of each house.

**Status of Legislation**

This measure is currently pending on the Assembly Floor.

**Discussion**

In December 2020, the California Broadband Council released the final draft of its *Broadband for All Action Plan*. The plan identified five roadblocks preventing Californians from accessing or adopting broadband: 1) availability; 2) affordability; 3) accessibility to devices; 4) digital skills (or lack of them); and 5) data.

This bill seeks to expand the availability of high-performance broadband for households and institutions. Since 2008 the CASF has provided $645 million in one-time grants for the capital costs of broadband infrastructure to areas of the state without access to high quality broadband (service at speeds of at least six mbps downstream and one mbps upstream). The program has been funded through a CPUC surcharge on telecommunications bills which was 1.019% as of December 2020.

Nevertheless, many areas of the state, mostly in rural and small communities, are still without broadband connectivity due to the lack of investment by providers who feel that the difficulties associated with deploying and maintaining such a network in an area for a limited amount of potential customers, even combined with CASF funds, would not result in a positive return on investment.
Several recent bills have attempted to expand access to broadband service, or, as it is often phrased, to "close the digital divide." For the most part, these bills seek to modify or enhance the CASF program, though some authorize significant new sources of funding for that purpose. This bill, too, significantly modifies the program, and attempts to provide new funding by allowing the CPUC to issue bonds secured by future revenue from the surcharge this bill extends.

The May Revise proposes a "$7 billion investment over three years as part of a plan to: expand broadband infrastructure, increase affordability, and enhance access to broadband for all Californians."

According to the Author, 1 in 8 California homes do not have internet access and communities of color face even higher numbers of students and families who remain disconnected. Only miles from our State Capitol there are areas of our state where Californians have no access to broadband connectivity. This bill seeks to modernize and sufficiently fund the CASF to provide sufficient service to meet the current and future internet needs of all Californians.

The Digital Equity Coalition argues in support of this measure that "reliable Internet and access to high-speed broadband are not only a necessity, but a long-standing issue of equity; low-income residents, individuals living in rural areas, and Black and Latinx communities are disproportionately impacted by lack of broadband. As elected leaders, educators, and parents, we urge you to swiftly expand broadband in our state so that our most vulnerable residents can access distance learning, telehealth, food, housing, and employment support."

The California Taxpayers Association states that there are already "numerous taxes and fees" on phone bills in California and that this bill would further increase the cost of communication in perpetuity. They opine that "California will receive American Recovery and Rescue Plan funds, which includes funds that are specifically earmarked for broadband infrastructure projects, the state should not impose a tax increase to fund the project, as this would result in taxpayers paying twice for the same project."

Support
3Core
Association of California Healthcare Districts
Association of California School Administrators
California Association of Public Authorities for
IHSS
California Commission on the Status of Women
& Girls
California Department of Education
California Economic Summit
California Forward Action Fund
California Pan-Ethnic Health Network
California Partnership for the San Joaquin Valley
California State Association of Counties
California State Student Association
California Telehealth Policy Coalition
CaliforniaHealth + Advocates
Central Valley Community Foundation
City of San Pablo
City of Torrance
City of Walnut Creek
City of West Sacramento
Community Clinic Association of Los Angeles
County
County of El Dorado
County of Imperial
County of Mariposa
County of Monterey
County of Napa
County of San Diego
County of San Luis Obispo Board of Supervisors
County of Santa Clara
County of Tulare
County of Yuba
Digital Equity Coalition
Economic Development Collaborative
Economic Vitality Corp.
Eden Housing
Education Trust-West
Fresno Business Council
Fresno State Connect Initiative
Generation Up
Gilroy City Council Member Office of Zach Hilton
Imperial County Board of Supervisors
Imperial County Transportation Commission
Inland Empire Community Foundation
League of California Cities
Los Angeles Community College District
National Association of Social Workers, California Chapter
North Bay Leadership Council
North State Planning & Development Collective
OCHIN
Parent Institute of Quality Education
Reach
Regional Council of the Southern California Association of Governments
Rural Caucus of the California Democratic Party
San Joaquin Valley Regional Broadband Consortium
San Joaquin Valley Rural Development Center
Santa Clara County Board of Supervisors, District 2
Sierra Business Council
Siskiyou Works
South Bay Cities Council of Governments
Stanislaus Community Foundation
Tahoe Prosperity Center

Teach Plus California
TechEquity Collaborative
Tenet Healthcare
The Fresno Center
Triple P America (Positive Parenting Program)
Unite LA
United Ways of California
Valley Vision
Western Center on Law and Poverty
Yolo Healthy Aging Alliance

**Support if Amended**
California Cable & Telecommunications Association
The Utility Reform Network (TURN)

**Opposition**
California Taxpayers Association
Attachment 2
January 27, 2021

The Honorable Miguel Santiago  
Chair, Assembly Communications and Conveyance Committee  
State Capitol Building, Room 6027  
Sacramento, CA 95814

RE: **AB 14 (Aguiar-Curry) Broadband Services: California Advanced Services Fund.**  
**Notice of SUPPORT (As Introduced 12/7/2020)**

Dear Assembly Member Santiago,

The League of California Cities (Cal Cities) is pleased to support AB 14 (Aguiar-Curry), which would prioritize deployment of broadband infrastructure in unserved and underserved communities throughout California through the ongoing collection of the California Advanced Services Fund (CASF) surcharge.

As local governments mobilized to address the spread of COVID-19, lack of access to reliable and affordable broadband service was highlighted as communities struggled to stay connected to school, work, and healthcare in the new digital environment. While Californians are increasingly using the internet to connect with others, local governments have taken to online platforms to ensure civic engagement during these unprecedented times.

AB 14 is a step in the right direction, ensuring the continued collection of an essential source of broadband funding. This measure not only authorizes the ongoing collection of the existing CASF surcharge but also makes it easier for local governments to access these grants. Additionally, AB 14 would create a Broadband Bond Financing and Securitization Account to fund broadband infrastructure deployment by local governments. These funding opportunities would allow local governments to continue to play a vital role in deploying broadband infrastructure in their communities.

In addition to these essential funding opportunities, AB 14 also would expand the definition of "unserved." Expanding this definition increases eligibility for CASF grants, which are currently reserved for areas with internet at dial-up speeds or lower, leaving out many communities where Californians struggle to stay connected with slightly faster but still obsolete speeds. This measure would also take important steps to address local education agencies' connectivity needs, increase service plan transparency by internet service providers, and ensures anchor institutions are eligible for CASF funding.

Cal Cities strongly supports AB 14 and stands ready to work with the Legislature to further the state's broadband goals while implementing them in a way that will work for local governments. If you have any questions, do not hesitate to contact me at (916) 658-8264.

Sincerely,

Jason Rhine
Assistant Legislative Director

cc. Members, Assembly Communications and Conveyance Committee
Edmond Cheung, Consultant, Assembly Communications and Conveyance Committee
Daniel Ballon, Consultant, Assembly Republican Caucus
Attachment 3
Introduced by Assembly Members Aguiar-Curry, Bloom, Bonta, Cristina Garcia, Eduardo Garcia, Low, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Robert Rivas, Santiago, Stone, and Weber
(Principal coauthors: Assembly Members Bauer-Kahan, Carrillo, and Irwin)
(Principal coauthors: Senators Eggman and Gonzalez)
(Coauthors: Assembly Members Burke, Muratsuchi, Blanca Rubio, Wicks, and Wood, and Villapudua)
(Coauthors: Senators Limón and McGuire)

December 7, 2020

An act to add Section 33314.5 to the Education Code, to amend Section 53167 of, and to add Sections 12096.3.5 and 26231 to, the Government Code, and to amend Sections 281, 285, 912.2, and 914.7 of, and to add Sections 281.2 and 884.2 to, the Public Utilities Code, relating to communications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

AB 14, as introduced, Aguiar-Curry. Communications: broadband services: California Advanced Services Fund.

(1) Existing law establishes the State Department of Education in state government, and vests the department with specified powers and duties relating to the state’s public school system.

This bill would authorize local educational agencies to report to the department their pupils’ estimated needs for computing devices and internet connectivity adequate for at-home learning. The bill would require the department, in consultation with the Public Utilities
Commission, to compile that information and to annually post that compiled information on the department’s internet website.

(2) Existing law expressly authorizes a county service area to acquire, construct, improve, maintain, and operate broadband internet access services, and requires a county service area that does so to take certain actions regarding the accessing of content on the internet by end users of that service.

This bill would similarly authorize the board of supervisors of a county to acquire, construct, improve, maintain, or operate broadband internet access service, and any other communications service necessary to obtain federal or state support for the acquisition, construction, improvement, maintenance, or operation of broadband internet access service, and would require a board that does so to take certain actions regarding the accessing of content on the internet by end users of that service.

(3) Existing law establishes the Governor’s Office of Business and Economic Development, known as “GO-Biz,” within the Governor’s office to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

This bill would require the office, on or before June 30, 2022, to develop recommendations and a model for streamlined local land use approval and construction permit processes for projects related to broadband infrastructure deployment and connectivity and to adopt, and post on its internet website, the recommendations and model, as specified.

(4) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop, implement, and administer the California Advanced Services Fund (CASF) program to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies. Existing law requires the commission, in approving CASF infrastructure projects, to give preference to projects in areas where only dial-up internet service is available or where no internet service is available. Existing law authorizes the commission to impose a surcharge to collect $330,000,000 for deposit into the CASF beginning January 1, 2018, and continuing through the 2022 calendar year. Existing law establishes 4 accounts,
the Broadband Infrastructure Grant Account, the Rural and Urban Regional Broadband Consortia Grant Account, the Broadband Public Housing Account, and the Broadband Adoption Account within the CASF and specifies the amount of moneys to be deposited into each account, subject to appropriation by the Legislature. Existing law specifies, among other things, eligibility criteria for grants awarded from each of those accounts.

This bill would require the commission, in approving CASF infrastructure projects that provide last-mile broadband access to unserved and unserved households, to instead prioritize projects in unserved areas, as defined, where internet connectivity is available only at speeds at or below 6 megabits per second (mbps) downstream and one mbps upstream or areas with no internet connectivity, with a goal of achieving at least 100 mbps downstream, and to further prioritize projects based on other specified attributes. Upon the achievement of the goal of providing broadband access to 98% of California households in each consortia region, the bill would require the commission to prioritize only middle-mile infrastructure, as provided. The bill would authorize moneys appropriated for purposes of CASF program to be used to match or leverage federal moneys for internet infrastructure and adoption, as specified. The bill would require the commission to maximize investments in new, robust, and scalable infrastructure and use CASF moneys to leverage federal and non-CASF moneys by undertaking specified activities. The bill would delete the commission’s authorization to collect $330,000,000 for deposit into the CASF beginning January 1, 2018, and continuing through the 2022 calendar year, delete the requirement that specified amounts of the surcharge revenues be deposited into those accounts, and instead authorize the commission to collect the surcharge in an amount not to exceed an unspecified percentage of an end user’s intrastate telecommunications service costs to fund the accounts within the CASF. The bill would revise, among other things, the eligibility criteria for grants awarded from the Broadband Infrastructure Grant Account, as specified. The bill would authorize the additional uses of moneys in the Rural and Urban Regional Broadband Consortia Grant Account to, among other uses, promote adoption of free, low-cost, income-qualified, or affordable home internet service offers.

This bill would require that the CASF program promote remote learning and telehealth, in addition to economic growth, job creation, and the substantial social benefits of advanced information and
communications technologies. The bill would repeal the requirement that moneys in the Broadband Public Housing Account not awarded by December 31, 2020, be transferred back to the Broadband Infrastructure Grant Account and would require that moneys in that account be available for grants and loans for network deployment in eligible publicly support communities, as specified. The bill would authorize the commission to require a performance metric plan to improve the administration of grants awarded from the Broadband Adoption Account.

Existing law requires the commission to annually offer an existing facility-based broadband provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days. Existing law prohibits the commission from approving funding for a project to deploy broadband to a delineated unserved area if the existing facility-based broadband provider demonstrates to the commission, in response to the commission’s annual offer, that it will deploy broadband or upgrade existing broadband service throughout the project area.

This bill would repeal that requirement and prohibition.

This bill would authorize the commission, upon determining, in consultation with the State Treasurer, that doing so would be lawful, to issue bonds secured by CASF surcharge revenues in an aggregate amount up to $1,000,000,000 for broadband deployment and adoption, and provide that such bonds do not constitute a debt or liability of the state or of any political subdivision thereof, other than the commission. The bill would establish the Broadband Bond Financing and Securitization Account within the CASF and, if the commission issues bonds, would deposit the moneys received by the commission from the CASF surcharge into the account for purposes of funding costs related to broadband bond financing and securities. The bill would require each local government agency or nonprofit organization allocated moneys from this account to file specified reports with the commission.

Existing law requires the commission to conduct interim and final financial and performance audits of the implementation and effectiveness of the CASF for specified purposes and to report the interim findings to the Legislature by April 1, 2020, and to report the final findings by April 1, 2023. Existing law repeals this requirement on January 1, 2027.

This bill would instead require the commission, on or before April 1, 2023, and annually thereafter, to conduct a financial audit and a performance audit of the implementation and effectiveness of the CASF
for those purposes and to report those findings to the Legislature. The bill would require the commission to submit that report in perpetuity.

Existing law requires the commission, until April 1, 2023, to annually provide a report to the Legislature that includes certain information, including the remaining unserved areas in the state, the status of the California Advanced Services Fund balance, and the projected amount to be collected in each year.

This bill would require the commission to submit that report in perpetuity.

This bill would authorize the commission to require each internet service provider, as defined, to report specified information regarding each free, low-cost, income-qualified, or affordable internet service plan advertised by the provider.

(5) Existing law requires the commission to require interconnected Voice over Internet Protocol service providers to collect and remit surcharges on their California intrastate revenues in support of the public purpose program funds. Existing law authorizes those providers to use certain methodologies to identify their intrastate revenues subject to the surcharge.

This bill would repeal that authorization to use those methodologies.

(6) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because a violation of a commission action implementing this bill’s requirements would be a crime, the bill would impose a state-mandated local program.

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

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

(7) This bill would declare that it is to take effect immediately as an urgency statute.


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

1 SECTION 1. (a) The Legislature finds and declares all of the following:
(1) Deployment of broadband infrastructure is vital to connect California’s workforce to gainful employment, harness the lifesaving technology of telemedicine, democratize distance learning, enable precision agriculture, and sustain economic transactions in times of emergencies.

(2) The creation of a fiber optic network for “middle-mile” broadband service deployment and “backhaul” infrastructure for unserved households, community anchor institutions, small businesses, and employers is critical to close the digital divide.

(3) All state agencies and departments with pertinent authority and resources to assist and facilitate timely deployment of broadband infrastructure throughout California must be engaged and coordinated by the administration and California Broadband Council to coordinate actions to achieve the goals and purposes of the Internet for All Now Act (Chapter 851 of the Statutes of 2017).

(b) It is the intent of the Legislature to close the digital divide by connecting students, families, and communities with reliable internet connectivity that will remain a necessity after the COVID-19 pandemic has abated.

(c) It is the intent of the Legislature that California achieve the goal specified in the Internet for All Now Act of providing broadband access to no less than 98 percent of California households in each California Advanced Services Fund consortia region.

(d) It is the intent of the Legislature to reduce impacts on the environment and avoid unnecessary costs for deployment, in addition to providing “last-mile” internet connectivity to unserved households, including all other unserved and underserved households and locations along the path of deployment.

SEC. 2. Section 33314.5 is added to the Education Code, to read:

33314.5. (a) A local educational agency may report to the department the agency’s pupils’ estimated needs for computing devices and internet connectivity adequate for at-home learning.

(b) The department, in consultation with the Public Utilities Commission, shall compile the information reported pursuant to subdivision (a) and shall annually post that compiled information on the department’s internet website.
SEC. 3. Section 12096.3.5 is added to the Government Code, to read:

12096.3.5. (a) On or before June 30, 2022, the office, in consultation with the Office of Planning and Research, California Broadband Council, Public Utilities Commission, Department of Transportation, and Department of Technology, shall develop recommendations and a model for streamlined local permit processes for projects related to broadband infrastructure deployment and connectivity.

(b) For purposes of developing the recommendations and model pursuant to subdivision (a), the office may convene any relevant stakeholders, including statewide local government associations, statewide education associations, private sector companies that provide broadband services and install broadband infrastructure, and regional broadband consortia.

(c) On or before June 30, 2021, the office shall adopt and post on its internet website the recommendations and model developed pursuant to subdivision (a).

(d) The office shall provide technical assistance to local governments that adopt the recommendations and model developed pursuant to subdivision (a).

(e) The office shall update the recommendations and model developed pursuant to subdivision (a) as necessary.

SEC. 4. Section 26231 is added to the Government Code, to read:

26231. (a) The board of supervisors of any county may acquire, construct, improve, maintain, or operate broadband internet access service, and any other communications service necessary to obtain federal or state support for the acquisition, construction, improvement, maintenance, or operation of broadband internet access service.

(b) A county that acquires, constructs, improves, maintains, or operates broadband internet access service shall comply with the requirements of Article 12 (commencing with Section 53167) of Chapter 1 of Part 1 of Division 2 of Title 5.

(c) For purposes of this section, “broadband internet access service” has the same meaning as defined in Section 53167.

SEC. 5. Section 53167 of the Government Code is amended to read:

53167. For purposes of this article:
(a) “Broadband Internet access service” means a mass-market retail service provided by a local agency in California by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. “Broadband Internet access service” also encompasses any service provided by a local agency in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this article.

(b) “Edge provider” means any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet to an end user.

(c) “End user” means any individual or entity in California that uses a broadband Internet access service that is provided by a local agency.

(d) “Fixed broadband Internet access service” means any broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband Internet access service includes fixed wireless services, including fixed unlicensed wireless services, and fixed satellite services.

(e) “Local agency” means any agency of local government authorized by any other law to provide broadband internet access service, including the following:
   (1) A city.
   (2) A county, including a county service area.
   (3) A community services district.
   (4) A public utility district.
   (5) A municipal utility district.

(f) “Mobile broadband Internet access service” means any broadband Internet access service that serves end users primarily using mobile stations.

(g) “Network management practice” means a practice that has a primarily technical network management justification, but does not include other business practices.

(h) “Paid prioritization” means the management of a broadband provider’s network to directly or indirectly favor some traffic over
other traffic, including through the use of techniques such as traffic
shaping, prioritization, resource reservation, or other forms of
preferential traffic management, that either:
(1) Is in exchange for consideration, monetary or otherwise,
from a third party.
(2) Done to benefit an affiliated entity.
(i) “Reasonable network management” means a network
management practice that is primarily used for and tailored to
achieving a legitimate network management purpose, taking into
account the particular network architecture and technology of the
broadband Internet access service.
SEC. 6. Section 281 of the Public Utilities Code is amended
to read:
281. (a) The commission shall develop, implement, and
administer the California Advanced Services Fund program to
encourage deployment of high-quality advanced communications
services to all Californians that will promote economic growth,
job creation, remote learning, telehealth, and the substantial social
benefits of advanced information and communications
technologies, consistent with this section and with the statements
of intent in Section 2 of the Internet for All Now Act (Chapter
851 of the Statutes of 2017).
(b) (1) (A) The goal of the program is, no later than December
31, 2022, is to approve funding for infrastructure projects that will
provide broadband access to no less than 98 percent of California
households in each consortia region, as identified by the
commission on or before January 1, 2017. The commission shall
be responsible for achieving the goals of the program.
(B) For purposes of this section, the following definitions apply:
(i) “Anchor institution” means schools maintaining kindergarten
or any of grades 1 to 12, inclusive, community colleges,
fairgrounds, libraries, hospitals, health clinics, public safety
entities, government buildings, and community organizations.
(ii) “High-poverty area” means a census tract in which at least
50 percent of the residents are designated low income according
to the most recent, as of December 31, 2020, five-year data series
available from the American Community Survey in the United
States Census Bureau.
(iii) “Mbps” means megabits per second.
(iv) “Unserved household” means a household for which no facility-based broadband provider offers broadband service at speeds of at least 25 mbps downstream and 3 mbps upstream.

(B) (i) (v) (I) Except as provided in clause (ii), subclause (II), for purposes of this section, “unserved household area” means a household for an area for which at least 90 percent of the population has no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 6 megabits per second (mbps) 25 mbps downstream and one 3 mbps upstream.

(ii) (II) For projects funded, in whole or in part, from moneys received from the federal Rural Digital Opportunity Fund, “unserved household area” means a household for an area in which no facility-based broadband provider offers broadband service at speeds consistent with the standards established by the Federal Communications Commission pursuant to In the Matter of Rural Digital Opportunity Fund, WC Docket No. 19-126, Report and Order, FCC 20-5 (adopted January 30, 2020, and released February 7, 2020), or as it may be later modified by the Federal Communications Commission.

(2) In approving infrastructure projects, the commission shall do both all of the following:

(A) Approve projects that provide last-mile broadband access to households that are unserved by an existing facility-based broadband provider, and, upon accomplishment of the goal of the program specified in paragraph (1), also approve projects pursuant to paragraph (15) of subdivision (f), and underserved households.

(B) (i) Prioritize projects in unserved areas where internet connectivity is available only at speeds at or below 10 mbps downstream and one mbps upstream or areas with no internet connectivity, with a goal of achieving at least 100 mbps downstream.

(ii) Pursuant to clause (i), prioritize projects in the following descending order:

(I) Projects that connect households in an area where internet connectivity is available only through dial-up service, that is not served by any form of wireline or wireless facility-based broadband service, and that is a high-poverty area.

(B) (i) Give preference to projects
(II) Projects that connect households in an area where internet connectivity is available only through dial-up service that are and that is not served by any form of wireline or wireless facility-based broadband service or areas with no internet connectivity service.

(III) Projects that connect households in an unserved area that is a high-poverty area.

(IV) Projects that connect households in an unserved area.

(C) Upon accomplishment of the goal of the program specified in subparagraph (A) of paragraph (1), prioritize projects that deploy only middle-mile infrastructure as follows:

(i) A project that includes only middle-mile infrastructure for which the application includes an applicant that will deploy any applicable last-mile infrastructure, and provides open access to the project’s improved facilities. The project may include an internet exchange point in a rural county or a county without an internet exchange point.

(ii) A project for transmission of a wireless broadband signal into cultivated agricultural fields.

(ii) This subparagraph does

(D) Subparagraphs (B) and (C) do not prohibit the commission from approving funding for projects outside of the areas specified in clause (i). those subparagraphs.

(3) Moneys appropriated for purposes of this section may be used to match or leverage federal moneys for internet infrastructure and adoption including, but not limited to, moneys from the United States Department of Commerce Economic Development Administration, United States Department of Agriculture ReConnect Loan and Grant Program, and Federal Communications Commission for internet adoption and infrastructure.

(4) The commission shall transition California Advanced Services Fund program methodologies to service “housing units” and evaluate other program changes to align with other funding sources including, but not limited to, funding “locations.”

(5) The commission shall maximize investments in new, robust, and scalable infrastructure and use California Advanced Services Fund moneys to leverage federal and non-California Advanced Services Fund moneys by undertaking activities including, but not limited to, all of the following:
(A) Provision of technical assistance to local governments and providers.

(B) Assistance in developing grant applications.

(C) Assistance in preparing definitive plans for deploying necessary infrastructure in each county.

(c) The commission shall establish the following accounts within the fund:

(1) The Broadband Infrastructure Grant Account.

(2) The Rural and Urban Regional Broadband Consortia Grant Account.

(3) The Broadband Public Housing Account.

(4) The Broadband Adoption Account.

(5) The Broadband Bond Financing and Securitization Account.

(d) (1) The commission shall transfer the moneys received by the commission from the surcharge imposed to fund the accounts to the Controller for deposit into the California Advanced Services Fund. Moneys collected shall be deposited in the following amounts in the following accounts:

(A) Three hundred million dollars ($300,000,000) into the Broadband Infrastructure Grant Account.

(B) Ten million dollars ($10,000,000) into the Rural and Urban Regional Broadband Consortia Grant Account.

(C) Twenty million dollars ($20,000,000) into the Broadband Adoption Account.

(2) All interest earned on moneys in the fund shall be deposited into the fund.

(3) The commission may collect a sum not to exceed three hundred thirty million dollars ($330,000,000) for a sum total of moneys collected by imposing the surcharge described in paragraph (1). The commission may collect the sum beginning with the calendar year starting on January 1, 2018, and continuing through the 2022 calendar year, in an amount not to exceed sixty-six million dollars ($66,000,000) per year, unless the commission determines that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year. make recommendations to the Legislature regarding appropriations from the California Advanced Services Fund and the accounts established pursuant to subdivision (c).
(4) A surcharge imposed pursuant to paragraph (1) shall not exceed ____ percent of an end user’s intrastate telecommunications service costs.

(e) All moneys in the California Advanced Services Fund shall be available, upon appropriation by the Legislature, to the commission for the program administered by the commission pursuant to this section, including the costs incurred by the commission in developing, implementing, and administering the program and the fund.

(f) (1) The commission shall award grants from the Broadband Infrastructure Grant Account on a technology-neutral basis, including both wireline and wireless technology.

(2) The commission shall consult with regional consortia, stakeholders, local governments, existing facility-based broadband providers, and consumers regarding unserved areas and cost-effective strategies to achieve the broadband access goal specified in subparagraph (A) of paragraph (1) of subdivision (b) through public workshops conducted at least annually no later than April 30 of each year through year 2022.

(3) The commission shall identify unserved rural and urban areas and delineate the areas in the annual report prepared pursuant to Section 914.7.

(4) (A) (i) The commission shall annually offer an existing facility-based broadband provider the opportunity to demonstrate that it will deploy broadband or upgrade existing facilities to a delineated unserved area within 180 days.

(ii) Except as provided in clause (iii), the commission shall not approve funding for a project to deploy broadband to a delineated unserved area if the existing facility-based broadband provider demonstrates to the commission, in response to the commission’s annual offer, that it will deploy broadband or upgrade existing broadband service throughout the project area.

(iii) If the existing facility-based broadband provider is unable to complete the deployment of broadband within the delineated unserved area within 180 days, the provider shall provide the commission with information to demonstrate what progress has been made or challenges faced in completing the deployment. If the commission finds that the provider is making progress towards the completion of the deployment, the commission shall extend the time to complete the project beyond the 180 days. If the
commission finds that the provider is not making progress towards completing the deployment, the delineated unserved area shall be eligible for funding pursuant to this subdivision.

(B) (i) Except for information specified in clause (ii), information submitted to the commission that includes the provider’s plans for future broadband deployment shall not be publicly disclosed.

(ii) The commission may publicly disclose information regarding the area designated for a broadband deployment, the number of households or locations to be served, and the estimated date by which the deployment will be completed.

(C) An existing facility-based broadband provider may, but is not required to, apply for funding from the Broadband Infrastructure Grant Account to make an upgrade pursuant to this subdivision.

(4) Projects eligible for grant awards pursuant to this subdivision shall meet all of the following requirements:

(A) The project deploys infrastructure capable of providing broadband access at speeds of a minimum of 10 megabits per second (mbps) at least 25 mbps downstream and one 25 mbps upstream to unserved households in census blocks where no provider offers access at speeds with a goal of at least 6 100 mbps downstream and one mbps upstream. downstream.

(B) All or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households. Projects that only deploy middle-mile infrastructure are not eligible for grant funding until after the commission verifies that the goal specified in subparagraph (A) of paragraph (1) of subdivision (b) has been met. For a project that includes funding for middle-mile infrastructure, the commission shall verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure.

(C) (i) Except as provided in clause (ii), until July 1, 2020, the project is not located in a census block where an existing facility-based broadband provider has accepted federal funds for broadband deployment from Phase II of the Connect America Fund, unless the existing facility-based broadband provider has notified the commission before July 1, 2020, that it has completed its Connect America Fund deployment in the census block.
(ii) An existing facility-based broadband provider is eligible for a grant pursuant to this subdivision to supplement a grant pursuant to Phase II of the Connect America Fund to expand broadband service within identified census blocks, as needed.

(6)

(5) (A) An individual household or property owner shall be eligible to apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider. Any infrastructure built to connect a household or property with funds provided under this paragraph shall become the property of, and part of, the network of the facility-based broadband provider to which it is connected.

(B) (i) In approving a project pursuant to this paragraph, the commission shall consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property, limiting the amount of grants on a per-household basis, and requiring a percentage of the project to be paid by the household or the owner of the property.

(ii) The aggregate amount of grants awarded pursuant to this paragraph shall not exceed five million dollars ($5,000,000).

(7)

(6) An entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved household, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission.

(8)

(7) (A) The commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the commission shall consider in reviewing the application.

(B) The commission may approve an application for funding to deploy broadband or upgrade broadband services upon making a finding that the existing facility-based broadband provider is unwilling or unable to deploy broadband throughout the project area.

(9)
(8) (A) A local governmental agency may be a special district or joint powers authority, is eligible for an infrastructure grant only if the infrastructure project is for pursuit to this subdivision. A local government within an unserved household or business, the commission has conducted an open application process, area of a regional consortium shall consult that regional consortium in regards to planning, application, and no other eligible entity applied implementation of the project.

(B) A California tribal government is eligible for a grant pursuant to this subdivision.

(9) The commission shall establish a service list of interested parties to be notified of any California Advanced Services Fund applications. Any application and any amendment to an application for project funding, and any request for additional funding after an initial grant, shall be served to those on the service list and posted on the commission’s internet website at least 30 days before publishing the corresponding draft resolution.

(10) A grant awarded pursuant to this subdivision may include funding for the following costs consistent with paragraph (5):

(A) Costs directly related to the deployment of infrastructure.

(B) Costs to lease access to property or for internet backhaul services for a period not to exceed five years.

(C) Costs incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

(D) Costs directly related to the deployment of infrastructure to connect an anchor institution in the eligible project area if all of the following occur:

(i) The anchor institution provides a public education, public safety, public health, or other significant public benefit.

(ii) The applicant includes a reasonable cost-sharing proposal for funding the cost to connect the anchor institution.

(iii) The applicant complies with all federal universal service program requirements.

(iv) The applicant, in good faith, applies for the maximum federal subsidies available through all federal universal service programs.

(12)
The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal.

The commission may require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from the Connect America Fund program or similar federal public programs that fund broadband infrastructure. This paragraph does not authorize the commission to reject a grant application on the basis that an applicant failed to seek project funding from the Connect America Fund program or another similar federal public program.

Upon the accomplishment of the goal of the program specified in paragraph (1) of subdivision (b), not more than thirty million dollars ($30,000,000) of the moneys remaining in the Broadband Infrastructure Grant Account shall be available for infrastructure projects that provide last-mile broadband access to households to which no facility-based broadband provider offers broadband service at speeds of at least 10 mbps downstream and one mbps upstream.

The commission shall prioritize a grant application for a project that offers both of the following:

(A) Open access fiber middle-mile backhaul.

(B) Capacity for interconnection of unserved households and anchor institutions along the path of deployment at speeds of 25 mbps downstream and 25 mbps upstream with a goal of 100 mbps downstream.

The commission shall authorize the interconnection of anchor institutions on a fair cost-sharing basis along the path of deployment.
(g) (1) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to do any of the following:

(A) In order to assist grant applicants to prepare cost-effective grant applications to achieve the goal specified in subparagraph (A) of paragraph (1) of subdivision (b), identify all unserved or underserved households and anchor institutions in project areas.

(B) Consult with local stakeholders, including those that represent educational institutions, public health care providers, incumbent internet service providers, builders of broadband infrastructure, and libraries in each region, to identify unserved anchor institutions.

(C) Promote adoption of available free, low-cost, income-qualified, or affordable home internet service offers.

(D) Facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process.

(g) (1) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process.

(2) An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks and recreation, agricultural, business, workforce organizations, and air pollution control or air quality management districts, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

(3) Each consortium shall conduct an annual audit of its expenditures for programs funded pursuant to this subdivision and shall submit to the commission an annual report, which shall be posted on the commission’s internet website, that includes both of the following:
(A) A description of activities completed during the prior year, how each activity promotes the deployment of broadband services, and the cost associated with each activity.

(B) The number of project applications assisted.

(h) (1) All remaining moneys in the Broadband Infrastructure Revolving Loan Account that are unencumbered as of January 1, 2018, shall be transferred into the Broadband Infrastructure Grant Account.

(2) All repayments of loans funded by the former Broadband Infrastructure Revolving Loan Account shall be deposited into the Broadband Infrastructure Grant Account.

(i) (1) For purposes of this subdivision, the following terms have the following meanings:

(A) “Publicly subsidized” means either that the housing development receives financial assistance from the United States Department of Housing and Urban Development pursuant to an annual contribution contract or is financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants and the rents of the occupants, who are lower income households, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) “Publicly supported community” means a publicly subsidized multifamily housing development that is wholly owned by either of the following:

(i) A public housing agency that has been chartered by the state, or by any city or county in the state, and has been determined to be an eligible public housing agency by the United States Department of Housing and Urban Development.

(ii) An incorporated nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)), and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as “low” or “very low” income according to federal poverty guidelines.

(2) Moneys in the Broadband Public Housing Account shall be available for the commission to award grants and loans pursuant to this subdivision to an eligible publicly supported community if
that entity otherwise meets eligibility requirements and complies
with program requirements established by the commission.

(3) (A) Not more than twenty million dollars ($20,000,000) of
the moneys deposited into the Broadband Public Housing Account
on or before January 1, 2018, shall be available for grants and
loans to a publicly supported community to finance a project to
connect a broadband network to that publicly supported
community. A publicly supported community may be an eligible
applicant only if the publicly supported community can verify to
the commission that the publicly supported community has not
denied a right of access to any broadband provider that is willing
to connect a broadband network to the facility for which the grant
or loan is sought and the publicly supported community is
unserved: sought.

(B) (i) In its review of applications received pursuant to
subparagraph (A), the commission shall award grants only to
unserved housing developments, regardless of when the applicant
filed its application.

(ii) For purposes of this subparagraph, a housing development
is unserved when at least one housing unit within the housing
development is not offered broadband internet service.

(C) Only after all funds available pursuant to this paragraph in
the Broadband Public Housing Account have been awarded may
a publicly supported community otherwise eligible to submit an
application for funding from the Broadband Public Housing
Account submit an application for funding for these purposes from
the Broadband Infrastructure Grant Account.

(4) (A) Not more than five million dollars ($5,000,000) of the
moneys deposited into the Broadband Public Housing Account on
or before January 1, 2018, shall be available for grants and loans
to a publicly supported community to support programs designed
to increase adoption rates for broadband services for residents of
that publicly supported community. A publicly supported
community may be eligible for funding for a broadband adoption
program only if the residential units in the facility to be served
have access to broadband services or will have access to broadband
services at the time the funding for adoption is implemented.
(B) A publicly supported community may contract with other nonprofit or public agencies to assist in implementation of a broadband adoption program.

(C) Only after all funds available pursuant to this paragraph in the Broadband Public Housing Account have been awarded may a publicly supported community otherwise eligible to submit an application for funding from the Broadband Public Housing Account submit an application for funding for these purposes from the Broadband Adoption Grant Account pursuant to subdivision (j).

(5) To the extent feasible, the commission shall approve projects for funding from the Broadband Public Housing Account in a manner that reflects the statewide distribution of publicly supported communities.

(6) In reviewing a project application under this subdivision, the commission shall consider the availability of other funding sources for that project, any financial contribution from the broadband service provider to the project, the availability of any other public or private broadband adoption or deployment program, including tax credits and other incentives, and whether the applicant has sought funding from, or participated in, any reasonably available program. The commission may require an applicant to provide match funding, and shall not deny funding for a project solely because the applicant is receiving funding from another source.

(7) Any moneys in the Broadband Public Housing Account that shall only be available for the commission to award grants and loans for network deployment in eligible publicly supported communities in which at least 20 percent of the residents do not have internet service in their residential units because either the requisite infrastructure was not been awarded pursuant to this subdivision by December 31, 2020, shall be transferred back to the Broadband Infrastructure Grant Account.

(8) In awarding grants and loans pursuant to this subdivision, the commission shall prioritize an application from a publicly subsidized organization that had submitted an application under the guidelines established by Chapter 851 of the Statutes of 2017.
(j) (1) Moneys in the Broadband Adoption Account shall be available to the commission to award grants to increase publicly available or after school broadband access and digital inclusion, such as grants for digital literacy training programs and public education to communities with limited broadband adoption, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption. The commission may award grants from the Broadband Adoption Account to meet needs reported pursuant to Section 33314.5 of the Education Code.

(2) Eligible applicants are local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations with programs to increase publicly available or after school broadband access and digital inclusion, such as digital literacy training programs.

(3) Payment pursuant to a grant for digital inclusion shall be based on digital inclusion metrics established by the commission that may include the number of residents trained, the number of residents served, or the actual verification of broadband subscriptions resulting from the program funded by the grant.

(4) The commission shall, in a new or existing proceeding, develop, by June 30, 2018, criteria for awarding grants and a process and methodology for verifying outcomes. The commission shall be prepared to accept applications for grants from the Broadband Adoption Account no later than July 1, 2018.

(5) The commission shall give preference to programs in communities with demonstrated low broadband access, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption. In the proceeding specified in paragraph (4), the commission shall determine how best to prioritize projects for funding pursuant to this paragraph.

(6) Moneys awarded pursuant to this subdivision shall not be used to subsidize the costs of providing broadband service to households.

(7) For purposes of improving the efficiency of the administration of grants awarded from the Broadband Adoption Account, the commission may require a performance metrics plan that includes both of the following:
(A) A detailed description of how outcomes will be measured and tracked for milestone or completion reports. Outcomes include, but are not limited to, all of the following:

(i) The total number of participants trained or provided access.

(ii) The total number of hours that training or access has been provided to the community and the number of participants served.

(iii) The number of participants that subsequently subscribe to a broadband internet service provider to use a device in their home.

(B) Methods of tracking such as verification of subscription online through internet service providers, billing, surveys, sign-in sheets, or other methodologies.

(k) The commission shall post on the homepage of the California Advanced Service Fund on its internet website a list of all pending applications, application challenge deadlines, and notices of amendments to pending applications. applications, or any other request for funding submitted pursuant to this section.

(l) The commission shall notify the appropriate policy committees of the Legislature on the date on which the goal specified in subparagraph (A) of paragraph (1) of subdivision (b) is achieved.

SEC. 7. Section 281.2 is added to the Public Utilities Code, to read:

281.2. (a) (1) The commission may, upon determining, in consultation with the State Treasurer, that doing so would be lawful, issue bonds secured by California Advanced Services Fund surcharge revenues in an aggregate amount up to one billion dollars ($1,000,000,000) for broadband deployment and adoption.

(2) Bonds issued pursuant to this section shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the commission, or a pledge of the faith and credit of the state or of any such political subdivision, but shall be payable solely from the funds herein provided for. All bonds shall contain a statement to the following effect: “Neither the faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of or interest on this bond.” The issuance of bonds shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.
(b) Notwithstanding subdivision (d) of Section 281, if the commission issued bonds pursuant to this section, the commission shall deposit the moneys received by the commission from the surcharge imposed pursuant to Section 281 into the Broadband Bond Financing and Securitization Account for purposes of funding costs related to broadband bond financing and securities, including the financing of the deployment of broadband infrastructure by a local government agency or nonprofit organization, including, but not limited to, payment of costs of debt issuance, obtaining credit enhancement, and establishment and funding of reserves for the payment of principal and interest on the debt.

(c) The commission may establish eligibility requirements for infrastructure projects deployed using financing supported in whole or in part by moneys allocated pursuant to this section.

(d) The commission may require a local government agency or nonprofit organization to provide information demonstrating the agency or nonprofit organization’s ability to reasonably finance and implement the infrastructure project deployed using financing supported in whole or in part by moneys allocated pursuant to this section.

(e) The commission shall require each local government agency or nonprofit organization allocated moneys pursuant to this section to file both of the following reports in the form and manner specified by the commission:

1. Biannual progress reports identifying project milestones and completion percentage to date.
2. A completion report including a full description of the completed project, comparison of approved versus actual costs of construction, speed test data for all areas served by the project.

SEC. 8. Section 285 of the Public Utilities Code is amended to read:

285. (a) As used in this section, “interconnected Voice over Internet Protocol (VoIP) service” has the same meaning as in Section 9.3 of Title 47 of the Code of Federal Regulations.

(b) The Legislature finds and declares that the sole purpose of this section is to require the commission to impose the surcharges pursuant to this section to ensure that end-use customers of interconnected VoIP service providers contribute to the funds enumerated in this section, and, therefore, this section does not
(c) The commission shall require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the following public purpose program funds:

1. California High-Cost Fund-A Administrative Committee Fund under Section 275.
2. California High-Cost Fund-B Administrative Committee Fund under Section 276.
3. Universal Lifeline Telephone Service Trust Administrative Committee Fund under Section 277.
4. Deaf and Disabled Telecommunications Program Administrative Committee Fund under Section 278.
5. California Teleconnect Fund Administrative Committee Fund under Section 280.
6. California Advanced Services Fund under Section 281.

(d) The authority to impose a surcharge pursuant to this section applies only to a surcharge imposed on end-use customers for interconnected VoIP service provided to an end-use customer’s place of primary use that is located within California. As used in this subdivision, “place of primary use” means the street address where the end-use customer’s use of interconnected VoIP service primarily occurs, or a reasonable proxy as determined by the interconnected VoIP service provider, such as the customer’s registered location for 911 purposes.

(e) (1) For the purposes of determining what revenues are subject to a surcharge imposed pursuant to this section, an interconnected VoIP service provider may use any of the following methodologies to identify intrastate revenues:

   (A) The inverse of the interstate safe harbor percentage established by the Federal Communications Commission for interconnected VoIP service for federal universal service contribution purposes, as these percentages may be revised from time to time:

   (B) A traffic study specific to the interconnected VoIP service provider allocating revenues between the federal and state jurisdictions:

   (C) Another means of accurately apportioning interconnected VoIP service between federal and state jurisdictions.
(2) The methodology chosen pursuant to paragraph (1) shall be consistent with the revenue allocation methodology the provider uses to determine its federal universal service contribution obligations.

(3) It is the intent of the Legislature that a traffic study described in subparagraph (B) of paragraph (1) is excluded from public inspection pursuant to Public Utilities Commission General Order 66-C, because the disclosure of these studies would place the provider at an unfair business disadvantage.

SEC. 9. Section 884.2 is added to the Public Utilities Code, to read:

884.2. The commission may require each internet service provider, as defined in Section 3100 of the Civil Code, to report the following information regarding each free, low-cost, income-qualified, or affordable internet service plan advertised by the provider:

(a) The cost of the plan, including any fees and taxes.
(b) The eligibility requirements for the plan.
(c) The data limitations of the plan.
(d) The number of California residents enrolled in the plan.
(e) A description of the outreach efforts undertaken by the provider to eligible populations to increase awareness about the plan.

SEC. 10. Section 912.2 of the Public Utilities Code is amended to read:

912.2. (a) On or before April 1, 2023, and annually thereafter, the commission shall conduct an interim financial audit and a final financial audit and an interim performance audit and a final performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements pursuant to Section 281. The commission shall report its interim findings to the Legislature by April 1, 2020. The commission shall report its final findings to the Legislature by April 1, 2023. The reports shall also include an update to the maps in the final report of the California Broadband Task Force and data on the types and numbers of jobs created as a result of the program administered by the commission pursuant to Section 281.
(b) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2027.

SEC. 11. Section 914.7 of the Public Utilities Code is amended to read:

914.7. (a) By April 1, 2019, and by April 1 of each year thereafter, until April 1, 2023, the commission shall provide a report to the Legislature that includes all of the following information:

1. (1) The remaining unserved areas in the state.

2. (2) The amount of funds expended from the California Advanced Services Fund in the prior year.

3. (3) The recipients of funds expended from the California Advanced Services Fund in the prior year.

4. (4) The geographic regions of the state affected by funds expended from the California Advanced Services Fund in the prior year, including information by county.

5. (5) The expected benefits to be derived from the funds expended from the California Advanced Services Fund in the prior year.

6. (6) Details on the status of each project funded through the California Advanced Services Fund and whether the project has been completed or the expected completion date of the project.

7. (7) Actual broadband adoption levels from funds expended from the California Advanced Services Fund in the prior year.

8. (8) The cost per household for each project.

9. (9) The number of formerly unserved households subscribing to broadband service in areas covered by projects funded by the California Advanced Services Fund.
(j) The number of subscriptions resulting from the broadband adoption program funded by the California Advanced Services Fund.

(k) An update on the expenditures from the California Advanced Services Fund, broadband adoption levels, the progress in achieving the goals of the program, and an accounting of the remaining unserved households in each region of the state as of December 31 of the immediately preceding year.

(l) The amount of funds expended from the California Advanced Services Fund to match federal funds.

(m) Additional details on efforts to leverage non-California Advanced Services Fund moneys.

(n) The status of the California Advanced Services Fund balance and the projected amount to be collected in each year through 2022 to fund approved projects.

(b) This section is repealed on January 1, 2024, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2024, deletes or extends that date.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To expedite the deployment of broadband infrastructure and internet service to unserved rural and urban communities and establishing 21st century infrastructure essential for economic competitiveness and quality of life.
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2    REVISIONS:
3    Heading—Line 8.
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Item B-4
MEMORANDUM  

TO: City Council Liaison/Legislative/Lobby Committee  
FROM: Cynthia Owens, Policy and Management Analyst  
DATE: June 7, 2021  
SUBJECT: Senate Bill 4 (Gonzalez) - Communications: California Advanced Services Fund: Deaf and Disabled Telecommunications Program: Surcharges  
ATTACHMENTS:  
1. Summary Memo – SB 4  
2. League of California Cities – Letter of Support  
3. Bill Text – SB 4  

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 4 (Gonzalez) - Communications: California Advanced Services Fund: Deaf and Disabled Telecommunications Program: Surcharges (SB 4) involves a policy matter that has a nexus to the City’s adopted Legislative Platform language. Specifically, the following statements may apply to SB 4 as it relates to state funding for broadband access:

- Support state funding and a statewide policy for broadband access for all, which would allow remote access for at home education and telework. This will reduce vehicle miles traveled and assist with reducing climate change.

The City’s state lobbyist, Shaw Yoder Antwh Schmelzer & Lange, provided a summary memo for SB 4 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 4, the Liaisons may recommend the following actions:

1) Oppose SB 4;
2) Support SB 4;
3) Support if amended SB 4;
4) Oppose unless amended SB 4;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position of support, then staff will prepare a letter for the Mayor to sign as the legislation appears to be consistent with the City’s Legislative Platform. Any other positions recommended by the Liaisons will require the concurrence of the City Council and staff will place this item on a future City Council agenda.
Attachment 1
June 1, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 4 (Gonzalez) California Advanced Services Fund: surcharges and grants

Version: As Amended on May 20, 2021. Fifteen legislators have added their name to this bill. Please see front page of the bill text for list.

Summary
Extends and makes various modifications to the California Advanced Services Fund (CASF), including increasing the minimum speed of broadband infrastructure funded by the program, expanding the communities eligible for grants, and increasing the maximum amount of funding the California Public Utilities Commission (CPUC) can collect for the CASF. Specifically, this bill:

1) Extends the CASF by 10 years to December 31, 2032, and establishes regular reporting and stakeholder consultation requirements for the CASF.

2) Redefines an unserved area as an area that has no facility-based broadband provider offering at speeds of at least 25 mbps downstream/3 mbps upstream and a latency that is sufficiently low to allow real-time interactive applications.

3) Requires the CPUC to prioritize projects in unserved areas without internet connectivity or unserved areas with connectivity at or below speeds of 10 mbps up/1 mbps down.

4) Permits the use of CASF monies to match or leverage federal funds and requires the CPUC to provide technical assistance to applicants, including helping develop grant applications.

5) Deletes specified minimum appropriation amounts for certain accounts within the CASF and instead authorizes the CPUC to make recommendations to the Legislature regarding appropriations to specific accounts within the CASF.

6) Increases the cap on the annual amount of funds the CASF can collect from $66 million to $150 million and removes the existing cap on the total amount of funds the CPUC can collect for the CASF.

7) Eliminates the right of first refusal process by which an incumbent ISP can block or delay a proposed CASF grant if the incumbent ISP intends to extend or upgrade service to the project area within six months.
8) Increases the minimum speed for CASF-funded infrastructure from 10/1 mbps to 100/20 mbps – or the federal minimum standard, depending on whichever is greater.

9) Deletes existing law that restricts a local government’s ability to obtain for CASF grants unless the project is for an unserved business or household for which no other entity has applied.

10) Deletes existing law that restricts funds in the CASF’s Broadband Public Housing Account to public housing facilities that meet specified “unserved” criteria.

11) Permits the CPUC to use CASF revenues to fund projects that deploy broadband infrastructure to certain unserved nonresidential facilities used for local and state emergency response, including, but not limited to, fairgrounds.

12) Deletes existing law that allows VoIP providers to adopt alternative methods for calculating their contributions to the CASF.

13) Removes existing law limiting the CPUC to establish a flat fee to fund the Deaf and Disabled Telephone Program (DDTP) and instead caps the annual funding the CPUC may collect for the DDTP at $100 million.

14) Requires the CPUC to conduct an audit and performance review of the CASF every other year and extends these auditing and reporting duties indefinitely.

15) Requires GO-Biz to coordinate with public agencies and national organizations to explore ways to streamline local land use approvals and permits for broadband infrastructure deployment.

16) Declares an urgency to take effect immediately. (Requires 2/3rds approval on the Senate and Assembly Floor).

**Status of Legislation**
This measure is currently pending on the Senate Floor.

**Discussion**
Existing law sunsets the CASF, including the surcharge funding the CASF, on December 31, 2022. This bill extends the CASF by 10 years and allows the CPUC to update its method for collecting the surcharges that fund the Universal Service Funds, including the CASF.

This bill increases the cap on the CASF’s annual funding and removes several provisions in existing law that limit the CPUC’s ability to shift the Universal Service Funds (including the CASF and Deaf and Disabled Telephone Programs) to a flat fee instead of a rate-based fee. A flat fee could lower costs for certain telephone customers and enable the CPUC to spread the cost of funding the CASF more evenly across a greater number of telecommunications lines, which would improve the CASF’s long-term funding.

On March 4, 2021, the CPUC opened a rulemaking (R. 21-03-002) to update the surcharge mechanism for the state’s Universal Service Fund programs. The first phase of this proceeding is intended to consider shifting the surcharge mechanism for all the Universal Service Fund public purpose programs to a flat surcharge assessed on access lines by January 1, 2022.
This bill makes changes to the CASF surcharge that may stabilize the fund’s revenues. The CASF is one of several Universal Service Fund programs funded through a surcharge on consumers’ intrastate telecommunications. Currently, the CASF surcharge is assessed at approximately one percent of a user’s in-state telecommunications services. However, existing law allows VoIP telecommunications providers to establish their own alternative methods for calculating their contributions to the CASF.

Generally, this authorization has led to proportionately lower CASF revenue collections from VoIP and wireless providers and cost-shifting of CASF revenue obligations to traditional telephone users. For example, a company may remit approximately 20 cents per user per month into the CASF from of its traditional telephone consumers while only remitting nine cents per user per month from each of its VoIP customers.

As more consumers shift to VoIP for telephone service, the projected total amount of revenue the CASF can collect has declined. Prior to December 2020 adjustments to the CASF surcharge rate, the CASF was on track to only collect $187 million out of the $330 million total funding authorized under existing law. Even with surcharge rate increases, the CASF may never collect its total authorized revenue if the revenues disproportionately rely on surcharges paid by traditional telephone users.

In August 2020, the Governor signed Executive Order N-73-20, which directed the California Broadband Council to create a new state Broadband Action Plan that incorporated a goal of deploying broadband capable of providing download speeds of at least 100 mbps. In December 2020, the California Broadband Council released its 2020 Broadband Action Plan. The plan recommends adopting a minimum speed standard for broadband of at least 25/3 mbps to match federal standards; however, the plan also recommended establishing a goal of building networks capable of delivering 100 mbps downstream and 10 mbps upstream.

Support
Tony Thurmond, State Superintendent of Public Instruction (co-source)
California Faculty Association (co-source)
Common Sense Media (co-source)
Electronic Frontier Foundation (co-source)
Service Employees International Union California (co-source)
3CORE, Inc.
Abriendo Puertas/opening Doors
Access Humboldt
Access Now
ACLU California Action
Alliance for A Better Community
AltaMed Health Services
Bay Area Youth Climate Action Team
Broadband Connect Initiative
California Association of Public Authorities for IHSS
California Association of School Business Officials
California Association of Suburban School Districts
California Cable & Telecommunications Association
California Center for Rural Policy
California Charter Schools Association
California Community Foundation
California County Superintendents Educational Services Association
California Economic Summit
California Edge Coalition
California Forward Action Fund
California Legislative Women’s Caucus
California Medical Association
California School Boards Association
California State Association of Counties
California State PTA
California State University, Chico – North State Planning and Development Collective
California State University, Fresno – Office of Community and Economic Development
California Telehealth Policy Coalition
California Workforce Association
CaliforniaHealth+ Advocates
Canal Alliance
Center for Powerful Public Schools
Central Coast Broadband Consortium
Central Valley Community Foundation
Cities of Alameda, Brea, Daly City, Lakewood, Long Beach, National City, San Pablo, Signal Hill, Thousand Oaks, Torrance, Tustin, Walnut Creek, and West Sacramento
Coalition for COVID Recovery, Support and Prevention
Common Sense
Communities in Schools of Los Angeles
Community Clinic Association of Los Angeles County
Computer Science Teachers Association
Consumer Action
Consumer Reports
Contextly
Council for a Strong America
County of Marin Board of Supervisors
County of Monterey Board of Supervisors
County of Nevada Board of Supervisors
County of Santa Clara
CUE
Digital NEST
Economic Development Collaborative – Ventura County
Economic Vitality Corporation of San Luis Obispo County
Eden Housing
Educators for Excellence
Electronic Frontier Foundation
EveryoneOn
Fight for the Future
Founder Academy
Fresno Business Council
Great Public Schools Now
Great School Voices
Humboldt County Office of Education
Imperial County Transportation Commission
Inland Empire Community Foundation
InnovateEDU
Institute for Local Self-Reliance
Khan Academy
LA Coalition for Excellent Public Schools
League of California Cities
Libby Schaaf, Mayor of Oakland
Livable California
Los Angeles County Democratic Party
Los Angeles County Office of Education
Louisville Metro Office of Civic Innovation and Technology
MakeKnowledge
Media Alliance
MediaJustice
mohuman
New America’s Open Technology Institute
Next Century Cities
Nexxus Ventures
Normal Heights Indivisible
North Bay Leadership Council
OCHIN, Inc.
Open Door Community Health Centers
Our Voice: Communities for Quality Education
Pacoima Beautiful
Parent Institute of Quality Education
Partnership for Los Angeles Schools
Public Knowledge
REACH Central Coast
Reddit, Inc
San Diego County Office of Education
San Joaquin Valley Partnership
San Joaquin Valley Redevelopment Center
Santa Barbara Women’s Political Committee
Sierra Business Council
Siskiyou Works
South Bay Cities Council of Governments
Southern California Association of Governments
Speak Up
Stanislaus Community Foundation
Tahoe Prosperity Center
TechEquity Collaborative
Techqueria
The Education Trust-West
The Fresno Center
The Greenlining Institute
The Utility Reform Network
Tony Madrigal, Modesto City Councilmember, District 2
Triple P America Inc.
Tucows
United Parents and Students
UNITE-LA
Valley Vision
Western Center on Law & Poverty
Western Governors University
Writers Guild of America West

**Opposition**
California Taxpayers Association
Attachment 2
May 6, 2021

The Honorable Anthony Portantino  
Chair, Senate Appropriations Committee  
State Capitol, Room 4203  
Sacramento, CA 95814

RE:  **SB 4 (Gonzalez) Communications: California Advanced Services Fund.**  
**Notice of SUPPORT (As Amended 04/19/21)**

Dear Senator Portantino,

The League of California Cities (Cal Cities) is pleased to support SB 4 (Gonzalez), which would prioritize deployment of broadband infrastructure in unserved and underserved communities throughout California through the ongoing collection of the California Advanced Services Fund (CASF) surcharge.

As local governments mobilized to address the spread of COVID-19, lack of access to reliable and affordable broadband service was highlighted as communities struggled to stay connected to school, work, and healthcare in the new digital environment. While Californians are increasingly using the internet to connect with others, local governments have taken to online platforms to ensure civic engagement during these unprecedented times.

SB 4 is a step in the right direction, ensuring the continued collection of an essential source of broadband funding. This measure not only authorizes the ongoing collection of the existing CASF surcharge but also makes it easier for local governments to access these grants. These funding opportunities would allow local governments to continue to play a vital role in deploying broadband infrastructure in their communities.

In addition to these essential funding opportunities, SB 4 also would expand the definition of "unserved." Expanding this definition increases eligibility for CASF grants, which are currently reserved for areas with internet at dial-up speeds or lower leaving out many communities where Californians struggle to stay connected with slightly faster but still obsolete speeds.

Cal Cities strongly supports SB 4 and stands ready to work with the Legislature to further the state's broadband goals while implementing them in a way that will work for local governments. If you have any questions, do not hesitate to contact me at (916) 658-8264.

Sincerely,

Jason Rhine  
Assistant Legislative Director

cc. The Honorable Lena Gonzalez  
Members, Senate Appropriations Committee  
Mark McKenzie, Consultant, Senate Appropriations Committee  
Kirk Feely, Consultant, Senate Republican Caucus
Attachment 3
An act to add Section 12096.3.5 to the Government Code, and to amend Sections 281, 285, 912.2, 914.7, and 2881 of the Public Utilities Code, relating to communications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing law establishes the Governor’s Office of Business and Economic Development, known as “GO-Biz,” within the Governor’s office to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

This bill would require the office to coordinate with other relevant state and local agencies and national organizations to explore ways to facilitate streamlining of local land use approvals and construction
permit processes for projects related to broadband infrastructure deployment and connectivity.

(2) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop, implement, and administer the California Advanced Services Fund (CASF) program to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies. Existing law provides that the goal of the program is, by no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households. Existing law requires the commission, in approving CASF infrastructure projects, to give preference to projects in areas where only dial-up internet service is available or where no internet service is available. Existing law authorizes the commission to impose a surcharge to collect $330,000,000 for deposit into the CASF beginning January 1, 2018, and continuing through the 2022 calendar year. Existing law establishes 4 accounts, the Broadband Infrastructure Grant Account, the Rural and Urban Regional Broadband Consortia Grant Account, the Broadband Public Housing Account, and the Broadband Adoption Account within the CASF and specifies the amount of surcharge revenues to be deposited into each account, subject to appropriation by the Legislature. Existing law specifies, among other things, eligibility criteria for grants awarded from each of those accounts. Existing law prohibits the commission from approving funding from the Broadband Infrastructure Grant Account for a project to deploy broadband to a delineated unserved area if the existing facility-based broadband provider demonstrates that it will deploy broadband or upgrade existing broadband service throughout the project area, and, except as provided, prohibits the commission from publicly disclosing information submitted to the commission that includes the provider's plans for future broadband deployment, as specified.

This bill would provide that the goal of the program is, by no later than December 31, 2032, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households. The bill would require the commission, in approving CASF infrastructure projects, to instead prioritize projects in unserved areas, as defined, where internet connectivity is available only at speeds at or
below 10 megabits per second (mbps) downstream and one mbps upstream or areas with no internet connectivity, with a goal of achieving at least 100 mbps downstream. This bill would authorize moneys appropriated for purposes of CASF program to be used to match or leverage federal moneys for internet infrastructure and adoption, as specified. The bill would require the commission to maximize investments in new, robust, and scalable infrastructure and use CASF moneys to leverage federal and non-CASF moneys by undertaking specified activities. The bill would authorize moneys appropriated from the fund to be used to fund projects that deploy broadband infrastructure to unserved nonresidential facilities used for local and state emergency response activities, including fairgrounds. The bill would delete the commission’s authorization to collect $330,000,000 for deposit into the CASF beginning January 1, 2018, and continuing through the 2022 calendar year and would delete the requirement that specified amounts of those surcharge revenues be deposited into those accounts. The bill would authorize the commission, through imposition of a surcharge, to collect up to $150,000,000 per year starting on January 1, 2022, and continuing through the 2032 calendar year. The bill would delete the prohibitions on the commission approving projects in areas that the existing facility-based broadband provider demonstrates it will deploy broadband or upgrade existing broadband service to that area and publicly disclosing information relating to the provider’s plans for future broadband deployment. The bill would revise, among other things, the eligibility criteria for grants awarded from the Broadband Infrastructure Grant Account and the Broadband Public Housing Account, as specified.

3) Existing law requires the commission to conduct interim and final financial and performance audits of the implementation and effectiveness of the CASF for specified purposes and to report the interim findings to the Legislature by April 1, 2020, and to report the final findings by April 1, 2023. Existing law repeals this requirement on January 1, 2027. This bill would instead require the commission, on or before April 1, 2023, and biennially thereafter, to conduct a fiscal and performance audit of the implementation and effectiveness of the CASF for those purposes and to report those findings to the Legislature. The bill would require the commission to submit that report in perpetuity.

4) Existing law requires the commission, until April 1, 2023, to annually provide a report to the Legislature that includes certain information, including the remaining unserved areas in the state, the
status of the California Advanced Services Fund balance, and the projected amount to be collected in each year.

This bill would require the commission to submit that report in perpetuity.

(5) Existing law requires the commission to require interconnected Voice over Internet Protocol service providers to collect and remit surcharges on their California intrastate revenues in support of the public purpose program funds. Existing law authorizes those providers to use certain methodologies to identify their intrastate revenues subject to the surcharge.

This bill would repeal that authorization to use those methodologies.

(6) Existing law—establishing requirements for the deaf and disabled telecommunications program—require and requires the commission to establish a rate recovery mechanism through a surcharge not to exceed $\frac{1}{2}$ of 1% uniformly applied to a subscriber’s intrastate telephone service, other than one-way radio paging service and universal telephone service, until January 1, 2025, to allow providers of equipment and service pursuant to the deaf and disabled telecommunications that program to recover their costs as they are incurred.

This bill would revise those requirements to instead require the commission to administer a surcharge to collect revenues, revenues of up to $100,000,000 per year until January 1, 2025, subject to annual appropriation of moneys by the Legislature, to allow providers of equipment and service pursuant to the deaf and disabled telecommunications program to recover their costs as they are incurred.

(7) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the above provisions would be part of the act and a violation of a commission action implementing this bill’s requirements would be a crime, the bill would impose a state-mandated local program.

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

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

(8) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 12096.3.5 is added to the Government Code, to read:

12096.3.5. The office shall coordinate with other relevant state and local agencies and national organizations to explore ways to facilitate streamlining of local land use approvals and construction permit processes for projects related to broadband infrastructure deployment and connectivity.

SEC. 2. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund program to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, consistent with this section and with the statements of intent in Section 2 of the Internet for All Now Act (Chapter 851 of the Statutes of 2017).

(b) (1) (A) The goal of the program is, no later than December 31, 2032, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the commission. The commission shall be responsible for achieving the goals of the program.

(B) For purposes of this section the following definitions apply:

(i) “Mbps” means megabits per second.

(ii) (I) Except as provided in subclause (II), “unserved area” means an area that has no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 mbps downstream, 3 mbps upstream, and a latency that is sufficiently low to allow real-time interactive applications.

(II) For projects funded, in whole or in part, from moneys received from the federal Rural Digital Opportunity Fund, “unserved area” means an area in which no facility-based broadband provider offers broadband service at speeds consistent with the standards established by the Federal Communications
Commission pursuant to In the Matter of Rural Digital Opportunity
Fund, WC Docket No. 19-126, Report and Order, FCC 20-5
(adopted January 30, 2020, and released February 7, 2020), or as
it may be later modified by the Federal Communications
Commission.
(2) In approving infrastructure projects, the commission shall
do both of the following:
(A) Approve projects that provide last-mile broadband access
to households that are unserved by an existing facility-based
broadband provider, and, upon accomplishment of the goal of the
program specified in paragraph (1), also approve projects pursuant
to paragraph (13) of subdivision (f).
(B) (i) Prioritize projects in unserved areas where internet
connectivity is available only at speeds at or below 10 mbps
downstream and 1 mbps upstream or areas with no internet
connectivity, with a goal of achieving at least 100 mbps
downstream.
(ii) This subparagraph does not prohibit the commission from
approving funding for projects outside of the areas specified in
clause (i).
(3) Moneys appropriated for purposes of this section may be
used to match or leverage federal moneys for internet infrastructure
and adoption including, but not limited to, moneys from the United
States Department of Commerce Economic Development
Administration, United States Department of Agriculture
ReConnect Loan and Grant Program, and Federal Communications
Commission for internet adoption and infrastructure.
(4) The commission shall transition California Advanced
Services Fund program methodologies to service “housing units”
and evaluate other program changes to align with other funding
sources including, but not limited to, funding “locations.”
(5) The commission shall maximize investments in new, robust,
and scalable infrastructure and use California Advanced Services
Fund moneys to leverage federal and non-California Advanced
Services Fund moneys by undertaking activities including, but not
limited to, all of the following:
(A) Provision of technical assistance to local governments and
providers.
(B)
(B) Assistance in developing grant applications.

(iii) Assistance in preparing definitive plans for deploying necessary infrastructure in each county.

(6) Moneys appropriated for the purposes of this section may be used to fund projects that deploy broadband infrastructure to unserved nonresidential facilities used for local and state emergency response activities, including, but not limited to, fairgrounds.

(c) The commission shall establish the following accounts within the fund:

(1) The Broadband Infrastructure Grant Account.
(2) The Rural and Urban Regional Broadband Consortia Grant Account.
(3) The Broadband Public Housing Account.
(4) The Broadband Adoption Account.

(d) (1) The commission shall transfer the moneys received by the commission from the surcharge the commission may impose to fund the accounts to the Controller for deposit into the California Advanced Services Fund.
(2) All interest earned on moneys in the fund shall be deposited into the fund.
(3) The commission may make recommendations to the Legislature regarding appropriations from the California Advanced Services Fund and the accounts established pursuant to subdivision (c).
(4) The commission may collect a sum not to exceed one hundred fifty million dollars ($150,000,000) per year, starting on January 1, 2022, and continuing through the 2032 calendar year by imposing the surcharge pursuant to paragraph (1).

(e) All moneys in the California Advanced Services Fund, including moneys in the accounts within the fund, shall be available, upon appropriation by the Legislature, to the commission for the California Advanced Services Fund program administered by the commission pursuant to this section, including the costs incurred by the commission in developing, implementing, and administering the program and the fund.

(f) (1) The commission shall award grants from the Broadband Infrastructure Grant Account on a technology-neutral basis, including both wireline and wireless technology.
(2) The commission shall consult with regional consortia, stakeholders, local governments, existing facility-based broadband providers, and consumers regarding unserved areas and cost-effective strategies to achieve the broadband access goal through public workshops conducted at least annually no later than April 30 of each year.

(3) The commission shall identify unserved rural and urban areas and delineate the areas in the annual report prepared pursuant to Section 914.7.

(4) An existing facility-based broadband provider may, but is not required to, apply for funding from the Broadband Infrastructure Grant Account to make an upgrade pursuant to this subdivision.

(5) Projects eligible for grant awards shall meet all of the following requirements:
   (A) The project deploys infrastructure capable of providing broadband access at speeds of a minimum of 100 megabits per second (mbps) downstream and 20 mbps upstream, or the most current broadband definition speed standard set by the Federal Communications Commission, whichever broadband access speed is greater, to unserved areas or unserved households.
   (B) All or a significant portion of the project deploys last-mile infrastructure to provide service to unserved households. Projects that only deploy middle-mile infrastructure are not eligible for grant funding. For a project that includes funding for middle-mile infrastructure, the commission shall verify that the proposed middle-mile infrastructure is indispensable for accessing the last-mile infrastructure.
   (C) (i) Except as provided in clause (ii), until July 1, 2020, the project is not located in a census block where an existing facility-based broadband provider has accepted federal funds for broadband deployment from Phase II of the Connect America Fund, unless the existing facility-based broadband provider has notified the commission before July 1, 2020, that it has completed its Connect America Fund deployment in the census block.
   (ii) An existing facility-based broadband provider is eligible for a grant pursuant to this subdivision to supplement a grant pursuant to Phase II of the Connect America Fund to expand broadband service within identified census blocks, as needed.
(6) (A) An individual household or property owner shall be eligible to apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider. Any infrastructure built to connect a household or property with funds provided under this paragraph shall become the property of, and part of, the network of the facility-based broadband provider to which it is connected.

(B) (i) In approving a project pursuant to this paragraph, the commission shall consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property, limiting the amount of grants on a per-household basis, and requiring a percentage of the project to be paid by the household or the owner of the property.

(ii) The aggregate amount of grants awarded pursuant to this paragraph shall not exceed five million dollars ($5,000,000).

(7) An entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved household, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission.

(8) The commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the commission shall consider in reviewing the application.

(9) The commission shall establish a service list of interested parties to be notified of any California Advanced Services Fund applications. Any application and any amendment to an application for project funding shall be served to those on the service list and posted on the commission’s internet website at least 30 days before publishing the corresponding draft resolution.

(10) A grant awarded pursuant to this subdivision may include funding for the following costs consistent with paragraph (5):

(A) Costs directly related to the deployment of infrastructure.

(B) Costs to lease access to property or for internet backhaul services for a period not to exceed five years.

(C) Cost incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.
(11) The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal.

(g) (1) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process. An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks and recreation, agricultural, business, workforce organizations, and air pollution control or air quality management districts, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

(2) Each consortium shall conduct an annual audit of its expenditures for programs funded pursuant to this subdivision and shall submit to the commission an annual report that includes both of the following:

(A) A description of activities completed during the prior year, how each activity promotes the deployment of broadband services, and the cost associated with each activity.

(B) The number of project applications assisted.

(h) (1) All remaining moneys in the Broadband Infrastructure Revolving Loan Account that are unencumbered as of January 1, 2018, shall be transferred to the Broadband Infrastructure Grant Account.

(2) All repayments of loans funded by the former Broadband Infrastructure Revolving Loan Account shall be deposited into the Broadband Infrastructure Grant Account.

(i) (1) For purposes of this subdivision, the following terms have the following meanings:

(A) “Publicly subsidized” means either that the housing development receives financial assistance from the United States
Department of Housing and Urban Development pursuant to an annual contribution contract or is financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants and the rents of the occupants, who are lower income households, do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) “Publicly supported community” means a publicly subsidized multifamily housing development that is wholly owned by either of the following:

(i) A public housing agency that has been chartered by the state, or by any city or county in the state, and has been determined to be an eligible public housing agency by the United States Department of Housing and Urban Development.

(ii) An incorporated nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)), and that has received public funding to subsidize the construction or maintenance of housing occupied by residents whose annual income qualifies as “low” or “very low” income according to federal poverty guidelines.

(2) Moneys in the Broadband Public Housing Account shall be available for the commission to award grants and loans pursuant to this subdivision to an eligible publicly supported community if that entity otherwise meets eligibility requirements and complies with program requirements established by the commission.

(3) (A) Not more than twenty million dollars ($20,000,000) of the moneys deposited into the Broadband Public Housing Account on or before January 1, 2018, shall be available for grants and loans to a publicly supported community to finance a project to connect a broadband network to that publicly supported community. A publicly supported community may be an eligible applicant only if the publicly supported community can verify to the commission that the publicly supported community has not denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought.

(B) Only after all funds available pursuant to this paragraph in the Broadband Public Housing Account have been awarded may
a publicly supported community otherwise eligible to submit an
application for funding from the Broadband Public Housing
Account submit an application for funding for these purposes from
the Broadband Infrastructure Grant Account.

(4) (A) Not more than five million dollars ($5,000,000) of the
moneys deposited into the Broadband Public Housing Account on
or before January 1, 2018, shall be available for grants and loans
to a publicly supported community to support programs designed
to increase adoption rates for broadband services for residents of
that publicly supported community. A publicly supported
community may be eligible for funding for a broadband adoption
program only if the residential units in the facility to be served
have access to broadband services or will have access to broadband
services at the time the funding for adoption is implemented.

(B) A publicly supported community may contract with other
nonprofit or public agencies to assist in implementation of a
broadband adoption program.

(C) Only after all funds available pursuant to this paragraph in
the Broadband Public Housing Account have been awarded may
a publicly supported community otherwise eligible to submit an
application for funding from the Broadband Public Housing
Account submit an application for funding for these purposes from
the Broadband Adoption Account pursuant to subdivision (j).

(5) To the extent feasible, the commission shall approve projects
for funding from the Broadband Public Housing Account in a
manner that reflects the statewide distribution of publicly supported
communities.

(6) In reviewing a project application under this subdivision,
the commission shall consider the availability of other funding
sources for that project, any financial contribution from the
broadband service provider to the project, the availability of any
other public or private broadband adoption or deployment program,
including tax credits and other incentives, and whether the applicant
has sought funding from, or participated in, any reasonably
available program. The commission may require an applicant to
provide match funding, and shall not deny funding for a project
solely because the applicant is receiving funding from another
source.

(7) Any moneys in the Broadband Public Housing Account that
have not been awarded pursuant to this subdivision by December
31, 2020, shall be transferred back to the Broadband Infrastructure
Grant Account.
(j) (1) Moneys in the Broadband Adoption Account shall be
available to the commission to award grants to increase publicly
available or after school broadband access and digital inclusion,
such as grants for digital literacy training programs and public
education to communities with limited broadband adoption,
including low-income communities, senior communities, and
communities facing socioeconomic barriers to broadband adoption.
(2) Eligible applicants are local governments, senior centers,
schools, public libraries, nonprofit organizations, and
community-based organizations with programs to increase publicly
available or after school broadband access and digital inclusion,
such as digital literacy training programs.
(3) Payment pursuant to a grant for digital inclusion shall be
based on digital inclusion metrics established by the commission
that may include the number of residents trained, the number of
residents served, or the actual verification of broadband
subscriptions resulting from the program funded by the grant.
(4) The commission shall, in a new or existing proceeding,
develop, by June 30, 2018, criteria for awarding grants and a
process and methodology for verifying outcomes. The commission
shall be prepared to accept applications for grants from the
Broadband Adoption Account no later than July 1, 2018.
(5) The commission shall give preference to programs in
communities with demonstrated low broadband access, including
low-income communities, senior communities, and communities
facing socioeconomic barriers to broadband adoption. In the
proceeding specified in paragraph (4), the commission shall
determine how best to prioritize projects for funding pursuant to
this paragraph.
(6) Moneys awarded pursuant to this subdivision shall not be
used to subsidize the costs of providing broadband service to
households.
(k) The commission shall post on the homepage of the California
Advanced Service Fund on its internet website a list of all pending
applications, application challenge deadlines, and notices of
amendments to pending applications.
(l) The commission shall notify the appropriate policy committees of the Legislature on the date on which the goal specified in paragraph (1) of subdivision (b) is achieved.

SEC. 3. Section 285 of the Public Utilities Code is amended to read:

285. (a) As used in this section, “interconnected Voice over Internet Protocol (VoIP) service” has the same meaning as in Section 9.3 of Title 47 of the Code of Federal Regulations.

(b) The Legislature finds and declares that the sole purpose of this section is to require the commission to impose the surcharges pursuant to this section to ensure that end-use customers of interconnected VoIP service providers contribute to the funds enumerated in this section, and, therefore, this section does not indicate the intent of the Legislature with respect to any other purpose.

(c) The commission shall require interconnected VoIP service providers to collect and remit surcharges on their California intrastate revenues in support of the following public purpose program funds:

(1) California High-Cost Fund-A Administrative Committee Fund under Section 275.

(2) California High-Cost Fund-B Administrative Committee Fund under Section 276.

(3) Universal Lifeline Telephone Service Trust Administrative Committee Fund under Section 277.

(4) Deaf and Disabled Telecommunications Program Administrative Committee Fund under Section 278.

(5) California Teleconnect Fund Administrative Committee Fund under Section 280.

(6) California Advanced Services Fund under Section 281.

(d) The authority to impose a surcharge pursuant to this section applies only to a surcharge imposed on end-use customers for interconnected VoIP service provided to an end-use customer’s place of primary use that is located within California. As used in this subdivision, “place of primary use” means the street address where the end-use customer’s use of interconnected VoIP service primarily occurs, or a reasonable proxy as determined by the interconnected VoIP service provider, such as the customer’s registered location for 911 purposes.
SEC. 4. Section 912.2 of the Public Utilities Code is amended to read:
912.2. On or before April 1, 2023, and biennially thereafter, the commission shall conduct a fiscal and performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements pursuant to Section 281, and shall report its findings to the Legislature. Each report shall include an update to the maps in the final report of the California Broadband Task Force and data on the types and numbers of jobs created as a result of the program administered by the commission pursuant to Section 281.

SEC. 5. Section 914.7 of the Public Utilities Code is amended to read:
914.7. By April 1, 2019, and by April 1 of each year thereafter, the commission shall provide a report to the Legislature that includes all of the following information:
(a) The remaining unserved areas in the state.
(b) The amount of funds expended from the California Advanced Services Fund in the prior year.
(c) The recipients of funds expended from the California Advanced Services Fund in the prior year.
(d) The geographic regions of the state affected by funds expended from the California Advanced Services Fund in the prior year, including information by county.
(e) The expected benefits to be derived from the funds expended from the California Advanced Services Fund in the prior year.
(f) Details on the status of each project funded through the California Advanced Services Fund and whether the project has been completed or the expected completion date of the project.
(g) Actual broadband adoption levels from funds expended from the California Advanced Services Fund in the prior year.
(h) The cost per household for each project.
(i) The number of formerly unserved households subscribing to broadband service in areas covered by projects funded by the California Advanced Services Fund.
(j) The number of subscriptions resulting from the broadband adoption program funded by the California Advanced Services Fund.
(k) An update on the expenditures from the California Advanced Services Fund, broadband adoption levels, the progress in achieving the goals of the program, and an accounting of the remaining unserved households in each region of the state as of December 31 of the immediately preceding year.

(l) The amount of funds expended from the California Advanced Services Fund to match federal funds.

(m) Additional details on efforts to leverage non-California Advanced Services Fund moneys.

(n) The status of the California Advanced Services Fund balance and the projected amount to be collected in each year to fund approved projects.

SEC. 6. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hard of hearing, together with a single party line, at no charge additional to the basic exchange rate, to a subscriber who is certified as an individual who is deaf or hard of hearing by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to a subscriber that is an organization representing individuals who are deaf or hard of hearing, as determined and specified by the commission pursuant to subdivision (h). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual’s hearing records on file before certification. In addition, a physician assistant or nurse practitioner may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hard of hearing to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hard of hearing and offices of organizations representing individuals who are deaf or hard of hearing, as determined and specified by the commission pursuant to subdivision (h), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hard
of hearing and the telephone system, making available reasonable
access of all phases of public telephone service to telephone
subscribers who are deaf or hard of hearing. In order to make a
dual-party relay system that will meet the requirements of
individuals who are deaf or hard of hearing available at a
reasonable cost, the commission shall initiate an investigation,
conduct public hearings to determine the most cost-effective
method of providing dual-party relay service to the deaf or hard
of hearing when using a telecommunications device, and solicit
the advice, counsel, and physical assistance of statewide nonprofit
c consumer organizations of the deaf, during the development and
implementation of the system. The commission shall apply for
certification of this program under rules adopted by the Federal
Communications Commission pursuant to Section 401 of the
federal Americans with Disabilities Act of 1990 (Public Law
101-336).
(c) The commission shall also design and implement a program
whereby specialized or supplemental telephone communications
equipment may be provided to subscribers who are certified to be
disabled at no charge additional to the basic exchange rate. The
certification, including a statement of visual or medical need for
specialized telecommunications equipment, shall be provided by
a licensed optometrist, physician and surgeon, physician assistant,
or nurse practitioner, acting within the scope of practice of the
applicable license, or by a qualified state or federal agency as
determined by the commission. The commission shall, in this
connection, study the feasibility of, and implement, if determined
to be feasible, personal income criteria, in addition to the
certification of disability, for determining a subscriber’s eligibility
under this subdivision.
(d) (1) The commission shall also design and implement a
program to provide access to a speech-generating device to any
subscriber who is certified as having a speech disability at no
charge additional to the basic exchange rate. The certification shall
be provided by a licensed physician, licensed speech-language
pathologist, nurse practitioner, or qualified state or federal agency.
The commission shall provide to a certified subscriber access to
a speech-generating device that is all of the following:
(A) A telecommunications device or a device that includes a
telecommunications component.
(B) Appropriate to meet the subscriber’s needs for access to, and use of, the telephone network, based on the recommendation of a licensed speech-language pathologist.

(C) Consistent with the quality of speech-generating devices available for purchase in the state.

(2) The commission shall adopt rules to implement this subdivision and subdivision (e) by January 1, 2014.

(e) All of the following apply to any device or equipment described in this section that is classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services:

(1) It is the intent of the Legislature that the commission be the provider of last resort and that eligible subscribers first obtain coverage from any available public or private insurance.

(2) The commission may require the subscriber to provide information about coverage for any or all of the cost of the device or equipment that is available from a public or private insurance, the cost to the subscriber of a deductible, copayment, or other relevant expense, and any related benefit cap information.

(3) The total cost of a device or equipment provided to a subscriber under this section shall not exceed the rate of reimbursement provided by Medi-Cal for that device or equipment.

(f) This section does not require the commission to provide training to a subscriber on the use of a speech-generating device.

(g) (1) The commission shall administer a surcharge to collect revenues, subject to annual appropriation of moneys by the Legislature, to allow providers of the equipment and service specified in subdivisions (a) to (d), inclusive, to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2025. The commission shall require that the programs implemented under this section be identified on subscribers’ bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(2) The commission may collect a sum not to exceed one hundred million dollars ($100,000,000) per year by imposing the surcharge pursuant to paragraph (1).

(h) The commission shall determine and specify those statewide organizations representing the deaf or hard of hearing that shall receive a telecommunications device pursuant to subdivision (a),
or a dual-party relay system pursuant to subdivision (b), or both,
and in which offices the equipment shall be installed in the case
of an organization having more than one office.
(i) The commission may direct a telephone corporation subject
to its jurisdiction to comply with its determinations and
specifications pursuant to this section.
(j) The commission shall annually review the surcharge level
and the balances in the funds established pursuant to subdivision
(g). Until January 1, 2025, the commission may make, within the
limits set by subdivision (g), necessary adjustments to the surcharge
to ensure that the programs supported by the surcharge are
adequately funded and that the fund balances are not excessive. A
fund balance that is projected to exceed six months’ worth of
projected expenses at the end of the fiscal year is excessive.
(k) In order to continue to meet the access needs of individuals
with functional limitations of hearing, vision, movement,
manipulation, speech, and interpretation of information, the
commission shall perform an ongoing assessment of, and if
appropriate, expand the scope of, the program to allow for
additional access capability consistent with evolving
telecommunications technology.
(l) The commission shall structure the programs required by
this section so that a charge imposed to promote the goals of
universal service reasonably equals the value of the benefits of
universal service to contributing entities and their subscribers.
SEC. 7. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.
SEC. 8. This act is an urgency statute necessary for the
immediate preservation of the public peace, health, or safety within
the meaning of Article IV of the California Constitution and shall
go into immediate effect. The facts constituting the necessity are:
To expedite the deployment of broadband infrastructure and
internet service to unserved rural and urban communities, which
will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, including telehealth and distance learning.
Item B-5
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 48 (Gonzalez, Lorena) - Law enforcement: kinetic energy projectiles and chemical agent (AB 48) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 48 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 48, the Liaisons may recommend the following actions:

1) Support AB 48;
2) Support if amended AB 48;
3) Oppose AB 48;
4) Oppose unless amended AB 48;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 48, then staff will place the item on a future City Council Agenda for concurrence.
May 25, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 48 (Gonzalez) Law enforcement: kinetic energy projectiles and chemical agents.

Version: Amended in the Assembly March 16, 2021

Summary
AB 48 would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards.

Specifically, this bill would:

- Ban the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse an assembly, protest, demonstration, or gathering unless their use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, and conditions are met.
- Require that if the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize its use.
- Specify that audible announcements announcing the intent to use kinetic energy projectiles and chemical agents shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- Provide that projectiles shall not be aimed indiscriminately into a crowd or group of persons.
- Require, beginning January 1, 2023, that each law enforcement agency provide a monthly report to the Department of Justice (DOJ) of all instances in which a peace officer used a kinetic energy projectile or chemical agent that resulted in a reported injury to any person.
- Require each law enforcement agency to produce monthly reports, instead of annual reports, and an annual summary report regarding specified use of force incidents.

Background
Under existing California law, a peace officer may use reasonable force to effect an arrest if it is to prevent escape or to overcome resistance. Penal Code section 196 allows a police officer to use deadly force when it is to overcome actual resistance to the execution of some legal process or discharge of some legal duty. Deadly force is also authorized if a person charged with a felony is fleeing or resisting arrest. Reasonable force is a question for the trier of fact. In Graham v.
Connor (1989) 490 U.S. 386, the U.S. Supreme Court defined “reasonable force” for purposes of determining whether a person’s Fourth Amendment rights were violated. Reasonableness is determined from the perspective of a “reasonable officer” at the scene and “not 20/20 hindsight.”

The courts balance “the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.” The Graham court laid out four factors for consideration: (1) the need for force; (2) the relationship between that need and the amount of force used; (3) the extent of injury inflicted; and (4) whether the force was applied was in good faith or just intended to inflict injury. The Graham standard focuses on the “totality of the circumstances” to determine if the force was reasonable. The Graham standard is applied in civil and administrative actions against police officers for excessive use of force. AB 392 (Weber), Chapter 170, Statutes of 2019, provided that an officer may use deadly force in order to prevent an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

**Status of Legislation**
AB 48 is currently pending on the Assembly Floor but will need to pass out of the Assembly by June 4.

**Arguments in Support:**
According to the bill's co-sponsors, the California News Publisher's Association, California Broadcasters Association, California Black Media, Ethnic Media Services, and the First Amendment Coalition: “The widespread use of rubber bullets and tear gas against protesters following the death of George Floyd, have made it clear that limitations on the use of these tactics are necessary. AB 48 will protect the public, and the press, who are almost always among the public, covering these demonstrations, and are also harmed when these tactics are used to disperse those protesting, by limiting the circumstances that kinetic energy projectiles, such as rubber bullets, and chemical agents. The prohibition against the use of these serious and often harmful weapons simply to disperse a crowd or for violation of an imposed curfew, frequently used to bring an end to protests, will ensure that police give pause before using these "non-lethal" methods.”

**Arguments in Opposition:**
According to the California State Sheriffs’ Association: "Restricting the use of less-lethal options limits the tools that are at an officer's disposal to protect public safety. Different circumstances may call for different responses and more or less force may be required. However, by restricting when an officer may use those tools, their response to a particular situation may end up being guided by choices about practices that may be acceptable or unacceptable to some instead of what measure is most appropriate in the context of the event.

"We are also concerned about mandating specific tactics directly in statute as AB 48 would. Again, it is difficult to legislate around situations that are rarely identical, and a "standard" approach may neglect a situation's unique features and the training of peace officers to assess and respond to these events. Experienced law enforcement practitioners and regulators are better positioned to set out guidelines through policy that steer officer practices and recognize the fluidity of situations that are prone to rapid evolution.

"Finally, additional use of force reporting will add workload and costs that are not accounted for in this bill. For this reason, and those stated above, we must respectfully oppose AB 48."

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**Support**  
California Attorneys for Criminal Justice  
California Nurses Association  
California Teachers Association  
Consumer Attorneys of California  
California Broadcasters Association  
California State PTA  
National Association of Social Workers, California Chapter (NASW-CA)  
County of Los Angeles Board of Supervisors  
California Public Defenders Association  
SEIU California  
California Faculty Association  
San Francisco Public Defender  
California Black Media  
First Amendment Coalition  
Alliance San Diego  
Pillars of the Community  
Oakland Privacy  
Think Dignity  
California News Publishers Association  
Change for Justice  
We The People - San Diego  
Asian Solidarity Collective  
Showing Up for Racial Justice San Diego  
Team Justice  
Ethnic Media Services  
Showing Up for Racial Justice North County

**Opposition**  
California State Sheriffs’ Association  
Los Angeles County Sheriff  
Riverside Sheriffs’ Association  
California Peace Officers’ Association  
California Statewide Law Enforcement Association  
Southwest California Legislative Council  
Santa Ana Police Officers Association  
Los Angeles School Police Officers Association  
California Coalition of School Safety Professionals  
Palos Verdes Police Officers Association
Attachment 2
An act to amend Section 12525.2 of the Government Code, and to add Section 13652 to the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL’S DIGEST

AB 48, as amended, Lorena Gonzalez. Law enforcement: kinetic energy projectiles and chemical agents.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents, as defined, by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance
with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would prohibit the use of chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas by law enforcement agencies to disperse any assembly, protest, or demonstration. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas. The bill would make these provisions inapplicable within a state prison facility.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. The bill would also require each law enforcement agency, beginning on January 1, 2023, to report any incident in which a kinetic energy projectile or chemical agent is used against a person resulting in a reported injury. The bill would require those agencies, commencing on March 31, 2024, to annually publish a report on their use of kinetic energy projectiles and chemical agents. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.


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

1 SECTION 1. Section 12525.2 of the Government Code is amended to read:

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12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

   (1) An incident involving the shooting of a civilian by a peace officer.
   (2) An incident involving the shooting of a peace officer by a civilian.
   (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
   (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

   (5) Commencing January 1, 2023, an incident in which a peace officer uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652 of the Penal Code, resulting in a reported injury to any person. Each law enforcement agency shall also annually, commencing March 31, 2024, publish a summary of incidents described in this paragraph.

   (b) For each incident reported under paragraphs (1) to (4), inclusive, of subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

   (1) The gender, race, and age of each individual who was shot, injured, or killed.
   (2) The date, time, and location of the incident.
   (3) Whether the civilian was armed, and, if so, the type of weapon.
   (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
   (5) The number of officers involved in the incident.
   (6) The number of civilians involved in the incident.
   (7) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

   (c) For each incident reported under paragraph (5) of subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

   (1) The type of kinetic energy projectile or chemical agent deployed.
(2) The number of rounds fired or quantity of a chemical agent dispersed, as applicable.
(3) The justification for using a kinetic energy projectile or chemical agent.
(4) Whether any person was injured as a result of the kinetic energy projectile or chemical agent deployment.
(d) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department’s OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer’s employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.
(e) For purposes of this section, “serious bodily injury” means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:
13652. (a) Except as otherwise provided in subdivision (e),
(b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.
(b) Chloroacetophenone tear gas, commonly known as CN tear gas, or 2-chlorobenzalmalononitrile gas, commonly known as CS gas, shall not be used by any law enforcement agency to disperse any assembly, protest, demonstration.
(e) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, and only in accordance with all of the following requirements:
(1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.

(2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.

(3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.

(4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

(5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

(6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.

(7) An objectively reasonable effort has been made to extract individuals in distress.

(8) Medical assistance is promptly procured or provided for injured persons.

(9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.

(10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:

(A) A violation of an imposed curfew.

(B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

(11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.
(d) For the purposes of this section, the following terms have the following meanings:

1. “Kinetic energy projectiles” means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.

2. “Chemical agents” means any chemical which can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzaldehyde gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
Item B-6
TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: June 7, 2021

SUBJECT: Assembly Bill 537 (Quirk) - Communications: wireless telecommunications and broadband facilities

ATTACHMENTS: 1. Summary Memo – AB 537
2. Bill Text – AB 537

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 537 (Quirk) - Communications: wireless telecommunications and broadband facilities (AB 537) involves a policy matter which may not be specifically addressed within the adopted Legislative Platform due to AB 537 aligning state law with the applicable Federal Communications Commission (FCC) rules on permitting deadlines for wireless telecommunications facilities.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 537 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 537, the Liaisons may recommend the following actions:
   1) Oppose AB 537;
   2) Support AB 537;
   3) Support if amended AB 537;
   4) Oppose unless amended AB 537;
   5) Remain neutral; or
   6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 537, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
June 1, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 537 (Quirk) Communications: wireless telecommunications and broadband facilities

Version: As Amended in the Assembly on May 27, 2021

Summary
Modifies city and county permitting deadlines for wireless telecommunications facilities. Specifically, this bill:

1) Clarifies the actions that may occur when a permit has been “deemed approved” as “all necessary permits shall be deemed issued, and the applicant may begin construction.”

2) Permits a city or county to condition permit approval on compliance the filing of a traffic control plan or other submission related to safety required by construction in the public right-of-way.

3) Requires the city or county to issue approval for any submission required by this subdivision without delay.

4) Requires a city or county to notify a permit applicant of the incompleteness of an application within the time periods established by applicable Federal Communications Commission (FCC) rules.

5) Updates references to FCC requirements by striking references to FCC decisions, and instead referencing FCC rules defined as those regulations contained in Subpart U (commencing with Section 1.6001) of Part 1 of Subchapter A of Chapter I of Title 47 of the Code of Federal Regulations.

6) Prohibits a city or county from discriminating against or prohibiting a particular technology.

7) Triggers the time limit on the processing of a permit to when the applicant takes the first procedural step.

Status of Legislation
This measure is currently pending on the Senate Floor.
Discussion
The author argues that “California’s need for reliable high-speed internet is critical, now more than ever. COVID-19 increased the need for internet in homes for distance learning, remote work, and telehealth access. Unfortunately, many throughout our state do not have access to the internet or need improved services. Some polls indicate that nearly 42% of California families have reported that unreliable internet access has been a challenge for them during distance learning. We need to address the inequities that have been highlighted by this pandemic.”

Responding to concerns that wireless providers were facing significant challenges and delays while navigating local governments’ permitting processes, AB 57 (Quirk), Chapter 685, Statutes of 2015, required an application for a collocation or siting of a wireless telecommunications facility to be deemed approved if specified requirements are met. The timelines for presumptive approval are referred to as “shot clocks.”

In 2018, the FCC underwent a regulatory update and adopted new rules regarding small wireless shot clocks. However, the update does not carry the “deemed approved” remedy enacted by AB 57. The author argues that the FCC action has left state law incompatible with federal law and applicants are left without the intended protections passed in AB 57. The author's stated goal is to conform state law to recent FCC regulatory action.

County government representatives and the California Chapter of the American Planning Association are opposed to this provision unless amended stating that it is “... ambiguous and problematic.” The intended effects of this language, and what it adds to the fact of deemed approval, are uncertain.

This language could be interpreted to make it more difficult for local agencies to address construction methods that do not comply with electrical, building, and fire codes, by requiring cumbersome suspension or revocation processes for these “permits” before potentially dangerous work is halted. If that is this bill's intent, that is clearly objectionable, and if not, this ambiguity is harmful.

This measure also addresses situations where a city or county may require a traffic safety plan for installation work. The provision reads as if any plan submitted by the applicant must be accepted by the city or county whether sufficient or not. The bill also states that a “city or county shall not prohibit or unreasonably discriminate in favor of, or against, any particular technology.” The provision is not consistent with federal law and the phrasing seems ambiguous. It may invite further litigation rather than resolve issues at the local level.

“Technology discrimination” under federal law is addressed in two ways. First 42 U.S.C. 332 intends that local governments do not discriminate among “providers of functionally equivalent services” or “have the effect of prohibiting the provision of personal services.” The FCC also comments on discrimination in the context of fees and that “governments should not discriminate on the fees charged to different providers.”

Several groups have also written in opposition to the bill. Their opposition is not based on the permitting process, but they are generally against the growth of wireless facilities. The California the Alliance of Nurses for Healthy Environments opines that “wireless connections are not secure. Telemedicine requires wired internet. We do not need more antennas; we need better wired internet to and into every building.” Other opponents argue that the growth of wireless technology results in a dangerous growth in the emissions of radiofrequency radiation.
Support
Crown Castle (sponsor)
Bay Area Council
California Apartment Association
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Retailers Association
California Wireless Association
Chula Vista Chamber of Commerce
Crown Castle and Its Affiliates
CTIA
First 5 California
Greater Sacramento Economic Council
Little Hoover Commission
Los Angeles County Business Federation (BIZFED)
Orange County Business Council
Sacramento Regional Builders Exchange
Sacramento Regional Builders Exchange (SRBX)
San Francisco Chamber of Commerce
Silicon Valley Leadership Group
Verizon Communications, INC. And its Affiliates
Wireless Infrastructure Association
One individual

Opposition
13 Moon Calendar Change Peace Movement
5g Free California
5g Free Marin
Alliance of Nurses for Healthy Environments
Californians for Safe Technology
East Bay Neighborhoods for Responsible Technology
Ecological Options Network
EMF Safety Network
Facts: Families Advocating for Chemical & Toxins Safety
Monterey Vista Neighborhood Association
Petalumans Against Wireless Telecom Radiation
Safe Technology for Santa Rosa
Safetech4santarosa.org
Salmon Protection and Watershed Network
San Jose; City of
Santa Barbara Green Sisters
Stop 5g Encinitas
Stop Smart Meters!
Sustainable Tamalmonte
Topanga Peace Alliance
Wireless Radiation Alert Network
Numerous individuals
Attachment 2
An act to amend Section 65964.1 of the Government Code, relating to communications.

LEGISLATIVE COUNSEL’S DIGEST

AB 537, as amended, Quirk. Communications: wireless telecommunications and broadband facilities.

Pursuant to existing federal law, the Federal Communications Commission (FCC) has adopted decisions and rules establishing reasonable time periods within which a local government is required to act on a collocation or siting application for certain wireless communications facilities.

Existing law requires a collocation or siting application for a wireless telecommunications facility be deemed approved if a city or county fails to approve or disapprove the application within the time periods specified in applicable FCC decisions, all required public notices have been provided regarding the application, and the applicant has provided a notice to the city or county that the time period has lapsed. Under existing law, eligible facilities requests, defined to include any request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment, removal of
transmission equipment, or replacement of transmission equipment, are exempt from these requirements.

This bill would remove the exemption for eligible facilities requests defined above. The bill would require that the time periods described above be determined pursuant to specified FCC rules. The bill would require that the city, county, or city and county notify the applicant of the incompleteness of an application within the time periods established by applicable FCC rules. The bill would require that the time period for a city or county to approve or disapprove a collocation or siting application commence when the applicant takes the first procedural step that the city or county requires as part of its applicable regulatory review process. The bill would require prohibit, where a city or county requires a traffic control plan or other submission or permit related to safety is required by construction or obstruction in the public right-of-way, the applicant to comply with that requirement and the city or county would be authorized to condition approval of the application on compliance from beginning construction before complying with that requirement, and the city or county would be required to issue approval for any submission related to that requirement without delay. Prohibited from unreasonably withholding, conditioning, or delaying the approval of any submission related to this requirement. The bill would require that a city or county not prohibit or unreasonably discriminate in favor of, or against, any particular technology. By imposing new duties on cities and counties, the bill would impose a state-mandated local program.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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

SECTION 1. The Legislature finds and declares all of the following:
(a) The public’s increased reliance on high-speed internet access for remote work and school, telehealth, emergency response, and commerce due to the COVID-19 pandemic demonstrates the need for legislation to accelerate the deployment of broadband infrastructure.
(b) Nearly 42 percent of California families said that unreliable internet access was a challenge for them during distance learning according to a recent poll by EdSource and FM3 Research.
(c) Each local jurisdiction in California has its own permitting process and timeline. Examples of local jurisdictions include cities, counties, cities and counties, and any other entity that may be required to issue a permit for a broadband project, including water districts, special districts, and municipal utilities.
(d) The length of time it takes for local jurisdictions to process permits for broadband projects directly impacts the length of time it takes before a project can provide high-speed internet service to local communities.
(e) Some local jurisdictions approve permits for broadband projects very quickly. Other jurisdictions take months or years to approve the same type of project.
(f) There are currently over 1,000 broadband permits pending with local jurisdictions in California that would improve internet connectivity for several million residents.
(g) Given the heightened importance of robust connectivity for access to opportunity in the 21st century global information economy, as well as for California families in a world of increasing work-from-home and learn-from-home expectations, it is in the public interest to encourage the rapid deployment of broadband projects.

SEC. 2. Section 65964.1 of the Government Code is amended to read:

65964.1. (a) A collocation or siting application for a wireless telecommunications facility, as defined in Section 65850.6,
shall, except as provided in subdivision (b), be deemed approved, and all necessary permits shall be deemed issued and the applicant may begin construction, if all of the following occur:

(1) The city or county fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC rules. The reasonable period of time may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and the local government, consistent with applicable FCC rules.

(2) The applicant has provided all public notices regarding the application that the applicant is required to provide under applicable laws consistent with the public notice requirements for the application.

(3) (A) The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved pursuant to this section.

(B) Within 30 days of the notice provided pursuant to subparagraph (A), the city or county may seek judicial review of the operation of this section on the application.

(b) Where a city or county requires a traffic control plan or other submission or permit related to safety is required by construction or obstruction in the public right-of-way, the applicant shall comply with the requirement, and the city or county may condition approval of the application on compliance not begin construction before complying with this requirement. The city or county shall issue approval for any submission required by this subdivision without delay, not unreasonably withhold, condition, or delay approval of any submission required by this subdivision.

(c) The city, county, or city and county, shall notify the applicant of the incompleteness of an application within the time periods established by applicable FCC rules.

(d) The Legislature finds and declares that a wireless telecommunications facility has a significant economic impact in California and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but is a matter of statewide concern.

(e) As used in this section, “Applicable FCC rules” means those regulations contained in Subpart U (commencing with Section
1.6001) of Part 1 of Subchapter A of Chapter I of Title 47 of the Code of Federal Regulations.

(f) Except as provided in subdivision (a), nothing in this section limits or affects the authority of a city or county over decisions regarding the placement, construction, and modification of a wireless telecommunications facility.

(g) A city or county shall not prohibit or unreasonably discriminate in favor of, or against, any particular technology.

(h) Due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters, this section does not apply to a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities.

(i) For purposes of this section, the time period for a city or county to approve or disapprove a collocation or siting application shall commence when the applicant takes the first procedural step that the city or county requires as part of its applicable regulatory review process, makes the first required submission, or if the city or county requires a preapplication meeting, communication, or similar step before submission, when the applicant takes that first required step.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
Item B-7
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: June 7, 2021

SUBJECT: Assembly Bill 989 (Gabriel) - Housing Accountability Act: appeals: Housing Accountability Committee

ATTACHMENTS: 1. Summary Memo – AB 989
                      2. Joint Letter of Opposition
                      3. Bill Text – AB 989

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Councilmember John Mirisch has requested this item be considered by the Legislative/Lobby Liaisons. Assembly Bill 989 (Gabriel) - Housing Accountability Act: appeals: Housing Accountability Committee (AB 989) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 989 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 989, the Liaisons may recommend the following actions:

1) Support AB 989;
2) Support if amended AB 989;
3) Oppose AB 989;
4) Oppose unless amended AB 989;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 989, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
May 25, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 989 (Gabriel) Housing Accountability Act: appeals: Housing Accountability Committee.

Version: Amended in the Assembly May 3, 2021

Summary
AB 989 would create an appeals board, the Housing Accountability Committee (HAC) at the Department of Housing and Community Development (HCD), to receive appeals from developers when a local government denies a housing development and to approve the development if the denial violates the provisions of the Housing Accountability Act (HAA).

Background
Suppose a housing development is denied by a local government or the local government places conditions on the project that make it infeasible. In that case, the developer can sue the city under the HAA. The HAA, also known as the "Anti-NIMBY" law, limits the ability of local agencies to reject or make infeasible housing developments without a thorough analysis of the economic, social, and environmental effects of the action. A person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, as defined, may bring an action to enforce the HAA. Specifically, when a proposed development complies with an objective general plan and zoning standards, including design review standards, a local agency that intends to disapprove the project or approve it on the condition that it be developed at a lower density must make written findings based on a preponderance of the evidence that the project would have a specific, adverse impact on the public health or safety and that there are no feasible methods to mitigate or avoid those impacts other than the disapproval of the project. If a local agency is found by a court to violate the HAA, a court may issue an order or judgment compelling compliance with the HAA within 60 days. The HAA also allows a court, upon a determination that the locality has failed to comply with the order or judgment compelling compliance with the HAA within 60 days, to impose fines on a local agency that has violated the HAA and to deposit any fine into a local housing trust fund or elect to deposit the fine in a state account. The fine shall be a minimum of $10,000 per unit. Additional fines may be imposed if the court finds that the locality acted in bad faith.

This bill would give the HAC the authority of the court to hear appeals under the HAA and determine if a local government denied a project that complies with the underlying zoning or land use conditions or applied conditions to a development that makes it unfeasible and thus stops the development from advancing. If the HAC found that a local government violated the HAA, it could approve a project or approve a project with changes to make it feasible.
The HAA provides a remedy for affordable housing and market-rate housing developments to appeal a local government’s denial or conditioning of a project. This bill would only allow for appeals from affordable housing developers that include a percentage of affordable housing as permitted under the HAA.

Anecdotal evidence suggests that developers use the HAA infrequently. Developers are reticent to sue cities in which they want to build housing. The challenge many developers face is not with an outright denial of a project but instead with the conditions that cities place on a project to get to the approval stage.

AB 72 (Santiago, 2017) gave HCD additional authority to find a housing element out of compliance and a mechanism to enforce state housing law. During the eight-year housing element planning period, HCD can revoke a finding that a local government’s housing element complies with housing element law based on any action or failure to act that it finds is inconsistent with housing element law. As an example, if HCD found that a local government downzoned a site listed in the housing element inventory of sites and the site can no longer accommodate the level of housing needed to meet the local government's RNHA, HCD could make findings to revoke their original finding of substantial compliance. Suppose HCD finds a violation of law either in a local government's action or failure to act regarding its housing element or a list of other state housing laws. In that case, it notifies the local government and refers to a violation of housing element law and a list of other state housing laws to the AG. The Governor's January budget proposes to add additional staff to HCD's accountability unit to enhance the state's capacity to enforce existing state housing laws.

HCD has the authority to enforce the HAA by referring a case to the Attorney General (AG), who would then be required to sue the city on behalf of the developer in court. This bill would give the HAC the authority of the court to find a city in violation of the HAA and order a city to approve a project or modify it in compliance with the HAA.

**Status of Legislation**

AB 989 is currently pending on the Assembly Floor but will have needed to pass out of the Assembly by June 4.

**Arguments in Support**

The California Apartment Association writes in support, "AB 989 creates a state Housing Accountability Committee to adjudicate violations of the HAA and gives it the authority to overturn denials or conditions of approval that are not consistent with the Act. This provides a quicker, less expensive, less confrontational, and more consistent alternative to enforcing state housing laws in court. Massachusetts has a similar appeals committee authorized by Chapter 40B, which has been successful in balancing the need for affordable housing with legitimate local concerns and, ultimately, increasing the development of affordable homes. In Massachusetts, the mere existence of the appeal option has resulted in localities being more willing to work with developers to find a path forward lest the city or county lose local control."

**Arguments in Opposition:**

The League of California Cities writes in opposition, "We are cognizant of the time it takes to resolve a dispute through the courts. The HAA addresses this issue in Section 65589.5(m) and (n). Adding a hearing by the Executive Branch of the State Government to the process of resolving the dispute will not get housing built faster. In fact, doing so will only slow development, increasing
conflict and add time to the process. AB 989 will do nothing to bridge the gap between the time a city or county approves a housing project and when a developer actually begins construction."

**Support**
California Apartment Association  
California Association of Realtors  
California Building Industry Association  
Los Angeles Area Chamber of Commerce  
California Coalition for Rural Housing  
Non-Profit Housing Association of Northern California  
Housing California  
California Housing Consortium  
Sacramento Housing Alliance  
San Diego Housing Federation  
BRIDGE Housing Corporation  
Abundant Housing LA  
Southern California Rental Housing Association  
Merritt Community Capital Corporation  
SV@Home Action Fund  
California Housing Partnership Corporation  
Office of Sacramento Mayor Darrell Steinberg

**Opposition**
League of California Cities  
California State Association of Counties  
City of Moorpark  
Rural County Representatives of California (RCRC)  
Urban Counties of California  
New Livable California dba Livable California  
California Cities for Local Control
Attachment 2
April 21, 2021

The Honorable Jesse Gabriel
Assembly Member, California State Assembly
State Capitol, Room 4117
Sacramento, CA 95814

RE: Assembly Bill 989 (Gabriel) Appeals. Housing Accountability Committee.
Notice of Opposition (As Amended 03/25/2021)

Dear Assembly Member Gabriel:

On behalf of the League of California Cities (Cal Cities), the California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC), we must strongly oppose your Assembly Bill 989 (Gabriel), which would create a new state appeals committee within the California Department of Housing and Community Development (HCD), comprised of five members, all appointed by the Governor.

Housing affordability and homelessness are among the most critical issues facing California cities and counties. Affordably priced homes are out of reach for many people and housing is not being built fast enough to meet the current or projected needs of people living in the state. Cities and counties lay the groundwork for housing production by planning and zoning in their communities based on extensive public input and engagement, state housing laws, and the needs of the building industry. Importantly, local jurisdictions must also approve housing projects that are consistent with local zoning and design standards.

The Housing Accountability Act (HAA) allows a city or county – after proper notice and public hearings within strict time limits - to impose conditions to mitigate the environmental impact of the project under CEQA (Section 65589.5(o)(2)(E); and to require compliance with “objective, quantifiable, written development standards, conditions and policies” in effect when the preliminary application was submitted (Section 65589.5(f))). AB 989 allows a single hearing officer to overturn either of these actions if a developer argues they make the project “infeasible” following procedures that are not subject to public review and comment.

The HAA allows a city or county – after proper notice and public hearings within strict time limits - to deny a project because it would have a specific, adverse impact upon the public health or safety (Section 65589.5(j)). As with the provision noted above, AB 989 allows a single hearing officer to substitute their judgment about the public health or safety of a community and overturn the denial following procedures that are not subject to public review and comment.

By so doing, AB 989 overrides these specific provisions of the HAA.

We are cognizant of the time it takes to resolve a dispute through the courts. The HAA addresses this issue in Section 65589.5(m) and (n). Adding a hearing by the Executive Branch of the State Government to the process of resolving the dispute will not get housing built faster. In fact, doing so will only slow development, increasing conflict and add time to the process. AB 989 will do nothing to bridge the gap between the time a city or county approves a housing project and when a developer actually begins construction.
For these reasons, Cal Cities, CSAC, UCC, and RCRC, strongly opposes AB 989. If you have any questions, please contact me at (916) 658-8264.

Sincerely,

Jason Rhine
League of California Cities

Christopher Lee
California State Association of Counties

Jean Kinney Hurst
Urban Counties of California

Tracy Rhine
Rural County Representatives of California

cc: The Honorable Cecelia Aguiar-Curry, Chair, Assembly Local Government Committee
    Members, Assembly Local Government Committee
    Consultant, Assembly Local Government Committee
    Consultant, Assembly Republican Caucus
Attachment 3
Introducing Assembly Bill No. 989

Introduced by Assembly Member Gabriel
(Principal coauthor: Senator Gonzalez)
(Coauthors: Assembly Members Berman, Fong, Mayes, McCarty, Quirk-Silva, Robert Rivas, and Wicks)
(Coauthor: Senator Kamlager)

February 18, 2021

An act to add Section 65585.4 to the Government Code, relating to planning and land use.

LEGISLATIVE COUNSEL’S DIGEST

AB 989, as amended, Gabriel. Housing: local development decisions; Housing Accountability Act; appeals: Housing Accountability Committee.

Existing law requires a city or county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Existing law prescribes requirements for the housing element, including adequate sites for various types of housing based on the existing and projected need of all economic segments of the community. Existing law requires a city or county to consider guidelines adopted by the Department of Housing and Community Development in preparing its housing element and prescribes a process for submitting the element for review by the department. Existing law authorizes the department to take certain
actions if it determines that the housing element does not comply with prescribed requirements.

The Housing Accountability Act prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, specified housing development projects, including projects for very low, low-, or moderate-income households and projects for emergency shelters that comply with applicable, objective general plan, zoning, and subdivision standards and criteria in effect at the time the application for the project is deemed complete, unless the local agency makes specified written findings based on a preponderance of the evidence in the record.

This bill would establish a Housing Accountability Committee within the Department of Housing and Community Development, and would prescribe its membership. The bill would set forth the committee’s powers and duties, including the review of appeals regarding multifamily housing projects that cities and counties have denied or subjected to unreasonable conditions that make the project financially infeasible.

This bill would require that the committee be supported by the department and hear appeals at least quarterly or more often as the committee deems necessary. It would authorize an applicant who proposes a housing development project pursuant to the Housing Accountability Act, as described above, to appeal a local agency's decision on the project application to the committee. The bill would prescribe the qualifications of proposed housing developments that would be eligible for appeals and timelines within which applicants, the committee, and local agencies would be required to act. The bill would require, among other things, the local agency to transmit a copy of its decision and reasoning to the committee, as specified, and would require all governing members of the local agency to certify in writing, under penalty of perjury, that their decision was not made for any unlawful or improper purpose. By requiring members of the local agency to make certifications under penalty of perjury, this bill would impose a state-mandated local program.

This bill would require the committee to vacate a local decision if it finds that the local agency disapproved the housing development or conditioned the approval of the housing development in violation of specified provisions, and the Housing Accountability Act. The bill would require the committee to direct the local agency to issue any necessary approval or permit for the development and, if applicable, to
modify or remove any condition or requirement to make the development no longer infeasible. conditions or requirements that violate the act.

This bill would require a local agency to carry out a committee order within 30 days of entry, and if the local agency fails to do so, the bill would authorize an applicant to enforce the committee orders in court. The bill would entitle the applicant to attorney’s fees and costs, and would additionally authorize the court to impose specified fines on the city or county local agency. The bill would authorize the department to charge applicants a fee for an appeal, as specified, and if the committee orders approval of the proposed development or modifies or removes any conditions or requirements imposed upon the applicant, the bill would require a city or county local agency to reimburse the applicant for the fee. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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

This bill would provide that no reimbursement is required by this act for specified reasons.

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

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


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

1 SECTION 1. The Legislature hereby finds and declares the following:
2 (a) California is experiencing a housing crisis, with housing demand far outstripping supply. California recently ranked 49th out of the 50 states in housing units per capita.
(b) Studies have shown that the housing crisis is driving high costs of living and further threatening sustainable economic growth in the state.

(c) Research has also shown that cost-burdened households have had to cut back on critical basic needs like food, and can be forced to take on additional debt in order to afford rent. Extremely low income households in California have to pay at least one-half of their income toward housing, putting them at risk of housing instability and homelessness.

(d) According to the California Housing Partnership, California needs an estimated 2,600,000 additional homes over the next 10 years, including 1,200,000 homes affordable to lower income households.

(e) State law requires local governments to exercise their zoning power to meet the housing needs of residents at all income levels and to remove arbitrary constraints that prevent the development of sufficient affordable housing.

(f) Even when proposed housing projects conform to local zoning requirements, local officials may improperly deny projects or subject them to unreasonable conditions that make them financially infeasible.

(g) It is often prohibitively expensive, time-consuming, and impractical to bring litigation challenging improper and unlawful decisions preventing the construction of affordable housing. For this reason, State Legislatures in Connecticut, Illinois, Massachusetts, and Rhode Island have created alternative means to challenge efforts to prevent the construction of affordable housing.

(h) It is the intent of the Legislature to ensure that local governments do not actively defy or circumvent state law and improperly or unlawfully prevent the development of badly needed affordable housing.

SEC. 2. Section 65585.4 is added to the Government Code, to read:

SEC. 2. Section 65589.5.1 is added to the Government Code, to read:

65589.5.1. (a) There shall be within the department a Housing Accountability Committee consisting of five members to review multifamily housing development projects identified in subdivision (d) of Section 65589.5 that have
been denied or subjected to unreasonable conditions that make the project financially infeasible. Conditions in violation of Section 65589.5.

(1) The director of the department and the Director of the Governor’s Office of Planning and Research shall be ex officio members, members of the committee, provided that they may designate an employee of their respective department or office to serve on the committee in their place.

(2) The remaining three six members of the committee shall be appointed by the Governor with the advice and consent of the Senate. One member Senate as follows:

(A) Notwithstanding Section 1099, two members shall be a member of a city council or board of supervisors and one other member supervisors. One member shall represent a small jurisdiction and one member shall represent a large jurisdiction.

(B) Two members shall have extensive experience in the development of affordable housing. The

(C) Two members shall be neither a member of a city council or county board of supervisors nor have extensive experience in the development of affordable housing.

(3) The appointed members shall serve for terms of two years each, at the pleasure of the Governor. The

(4) The director of the department shall designate the chairperson.

(5) Members of the committee shall not receive compensation for their services, but shall be reimbursed by the department for all reasonable expenses actually or necessarily incurred in the performance of their official duties. The department shall provide the space and clerical and other assistance that the committee may require.

(4) The committee shall hear appeals pursuant to this section at least quarterly or more often as it deems necessary. The committee shall conduct the hearings in accordance with guidelines established by the department. The adoption, amendment, or repeal of a guideline authorized by this section is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).
(b) An applicant who proposes to construct a housing development that meets the criteria of subdivision (c) and whose application is either denied, or approved with conditions that in the person’s judgment render the provision of housing economically infeasible, may appeal the decision of the city, county, or city and county to the committee.

(c) An applicant may file an appeal with the committee if both of the following criteria are met:

(1) The proposed housing development will meet or exceed any of the following affordability requirements:

(A) Ten percent of the total of the housing development is available at affordable housing cost to extremely low-income households whose household income is less than or equal to 30 percent of the area median income.

(B) Twenty percent of the total housing of the development is available at affordable housing cost to very low-income and low-income households, as defined in Section 50105 of the Health and Safety Code.

(C) One hundred percent of the total housing of the development is available at affordable housing cost to moderate-income households, as defined in Section 50093 of the Health and Safety Code.

(2) Either of the following criteria is met:

(A) The city, county, or city and county has adopted a housing element that the department has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article, and the proposed housing development, exclusive of any density bonus granted pursuant to Section 65915, is consistent with both the density allowed by the jurisdiction’s zoning ordinance and the general plan land use designation as specified in any element of the general plan as of the date the application was deemed complete, except that consistency shall not be required with the zoning ordinance or the general plan land use designation if the jurisdiction has not amended the ordinance or the designation to conform to the adopted housing element.

(B) The city, county, or city and county has not adopted a housing element that the department has determined pursuant to Section 65585 to be in substantial compliance with the requirements of this article, and the proposed housing development is located on a site that is designated for residential or commercial
uses in any element of the general plan as of the date the
application was deemed complete.
(d) (1) An applicant may file an appeal with the committee
within 45 days after the date of the decision by the local agency
to deny the application or approve the application with conditions
that render the provision of housing economically infeasible. The
committee shall notify the local agency of the filing of an appeal
within 10 days, and the local agency shall, within 10 days of the
receipt of that notice, transmit a copy of its decision and the reasons
therefor to the committee. All governing members of the local
agency shall certify in writing, under penalty of perjury, that their
decision was not made for any unlawful or improper purpose. If
the local agency does not meet the deadline, the committee shall
vacate the decision of the local agency and direct the local agency
to issue any necessary approval or permit for the development to
the applicant within 30 days of the committee’s decision. In this
instance, the case shall be considered closed. If the local agency
responds within the deadline, the appeal shall be heard within 30
days after receipt of the request for an appeal by the applicant.

(2) The appeal hearing may be conducted by the committee, a
subcommittee of two or more members of the committee, or a
hearing officer appointed by the chairperson of the committee. A
record of the proceedings shall be kept. The hearing shall be limited
to the issue of whether the local agency, in violation of Section
65589.5, disapproved a housing development project or conditioned
its approval in a manner rendering it infeasible for the development
of housing for very low, low-, or moderate-income households,
including farmworker housing, without making the findings
required by that section or without making findings supported by
a preponderance of the evidence.

(6) Any appeal hearing held pursuant to this section shall be
conducted by a panel of five members of the committee. Each
five-member panel shall include the two ex officio members or
their designee and one member appointed pursuant to each of
subparagraphs (A), (B), and (C) of paragraph (2). With the
exception of the ex officio members, each panel member shall be
randomly assigned to an appeal hearing from within the groupings
of subparagraphs (A), (B), and (C) of paragraph (2), except in
circumstances where a panelist has a conflict of interest or a
scheduling conflict.
(7) Except as specifically provided in this section, the panel shall consider appeals pursuant to the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2).

(8) The department may adopt regulations to implement this section. The initial adoption of a regulation authorized by this section is deemed to address an emergency, for purposes of Sections 11346.1 and 11349.6, and the department is hereby exempted for that purpose from the requirements of subdivision (b) of Section 11346.1. The initial adoption of regulations shall be valid for a period not to exceed two years. After the initial adoption of an emergency regulation pursuant to this section, the department may request approval from the Office of Administrative Law to amend the regulation as an emergency regulation pursuant to Section 11346.1.

(b) An applicant who proposes a housing development project identified in subdivision (d) of Section 65589.5 and whose application is subject to a decision by a local agency that the applicant alleges violates Section 65589.5 may appeal the decision of the local agency to a panel of the committee. The appeal shall be limited to the issue of whether the local agency acted in violation of Section 65589.5.

(c) (1) An applicant shall file an appeal to the committee within 30 days after the date of the decision by the local agency. The committee shall notify the local agency of the filing of an appeal within 10 days, and the local agency shall, within 10 days of the receipt of that notice, transmit a copy of its decision and its reasoning for that decision to the committee, and notify the committee if it will contest the appeal. If the local agency does not transmit a copy of its decision and reasoning within 10 days, the committee shall vacate the decision of the local agency and direct the local agency to issue any necessary approval for the development to the applicant within 30 days of the committee's decision to vacate. If the local agency transmits a copy of its decision and reasoning within 10 days, the committee shall schedule an appeal hearing within 30 days. The hearing shall take place no more than 60 days after the local agency receives the initial notice, unless all parties to the hearing agree to a later date.

(3) At its next meeting following the hearing, the committee
(2) Following the appeal hearing, the panel shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions, and the support for them. If the committee vote of the panel. If the panel finds that the local agency disapproved the a housing development identified in subdivision (d) of Section 65598.5 in violation of Section 65589.5, it shall vacate the decision and shall direct the local agency to issue any necessary approval or permit for the development to the applicant within 30 days of the committee's panel's decision. If the committee panel finds that the local agency conditioned its approval in a manner rendering the development infeasible for the development of housing for very low, low, or moderate income households in violation of that violates Section 65589.5, it the panel shall identify the conditions or requirements that violate subdivision (d) of Section 65589.5 in its decision and shall order the local agency to modify or remove any such condition or requirement so as to make the development no longer infeasible conditions or requirements within 30 days and to issue any necessary permit or approval.

(e) In any appeal before the committee, the applicant shall have the initial burden of proof to show that it has met the requirements of subdivision (c). In a case of approval with conditions or requirements imposed, the applicant shall also have the burden of proof to show that the conditions and requirements render the provision of housing economically infeasible. If the applicant meets the initial burden of proof, then the local agency shall have the burden of proof to show that its action was consistent with Section 65589.5. Burdens of proof and standards of review shall be those established in Section 65589.5.

(f) The city or county local agency shall carry out the order of the committee within 30 days of its entry, and upon failure to do so, the order of the committee shall for all purposes be deemed to be the action of the local agency, unless the applicant consents to a different decision or order by the local agency. The applicant may enforce the orders of the committee in court. The applicant shall be entitled to attorney’s fees and costs if the applicant prevails in an enforcement action, and the court may impose fines on the
city or county local agency consistent with subdivision (k) and (l) of Section 65589.5.

(f) The department may charge a fee to the applicant that shall not exceed the reasonable cost to the committee of providing the hearing. If the committee orders approval of the proposed development or modifies or removes any conditions or requirements imposed upon the applicant, the city or county local agency shall reimburse the applicant for the fee paid pursuant to this subdivision.

(g) For the purposes of this section, the following terms have the following meanings:

(1) “Area median income” means area median income as periodically established by the department pursuant to Section 50093 of the Health and Safety Code.

(2) “Committee” means the Housing Accountability Committee.

(3) “Housing development” means a development project consisting of 10 or more residential dwelling units or an emergency shelter facility.

(h) The remedies provided in this section are in addition to any other remedy provided by law.

(i) The Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred...
because this act creates a new crime or infraction, eliminates a
crime or infraction, or changes the penalty for a crime or infraction,
within the meaning of Section 17556 of the Government Code, or
changes the definition of a crime within the meaning of Section 6
of Article XIII B of the California Constitution.

SEC. 3. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
a local agency or school district has the authority to levy service
charges, fees, or assessments sufficient to pay for the program or
level of service mandated by this act, within the meaning of Section
Item B-8
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 7, 2021
SUBJECT: Assembly Bill 1276 (Carrillo) - Single-use food accessories
ATTACHMENTS: 1. Summary Memo – AB 1276
2. Bill Text – AB 1276

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 1276 (Carrillo) - Single-use food accessories (AB 1276) involves a policy matter that may have a nexus to the City's adopted Legislative Platform language. Specifically, the following statements may apply to AB 1276:

- Advocate for cost-effective, sustainable, and responsible environmental policy and programs in the areas of energy efficiency, greenhouse gases, climate change, potable water, wastewater, solid waste removal and storm water, among others.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1276 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1276, the Liaisons may recommend the following actions:
1) Oppose AB 1276;
2) Support AB 1276;
3) Support if amended AB 1276;
4) Oppose unless amended AB 1276;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position that is consistent with the City’s Legislative Platform, then staff will generate a letter for the Mayor to sign. Should the recommendation not be consistent with the City’s Legislative Platform or this subject matter is not addressed in the City’s Legislative Platform, then the item will be placed on a future City Council agenda for concurrence.
Attachment 1
June 2, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange

Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1276 (Carrillo) Single-use food accessories

Version: Amended in the Assembly May 27, 2021

Summary
AB 1276 expands and revises statute regarding the by-request-only distribution of single-use plastic straws to apply to all single-use standard condiments and food service ware distributed by food facilities or third-party food delivery platforms.

Specifically, this bill would:

- Requires platforms to provide each of its ready-to-eat food vendors with the option to customize the vendor’s menu on the online food-ordering platform, with a list of the single-use food accessories for selection by the consumer. If a ready-to-eat food vendor chooses not to customize its menu, the platform shall post the following statement next to their menu: "This restaurant has not listed single-use food accessories on its menu."
- Prohibits food facilities and platforms from providing single-use food accessories to consumers except upon request. Allows food facilities to ask drive-through customers if the accessory is necessary for the consumer to consume ready-to-eat food, prevent spills, or safely transport ready-to-eat food.
- Authorizes food facilities to make unwrapped single-use food accessories available to a consumer using refillable self-service dispensers and encourages the use of bulk dispensers for condiments.
- States that the requirement to provide single-use food accessories only upon request does not prevent a local government from adopting or implementing an ordinance or rule that would further restrict a food facility, platform, or full-service restaurant from providing single-use food accessories to a consumer.
- On or before June 1, 2022, requires a city, county, or city and county to authorize an enforcement agency to enforce the bill's requirements. Provides first and second violations result in a notice of violation, and any subsequent violations constitute infractions punishable by a fine of $25 for each day of violation, not to exceed $300 annually.
- Exempts correctional institutions, health care facilities, public and private schools, and residential care facilities from the provisions of the bill.
- Defines terms used in the bill, including:
  - "Single-use food accessory" as any standard condiment in single-use packaging or single-use food service ware.
"Single-use food service ware" as utensils, chopsticks, napkins, condiment cups and packets, straws, stirrers, splash sticks, and cocktail sticks provided alongside ready-to-eat food.

"Food facility" as defined in Section 113757 of the Health and Safety Code as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level (whether or not there is a charge for the food), which includes, among other things, commissaries, mobile food facilities, fisherman's markets, and catering operations.

**Background**

An estimated 35 million tons of waste are disposed of in California's landfills annually. CalRecycle is tasked with diverting at least 75% of solid waste from landfills statewide by 2020. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro, 2011) requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow-up bill, AB 1826 (Chesbro, 2014), requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep the material out of the landfill. California's recent recycling rate, which reached 50% in 2014, dropped to 37% in 2019.

Plastics are estimated to comprise 60-80% of all marine debris and 90% of all floating debris. By 2050, by weight, there will be more plastic than fish in the ocean if we keep producing (and failing to manage properly) plastics at predicted rates, according to The New Plastics Economy: Rethinking the Future of Plastics, a January 2016 report by the World Economic Forum.

California Coastal Cleanup Day was first organized by the California Coastal Commission in 1985. The Coastal Commission continues to organize the event annually and track the items collected. According to the Coastal Commission, the top 10 items collected since 1984 are cigarette butts, food wrappers, containers; caps and lids; bags; cups, plates, utensils; straws; glass bottles; plastic bottles; cans; and construction material.

Ocean plastic pollution is driven by ocean currents and accumulates in certain areas throughout the ocean. The North Pacific Central Gyre is the ultimate destination for much of the marine debris originating from the California coast. However, plastic generated in California pollutes oceans globally, as bales of plastic collected for recycling are exported for processing and recycling. The plastic with value is collected and recycled, and the rest is discarded or incinerated. In countries with inadequate waste management systems, this plastic enters waterways and flows to the ocean. Approximately 150 million metric tons of plastic are already circulating in the marine environment, and an estimated 8 million metric tons enter the oceans annually.

Most plastic marine debris exists as small plastic particles due to excessive UV radiation exposure and subsequent photo-degradation. Expanded polystyrene breaks down more rapidly into these smaller particles than rigid plastics. These plastic pieces are confused with small fish, plankton, or krill and ingested by birds and marine animals. Over 600 marine animal species have been negatively affected by ingesting plastic worldwide.

In addition to the physical impacts of plastic pollution, hydrophobic chemicals present in the ocean in trace amounts (e.g., from contaminated runoff and oil and chemical spills) bind to plastic particles where they enter and accumulate in the food chain.
Controlling plastic pollution involves source reduction in addition to proper end-of-life management. This bill is intended to reduce the amount of single-use food ware used in California, which has the combined benefits of source reducing the amount of waste generated and potentially reducing the amount of single-use food ware that is littered or otherwise improperly managed.

**Status of Legislation**
AB 1276 passed out of the Assembly Floor on June 1. The bill will be heading to Senate Rules for Committee referral.

**Arguments in Support**
According to the author, "The COVID-19 pandemic has increased takeout and food delivery, which restaurants are relying upon to stay afloat. However, the use of disposable food accessories like plastic forks, spoons, and knives has led to a rise in single-use plastics and waste. AB 1276 is an important step to significantly reduce plastic waste that pollutes our oceans, harms marine life, harms our environment, and hurts low-income communities of color, while simultaneously providing financial savings to restaurants and local governments. This bill will build on California’s existing efforts to combat waste from single-use items by ensuring food and beverage accessories are provided only upon request to customers."

**Arguments in Opposition:**
The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force states that it "...agrees the bill would reduce single-use plastic waste but opposes the bill unless it is amended to include language requiring the State to be responsible for enforcement or provide funding to local governments for local enforcement of the prohibition and requirements. Local governments often do not have the additional capacity for unfunded state mandates; implementation of the requirements would be inadequately supported, prescribing failure of implementation of the law. The state ought to adequately fund requirements it imposes on local governments."

**Support**
- Agromin
- Alliance of Nurses for Healthy Environments, California Chapter
- Azul
- Cafe Aquatica
- California Coastkeeper Alliance
- California Compost Coalition
- California Interfaith Power & Light
- California League of Conservation Voters
- California Product Stewardship Council
- California Reuse Collective
- Californians Against Waste
- CALPIRG
- Center for Biological Diversity
- Center for Environmental Health
- ChicoEco, Inc, DBA ChicoBag Company
- City and County of San Francisco
- Clean Water Action
- Community Environmental Council
- Compost Manufacturing Alliance
- County of Marin
- Courage California
- Ecology Center
- Elders Climate Action, NorCal and SoCal Chapters
- Friends Committee on Legislation of California
- Goodwerks
- Green Mary
- Green Valley Community Farm
- GreenTown Los Altos
- Habits of Waste
- Heal the Bay
- League to Save Lake Tahoe
- Marin Sanitary Service
- Napa Recycling and Waste Services
- National Stewardship Action Council
- Natural Resources Defense Council
- Northern California Recycling Association
Ocean Conservancy
Orange County Coastkeeper
Plastic Oceans International
Plastic Pollution Coalition
Race to Zero Waste
Rainbow Grocery Cooperative, Inc.
Recology
Resource Renewal Institute
RethinkWaste
Santa Barbara Channelkeeper
Save Our Shores
Sea Hugger
Seventh Generation Advisors
Shizen and Tataki Restaurants
Sierra Club California
Sierra Nevada Brewing Company

Sonoma County Waste Management Agency
Surfrider Foundation
Sustain LA
Sustainable St. Helena
The 5 Gyres Institute
The Bay Foundation, Los Angeles CA
The Center for Oceanic Awareness, Research, and Education
The Refill Shoppe
The Story of Stuff Project
The Trust for Public Land
Upstream
Wisdom Supply Co.
Wishtoyo Chumash Foundation
Zanker Recycling
Zero Waste USA

**Opposition**
Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force
Attachment 2
ASSEMBLY BILL No. 1276

Introduced by Assembly Members Carrillo and Lorena Gonzalez
(Coauthors: Assembly Members Friedman, Muratsuchi, and Ting)
(Coauthors: Senators Allen and Wiener)

February 19, 2021

An act to amend Sections 42270 and 42271 of, to amend the heading of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of, and to add Sections 42272, 42273, and 42274 of, the Public Resources Code, relating to single-use food-accessories and serveware.

LEGISLATIVE COUNSEL’S DIGEST


Existing law prohibits a full-service restaurant, as specified, from providing single-use plastic straws, as defined, to consumers unless requested by the consumer, and places the duty to enforce this prohibition on specified state and local health and environmental health officers and their agents. Existing law specifies that the first and 2nd violations of these provisions result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of...
$25 for each day the full-service restaurant is in violation, but not to exceed an annual total of $300.

This bill would instead prohibit a food facility or a third-party food delivery platform, as defined, from providing any single-use food accessories, as defined, to consumers unless requested by the consumer, as provided. The bill would authorize a food facility to ask a drive-through consumer if the consumer wants a single-use food accessory in specified circumstances. The bill would require a third-party food delivery platform to provide each of its ready-to-eat food vendors with the option to customize the vendor’s menu, on the online food-ordering platform, regarding the availability of single-use food accessories, as provided. The bill would require a full-service restaurant that has adequate dishwashing capacity to sanitize reusable service ware from providing single-use service ware to consumers except under specified conditions. The bill would exclude certain facilities from these requirements. The requirements correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias.

This bill would require a city, county, or city and county, on or before June 1, 2022, to authorize an enforcement agency to enforce these requirements. The bill would specify that the first and 2nd violations of the prohibitions result in a notice of violation, and any subsequent violation is an infraction punishable by a fine of $100. By creating a new crime and imposing additional duties on local governing bodies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. The heading of Chapter 5.2 (commencing with Section 42270) of Part 3 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 5.2. SINGLE-USE FOOD ACCESSORIES AND SERVICeware

SEC. 2. Section 42270 of the Public Resources Code is amended to read:

42270. For purposes of this chapter, the following definitions shall apply:
(a) “Consumer” has the same meaning as in Section 113757 of the Health and Safety Code.
(b) “Food facility” has the same meaning as in Section 113789 of the Health and Safety Code.
(c) “Full-service restaurant” means an establishment with the primary business purpose of serving food, where food may be consumed on the premises.
(d) “Ready-to-eat food” has the same meaning as in Section 113881 of the Health and Safety Code.
(e) “Single-use” means designed to be used once and then discarded, and not designed for repeated use and sanitizing.
(f) “Single-use food accessory” means any standard condiment in single-use packaging or single-use food serviceware.
(g) “Single-use food serviceware” means all types of the following single-use items provided alongside ready-to-eat food, including, but not limited to, utensils, chopsticks, napkins, condiment cups and packets, straws, stirrers, splash sticks, and cocktail sticks, which are designed for a single use for ready-to-eat foods: food:
(1) Utensils.
(2) Chopsticks.
(3) Napkins.
(4) Condiment cups and packets.
(5) Straws.
(6) Stirrers.
(7) Splash sticks.
(8) Cocktail sticks.

(g) “Standard condiment” means relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, salsa, salt, pepper, sugar, and sugar substitutes.

(h) “Third-party food delivery platform” has the same meaning as in Section 113930.5 of the Health and Safety Code.

SEC. 3. Section 42271 of the Public Resources Code is amended to read:

42271. (a) Except as provided in subdivision (b), a food facility or a third-party food delivery platform shall not provide a single-use food accessory to a consumer unless the single-use food accessory is requested by the consumer.

(b) A food facility may ask a drive-through consumer if the consumer wants a single-use food accessory if the single-use food accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.

(c) (1) A third-party food delivery platform shall provide each of its ready-to-eat food vendors with the option to customize the ready-to-eat food vendor’s menu, on the online food-ordering platform, with a list of the single-use food accessories offered by the ready-to-eat food vendor.

(2) If a ready-to-eat food vendor chooses to customize its menu as described in paragraph (1), only those single-use food accessories selected by the consumer shall be provided. If a consumer does not select any single-use food accessories, no single-use food accessory shall be provided.

(3) If a ready-to-eat food vendor chooses not to customize its menu as described in paragraph (1), the third-party food delivery platform shall post the following statement next to the ready-to-eat food vendor’s menu on the online food-ordering platform: “This restaurant has not listed single-use food accessories on its menu.”
(d) Nothing in this section shall prohibit a food facility from making unwrapped single-use food accessories available to a consumer using refillable self-service dispensers to allow for single-use food accessories to be obtained upon the consumer’s request. A food facility that offers condiments is encouraged to use bulk dispensers for the condiments rather than single-use condiments.

(e) Nothing in this section shall prevent a city, county, city and county, or other local public agency from adopting and implementing an ordinance or rule that would further restrict a food facility or a third-party food delivery platform from providing single-use food accessories to a consumer.

SEC. 4. Section 42272 is added to the Public Resources Code, to read:

42272. (a) Except as provided in subdivision (b), commencing on January 1, 2023, a full-service restaurant shall provide reusable food serviceware, and shall not provide single use food serviceware, to a consumer dining on the premises of the full-service restaurant if the full-service restaurant has dishwashing capacity that provides adequate sanitation for reusable food serviceware.

(b) A full-service restaurant may provide single use food serviceware to consumers dining at the full-service restaurant’s premises under any of the following conditions:

(1) The full-service restaurant has limited dishwashing capacity.

(2) The single use food serviceware is necessary to accommodate a consumer with a disability.

(3) The single use food serviceware is provided to a consumer upon request to carry out leftover ready-to-eat food after dining at the restaurant.

(4) A public health state of emergency has been declared.

(5) If the single use food serviceware is a disposable paper food wrapper, foil wrapper, paper napkin, or paper tray or plate liner that is of the type and form accepted by local municipal recycling and composting programs.

(e) Nothing in this section shall prevent a city, county, city and county, or other local public agency from adopting and implementing an ordinance or rule that would further restrict a
full-service restaurant from providing single-use food serviceware to a consumer.

SEC. 5. Section 42273 is added to the Public Resources Code, to read:

42273—

SEC. 4. Section 42272 is added to the Public Resources Code, to read:

42272. (a) On or before June 1, 2022, a city, county, or city and county shall authorize an enforcement agency to enforce this chapter.

(b) The first and second violations of this chapter shall result in a notice of violation, and any subsequent violation shall constitute an infraction punishable by a fine of one hundred twenty-five dollars ($100) ($25) for each day in violation, but not to exceed one thousand three hundred dollars ($1,000) ($300) annually.

SEC. 6. Section 42274 is added to the Public Resources Code, to read:

42274—

SEC. 5. Section 42273 is added to the Public Resources Code, to read:

42273. This chapter does not apply to any of the following:

(a) Correctional institutions, which has the same meaning as in Section 7502 of the Penal Code.

(b) Health care facilities licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or facilities that are owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) Residential care facilities licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(d) Public and private school cafeterias, as referenced in paragraph (1) of subdivision (b) of Section 113789 of the Health and Safety Code.

SEC. 7.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction,
eliminates a crime or infraction, or changes the penalty for a crime
or infraction, within the meaning of Section 17556 of the
Government Code, or changes the definition of a crime within the
meaning of Section 6 of Article XIII B of the California
Constitution.

However, if the Commission on State Mandates determines that
this act contains other costs mandated by the state, reimbursement
to local agencies and school districts for those costs shall be made
pursuant to Part 7 (commencing with Section 17500) of Division
4 of Title 2 of the Government Code.
Item B-9
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 1401 (Friedman) - Residential and commercial development: parking requirements (AB 1401) involves a policy matter that may have a nexus to the City’s adopted Legislative Platform language. Specifically, the following statements may apply to AB 1401 as this bill prohibits local governments from enforcing minimum automobile parking requirements for developments located close to public transit:

- Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1401 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1401, the Liaisons may recommend the following actions:

1) Oppose AB 1401;
2) Support AB 1401;
3) Support if amended AB 1401;
4) Oppose unless amended AB 1401;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position that is consistent with the City’s Legislative Platform, then staff will generate a letter for the Mayor to sign. Should the recommendation not be consistent with the City’s Legislative Platform or this subject matter is not addressed in the City’s Legislative Platform, then the item will be placed on a future City Council agenda for concurrence.
Attachment 1
June 2, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1401 (Friedman) Residential and commercial development: parking requirements

Version: Amended in the Assembly April 19, 2021

Summary
AB 1401 prohibits local governments from enforcing minimum automobile parking requirements for developments located close to public transit.

Specifically, this bill would:
- Prohibits local governments from imposing or enforcing a minimum automobile parking requirement for residential, commercial, and other developments if the parcel is located within one-half mile walking distance of either of the following:
  - A high-quality transit corridor, as defined; and,
  - A major transit stop, as defined.
- Provides that nothing in this bill reduces, eliminates, or precludes the enforcement of any requirement to provide electric vehicle parking spaces or parking spaces that are accessible to persons with disabilities that would have otherwise applied to a development eligible for the parking reductions authorized in this bill.

Background
Cities and counties generally establish parking standards that capture various types of facilities and uses. Parking standards are commonly indexed to conditions related to the building or facility they are associated with. For example, shopping centers may have parking requirements linked to total floor space, restaurants may be linked to the total number of seats, and hotels may have parking spaces linked to the number of beds or rooms present at the facility.

In 2019, California Air Resources Board (CARB) staff reviewed over 200 municipal codes and found that an average of at least one parking space is installed for every 275 square feet of nonresidential building floor space for nonresidential construction. Accounting for the fact that approximately 60% of reviewed municipal codes already allow developers to reduce parking by an average of 30%, CARB staff estimated that between 1.4 million and 1.7 million new nonresidential parking spaces may be constructed from 2021-2024.

There is a significant body of academic research regarding the potential impact minimum parking ratios have on car ownership, VMT, use of public transit, and transportation trends generally. In a recent journal article (What do Residential Lotteries Show Us About Transportation Choices?),
researchers from the University of California found that data from affordable housing lotteries in San Francisco provided a unique setting that effectively randomized housing assignments for housing lottery applicants. The study found “that a building's parking ratio not only influences car ownership, vehicle travel and public transport use, but has a stronger effect than public transport accessibility. Buildings with at least one parking space per unit (as required by zoning codes in most United States cities, and in San Francisco until circa 2010) have more than twice the car ownership rate of buildings that have no parking." Specifically, the study found, "In buildings with no on-site parking, only 38% of households own a car. In buildings with at least one parking space per unit, more than 81% of households own automobiles."

**Status of Legislation**
AB 1401 passed out of the Assembly Floor and is heading to the Senate.

**Arguments in Support**
According to the author, "Mandatory parking requirements have led to an oversupply of parking spaces; Los Angeles County alone has 18.6 million parking spaces or almost two for every resident. Experts believe that this policy encourages car dependence and discourages mass transit usage, increasing vehicle miles traveled. California needs to reduce vehicle miles traveled by 15% to meet its SB 32 climate goals, even in a scenario with full vehicle electrification."

The California Apartment Association writes in support, "We appreciate the intent of the bill to reduce car dependence, lower carbon emissions, and encourage more housing production near transit. These one-size-fits-all mandates are often imposed even in areas that are close to transit. As you know, mandatory parking requirements have led to an oversupply of parking spaces. These mandatory parking requirements hinder California’s severe housing shortage by raising the cost of housing production. CAA believes that eliminating these spaces will allow for more construction of apartment units."

**Arguments in Opposition:**
The League of California Cities writes in opposition, "AB 1401 could negatively impact the State's Density Bonus Law by providing developers parking concessions without also requiring developers to include affordable housing units in the project. The purpose of Density Bonus Law is to provide concessions and waivers to developers in exchange for affordable housing units."

**Support**
Abundant Housing LA (Co-Sponsor)  
California YIMBY (Co-Sponsor)  
Council of Infill Builders (Co-Sponsor)  
SPUR (Co-Sponsor)  
350 Bay Area Action  
AARP  
Active SGV, a Project of Community Partners  
Bay Area Council  
Bay Area Rapid Transit (BART)  
Cal Asian Chamber of Commerce  
California Downtown Association  
California Interfaith Power & Light  
California Restaurant Association  
California State University, Pomona, College of Environmental Design  
Casita Coalition  
CBIA  
Central City Association  
Chan Zuckerberg Initiative  
Circulate San Diego  
City Council Member, City of Gilroy  
Civic Enterprise  
Codding Enterprises  
East Bay for Everyone  
Fieldstead and Company, INC.  
Greenbelt Alliance  
Habitat for Humanity California  
Hello Housing  
Housing Action Coalition  
Independent Hospitality Coalition  
LISC San Diego
Local Government Commission
Long Beach YIMBY
MidPen Housing
Modular Building Institute
Mountain View YIMBY
Natural Resources Defense Council
Northern Neighbors
Parkade
Peninsula for Everyone
People for Housing - Orange County
Related California
San Fernando Valley YIMBY
San Francisco YIMBY
Santa Cruz YIMBY
Silicon Valley Leadership Group
South Bay YIMBY

**Opposition**
Albany Neighbors United
California Cities for Local Control
California Contract Cities Association
Century Glen HOA
City of Corona
City of Fountain Valley
City of Pleasanton
Livable California
Town of Truckee
The League of California Cities
Ventura Council of Governments

Streets for All
Streets for People Bay Area
Terner Center for Housing Innovation at the University of California, Berkeley
The Two Hundred
TMG Partners
Transform
UC Berkeley School of Law's Center for Law, Energy, and the Environment
UCLA Department of Urban Planning
Urban Environmentalists
Urban Mix Development
West Third Street Parking and Public Improvement Association
YIMBY Action
Attachment 2
April 7, 2021

The Honorable Laura Friedman
Member, California State Assembly
State Capitol, Room 6011
Sacramento, CA 95814

RE: AB 1401 (Friedman) Residential and Commercial Development. Parking Requirements.
Notice of Opposition (As Amended 4/5/2021)

Dear Assembly Member Friedman:

The League of California Cities (Cal Cities) must respectfully oppose your AB 1401 (Friedman), which would prohibit a local government from imposing a minimum automobile parking requirement, or enforcing a minimum automobile parking requirement, on residential, commercial, or other development if the development is located on a parcel within one-half mile walking distance of public transit.

AB 1401 would essentially allow developers to dictate parking requirements in vast areas of many cities because the definition of public transit includes entire bus corridors, not just high frequency bus stops or major transit stops. Restricting parking requirements within one half-mile walking distance of a high-quality transit corridor does not guarantee individuals living, working, or shopping on those parcels will have access to public transit since proximity to a corridor does not equate to a convenient bus stop.

AB 1401 would give both developers and transit agencies, who are unaccountable to local voters, the power to determine parking requirements. Transit agencies would be able to dramatically alter local parking standards by shifting transit routes and adjusting service intervals.

As the state aspires to reach its climate goals, the move to electric vehicles will be a part of the solution. However, much like gasoline-fueled automobiles, electric vehicles need parking spaces too. If there are not enough spots to park and charge these vehicles, individuals will remain reluctant to own an electric vehicle.

Additionally, AB 1401 could negatively impact the State’s Density Bonus Law by providing developers parking concessions without also requiring developers to include affordable housing units in the project. The purpose of Density Bonus Law is to provide concessions and waivers to developers in exchange for affordable housing units.
While AB 1401 may be well intended, parking requirements are most appropriately established at the local level based on community needs. A one-size fits all approach to an issue that is project specific just does not work. For these reasons, Cal Cities opposes AB 1401. If you have any questions, please contact me at (916) 658-8264.

Sincerely,

Jason Rhine
Assistant Legislative Director

cc. Members, Assembly Local Government Committee
Attachment 3
Introduced by Assembly Member Friedman  
(Coauthor: Assembly Member Lee)  
(Coauthors: Senators Skinner and Wiener)  

February 19, 2021  

An act to add Section 65863.3 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST  
AB 1401, as amended, Friedman. Residential and commercial development: parking requirements.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a land use element and a conservation element. Existing law also permits variances to be granted from the parking requirements of a zoning ordinance for nonresidential development if the variance will be an incentive to the development and the variance will facilitate access to the development by patrons of public transit facilities.

This bill would prohibit a local government from imposing a minimum automobile parking requirement, or enforcing a minimum automobile parking requirement, on residential, commercial, or other development if the development is located on a parcel that is within one-half mile walking distance of public transit, as defined. The bill would not
The people of the State of California do enact as follows:

SECTION 1. Section 65863.3 is added to the Government Code, to read:

65863.3. (a) A local government shall not impose a minimum automobile parking requirement, or enforce a minimum automobile parking requirement, on residential, commercial, or other development if the parcel is located within one-half mile walking distance of public transit.

(b) When a project provides parking voluntarily, nothing in this section shall preclude a local government from imposing requirements on that voluntary parking to require spaces for car share vehicles.

(c) Subdivision (a) shall not reduce, eliminate, or preclude the enforcement of any requirement imposed on a new multifamily residential or nonresidential development to provide electric vehicle parking spaces or parking spaces that are accessible to persons with disabilities that would have otherwise applied to the development if this section did not apply.
(d) For purposes of this section, “public transit” means either of the following:

(1) A high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code.

(2) A major transit stop as defined in Section 21064.3 of the Public Resources Code.

(e) The Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.
Item B-10
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 2 (Bradford) - Peace officers: certification: civil rights (SB 2) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 2 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 2, the Liaisons may recommend the following actions:

1) Support SB 2;
2) Support if amended SB 2;
3) Oppose SB 2;
4) Oppose unless amended SB 2;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 2, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
June 2, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 2 (Bradford) Peace officers: certification: civil rights


Summary
This bill grants new powers to the Commission on Peace Officer Standards and Training (POST) to investigate and determine peace officer fitness, decertify officers who engage in "serious misconduct," and make changes to the Bane Civil Rights Act limit immunity, as specified.

Specifically, this bill would:

- Requires POST to adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. The bill sets out a number of criteria that shall be included as serious misconduct.

- Grants POST the power to investigate and determine the fitness of any person to serve as a peace officer in the state of California and to audit any law enforcement agency that employs peace officers without cause at any time by creating and empowering a new division.
  - Creates the Peace Officer Standards Accountability Division (Division) within POST to investigate and prosecute proceedings to take action against a peace officer's certification.
  - Requires the Division to review and investigate grounds for decertification and make findings as to whether the grounds for action against an officer's certification exist.
  - Requires the Division to notify the officer subject to decertification of their findings and allow the officer to request review.

- Creates the Peace Officer Standards Accountability Advisory Board (Advisory Board) and sets forth the membership qualifications and a 3-year term of service.

- Requires that the Advisory Board hold public meetings to review the findings after an investigation made by the division and to make a recommendation to POST.

- Requires that POST adopt the recommendation of the Advisory Board if supported by clear and convincing evidence and if action is to be taken against an officer's certification, return the determination to the Division to commence formal proceedings before an administrative law judge consistent with the Administrative Procedures Act. And provides that the determination of the administrative law judge shall be subject to judicial review. This bill also requires that POST notify the employing agency of the officer and the district attorney of the county in which the officer is employed of their decision.
• Requires law enforcement agencies to report to POST:
  o The employment, appointment, or separation from employment of a peace officer;
  o Any complaint, charge, allegation, or investigation into the conduct of a peace
    officer that could render the officer subject to revocation;
  o Findings of civil oversight entities; and
  o Civil judgments that could affect the officer's certification.
• Requires, in cases of separation from employment or appointment, each agency is
  required to execute an affidavit-of-separation form adopted by POST describing the
  reason for the separation. This affidavit is signed under penalty of perjury.
• Declares that certificates or proof of eligibility awarded by POST to be the property
  of POST and would authorize POST to revoke a proof of eligibility or certificate on
  grounds including the use of excessive force, sexual assault, making a false arrest, or participating
  in a law enforcement gang.
• Requires law enforcement agencies only employ peace officers with current, valid
  certification or pending certification.
• Directs POST to issue or deny certification, including a basic certificate or proof of eligibility
  to a peace officer.
• Requires POST to issue a proof of eligibility or basic certificate to persons employed as a
  peace officer on January 1, 2022, who do not otherwise possess a certificate.
• Requires renewal of proof of eligibility or basic certification at least every two years and
  requires that POST assess a fee for the application, renewal, and the annual certification
  fee.
• Makes all records related to the revocation of a peace officer's certification public and
  would require that records of an investigation be retained for 30 years.
• Eliminates specified immunity provisions for peace and custodial officers or public entities
  employing peace or custodial officers sued under the Tom Bane Civil Rights Act.
• Authorizes persons who can otherwise bring actions for wrongful death to bring an action
  under the Tom Bane Civil Rights Act for the death of a person if the claim is based on
  conduct that constitutes a crime of violence or a crime of moral turpitude.

Background
This bill creates a process for decertification by creating the Peace Officer Standards
Accountability Division (Division) within POST. This Division is responsible for reviewing grounds
for decertification, conducting investigations into serious misconduct, presenting findings in
decertification procedures, and seeking revocation of certification of peace officers. The bill also
creates a Peace Officer Standards Accountability Advisory Board (Advisory Board). The Advisory
Board is tasked with hearing evidence of misconduct and making determinations about the
registration or decertification of peace officers. The Advisory Board conducts hearings publicly.
The bill makes the necessary amendments to the California code to permit the discussion of
peace officer personnel records introduced in these proceedings subject to public disclosure.

California's Bane Act protects persons from threats, intimidation, or coercion and attempts to
interfere with someone's state or federal statutory, constitutional rights. The Bane Act authorizes
a cause of action against a person who, whether or not acting under "color of law," uses threats,
inimidation, or coercion to interfere with the ability of another person in the exercise and
enjoyment of any rights guaranteed under the US or California constitutions, or any right
guaranteed under federal or state statute. Some courts have more restrictively interpreted the
Bane Act to require that threats, intimidation, or coercion must be committed with the specific
intent to interfere with the person's rights. Other courts have found that only general intent is
required.
**Status of Legislation**  
SB 2 passed off the Senate Floor and is currently pending in the Assembly Rules Committee.

**Arguments in Support**  
According to the Ella Baker Center for Human Rights, "This bill seeks to address and clarify court decisions that have made meaningful remedy for civil rights violations under the Bane Act essentially useless. The Bane Act is California's most broadly applicable and essential civil rights law. Bane Act claims are included whenever constitutional or other rights are violated by government or private actors, most commonly from law enforcement's use of excessive force or false arrest. The California remedy for civil rights violations has increased in importance in all civil rights cases, including use of force cases under the previous Trump Administration. Federal courts have made the doctrine of qualified immunity an increasingly potent obstacle to achieving justice for violations of rights under federal civil rights law. Importantly, qualified immunity does not apply to state law claims, including violations of the Bane Act. Given that federal law is slow to make meaningful change, it is imperative that the state act now to strengthen the ability of Californians who have their rights violated and impacted families to seek justice for loved ones killed by law enforcement officers."

**Arguments in Opposition:**  
Writing in opposition, the California State Sheriffs' Association explains, "We are concerned that the language removing employee immunity from state civil liability will result in individual peace officers hesitating or failing to act out of fear that actions they believe to be lawful may result in litigation and damages. In so doing, SB 2 will very likely jeopardize public safety and diminish our ability to recruit, hire, and retain qualified individuals who would otherwise be drawn to public service."

**Support**  
ACLU of California (co-source)  
Alliance for Boys and Men of Color (co-source)  
Anti-Police Terror Project (co-source)  
Black Lives Matter Los Angeles (co-source)  
California Families United 4 Justice (co-source)  
Communities United for Restorative Youth Justice (co-source)  
PolicyLink (co-source)  
STOP Coalition (co-source)  
UDW/AFSCME Local 3930 (co-source)  
Youth Justice Coalition (co-source)  
Against Bigotry, Responding With Action  
Alameda County Public Defender's Office  
All Home  
Alliance San Diego  
American Association of Independent Music  
American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties  
American Federation of State, County and Municipal Employees, Local 3299  
Artist Rights Alliance  
Asian Prisoner Support Committee  
Asian Solidarity Collective  
Bend the Arc: Jewish Action  
Black Leadership Council  
Black Music Action Coalition  
Brotherhood Crusade  
California Alliance for Youth and Community Justice  
California Department of Insurance  
California Faculty Association  
California Immigrant Policy Center  
California Innocence Coalition: Northern California  
California Innocence Project, California  
Innocence Project, Loyola Project for The Innocent  
California Nurses Association  
California Public Defenders Association  
Californians for Safety and Justice  
Change for Justice
Children's Defense Fund - California
City of Oakland
Clergy and Laity United for Economic Justice
Community Advocates for Just and Moral Governance
Consumer Attorneys of California
Courage California
Democratic Party of the San Fernando Valley
Disability Rights California
Drug Policy Alliance
East Bay for Everyone
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities
Equal Rights Advocates
Essie Justice Group
Everytown for Gun Safety Action Fund
Fresno Barrios Unidos
Friends Committee on Legislation of California
Fund Her
Giffords
Indivisible CA Statestrong
Indivisible East Bay
Indivisible South Bay LA
Indivisible Yolo
Initiate Justice
Justice Reinvestment Coalition of Alameda County
Kensington Community Church
Kern County Participatory Defense
LA Voice
Law Enforcement Accountability Network
Law Enforcement Action Partnership
League of Women Voters of California
Legal Services for Prisoners With Children
Los Angeles LGBT Center
Martin Luther King Jr Freedom Center
Mexican American Bar Association of Los Angeles County
Mid-city Community Advocacy Network
Moms Demand Action for Gun Sense in America
Mosques Against Trafficking
Music Artists Coalition
National Action Network - Sacramento Chapter
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
National Nurses United
Nextgen California
Orange County Emergency Response Coalition
Organizers in Solidarity
Pacifica Social Justice
Palomar UU Fellowship
People’s Budget Orange County
Pico California
Pillars of the Community
Prosecutors Alliance of California
Public Health Institute
Recording Industry Association of America
Roots of Change
Salesforce
San Diegans for Justice
San Francisco Bay Area Rapid Transit District
San Francisco Board of Supervisors
San Francisco Public Defender
San Jose State University Human Rights Institute
Santa Monica Coalition for Police Reform
Screen Actors Guild-American Federation of Television and Radio Artists
SEIU California
Showing Up for Racial Justice Long Beach
Showing Up for Racial Justice North County
Showing Up for Racial Justice North County San Diego
Showing Up for Racial Justice San Diego
Silicon Valley Leadership Group
Songwriters of North America
Southeast Asia Resource Action Center
Students Demand Action for Gun Sense in America
Team Justice
The Resistance Northridge Indivisible
Think Dignity
Together We Will/Indivisible - Los Gatos
Uprise Theatre
We the People - San Diego
White People 4 Black Lives
Yalla Indivisible
Opposition
Association for Los Angeles Deputy Sheriffs
Association of Orange County Deputy Sheriff's
Association of Probation Supervisors of Los Angeles County
California Association of Highway Patrolmen
California Association of Joint Powers Authorities
California Coalition of School Safety Professionals
California Correctional Peace Officers Association
California Fraternal Order of Police
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs’ Association
California Statewide Law Enforcement Association
City of Fountain Valley
City of Kerman
Corona Police Officers Association
Deputy Sheriffs Association of San Diego
Hawthorne Police Officers Association
League of California Cities
Long Beach Police Officers Association
Los Angeles County Probation Managers Association, AFSCME, Local 1967
Los Angeles Police Protective League
Los Angeles School Police Officers Association
Newport Beach Police Association
Pacific Justice Institute
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Riverside Sheriffs’ Association
Sacramento County Deputy Sheriffs Association
San Bernardino County Safety Employees' Benefit Association
San Bernardino County Sheriff’s Employees’ Benefit Association
San Diego District Attorney Investigator’s Association
San Diego Police Officers Association
San Francisco Police Officers Association
Santa Ana Police Officers Association
Attachment 2
April 27, 2021

The Honorable Steven Bradford
California State Senate
State Capitol Building, Room 2059
Sacramento, CA 95814

RE: SB 2 (Bradford) Peace Officers: Certification: Civil Rights
Notice of OPPOSITION

Dear Senator Bradford,

The League of California Cities (Cal Cities) must respectfully oppose Senate Bill 2. This measure makes detrimental changes to the Tom Bane Civil Rights Act, undercuts the federally held doctrine of qualified immunity, and outlines a largely unworkable peace officer decertification process.

In response to George Floyd's death and the civil unrest the ensued across the nation, it is important that public safety and police reform is a priority. To meet the urgency of the call for these much-needed changes, Cal Cities established a Public Safety Task Force to assist our Public Safety Policy Committee and Board of Directors. The Public Safety Task Force reviewed legislation and made recommendations to update our policies to assist with our advocacy on behalf of cities. This task force has analyzed and debated several of the bills moving through the Legislature this session and provided recommendations to our Board of Directors for consideration in the coming days.

The Tom Bane Civil Rights Act provides: “If a person ... interferes ... or attempts to interfere by threats, intimidation, or coercion, with the exercise ... by any individual ... of rights secured by the Constitution or laws of the United States, or the rights secured by the Constitution or laws of this state,” the individual can bring “a civil action for damages.” This measure would lower the current proof requirement that the individual filing suit demonstrate that the person being sued specifically intended to violate the individual’s constitutional rights to now require proof that the person being sued generally intended to engage in the conduct that ultimately resulted in an alleged constitutional violation. This change will undoubtedly increase claims under the Bane Act—along with the associated attorney’s fees.

The intent of SB 2, as outlined in its legislative findings, is to eliminate instances of “officers escaping accountability in civil courts, even when they have broken the law or violated the rights of members of the public.” As written, we do not believe this measure meets that end but instead increases liability significantly for employing agencies (cities and counties) who are often responsible for paying settlements or judgments resulting from these lawsuits. The ultimate result could significantly impact local budgets, that would thereby impact taxpayers.
SB 2 would undercut qualified immunity, a common law doctrine that applies in federal courts, as it will significantly increase the volume and extent of lawsuits being filed in state court that would otherwise have been filed in federal court. Qualified immunity is meant to protect state and local governments from having to pay money damages for actions not yet deemed unconstitutional by a court: “This accommodation for reasonable error exists because officials should not err always on the side of caution because they fear being sued.” *Hunter v. Bryant*, 502 U.S. 224, 229 (1991).

Qualified immunity has very clearly outlined parameters and does not apply to every officer in every incident. The Supreme Court has held that police and correctional officer use of force violates the Fourth Amendment when it is “excessive.” Police and correctional officers receive qualified immunity if it is not clearly established that their use of force was excessive. According to the Supreme Court, while qualified immunity “do[es] not require a case directly on point,” it does require that “existing precedent must have placed the statutory or constitutional question beyond debate.”

Finally, SB 2 would increase the administrative burden on local agencies to report to the Peace Officer Standards and Training (POST) Commission and essentially eliminate local control relating to action taken on incidents within their jurisdiction. The powers granted to POST to initiate investigations and proceed with findings effectively undercut the leadership of our chiefs of police.

For these reasons, the Cal Cities opposes SB 2. If you have any questions, please feel free to contact me at (916) 658-8252.

Sincerely,

Elisa Arcidiacono
Legislative Representative
Attachment 3
An act to amend Section 52.1 of the Civil Code, to amend Section 1029 of the Government Code, and to amend Sections 832.7, 13503, 13506, 13510, 13510.1, and 13512 of, to amend the heading of Article 2 (commencing with Section 13510) of Chapter 1 of Title 4 of Part 4 of, and to add Sections 13509.5, 13509.6, 13510.15, 13510.8, 13510.85, and 13510.9 to, the Penal Code, relating to public employment, and making an appropriation therefor.

LEGISLATIVE COUNSEL’S DIGEST

SB 2, as amended, Bradford. Peace officers: certification: civil rights. (1) Under existing law, the Tom Bane Civil Rights Act, if a person or persons, whether or not acting under color of law, interferes or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney, is authorized to bring a civil action for
injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the exercise or enjoyment of the right or rights secured. Existing law also authorizes an action brought by the Attorney General, or any district attorney or city attorney, to seek a civil penalty of $25,000. Existing law also allows an individual whose exercise or enjoyment of rights has been interfered with to prosecute a civil action for damages on their own behalf.

This bill would provide that a threat, intimidation, or coercion under the act may be inherent in any interference with a civil right and would describe intentional acts for these purposes as an act in which the person acted with general intent or a conscious objective to engage in particular conduct.

The bill would eliminate certain immunity provisions for peace officers and custodial officers, or public entities employing peace officers or custodial officers sued under the act. The bill would also authorize, in certain circumstances, specified persons to bring an action under the act for the death of a person.

(2) Existing laws defines persons who are peace officers and the entities authorized to appoint them. Existing law requires certain minimum training requirements for peace officers including the completion of a basic training course, as specified. Existing law prescribes certain minimum standards for a person to be appointed as a peace officer, including moral character and physical and mental condition, and certain disqualifying factors for a person to be employed as a peace officer, including a felony conviction.

This bill would disqualify a person from being employed as a peace officer if that person has been convicted of, or has been adjudicated in an administrative, military, or civil judicial process as having committed, a violation of certain specified crimes against public justice, including the falsification of records, bribery, or perjury. The bill would also disqualify any person who has been certified as a peace officer by the Commission on Peace Officer Standards and Training and has surrendered that certification or had that certification revoked by the commission, or has been denied certification. The bill would disqualify any person previously employed in law enforcement in any state or United States territory or by the federal government, whose name is listed in the national decertification index or who engaged in serious misconduct that would have resulted in their certification being revoked in this state. The bill would require a law enforcement agency employing
certain peace officers to employ only individuals with a current, valid certification or pending certification.

(3) Existing law establishes the Commission on Peace Officer Standards and Training to set minimum standards for the recruitment and training of peace officers and to develop training courses and curriculum. Existing law authorizes the commission to establish a professional certificate program that awards basic, intermediate, advanced, supervisory, management, and executive certificates on the basis of a combination of training, education, experience, and other prerequisites, for the purpose of fostering the professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers. Existing law authorizes the commission to cancel a certificate that was awarded in error or obtained through misrepresentation or fraud, but otherwise prohibits the commission from canceling a certificate that has properly been issued.

This bill would grant the commission the power to investigate and determine the fitness of any person to serve as a peace officer in the state. The bill would direct the commission to issue or deny certification, which includes a basic certificate or proof of eligibility, to a peace officer in accordance with specified criteria. The bill would require the commission to issue a proof of eligibility or basic certificate, as specified, to certain persons employed as a peace officer on January 1, 2022, who do not otherwise possess a certificate. The bill would require a proof of eligibility or basic certificate to be renewed at least every 2 years and would require the commission to assess a fee for the application and renewal of the certificate or proof of eligibility, as well as an annual certification fee. The bill would require the fees to be deposited into the Peace Officer Certification Fund, created by the bill, and would continuously appropriate those funds to the commission for the administration of the certification program, as specified, thereby making an appropriation. The bill would declare certificates or proof of eligibility awarded by the commission to be property of the commission and would authorize the commission to revoke a proof of eligibility or certificate on specified grounds, including the use of excessive force, sexual assault, making a false arrest, or participating in a law enforcement gang, as defined.

The bill would create the Peace Officer Standards Accountability Division within the commission to investigate and prosecute proceedings to take action against a peace officer’s certification. The bill would
require the division to review and investigate grounds for decertification and make findings as to whether grounds for action against an officer’s certification exist. The bill would require the division to notify the officer subject to decertification of their findings and allow the officer to request review. The bill would also create the Peace Officer Standards Accountability Advisory Board with 9 members to be appointed as specified. The bill would require the board to hold public meetings to review the findings after an investigation made by the division and to make a recommendation to the commission. The bill would require the commission to adopt the recommendation of the board if supported by clear and convincing evidence and, if action is to be taken against an officer’s certification, return the determination to the division to commence formal proceedings consistent with the Administrative Procedure Act. The bill would require the commission to notify the employing agency and the district attorney of the county in which the officer is employed of this determination, as specified.

The bill would make all records related to the revocation of a peace officer’s certification public and would require that records of an investigation be retained for 30 years.

The bill would require an agency employing peace officers to report to the commission the employment, appointment, or separation from employment of a peace officer, any complaint, charge, allegation, or investigation into the conduct of a peace officer that could render the officer subject to revocation, findings by civil oversight entities, and civil judgements that could affect the officer’s certification.

In case of a separation from employment or appointment, the bill would require each agency to execute an affidavit-of-separation form adopted by the commission describing the reason for separation. The bill would require the affidavit to be signed under penalty of perjury. By creating a new crime, this bill would impose a state-mandated local program.

The bill would require the board to report annually on the activities of the division, board, and commission, relating to the certification program, including the number of applications for certification, the events reported, the number of investigations conducted, and the number of certificates surrendered or revoked.

By imposing new requirements on local agencies, this bill would impose a state-mandated local program.
The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.


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

SECTION 1. This act shall be known as the Kenneth Ross Jr. Police Decertification Act of 2021.

SEC. 2. The Legislature finds and declares all of the following:

(a) As the Legislature and courts of this state have repeatedly recognized, police officers, sheriffs’ deputies, and other peace officers hold extraordinary powers to detain, to search, to arrest, and to use force, including deadly force. The state has a correspondingly strong interest in ensuring that peace officers do not abuse their authority, including by ensuring that individual peace officers who abuse their authority are held accountable.

(b) California is one of the last few states that does not have a process for revoking peace officer certificates as a result of misconduct. Nationwide, 45 states have the authority to decertify peace officers. Four states do not have decertification authority: California, Hawaii, New Jersey, and Rhode Island.

(c) In 2017, 172 Californians were killed by the police, and our state’s police departments have some of the highest rates of killings in the nation. Of the unarmed people California police killed, three out of four were people of color. Black and Latino families and communities of color are disproportionately vulnerable to police violence, creating generations of individual and community trauma.

(d) More than 200 professions and trades, including doctors, lawyers, and contractors are licensed or certified by the State of California, in order to maintain professional standards and to protect the public. Law enforcement officers are entrusted with extraordinary powers including the power to carry a firearm, to
stop and search, to arrest, and to use force. They must be held to
the highest standards of accountability, and the state should ensure
that officers who abuse their authority by committing serious or
repeated misconduct, or otherwise demonstrate a lack of fitness
to serve as peace officers, are removed from the streets.
(e) To ensure public trust that the system for decertification will
hold peace officers accountable for misconduct and that
California’s standards for law enforcement reflect community
values, it is the intent of the Legislature that the entities charged
with investigating and rendering decisions on decertification shall
be under independent civilian control and maintain independence
from law enforcement.
(f) Civil courts provide a vital avenue for individuals harmed
by violations of the law by peace officers to find redress and
accountability. But the judicially created doctrine of qualified
immunity in federal courts, and broad interpretations of California
law immunities and restrictive views on the cause of action under
the Tom Bane Civil Rights Act, too often lead to officers escaping
accountability in civil courts, even when they have broken the law
or violated the rights of members of the public. The civil court
process should ensure that peace officers are treated fairly, but that
they can be held accountable for violations of the law that harm
others, especially the use of excessive force.
SEC. 3. Section 52.1 of the Civil Code is amended to read:
52.1. (a) This section shall be known, and may be cited, as the
Tom Bane Civil Rights Act.
(b) (1) If a person or persons, whether or not acting under color
of law, interferes by threat, intimidation, or coercion, or attempts
to interfere by threat, intimidation, or coercion, with the exercise
or enjoyment by any individual or individuals of rights secured by
the Constitution or laws of the United States, or of the rights
secured by the Constitution or laws of this state, the Attorney
General, or any district attorney or city attorney may bring a civil
action for injunctive and other appropriate equitable relief in the
name of the people of the State of California, in order to protect
the peaceable exercise or enjoyment of the right or rights secured.
An action brought by the Attorney General, any district attorney,
or any city attorney may also seek a civil penalty of twenty-five
thousand dollars ($25,000). If this civil penalty is requested, it
shall be assessed individually against each person who is
determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(2) The threat, intimidation, or coercion required under this section need not be separate or independent from, and may be inherent in, any interference or attempted interference with a right. A person bringing suit under this section need not prove that a person being sued under this section had specific intent to interfere or attempt to interfere with a right secured by the Constitution or law. For any person, public entity, or private entity sued under this section, intentional conduct to interfere or attempt to interfere with a constitutional right or right granted by law that interferes or attempts to interfere with that right, is sufficient to prove a violation of this section by threat, intimidation, or coercion. For purposes of this section, a person acts “intentionally” when the person acts with general intent or a conscious objective to engage in particular conduct.

(c) (1) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (b), may institute and prosecute in their own name and on their own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured, including appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct as described in subdivision (b).

(2) A cause of action under this section for the death of a person may be asserted by any person described in Section 377.60 of the Code of Civil Procedure. A person may only bring a cause of action under this paragraph if the conduct on which the claim is based constitutes a crime of violence or a crime of moral turpitude.

(d) An action brought pursuant to subdivision (b) or (c) may be filed either in the superior court for the county in which the conduct complained of occurred or in the superior court for the county in which a person whose conduct complained of resides or has their place of business. An action brought by the Attorney General pursuant to subdivision (b) also may be filed in the superior court.
for any county wherein the Attorney General has an office, and in that case, the jurisdiction of the court shall extend throughout the state.

(e) If a court issues a temporary restraining order or a preliminary or permanent injunction in an action brought pursuant to subdivision (b) or (c), ordering a defendant to refrain from conduct or activities, the order issued shall include the following statement: VIOLATION OF THIS ORDER IS A CRIME PUNISHABLE UNDER SECTION 422.77 OF THE PENAL CODE.

(f) The court shall order the plaintiff or the attorney for the plaintiff to deliver, or the clerk of the court to mail, two copies of any order, extension, modification, or termination thereof granted pursuant to this section, by the close of the business day on which the order, extension, modification, or termination was granted, to each local law enforcement agency having jurisdiction over the residence of the plaintiff and any other locations where the court determines that acts of violence against the plaintiff are likely to occur. Those local law enforcement agencies shall be designated by the plaintiff or the attorney for the plaintiff. Each appropriate law enforcement agency receiving any order, extension, or modification of any order issued pursuant to this section shall serve forthwith one copy thereof upon the defendant. Each appropriate law enforcement agency shall provide to any law enforcement officer responding to the scene of reported violence, information as to the existence of, terms, and current status of, any order issued pursuant to this section.

(g) A court shall not have jurisdiction to issue an order or injunction under this section, if that order or injunction would be prohibited under Section 527.3 of the Code of Civil Procedure.

(h) An action brought pursuant to this section is independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law, including, but not limited to, an action, remedy, or procedure brought pursuant to Section 51.7.

(i) In addition to any damages, injunction, or other equitable relief awarded in an action brought pursuant to subdivision (c), the court may award the petitioner or plaintiff reasonable attorney’s fees.
(j) A violation of an order described in subdivision (e) may be punished either by prosecution under Section 422.77 of the Penal Code, or by a proceeding for contempt brought pursuant to Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure. However, in any proceeding pursuant to the Code of Civil Procedure, if it is determined that the person proceeded against is guilty of the contempt charged, in addition to any other relief, a fine may be imposed not exceeding one thousand dollars ($1,000), or the person may be ordered imprisoned in a county jail not exceeding six months, or the court may order both the imprisonment and fine.

(k) Speech alone is not sufficient to support an action brought pursuant to subdivision (b) or (c), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.

(l) No order issued in any proceeding brought pursuant to subdivision (b) or (c) shall restrict the content of any person’s speech. An order restricting the time, place, or manner of any person’s speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights, consistent with the constitutional rights of the person sought to be enjoined.

(m) The rights, penalties, remedies, forums, and procedures of this section shall not be waived by contract except as provided in Section 51.7.

(n) The state immunity provisions provided in Sections 821.6, 844.6, and 845.6 of the Government Code shall not apply to any cause of action brought against any peace officer or custodial officer, as those terms are defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or directly against a public entity that employs a peace officer or custodial officer, under this section.

(o) Sections 825, 825.2, 825.4, and 825.6 of the Government Code, providing for indemnification of an employee or former employee of a public entity, shall apply to any cause of action
brought under this section against an employee or former employee
of a public entity.

SEC. 4. Section 1029 of the Government Code is amended to
read:

1029. (a) Except as provided in subdivision (b), (c), (d), or
(e), each of the following persons is disqualified from holding
office as a peace officer or being employed as a peace officer of
the state, county, city, city and county or other political subdivision,
whether with or without compensation, and is disqualified from
any office or employment by the state, county, city, city and county
or other political subdivision, whether with or without
compensation, which confers upon the holder or employee the
powers and duties of a peace officer:

1. Any person who has been convicted of a felony.

2. Any person who has been convicted of any offense in any
other jurisdiction which would have been a felony if committed
in this state.

3. Any person who has been discharged from the military for
committing an offense, as adjudicated by a military tribunal, which
would have been a felony if committed in this state.

4. Any person who, after January 1, 2004, has been convicted
of a crime based upon a verdict or finding of guilt of a felony by
the trier of fact, or upon the entry of a plea of guilty or nolo
contendere to a felony. This paragraph applies regardless of
whether, pursuant to subdivision (b) of Section 17 of the Penal
Code, the court declares the offense to be a misdemeanor or the
offense becomes a misdemeanor by operation of law.

5. Any person who has been charged with a felony and
adjudged by a superior court to be mentally incompetent under
Chapter 6 (commencing with Section 1367) of Title 10 of Part 2
of the Penal Code.

6. Any person who has been found not guilty by reason of
insanity of any felony.

7. Any person who has been determined to be a mentally
disordered sex offender pursuant to Article 1 (commencing with
Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare
and Institutions Code.

8. Any person adjudged addicted or in danger of becoming
addicted to narcotics, convicted, and committed to a state institution
as provided in Section 3051 of the Welfare and Institutions Code.
(9) Any person who has been convicted of, or adjudicated through an administrative, military, or civil judicial process, including a hearing that meets the requirements of the administrative adjudication provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), as having committed, any act that is a violation of Section 115, 115.3, 116, 116.5, or 117 of, or of any offense described in Chapter 1 (commencing with Section 92), Chapter 5 (commencing with Section 118), Chapter 6 (commencing with Section 132), or Chapter 7 (commencing with Section 142) of Title 7 of Part 1 of the Penal Code, including any act committed in another jurisdiction that would have been a violation of any of those sections if committed in this state.

(10) Any person who has been issued the certification described in Section 13510.1 of the Penal Code, and has had that certification revoked by the Commission on Peace Officer Standards and Training, has voluntarily surrendered that certification pursuant to subdivision (f) of Section 13510.8, or having met the minimum requirement for issuance of certification, has been denied issuance of certification.

(11) Any person previously employed in law enforcement in any state or United States territory or by the federal government, whose name is listed in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or whose certification as a law enforcement officer in that jurisdiction was revoked for misconduct, or who, while employed as a law enforcement officer, engaged in serious misconduct that would have resulted in their certification being revoked by the commission if employed as a peace officer in this state.

(b) (1) A plea of guilty to a felony pursuant to a deferred entry of judgment program as set forth in Sections 1000 to 1000.4, inclusive, of the Penal Code shall not alone disqualify a person from being a peace officer unless a judgment of guilty is entered pursuant to Section 1000.3 of the Penal Code.

(2) A person who pleads guilty or nolo contendere to, or who is found guilty by a trier of fact of, an alternate felony-misdemeanor drug possession offense and successfully completes a program of probation pursuant to Section 1210.1 of the Penal Code shall not
be disqualified from being a peace officer solely on the basis of
the plea or finding if the court deems the offense to be a
misdemeanor or reduces the offense to a misdemeanor.
(c) Any person who has been convicted of a felony, other than
a felony punishable by death, in this state or any other state, or
who has been convicted of any offense in any other state which
would have been a felony, other than a felony punishable by death,
if committed in this state, and who demonstrates the ability to
assist persons in programs of rehabilitation may hold office and
be employed as a parole officer of the Department of Corrections
and Rehabilitation or the Division of Juvenile Justice, or as a
probation officer in a county probation department, if the person
has been granted a full and unconditional pardon for the felony or
offense of which they were convicted. Notwithstanding any other
 provision of law, the Department of Corrections and Rehabilitation
or the Division of Juvenile Justice, or a county probation
department, may refuse to employ that person regardless of their
qualifications.
(d) This section does not limit or curtail the power or authority
of any board of police commissioners, chief of police, sheriff,
mayor, or other appointing authority to appoint, employ, or
deputize any person as a peace officer in time of disaster caused
by flood, fire, pestilence or similar public calamity, or to exercise
any power conferred by law to summon assistance in making
arrests or preventing the commission of any criminal offense.
(e) This section does not prohibit any person from holding office
or being employed as a superintendent, supervisor, or employee
having custodial responsibilities in an institution operated by a
probation department, if at the time of the person’s hire a prior
conviction of a felony was known to the person’s employer, and
the class of office for which the person was hired was not declared
by law to be a class prohibited to persons convicted of a felony,
but as a result of a change in classification, as provided by law,
the new classification would prohibit employment of a person
convicted of a felony.
SEC. 5. Section 832.7 of the Penal Code is amended to read:
832.7. (a) Except as provided in subdivision (b), the personnel
records of peace officers and custodial officers and records
maintained by any state or local agency pursuant to Section 832.5,
or information obtained from these records, are confidential and
shall not be disclosed in any criminal or civil proceeding except
by discovery pursuant to Sections 1043 and 1046 of the Evidence
Code. This section shall not apply to investigations or proceedings
concerning the conduct of peace officers or custodial officers, or
an agency or department that employs those officers, conducted
by a grand jury, a district attorney’s office, the Attorney General’s
office, or the Commission on Peace Officer Standards and Training.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of
Section 6254 of the Government Code, or any other law, the
following peace officer or custodial officer personnel records and
records maintained by any state or local agency shall not be
confidential and shall be made available for public inspection
pursuant to the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code):

(A) A record relating to the report, investigation, or findings of
any of the following:

(i) An incident involving the discharge of a firearm at a person
by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or
custodial officer against a person resulted in death, or in great
bodily injury.

(B) (i) Any record relating to an incident in which a sustained
finding was made by any law enforcement agency or oversight
agency that a peace officer or custodial officer engaged in sexual
assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the
commission or attempted initiation of a sexual act with a member
of the public by means of force, threat, coercion, extortion, offer
of leniency or other official favor, or under the color of authority.
For purposes of this definition, the propositioning for or
commission of any sexual act while on duty is considered a sexual
assault.

(iii) As used in this subparagraph, “member of the public” means
any person not employed by the officer’s employing agency and
includes any participant in a cadet, explorer, or other youth program
affiliated with the agency.

(C) Any record relating to an incident in which a sustained
finding was made by any law enforcement agency or oversight
agency of dishonesty by a peace officer or custodial officer directly
relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

(3) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B) or (C) of paragraph (1), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (B) or (C) of paragraph (1).

(5) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.
(B) To preserve the anonymity of complainants and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency’s determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency’s determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the
disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule thereto, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may
delay the disclosure of records or information until the investigating
agency determines whether the use of force violated a law or
agency policy, but no longer than 180 days after the date of the
employing agency’s discovery of the use of force, or allegation of
use of force, by a person authorized to initiate an investigation, or
30 days after the close of any criminal investigation related to the
peace officer or custodial officer’s use of force, whichever is later.
(8) A record of a civilian complaint, or the investigations,
findings, or dispositions of that complaint, shall not be released
pursuant to this section if the complaint is frivolous, as defined in
Section 128.5 of the Code of Civil Procedure, or if the complaint
is unfounded.
(c) Notwithstanding subdivisions (a) and (b), a department or
agency shall release to the complaining party a copy of the party’s
own statements at the time the complaint is filed.
(d) Notwithstanding subdivisions (a) and (b), a department or
agency that employs peace or custodial officers may disseminate
data regarding the number, type, or disposition of complaints
(sustained, not sustained, exonerated, or unfounded) made against
its officers if that information is in a form which does not identify
the individuals involved.
(e) Notwithstanding subdivisions (a) and (b), a department or
agency that employs peace or custodial officers may release factual
information concerning a disciplinary investigation if the officer
who is the subject of the disciplinary investigation, or the officer’s
agent or representative, publicly makes a statement that they know
to be false concerning the investigation or the imposition of
disciplinary action. Information may not be disclosed by the peace
or custodial officer’s employer unless the false statement was
published by an established medium of communication, such as
television, radio, or a newspaper. Disclosure of factual information
by the employing agency pursuant to this subdivision is limited
to facts contained in the officer’s personnel file concerning the
disciplinary investigation or imposition of disciplinary action that
specifically refute the false statements made public by the peace
or custodial officer or their agent or representative.
(f) (1) The department or agency shall provide written
notification to the complaining party of the disposition of the
complaint within 30 days of the disposition.
(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer’s personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public’s right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 6. Section 13503 of the Penal Code is amended to read:

13503. In carrying out its duties and responsibilities, the commission shall have all of the following powers:

(a) To meet at those times and places as it may deem proper.

(b) To employ an executive secretary and, pursuant to civil service, those clerical and technical assistants as may be necessary.

(c) To contract with other agencies, public or private, or persons as it deems necessary, for the rendition and affording of those services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities.

(d) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and in performing its other functions.

(e) To develop and implement programs to increase the effectiveness of law enforcement and when those programs involve training and education courses to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs.

(f) To investigate and determine the fitness of any person to serve as a peace officer in the State of California.

(g) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government.
(h) To audit any law enforcement agency that employs peace officers described in subdivision (a) of Section 13510.1, without cause and at any time.

(i) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it.

SEC. 7. Section 13506 of the Penal Code is amended to read:

13506. The commission may adopt those regulations as are necessary to carry out the purposes of this chapter.

SEC. 8. Section 13509.5 is added to the Penal Code, to read:

13509.5. (a) There is within the commission a Peace Officer Standards Accountability Division, hereafter referred to in this chapter as the division.

(b) The primary responsibilities of the division shall be to review potential grounds for decertification of peace officers, conduct investigations into serious misconduct that may provide grounds for decertification, present findings and recommendations to the board and commission, and bring proceedings seeking the revocation of certification of peace officers as directed by the board and commission pursuant to this chapter.

(c) The Governor and the commission shall ensure the division is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of decertification investigations, prosecutions, and administrative proceedings against peace officers.

(d) The commission shall establish procedures for accepting complaints from members of the public regarding peace officers or law enforcement agencies that may be investigated by the division or referred to the peace officers’ employing agency or the Department of Justice.

SEC. 9. Section 13509.6 is added to the Penal Code, to read:

13509.6. (a) No later than January 1, 2023, the Governor shall establish the Peace Officer Standards Accountability Advisory Board, hereafter referred to in this chapter as the board.

(b) The purpose of the board shall be to make recommendations on the decertification of peace officers to the commission.

(c) The protection of the public shall be the highest priority for the board as it upholds the standards for peace officers in California. Whenever the protection of the public is inconsistent
with other interests sought to be promoted, the protection of the
public shall be paramount.

(d) The board shall consist of nine members, as follows:
(1) One member shall be a peace officer or former peace officer
with substantial experience at a command rank, appointed by the
Governor.
(2) One member shall be a peace officer or former peace officer
with substantial experience at a management rank in internal
investigations or disciplinary proceedings of peace officers,
appointed by the Governor.
(3) Two members shall be members of the public, who shall
not be former peace officers, who have substantial experience
working at nonprofit or academic institutions on issues related to
police misconduct. One of these members shall be appointed by
the Governor and one by the Speaker of the Assembly.
(4) Two members shall be members of the public, who shall
not be former peace officers, who have substantial experience
working at community-based organizations on issues related to
police misconduct. One of these members shall be appointed by
the Governor and one by the Senate Rules Committee.
(5) Two members shall be members of the public, who shall
not be former peace officers, who have been subject to wrongful
use of force likely to cause death or serious bodily injury by a
peace officer, or who are surviving family members of a person
killed by the wrongful use of deadly force by a peace officer,
appointed by the Governor.
(6) One member shall be an attorney, who shall not be a former
peace officer, with substantial professional experience involving
oversight of peace officers, appointed by the Governor.
(e) Except as otherwise provided in subdivision (f), each member
shall be appointed for a term of three years and shall hold office
until the appointment of the member’s successor or until one year
has elapsed since the expiration of the term for which the member
was appointed, whichever occurs first. Vacancies occurring shall
be filled by appointment for the unexpired term of a person with
the same qualification for appointment as the person being
replaced. No person shall serve more than two terms consecutively.
The Governor shall remove from the board any peace officer
member whose certification as a peace officer has been revoked.
The Governor may, after hearing, remove any member of the board for neglect of duty or other just cause.

(f) Of the members initially appointed to the board, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. Successor appointments shall be made pursuant to subdivision (e).

(g) Each member of the board shall receive a per diem of three hundred fifty dollars ($350) for each day actually spent in the discharge of official duties, including reasonable time spent in preparation for public hearings, and shall be reimbursed for travel and other expenses necessarily incurred in the performance of official duties. Upon request of a member based on financial necessity, the commission shall arrange and make direct payment for travel or other necessities rather than providing reimbursement.

SEC. 10. The heading of Article 2 (commencing with Section 13510) of Chapter 1 of Title 4 of Part 4 of the Penal Code is amended to read:

Article 2. Field Services, Standards, and Certification

SEC. 11. Section 13510 of the Penal Code is amended to read:

13510. (a) (1) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing and upholding minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff’s office, marshals or deputy marshals, peace officer members of a county coroner’s office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney’s office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.
(2) The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff’s offices, marshals or deputy marshals, peace officer members of a county coroner’s office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney’s office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, and housing authority police departments.

(3) These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards that are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing
with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, “primary responsibility” refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) This section does not prohibit a local agency from establishing selection and training standards that exceed the minimum standards established by the commission.

SEC. 12. Section 13510.1 of the Penal Code is amended to read:

13510.1. (a) The commission shall establish a certification program for peace officers described in Section 830.1, 830.2 with the exception of those described in subdivision (d) of that section, 830.3, 830.32, or 830.33, or any other peace officer employed by an agency that participates in the Peace Officer Standards and Training (POST) program. A certificate or proof of eligibility issued pursuant to this section shall be considered the property of the commission.

(b) Basic, intermediate, advanced, supervisory, management, and executive certificates shall be established for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officer members of city police departments, county sheriffs’ departments, districts, university and state university and college departments, or by the California Highway Patrol.

(c) (1) Certificates shall be awarded on the basis of a combination of training, education, experience, and other prerequisites, as determined by the commission.

(2) In determining whether an applicant for certification has the requisite education, the commission shall recognize as acceptable college education only the following:

(A) Education provided by a community college, college, or university which has been accredited by the department of education of the state in which the community college, college, or
university is located or by a recognized national or regional
accrediting body.

(B) Until January 1, 1998, educational courses or degrees
provided by a nonaccredited but state-approved college that offers
programs exclusively in criminal justice.

(d) Persons who are determined by the commission to be eligible
peace officers may make application for the certificates, provided
they are employed by an agency which participates in the POST
program. Any person described in subdivision (a) who is not
eligible for a certificate shall make application for proof of
eligibility.

(e) The commission shall assign each person who applies for
or receives certification a unique identifier that shall be used to
track certification status from application for certification through
that person’s career as a peace officer.

(f) The commission shall have the authority to suspend, revoke,
or cancel any certification pursuant to this chapter.

(g) An agency that employs peace officers described in
subdivision (a) shall employ as a peace officer only individuals
with current, valid certification pursuant to this section, except
that an agency may provisionally employ a person for up to 24
months, pending certification by the commission, provided that
the person has applied for certification and has not previously been
certified or denied certification.

(h) (1) Notwithstanding subdivision (d), the commission shall
issue a basic certificate or proof of eligibility to any peace officer
described in subdivision (a) who, on January 1, 2022, is eligible
for a basic certificate or proof of eligibility but has not applied for
a certification.

(2) Commencing on January 1, 2022, any peace officer described
in subdivision (a) who does not possess a basic certificate and who
is not yet or will not be eligible for a basic certificate, shall apply
to the commission for proof of eligibility.

(i) As used in this chapter, “certification” means a valid and
unexpired basic certificate or proof of eligibility issued by the
commission pursuant to this section.

SEC. 13. Section 13510.15 is added to the Penal Code,
immediately following Section 13510.1, to read:

13510.15. (a) Every basic certificate issued before January 1,
2022, shall be deemed to expire on January 1, 2023. Every basic
certificate or proof of eligibility issued on or after January 1, 2022, shall be valid for no more than two years, as determined by the commission.

(b) The commission shall assess the following fees related to the issuance and renewal of a basic certificate or proof of eligibility:

1. A fee not to exceed three hundred dollars ($300) for the initial issuance of a basic certificate or proof of eligibility.
2. A fee not to exceed fifty dollars ($50) for the renewal of an expiring basic certificate or proof of eligibility.
3. An annual certification fee not to exceed two hundred fifty dollars ($250), per year, for costs incident to the administration of the certification program, investigations of officer misconduct, and adjudication of certification revocations.
4. Any other fees determined necessary by the commission for the processing of other transactions related to the certification program, including, but not limited to, the replacement of a lost or destroyed certificate or proof of eligibility, the placement of certification on inactive status, or reactivation of an inactive certification.

(c) The amount of the fees shall be set and may be adjusted by the commission, but shall not exceed the reasonable regulatory cost to the commission of administering the certification program.

(d) Moneys collected pursuant to this section shall be deposited into the Peace Officer Certification Fund, which is hereby created as a special fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the Peace Officer Certification Fund are continuously appropriated to the commission for the purpose of administering the certification program.

SEC. 14. Section 13510.8 is added to the Penal Code, to read:

A certified peace officer shall have their certification revoked, and an applicant shall have their application for certification denied, upon a determination pursuant to subdivision (d) that the peace officer or applicant has done any of the following:

1. The person is or has become ineligible to hold office as a peace officer pursuant to Section 1029 of the Government Code.
2. The person has been terminated for cause from employment as a peace officer for, or has, while employed as a peace officer, otherwise engaged in, any serious misconduct as described in subdivision (b).
(b) By January 1, 2023, the commission shall adopt by regulation a definition of “serious misconduct” that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification. This definition shall, without limitation, include all of the following:

(1) Acts of dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

(2) Acts of abuse of power, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.

(3) Acts of physical abuse, including, but not limited to, the unauthorized use of force.

(4) Sexual assault, as described in subdivision (b) of Section 832.7.

(5) Acts demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.

(6) Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with an officer’s obligation to uphold the law or respect the rights of members of the public, as determined by the commission.

(7) Participation in a law enforcement gang or other organization that engages in a pattern of rogue on-duty behavior that violates the law or fundamental principles of professional policing, including, but not limited to, unlawful detention, use of excessive force, falsifying police reports, fabricating evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, use of alcohol or drugs on duty, protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.
(8) Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to this chapter.

(c) (1) Beginning no later than January 1, 2023, the division shall promptly review and investigate any grounds for decertification described in subdivision (a) received from an agency.

(2) In addition to the requirement to investigate incidents specified in paragraph (1), the commission or board, in their discretion, may direct the division to investigate, and the division in its discretion may investigate without the request of the commission or board, any potential grounds for revocation of certification of an officer.

(3) The division, in carrying out any investigation initiated pursuant to this section or any other duty shall have all of the powers of investigation granted pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(4) Notwithstanding any other law, the investigation shall be completed within three years after the receipt of the completed report of the disciplinary or internal affairs investigation from the employing agency pursuant to Section 13510.9, however, no time limit shall apply if a report of the conduct was not made to the commission. An investigation shall be considered completed upon a notice of intent to deny or revoke certification issued pursuant to subdivision (e). The time limit shall be tolled during the appeal of a termination or other disciplinary action through an administrative or judicial proceeding or during any criminal prosecution of the officer. The commission shall consider the officer’s prior conduct and service record, and any instances of misconduct, including any incidents occurring beyond the time limitation for investigation in evaluating whether to revoke certification for the incident under investigation.

(5) An action by an agency or decision resulting from an appeal of an agency’s action does not preclude action by the commission to investigate, suspend, or revoke an officer’s certification pursuant to this section.

(d) Upon arrest or indictment of an officer for any crime described in Section 1029 of the Government Code, or discharge from any law enforcement agency for grounds set forth in
subdivision (a), or separation from employment of an officer during
a pending investigation into allegations of serious misconduct, the
executive director shall order the immediate suspension of any
certificate held by that officer upon the determination by the
executive director that the suspension is in the best interest of the
health, safety, or welfare of the public. The order of suspension
shall be made in writing and shall specify the basis for the
executive director’s determination. Following the issuance of a
suspension order, proceedings of the commission in the exercise
of its authority to discipline any officer shall be promptly scheduled
as provided for in this section. The suspension shall continue in
effect until issuance of the final decision on revocation pursuant
to this section or until the order is withdrawn by the executive
director.

(e) Records of an investigation of any person by the commission
shall be retained for 30 years following the date that the
investigation is deemed concluded by the commission. The
commission may destroy records prior to the expiration of the
30-year retention period if the subject is deceased and no action
upon the complaint was taken by the commission beyond the
commission’s initial intake of such complaint.

(f) Any peace officer may voluntarily surrender their
certification permanently. Voluntary permanent surrender of
certification pursuant to this subdivision shall have the same effect
as revocation. Voluntary permanent surrender is not the same as
placement of a valid certification into inactive status during a
period in which a person is not actively employed as a peace
officer. A permanently surrendered certification cannot be
reactivated.

(g) (1) The commission may initiate proceedings to revoke an
officer’s certification for conduct which occurred before January
1, 2022, only for either of the following:

(A) Serious misconduct pursuant to paragraphs (1) or (4) of
subdivision (b), or pursuant to paragraph (3) of subdivision (b) for
the use of deadly force that results in death or serious bodily injury.

(B) If the employing agency makes a final determination
regarding its investigation of the misconduct after January 1, 2022.

(2) Nothing in this subdivision prevents the commission from
considering the officer’s prior conduct and service record in
determining whether revocation is appropriate for serious
misconduct.
SEC. 15. Section 13510.85 is added to the Penal Code, 
immediately following Section 13510.8, to read:
13510.85. (a) (1) When, upon the completion of an
investigation conducted pursuant to subdivision (c) of Section
13510.8, the division finds reasonable grounds for revocation of
a peace officer’s certification, it shall promptly notify the officer
involved, in writing, of its determination and reasons therefore,
and shall provide the officer with a detailed explanation of the
decertification procedure and the officer’s rights to contest and
appeal.
(2) Upon notification, the officer may, within 30 days, file a
request for a review of the determination by the board and
commission. If the officer does not file a request for review within
30 days, the officer’s certification shall be revoked without further
proceedings. If the officer files a timely review, the board shall
schedule the case for hearing.
(3) The board shall meet as required to conduct public hearings,
but no fewer than four times per year. The location of the board’s
meetings shall be varied across the state to facilitate attendance
by involved officers and members of the public in the locality
where the cases arise.
(4) At each public hearing, the board shall review the findings
of investigations presented by the division pursuant to paragraph
(1) and shall make a recommendation on what action should be
taken on the certification of the peace officer involved. The board
shall only recommend revocation if the factual basis for revocation
is established by clear and convincing evidence.
(5) The commission shall review all recommendations made
by the board and shall adopt the board’s recommendation unless
it is without a reasonable basis. In any case in which the
commission reaches a different determination than the board’s
recommendation, it shall set forth its analysis and reasons for
reaching a different determination in writing.
(6) The commission shall return any determination requiring
action to be taken against a peace officer’s certification to the
division, which shall initiate proceedings for a formal hearing
before an administrative law judge in accordance with the
Administrative Procedure Act (Chapter 5 (commencing with
Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), which shall be subject to judicial review as set forth in that Act.

(b) Notwithstanding Section 832.7, the hearings of the board and the review by the commission under this section, administrative adjudications held pursuant to paragraph (6) of subdivision (a), and any records introduced during those proceedings, shall be public.

(c) The commission shall publish the names of any peace officer whose certification is suspended or revoked and the basis for the suspension or revocation and shall notify the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training of the suspension or revocation.

SEC. 16. Section 13510.9 is added to the Penal Code, to read:

13510.9. (a) Beginning January 1, 2023, any agency employing peace officers shall report to the commission within seven days, in a form specified by the commission, any of the following events:

1. The employment, appointment, or termination or separation from employment or appointment, by that agency, of any peace officer. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.

2. Any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to revocation of certification by the commission pursuant to Section 13510.8.

3. Any finding or recommendation by a civilian oversight entity, including a civilian review board, civilian police commission, police chief, or civilian inspector general, that an officer employed by that agency engaged in conduct that could render a peace officer subject to revocation of certification by the commission pursuant to Section 13510.8.

4. The final disposition of any investigation that determines an officer engaged in conduct that could render a peace officer subject to revocation of certification by the commission pursuant to Section 13510.8, regardless of the discipline imposed.

5. Any civil judgment or court finding against an officer based on conduct, or settlement of a civil claim against an officer or an agency based on allegations of officer conduct that could render
a peace officer subject to revocation of certification by the
commission pursuant to Section 13510.8.
(b) An agency employing peace officers shall make available
for inspection or duplication by the commission any investigation
into any matter reported pursuant to paragraph (2) of subdivision
(a), including any physical or documentary evidence, witness
statements, analysis, and conclusions, for up to two years after
reporting of the disposition of the investigation pursuant to
paragraph (3) of subdivision (a).
(c) (1) In a case of separation from employment or appointment,
the employing agency shall execute and maintain an
affidavit-of-separation form adopted by the commission describing
the reason for separation and shall include whether the separation
is part of the resolution or settlement of any criminal, civil, or
administrative charge or investigation. The affidavit shall be signed
under penalty of perjury and submitted to the commission.
(2) An officer who has separated from employment or
appointment shall be permitted to respond to the
affidavit-of-separation, in writing, to the commission, setting forth
their understanding of the facts and reasons for the separation, if
different from those provided by the agency.
(3) Before employing or appointing any peace officer who has
previously been employed or appointed as a peace officer by
another agency, the agency shall contact the commission to inquire
as to the facts and reasons an officer became separated from any
previous employing agency. The commission shall, upon request
and without prejudice, provide to the subsequent employing agency
any information regarding the separation in its possession.
(4) Civil liability shall not be imposed on either a law
enforcement agency or the commission, or any of the agency’s or
commission’s agents, for providing information pursuant to this
section in a good faith belief that the information is accurate.
(d) The commission shall maintain the information reported
pursuant to this section, in a form determined by the commission,
and in a manner that may be accessed by the subject peace officer,
any employing law enforcement agency of that peace officer, any
law enforcement agency that is performing a preemployment
background investigation of that peace officer, or the commission
when necessary for the purposes of decertification.
(e) (1) The commission shall notify the head of the agency that employs the officer of all of the following:
(A) The initiation of any investigation of that officer by the division, unless such notification would interfere with the investigation.
(B) A finding by the division, following an investigation, of grounds to take action against the officer’s certification or application.
(C) A final determination by the commission as to whether action should be taken against an officer’s certification or application.
(D) An adjudication, after hearing, resulting in action against an officer’s certification or application.
(2) If the certificate of an officer is suspended or revoked or if an applicant is denied the basic certificate, the commission shall also notify the district attorney of the county in which the officer is or was employed of this fact.
(3) Each notification required by this subdivision shall include the name of the officer and a summary of the basis for the action requiring notification.

SEC. 17. Section 13512 of the Penal Code is amended to read:
13512. (a) The commission shall make such inquiries as may be necessary to determine whether every city, county, city and county, and district receiving state aid pursuant to this chapter is adhering to the standards for recruitment, training, certification, and reporting established pursuant to this chapter.
(b) The board shall prepare an annual report on the activities of the commission, board, division, and subject agencies regarding peace officer certification under this chapter. The report shall include, without limitation, all of the following:
(1) The number of applications for certification and the number of certifications granted or denied.
(2) The number of events reported pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) of Section 13510.9.
(3) The criteria and process for review and investigation by the division, the number of reviews, and the number of investigations conducted by the division.
(4) The number of notices sent by the division pursuant to paragraph (1) of subdivision (a) of Section 13510.85, the number of requests for review received, and the number of revocations or

13512. (a) The commission shall make such inquiries as may be necessary to determine whether every city, county, city and county, and district receiving state aid pursuant to this chapter is adhering to the standards for recruitment, training, certification, and reporting established pursuant to this chapter.
(b) The board shall prepare an annual report on the activities of the commission, board, division, and subject agencies regarding peace officer certification under this chapter. The report shall include, without limitation, all of the following:
(1) The number of applications for certification and the number of certifications granted or denied.
(2) The number of events reported pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) of Section 13510.9.
(3) The criteria and process for review and investigation by the division, the number of reviews, and the number of investigations conducted by the division.
(4) The number of notices sent by the division pursuant to paragraph (1) of subdivision (a) of Section 13510.85, the number of requests for review received, and the number of revocations or
denials made pursuant to paragraph (2) of subdivision (a) of Section 13510.85.

(5) The number of review hearings held by the board and commission and the outcomes of those review hearings.

(6) The number of administrative hearings held on revocations and the number of revocations resulting from those hearings.

(7) Any cases of judicial review of commission actions on revocation and the result of those cases.

(8) The number of certifications voluntarily surrendered and the number placed on inactive status.

(9) Any compliance audits or reviews conducted pursuant to this chapter and the results of those audits.

(10) Any other information the board deems relevant to evaluating the functioning of the certification program, the decertification process, and the staffing levels of the division.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
Item B-11
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 12 (McGuire) - Local government: planning and zoning: wildfires (SB 12) involves a policy matter that may have a nexus to the City’s adopted Legislative Platform language. Specifically, the following statements may apply to SB 12:

- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.
- In general, oppose any county, state or federal mandates without the direct or indirect reimbursement for the costs associated with complying with new and/or modified laws, regulations, policies, procedures, permits and/or programs.
- Emphasize local control related to land use planning.

However, the City Council Liaison/Legislative/Lobby Committee may wish to consider the fire safety provisions of SB 12 before adopting a position as the author of the bill states:

*SB 12 presents a comprehensive approach to ensuring data driven, fire-safe development. It does not say that communities cannot develop but does tell them that they have to do it safely using the new and aggressive wildfire risk reduction standards.*

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 12 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 12, the Liaisons may recommend the following actions:

1) Support SB 12;
2) Support if amended SB 12;
3) Oppose SB 12;
4) Oppose unless amended SB 12;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position that is consistent with the City’s Legislative Platform, then staff will generate a letter for the Mayor to sign. Should the recommendation not be consistent with the City’s Legislative Platform, then the item will be placed on a future City Council agenda for concurrence.
Attachment 1
May 26, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwi, Partner, Shaw Yoder Antwi Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwi Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwi Schmelzer & Lange


Version: Amended in the Senate May 4, 2021

Summary
SB 12 would impose specified fire hazard planning responsibilities on local governments, require cities and counties to make specified findings on fire standards before permitting development in a very high fire severity zone (VHFHSZ), and incorporate fire hazard planning into regional housing needs allocation (RHNA) objectives and methodologies. The bill would also establish the Wildfire Risk Reduction Planning Support Grants (WRRPSG) Program to provide small jurisdictions that contain very high fire risk areas for specified planning activities.

Specifically, this bill would:
- Impose new planning requirements on local governments, as follows:
  - Defines “very high fire risk areas” to be the VHFHSZ in both the SRA and the Local Responsibility Area.
  - Requires each city or county, upon the next revision of the housing element or local hazard mitigation plan on or after July 1, 2024, whichever occurs first, to review and update its safety element to include a comprehensive retrofit strategy that provides for specified contents.
  - Requires a city or county with VHFHSZ within its jurisdiction to amend the land use element of its general plan upon the next revision of the housing element on or after July 1, 2024. This amendment of the land use element must include the locations of all VHFHSZ within the city or county, the data and analysis described in the Office of Planning and Research’s (OPR’s) most recent publication of “Fire Hazard Planning—General Plan Technical Advice Series,” and other specified goals, objectives, and implementation measures.
  - Requires, after that initial amendment to the land use element, a city or county to review upon each revision of the housing element the implementation of the wildfire risk reduction standards, as defined below, within the jurisdiction, and the designation of VHFHSZ.
  - Provides for review and comment on draft findings by the Board and local fire agencies on whether the city or county has implemented the standards or made adequate progress.
- Requires OPR, on or before January 1, 2023, to develop and post on its Web site a clearinghouse of local ordinances, policies, and best practices relating to land use planning in VHFHSZ, wildfire risk reduction, and wildfire preparedness. OPR must also regularly update the clearinghouse.

- Within 12 months after revising their general plan as described above, it requires cities and counties to develop WUI overlay zones in their zoning ordinances to ensure consistency with the jurisdiction’s amended general plan.

- Prohibit cities and counties from approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps, or development agreement in VHFHSZ unless the city or county finds that the project and all structures within the project are protected from wildfire risk per specified “wildfire risk reduction standards” contained in this bill, or standards adopted by a local jurisdiction that exceed those standards.

- Define three tiers of “wildfire risk reduction standards,” based on the size of the development, specifically:
  - For a development of any size: (1) existing regulations governing defensible space, vegetation management, fuel modification, and building standards promulgated by the State Fire Marshal (SFM), Building Standards Commission, and the Board; (2) preparation of a wildland fire hazard assessment and mitigation plan, as defined; (3) an enforcement program established, funded, and implemented to verify ongoing compliance within jurisdiction concerning defensible space, vegetation management, and local fire plan/wildfire hazard mitigation plans, with specified requirements; and (4) standards for fire suppression, response times and levels, water flows for firefighting, road design for equipment ingress/egress, and for identifying ignition hazards.
  - For developments of nine or more residential dwelling units: (1) all the standards applicable to smaller developments; (2) reasonable site-specific fire protection plans designed to protect against fire encroachment, including defensible structure layout, structure clustering, and use of natural/engineered firebreaks; (3) identification of potential on-site shelter-in-place locations; (4) mechanisms to maintain common areas/open spaces to control vegetative fuels; (5) condition on the development that all parcels within the development containing structures are subject to an ongoing, permanent fee, tax, or assessment, an assessment through a homeowners’ association, or a similar funding mechanism sufficient to ensure that defensible space and vegetation management maintenance is funded and occurs on a schedule so as to comply with this bill’s requirements; and (6) a finding by a city or county that the development can be reasonably accessed and served in the event of wildfire, with adequate ingress, egress, including, but not limited to, primary and secondary routes and capacity for evacuation and emergency response at the same time.
  - For developments of 100 or more residential units: (1) all the standards applicable to smaller developments; and (2) additional wildfire risk reduction standards developed by the SFM as provided in this bill. These standards must incorporate all applicable recommendations in OPR’s 2015 Fire Hazard Planning Technical Advisory.

- Deem a development in compliance with the requirements for defensible space enforcement, response time, infrastructure sufficiency, and water supplies if the city or county has made adequate progress towards achieving those standards for five years following the adoption of the zoning ordinance amendments required by the bill.
• Require, on or before January 1, 2023, the SFM, in consultation with OPR, to do all of the following, subject to the Administrative Procedures Act:
  o Adopt wildfire risk reduction standards that meet all of the following requirements:
    (1) account for differences in the size of proposed developments; (2) include standards for organization and development of fire suppression operations, fire protection infrastructure, water supplies for firefighting, and reducing structure ignition hazards from wildland fire; (3) include any additional requirements for fire hardening or similar building standards applicable to structures located in areas with restricted access or service in the event of a wildfire; (4) establish specified types of community-scale risk reduction measures; (5) are designed to reduce the risk of catastrophic loss due to wildfire a risk model that uses current wildfire hazard severity information known for the very high fire risk areas and meets other specified conditions; and (6) are directly applicable to, and account for, California’s climate, weather, topography, and development patterns.
  o Adopt standards for third-party inspection and certification of defensible space.
• Require the SFM, by January 1, 2024, to update the maps of the VHFHSZ and identify areas where new residential development poses an exceptional risk to future occupants of the development and to fire personnel and other public safety personnel that must access the development during a wildfire.
• Require the standards, regulations, and rules to be reasonable and feasible, and achievable for most developments in that size category.
• Require, on or before January 1, 2023, the Office of Planning and Research, in collaboration with cities and counties, to identify best practices.
• Direct CAL FIRE to distribute grant funds upon appropriation by the Legislature to assist small jurisdictions in updating planning documents and complying with other bill provisions.
• Amend the regional housing needs allocation (RHNA) process for the seventh cycle to account for fire risk.
• Clarify local governments may impose more stringent standards than those set out in the bill and clarifies that a local government may issue a final subdivision map without making the findings in this bill if the tentative map or parcel map met the required standards when it was deemed complete.
• Modify the standards adopted by the Board for subdivision design to access from the perimeters to all residential, commercial, and industrial building construction and requires the Board’s regulations to conform as nearly as practicable with the wildfire risk reduction standards adopted by the SFM under this bill.

**Background**

California wildfires continue to break records year after year. Even as climate change worsens the hazard that fire poses to California communities, new development increases in fire-prone areas. SB 12 presents a comprehensive approach to ensuring intelligent, fire-safe development. It requires local governments to do extensive planning to identify fire risks to their communities, consistent with best practices identified by the state. More importantly, it prohibits local agencies from approving developments that aren’t adequately protected from the fire hazard while requiring local agencies to do their part by enforcing defensible space requirements. SB 12 doesn’t say that locals can’t develop, but it does tell them that they have to do it right. It builds on existing fire-safe standards but adds community-level standards to reduce fire risk, which the most current fire science says are increasingly important. Finally, SB 12 provides local governments with some regulatory relief and funding to support the new duties that they need to perform under the bill. The first rule of holes is that when you’re in one, stop digging. SB 12 is a balanced bill that will
ensure that future development in California is fire-safe, avoiding wildfire damage and destruction down the line.

Cities and counties must also submit a draft of any safety element amendments to the Board and local fire protection agencies at least 90 days before adoption. The Board must review and recommend changes to the draft safety element within 60 days of receiving it. If the Board provides recommendations within this timeframe, local governments must consider its recommendations. If they don’t adopt the Board’s recommendations, local governments have to explain why they opted not to do so. Local agencies must meet with the Board on its recommendations if the Board requests but isn’t required to adopt the Board’s recommendations.

The safety element must also include similar information about risks due to climate change and goals, policies, objectives, and implementation measures to protect against those risks.

Many local governments have also adopted a local hazard mitigation plan (LHMP) to identify all-natural hazards that threaten a community and strategies to mitigate those hazards. The Federal Emergency Management Agency (FEMA) reviews and approves every LHMP, and the LHMP expires five years after its approval unless amended and recertified. Local governments with a compliant LHMP are eligible for proactive hazard mitigation grants from the federal government, as well as additional post-disaster assistance.

Before a city council or county board of supervisors can approve a tentative map or final map in the SRA or VHFHSZ, it must make findings supported by substantial evidence that: (1) the subdivision is consistent with the Board’s applicable regulations or local ordinances certified by the Board as meeting or exceeding the state regulations; and (2) a local agency or CALFIRE, under contract, will provide structural fire protection and suppression services to the subdivision. Upon making these findings, the city or county must send them to the Board along with the subdivision maps.

To assist local governments with fire hazard planning, OPR issues a technical advisory series that includes best practices in land use and permitting for fire hazard planning.

**Status of Legislation**

SB 12 is currently pending on the Senate Floor but will have needed to pass out of the Senate by June 4.

**Arguments in Support**

Author’s statement. “California’s largest, most destructive, and deadly wildland fires have all taken place in the last decade – with over 38,000 homes and structures destroyed by California wildfires since 2015. As climate change deepens and the hots grow hotter, the hazard wildfire poses to California communities is greater than ever before. We must take decisive action now to save lives. SB 12 presents a comprehensive approach to ensuring data driven, fire-safe development. It does not say that communities cannot develop but does tell them that they have to do it safely using the new and aggressive wildfire risk reduction standards. SB 12 requires local governments to do extensive planning to identify fire risks to their communities. To ensure that local governments have the information they need to do this planning, it requires OPR and the State Fire Marshal to develop best practices and update maps relating to wildfire risk reduction and preparedness. Importantly, SB 12 prohibits local agencies from approving developments that are not adequately protected from fire hazards and do not meet the new standards established in this bill. Finally, SB 12 creates the Wildfire Risk Reduction Planning Support Grants Program to assist jurisdictions to implement the planning activities the bill requires.”
Arguments in Opposition:
Builders and others argue that SB 12 stymies housing production at a time when our housing crisis continues to worsen. In particular, they are concerned with provisions of SB 12 that require the standards developed by the SFM to incorporate all applicable recommendations from OPR’s technical advisory into the requirements that 100+ unit developments must meet. Because OPR’s technical advisory suggests that local governments may avoid building in parts or all of the VHFHSZ, builders are concerned that this means that local agencies will be either encouraged or required to avoid large developments in the VHFHSZ. They argue that such policies run counter to the dire need to build housing in the state and existing state law that says OPR’s policies are advisory and not regulatory. Builders and business groups also say that the bill’s standards are duplicative and confusing.

Support
American Planning Association, California Chapter
California Fire Chiefs Association
Catalysts
City of Lafayette
Fire Districts Association of California
Local Government Commission
National Fire Protection Association
Sonoma Land Trust
Tree Care Industry Association

Opposition
Associated General Contractors
Building Industry Association of Southern California, Inc.
California Apartment Association
California Association of Realtors
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Forestry Association
Chambers of Commerce: El Dorado County, El Dorado Hills, Elk Grove, Folsom, Los Angeles Area, Rancho Cordova, Roseville Area, and Yuba Sutter
Los Angeles Business Council
Los Angeles County Business Federation
Sacramento Regional Builders Exchange
The Two Hundred
United Chamber Advocacy Network
Attachment 2
An act to amend Sections 65007, 65302, 65584, 65584.04, and 65584.06 of, and to add Sections 65011, 65012, 65013, 65040.18, 65302.11, 65860.2, 65865.6, 65962.3, and 66474.03 to, the Government Code, to amend Section 13132.7 of the Health and Safety Code, and to amend Section 4290 of, and to add Section 4123.6 to, the Public Resources Code, relating to local government.

LEGISLATIVE COUNSEL’S DIGEST

SB 12, as amended, McGuire. Local government: planning and zoning: wildfires.

(1) The Planning and Zoning Law requires the legislative body of a city or county to adopt a comprehensive, long-term general plan that includes various elements, including, among others, a housing element and a safety element for the protection of the community from unreasonable risks associated with the effects of various geologic and seismic hazards, flooding, and wildland and urban fires. Existing law requires the housing element to be revised according to a specific schedule. Existing law requires the planning agency to review and, if necessary, revise the safety element upon each revision of the housing element or local hazard mitigation plan, but not less than once every 8 years to identify new information relating to flood and fire hazards and climate adaptation and resiliency strategies applicable to the city or county that was not available during the previous revision of the safety element.
Existing law requires that the Office of Planning and Research, among other things, coordinate with appropriate entities, including state, regional, or local agencies, to establish a clearinghouse for climate adaptation information for use by state, regional, and local entities, as provided.

This bill would require the safety element, upon the next revision of the housing element or the hazard mitigation plan, on or after July 1, 2024, whichever occurs first, to be reviewed and updated as necessary to include a comprehensive retrofit strategy to reduce the risk of property loss and damage during wildfires, as specified, and would require the planning agency to submit the adopted strategy to the Office of Planning and Research for inclusion into the above-described clearinghouse. The bill would also require the planning agency to review and, if necessary, revise the safety element upon each revision of the housing element or local hazard mitigation plan, but not less than once every 8 years, to identify new information relating to retrofit updates applicable to the city or county that was not available during the previous revision of the safety element. By increasing the duties of local officials, this bill would create a state-mandated local program.

(2) Existing law requires the general plan to include a land use element that designates the proposed general distribution and general location and extent of the uses of the land for, among other purposes, housing, business, and industry. Existing law additionally requires the general plan to include a housing element and requires each local government to review and revise its housing element, as specified.

This bill would require a city or county that contains a very high fire risk area, as defined, upon each revision of the housing element on or after July 1, 2024, to amend the land use element of its general plan to contain, among other things, the locations of all very high fire risk areas within the city or county and feasible implementation measures designed to carry out specified goals, objectives, and policies relating to the protection of lives and property from unreasonable risk of wildfire. The bill would require the city or county to complete a review of, and make findings related to, wildfire risk reduction standards, as defined, upon each subsequent revision of the housing element, as provided. The bill would require the State Board of Forestry and Fire Protection to review the findings and make recommendations, as provided.

The bill would additionally require the Office of the State Fire Marshal, in consultation with the Office of Planning and Research and the State Board of Forestry and Fire Protection, by January 1, 2023, to
adopt wildfire risk reduction standards for developments in a very high fire risk area that meet certain requirements and reasonable standards for third-party inspection and certifications for a specified enforcement program. The bill would also require the Office of the State Fire Marshal to, by January 1, 2024, update the maps of the very high fire hazard severity zones, as specified. The bill would require the Office of the State Fire Marshal to convene a working group of stakeholders, as specified, to assist in this effort and to consider specified national standards.

Existing law requires county or city zoning ordinances to be consistent with the general plan of the county or city, as specified.

This bill would require a city or county that contains a very high fire risk area, within 12 months following the amendment of the city or county’s land use element, to adopt a very high fire risk overlay zone or otherwise amend its zoning ordinance so that it is consistent with the general plan, as specified.

This bill would additionally prohibit the legislative body of a city or county that contains a very high fire risk area, upon the effective date of the revision of the city or county’s land use element, from entering into a development agreement for property that is located within a very high fire risk area, approving specified discretionary permits or other discretionary entitlements for projects located within a very high fire risk area, or approving a tentative map or a parcel map for which a tentative map was not required for a subdivision that is located within a very high fire risk area, unless the city or county makes specified findings based on substantial evidence in the record.

By increasing the duties of local officials, this bill would impose a state-mandated local program.

(3) Existing law requires the Department of Housing and Community Development, in consultation with each council of governments, to determine each region’s existing and projected housing need, as provided. Existing law requires each council of governments, or the department for cities and counties without a council of governments, to adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county and that furthers specified objectives.

This bill would require the regional housing needs allocation plan to additionally further the objective of reducing development pressure within very high fire risk areas.
(4) Existing law requires the council of governments, or delegate subregion, as applicable, to develop a proposed methodology for distributing the existing and projected regional housing need and, to the extent that sufficient data is available as provided, to include specified factors to develop the methodology that allocates regional housing needs, including, among other factors, the rate of overcrowding.

This bill would additionally require the council of governments, or delegate subregion, as applicable, to include within those factors for the seventh and subsequent revisions of the housing element, the amount of land in each member jurisdiction that is within a very high fire risk area by allocating a lower proportion of housing if the council of governments or delegate subregion determines, based on specified factors, that it is likely that the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites in order to meet its housing need allocation.

For cities and counties without a council of governments, existing law requires the Department of Housing and Community Development to determine and distribute the existing and projected housing need, unless that responsibility is delegated as provided to cities and counties, based upon available data and in consultation with the cities and counties, taking into consideration, among other things, the availability of suitable sites and public facilities.

This bill would also require the department, for the seventh and subsequent revisions of the housing element, to take into consideration the amount of land in each city and each county that is within a very high fire risk area, as defined, by allocating a lower proportion of housing if the department determines, based on specified factors, that it is likely that the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites in order to meet its housing need allocation.

By increasing the duties of local officials, this bill would impose a state-mandated local program.

(5) Existing law requires the Office of Planning and Research to implement various long-range planning and research policies and goals that are intended to, among other things, encourage the formation and proper functioning of local entities and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans.

This bill would require the Office of Planning and Research, on or before January 1, 2023, in collaboration with cities and counties, to
identify local ordinances, policies, and best practices relating to land use planning in very high fire risk areas, wildfire risk reduction, and wildfire preparedness and publish these resources on the above-described clearinghouse, as specified.

(6) Existing law requires, until the 2023–24 fiscal year, the amount of $165,000,000 to be appropriated from the Greenhouse Gas Reduction Fund to the Department of Forestry and Fire Protection for healthy forest and fire prevention programs and projects that improve forest health and reduce greenhouse gas emissions caused by uncontrolled wildfires.

This bill would establish the Wildfire Risk Reduction Planning Support Grants Program, administered by the Department of Forestry and Fire Protection, for the purpose of providing small jurisdictions, as defined, containing very high fire hazard risk areas with grants for specified planning activities to enable those jurisdictions to meet the requirements set forth in the bill, as described above. Upon appropriation, the bill would require the department to distribute grant funds under the program via a noncompetitive, over-the-counter process, as provided, to small jurisdictions. The bill would require a recipient small jurisdiction to use the allocation solely for wildfire risk reduction planning activities, as specified. The bill would authorize the department to set aside up to 5% of any amount appropriated for these purposes for program administration.

(7) Existing law requires the State Board of Forestry and Fire Protection to adopt regulations implementing minimum fire safety standards that are applicable to lands classified and designated as very high fire hazard severity zones, and requires the regulations to apply to the perimeters and access to all residential, commercial, and industrial building construction within lands classified and designated as very high fire hazard severity zones, as defined, after July 1, 2021.

This bill would specify that the above-described regulations apply to the perimeters and access from the perimeters to all residential, commercial, and industrial building construction within lands classified and designated as very high fire hazard severity zones. The bill would also require the regulations to conform as nearly as practicable with specified existing regulations adopted by the State Fire Marshal.

(8) Existing law requires a common interest development within a very high fire severity zone to allow an owner to install or repair a roof with at least one type of fire retardant roof covering material that meets specified requirements.
This bill would require the one type of fire retardant roof covering material to additionally meet, at a minimum, class B standards, as specified in the International Building Code.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.


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

SECTION 1. Section 65007 of the Government Code is amended to read:

65007. As used in Sections 65302.9, 65860.1, 65865.5, 65962, and 66474.5, the following terms have the following meanings, unless the context requires otherwise:

(a) “Adequate progress” means all of the following:

(1) The total project scope, schedule, and cost of the completed flood protection system have been developed to meet the appropriate standard of protection.

(2) (A) Revenues that are sufficient to fund each year of the project schedule developed in paragraph (1) have been identified and, in any given year and consistent with that schedule, at least 90 percent of the revenues scheduled to be received by that year have been appropriated and are currently being expended.

(B) Notwithstanding subparagraph (A), for any year in which state funding is not appropriated consistent with an agreement between a state agency and a local flood management agency, the Central Valley Flood Protection Board may find that the local flood management agency is making adequate progress in working toward the completion of the flood protection system.

(3) Critical features of the flood protection system are under construction, and each critical feature is progressing as indicated by the actual expenditure of the construction budget funds.

(4) The city or county has not been responsible for a significant delay in the completion of the system.

(5) The local flood management agency shall provide the Department of Water Resources and the Central Valley Flood
Protection Board with the information specified in this subdivision sufficient to determine substantial completion of the required flood protection. The local flood management agency shall annually report to the Central Valley Flood Protection Board on the efforts in working toward completion of the flood protection system.

(b) “Central Valley Flood Protection Plan” has the same meaning as that set forth in Section 9612 of the Water Code.

(c) “Developed area” has the same meaning as that set forth in Section 59.1 of Title 44 of the Code of Federal Regulations.

(d) “Flood hazard zone” means an area subject to flooding that is delineated as either a special hazard area or an area of moderate hazard on an official flood insurance rate map issued by the Federal Emergency Management Agency (FEMA). The identification of flood hazard zones does not imply that areas outside the flood hazard zones, or uses permitted within flood hazard zones, will be free from flooding or flood damage.

(e) “National Federal Emergency Management Agency standard of flood protection” means the level of flood protection that is necessary to withstand flooding that has a 1-in-100 chance of occurring in any given year using criteria developed by FEMA for application in the National Flood Insurance Program.

(f) “Nonurbanized area” means a developed area or an area outside a developed area in which there are fewer than 10,000 residents that is not an urbanizing area.

(g) “Project levee” means any levee that is part of the facilities of the State Plan of Flood Control.

(h) “Sacramento-San Joaquin Valley” means lands in the bed or along or near the banks of the Sacramento River or San Joaquin River, or their tributaries or connected therewith, or upon any land adjacent thereto, or within the overflow basins thereof, or upon land susceptible to overflow therefrom. The Sacramento-San Joaquin Valley does not include lands lying within the Tulare Lake basin, including the Kings River.

(i) “State Plan of Flood Control” has the same meaning as that set forth in subdivision (j) of Section 5096.805 of the Public Resources Code.

(j) “Tulare Lake basin” means the Tulare Lake Hydrologic Region as defined in the California Water Plan Update 2009, prepared by the Department of Water Resources pursuant to
Chapter 1 (commencing with Section 10004) of Part 1.5 of Division 6 of the Water Code.

(k) “Undetermined risk area” means an urban or urbanizing area within a moderate flood hazard zone, as delineated on an official flood insurance rate map issued by FEMA, which has not been determined to have an urban level of protection.

(l) “Urban area” means a developed area in which there are 10,000 residents or more.

(m) “Urbanizing area” means a developed area or an area outside a developed area that is planned or anticipated to have 10,000 residents or more within the next 10 years.

(n) “Urban level of flood protection” means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the Department of Water Resources. “Urban level of flood protection” shall not mean shallow flooding or flooding from local drainage that meets the criteria of the national FEMA standard of flood protection.

(o) “Very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 2. Section 65011 is added to the Government Code, to read:

65011. For the purposes of Sections 65302.11, 65860.2, 65865.6, 65962.3, and 66474.03, unless the context requires otherwise, the following terms have the following meanings:

(a) “Adequate progress” means the city or county is taking concrete steps reasonably calculated to achieve funding and implementation of the applicable standard with the timeframe specified in subdivision (b) of Section 65012.

(b) “Very high fire risk area” means any lands located within a very high fire hazard severity zone, as designated pursuant to subdivisions (a) and (b) of Section 51179, or as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code or as designated pursuant to subdivisions (a) and (b) of Section 51179.

SEC. 3. Section 65012 is added to the Government Code, to read:

65012. (a) For the purposes of Sections 65302.11, 65860.2, 65865.6, 65962.3, and 66474.03, “wildfire risk reduction standard” means the following:
(1) For a development of any size:

(A) The regulations adopted by the State Board of Forestry and
Fire Protection, the State Fire Marshal, and the California Building
Standards Commission regarding defensible space, vegetation
management, fuel modification, and materials and construction
methods for exterior wildfire exposure, including, but not limited
to, all of the following, or the successor provisions:

(i) Chapter 7A of the California Building Code.

(ii) Chapter 49 of the California Fire Code.

(iii) Section R337 of the California Residential Code.

(iv) Chapter 12-7A of the California Referenced Standards
Code.

(v) Subchapter 2 (commencing with Section 1270) of Chapter
7 of Division 1.5 of Title 14 of the California Code of Regulations.

(vi) Article 3 (commencing with Section 1299.01) of Subchapter
3 of Chapter 7 of Division 1.5 of Title 14 of the California Code
of Regulations.

(B) A wildland fire hazard assessment and wildfire hazard
mitigation plan approved by the enforcing agency in accordance
with standards adopted by the State Fire Marshal pursuant to
Section 65013.

(C) An enforcement program established, funded, and
implemented to verify ongoing compliance of the defensible space,
vegetation management, and fuel modification requirements of
the regulations described in subparagraph (A), and with any
continuing obligations imposed under a fire protection plan or
wildfire hazard mitigation plan established for the project. The
enforcing agency may charge a fee sufficient to cover the costs of
administering the program and providing any inspections conducted
by the enforcing agency. The program shall ensure that compliance
is documented for each affected property or structure at least once
every three years. Acceptable methods of compliance inspection
and documentation shall be determined by the enforcing agency
and may include any of the following:

(i) The local, state, or federal fire authority or designee
authorized to enforce vegetation management requirements.

(ii) The enforcing agency.

(iii) Third-party inspection and certification authorized in
accordance with the regulations adopted by the State Fire Marshal
pursuant to Section 65013.
(D) The regulations relating to the organization and deployment of fire suppression operations, fire protection infrastructure, water supplies for fire fighting, and reducing ignition hazards from wildland fire adopted by the State Fire Marshal pursuant to Section 65013.

(2) For a development of nine units or more:

(A) All of the standards set forth in paragraph (1).

(B) A fire protection plan setting forth reasonable site-specific safety measures to ensure that the development as a whole is planned and constructed to resist the encroachment of uncontrolled fire. The fire protection plan may be combined with the wildfire hazard mitigation plan prepared for the development in accordance with subparagraph (B) of paragraph (1). The plan shall include, but not be limited to, all of the following:

(i) A development layout that reduces wildfire risk to the greatest extent practicable, through measures that may include, but are not limited to, clustering of structures in the lowest risk areas on the property, while still requiring all structures to be separated by a safe distance to avoid the spread of fires from structure to structure, the use of natural and manmade features as fire breaks, and the establishment of community protection fire breaks on the perimeter of the property.

(ii) Identification of a low-risk fire safety area where community members can evacuate to and wait until emergency service providers can reach them.

(iii) Mechanisms, including funding, to maintain common areas and open spaces within the development so that ground fuels do not promote the spread of wildfire and aerial fuels do not allow the spread of a fire through the tree canopy.

(C) A condition on the development that all parcels within the development containing structures are subject to an ongoing, permanent fee, tax, or assessment, an assessment through a homeowners’ association, or a similar funding mechanism sufficient to ensure that defensible space and vegetation management maintenance is funded and occurs on a schedule so as to comply with subparagraph (C) of paragraph (1), and other requirements for maintaining defensible space and vegetation management under law, including, but not limited to, Section 4291 of the Public Resources Code.
(D) The development shall not be approved unless the city or county finds, based on substantial evidence in the record, that the development can be reasonably accessed and served in the case of a wildfire, with adequate ingress and egress, including, but not limited to, primary and secondary routes and capacity for evacuation and emergency response at the same time.

(3) For any development subject to this subdivision that includes 100 or more residential dwelling units:

(A) All of the standards set forth in paragraphs (1) and (2).

(B) Additional wildfire risk reduction standards adopted by the State Fire Marshal pursuant to clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a) of Section 65013, or conditions imposed by the city or county that provide the same practical effect as the standards and are at least the equivalent of the standards in reducing the risk to life and property from catastrophic wildfire.

(b) For a period of five years following adoption of the zoning ordinance amendment pursuant to Section 65860.2, a development shall be deemed in compliance with the wildfire risk reduction standards set forth in subparagraphs (C) and (D) of paragraph (1) of subdivision (a) if the city or county finds, based on substantial evidence in the record, that the responsible state and local agencies have made adequate progress toward providing protection from wildfire risk to the level set forth in those standards, or wildfire protection standards adopted by the city or county that meet or exceed those standards.

(c) Nothing in this section shall be construed to limit the existing authority of the State Fire Marshal or any other public agency under any other law from adopting standards that are more protective of life and property from the risk of wildfire.

SEC. 4. Section 65013 is added to the Government Code, to read:

65013. (a) By January 1, 2023, the Office of the State Fire Marshal, in consultation with the Office of Planning and Research and the State Board of Forestry and Fire Protection, shall do all of the following:

(1) Adopt wildfire risk reduction standards for developments in a very high fire risk area that meet all of the following requirements:
(A) (i) Account for differences in the size of proposed developments, consistent with the categories set forth in Section 65012.

(ii) When adopting standards for developments that include 100 or more residential dwelling units, the Office of the State Fire Marshal shall incorporate all applicable recommendations included in the Office of Planning and Research’s most recent 2015 publication of “Fire Hazard Planning—General Plan Technical Advice Series.”

(B) Include standards for organization and development of fire suppression operations, fire protection infrastructure, water supplies for fire fighting, and reducing structure ignition hazards from wildland fire.

(C) Include any additional requirements for fire hardening or similar building standards applicable to structures located in areas without a secondary egress route that are identified in accordance with subdivision (a) of Section 4290.5 of the Public Resources Code.

(D) Establish community-scale risk reduction measures, including, but not limited to, both of the following:

(i) Community design and layout.

(ii) Location and construction of infrastructure to reduce ignition potential and ensure availability of water supplies essential for fire suppression during a wildfire.

(E) Are designed to reduce the risk of catastrophic loss due to wildfire based upon a risk model that uses current wildfire hazard severity information known for the very high fire risk areas. The Office of the State Fire Marshal shall utilize a risk model that meets both of the following requirements:

(i) The risk model is able to quantify the risk for a community or parcel in a very high fire risk area through the input of mitigating factors into the model.

(ii) The model uses the best available science and objective scientific methodologies.

(F) Are directly applicable to, and account for, California’s climate, weather, topography, and development patterns.

(2) Adopt standards for third-party inspection and certification conducted pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 65012.
(b) (1) By January 1, 2024, the Office of the State Fire Marshal shall update the maps of the very high fire hazard severity zones pursuant to Section 51178.

(2) In updating the maps pursuant to subparagraph (A), the State Fire Marshal shall identify areas within very high fire hazard severity zones where new residential development poses exceptional risk to future occupants of the development and to fire personnel and other public safety personnel that must access the development during a wildfire.

(c) Standards adopted pursuant to this section, regulations and rules of general applicability adopted pursuant to Section 65012, and regulations and rules of general applicability adopted by state or local agencies as necessary to implement those standards, shall be reasonable, and shall be feasible and achievable for the majority of developments in each category set forth in subdivision (a) of Section 65012.

(d) In developing the standards required by this section, the Office of the State Fire Marshal shall do both of the following:

(1) Convene a working group of stakeholders, including representatives of urban, suburban, and rural counties and cities to assist in this effort.

(2) Consider national standards, including, but not limited to, the following:


(B) NFPA 1141: Standard for Fire Protection Infrastructure for Land Development and Wildland, Rural, and Suburban Areas.

(C) NFPA 1142: Standard on Water Supplies for Suburban and Rural Fire Fighting.

(D) NFPA 1144: Standard for Reducing Structure Ignition Hazards from Wildland Fire.


(e) The Office of the State Fire Marshal may incorporate some or all of the wildfire risk reduction standards adopted pursuant to this section into the building standards developed pursuant to Section 13108.5 of the Health and Safety Code or the regulations adopted pursuant to Section 4290 of the Public Resources Code.
Standards adopted pursuant to this section shall be adopted pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

Nothing in this section shall be construed to limit the existing authority of the State Fire Marshal or any other state or local public agency under any other law from adopting standards that are more protective of life and property from the risk of wildfire.

“Very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 5. Section 65040.18 is added to the Government Code, to read:

65040.18. By January 1, 2023, the Office of Planning and Research, in collaboration with cities and counties, shall identify local ordinances, policies, and best practices relating to land use planning in very high fire risk areas, wildfire risk reduction, and wildfire preparedness and publish these resources on the clearinghouse established pursuant to Section 71360 of the Public Resources Code. The office shall include in the clearinghouse any comprehensive retrofit strategies submitted pursuant to subparagraph (E) of paragraph (6) of subdivision (g) of Section 65302. The office shall regularly update the clearinghouse materials made available pursuant to this section. For purposes of this section, “very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 6. Section 65302 of the Government Code, as amended by Section 169 of Chapter 370 of the Statutes of 2020, is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, greenways, as defined in Section 816.52 of the Civil Code, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land
for public and private uses shall consider the identification of land
and natural resources pursuant to paragraph (3) of subdivision (d).
The land use element shall include a statement of the standards of
population density and building intensity recommended for the
various districts and other territory covered by the plan. The land
use element shall identify and annually review those areas covered
by the plan that are subject to flooding identified by flood plain
mapping prepared by the Federal Emergency Management Agency
(FEMA) or the Department of Water Resources. The land use
element shall also do both of the following:

(1) Designate in a land use category that provides for timber
production those parcels of real property zoned for timberland
production pursuant to the California Timberland Productivity Act
of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1
of Division 1 of Title 5).

(2) Consider the impact of new growth on military readiness
activities carried out on military bases, installations, and operating
and training areas, when proposing zoning ordinances or
designating land uses covered by the general plan for land, or other
territory adjacent to military facilities, or underlying designated
military aviation routes and airspace.

(A) In determining the impact of new growth on military
readiness activities, information provided by military facilities
shall be considered. Cities and counties shall address military
impacts based on information from the military and other sources.

(B) The following definitions govern this paragraph:

(i) “Military readiness activities” mean all of the following:

(I) Training, support, and operations that prepare the members
of the military for combat.

(II) Operation, maintenance, and security of any military
installation.

(III) Testing of military equipment, vehicles, weapons, and
sensors for proper operation or suitability for combat use.

(ii) “Military installation” means a base, camp, post, station,
yard, center, homeport facility for any ship, or other activity under
the jurisdiction of the United States Department of Defense as
defined in paragraph (1) of subsection (g) of Section 2687 of Title
10 of the United States Code.

(b) (1) A circulation element consisting of the general location
and extent of existing and proposed major thoroughfares,
transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(2) (A) Commencing January 1, 2011, upon any substantive revision of the circulation element, the legislative body shall modify the circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

(B) For purposes of this paragraph, “users of streets, roads, and highways” mean bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) (1) A conservation element for the conservation, development, and utilization of natural resources, including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies, including flood management, water conservation, or groundwater agencies that have developed, served, controlled, managed, or conserved water of any type for any purpose in the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

(2) The conservation element may also cover all of the following:

(A) The reclamation of land and waters.

(B) Prevention and control of the pollution of streams and other waters.

(C) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.
Prevention, control, and correction of the erosion of soils, beaches, and shores.

Protection of watersheds.

The location, quantity, and quality of the rock, sand, and gravel resources.

Upon the next revision of the housing element on or after January 1, 2009, the conservation element shall identify rivers, creeks, streams, flood corridors, riparian habitats, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management.

An open-space element as provided in Article 10.5 (commencing with Section 65560).

A noise element that shall identify and appraise noise problems in the community. The noise element shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(A) Highways and freeways.

(B) Primary arterials and major local streets.

(C) Passenger and freight online railroad operations and ground rapid transit systems.

(D) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(E) Local industrial plants, including, but not limited to, railroad classification yards.

(F) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average sound level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in subparagraphs (A) to (F), inclusive, of paragraph (1).

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.
(4) The noise element shall include implementation measures
and possible solutions that address existing and foreseeable noise
problems, if any. The adopted noise element shall serve as a
guideline for compliance with the state’s noise insulation standards.

(g) (1) A safety element for the protection of the community
from any unreasonable risks associated with the effects of
seismically induced surface rupture, ground shaking, ground
failure, tsunami, seiche, and dam failure; slope instability leading
to mudslides and landslides; subsidence; liquefaction; and other
seismic hazards identified pursuant to Chapter 7.8 (commencing
with Section 2690) of Division 2 of the Public Resources Code,
and other geologic hazards known to the legislative body; flooding;
and wildland and urban fires. The safety element shall include
mapping of known seismic and other geologic hazards. It shall
also address evacuation routes, military installations, peakload
water supply requirements, and minimum road widths and
clearances around structures, as those items relate to identified fire
and geologic hazards.

(2) The safety element, upon the next revision of the housing
element on or after January 1, 2009, shall also do the following:

(A) Identify information regarding flood hazards, including,
but not limited to, the following:

(i) Flood hazard zones. As used in this subdivision, “flood
hazard zone” means an area subject to flooding that is delineated
as either a special hazard area or an area of moderate or minimal
hazard on an official flood insurance rate map issued by FEMA.
The identification of a flood hazard zone does not imply that areas
outside the flood hazard zones or uses permitted within flood
hazard zones will be free from flooding or flood damage.

(ii) National Flood Insurance Program maps published by
FEMA.

(iii) Information about flood hazards that is available from the
United States Army Corps of Engineers.

(iv) Designated floodway maps that are available from the
Central Valley Flood Protection Board.

(v) Dam failure inundation maps prepared pursuant to Section
6161 of the Water Code that are available from the Department of
Water Resources.
(vi) Awareness Floodplain Mapping Program maps and 200-year flood plain maps that are or may be available from, or accepted by, the Department of Water Resources.

(vii) Maps of levee protection zones.

(viii) Areas subject to inundation in the event of the failure of project or nonproject levees or floodwalls.

(ix) Historical data on flooding, including locally prepared maps of areas that are subject to flooding, areas that are vulnerable to flooding after wildfires, and sites that have been repeatedly damaged by flooding.

(x) Existing and planned development in flood hazard zones, including structures, roads, utilities, and essential public facilities.

(xi) Local, state, and federal agencies with responsibility for flood protection, including special districts and local offices of emergency services.

(B) Establish a set of comprehensive goals, policies, and objectives based on the information identified pursuant to subparagraph (A), for the protection of the community from the unreasonable risks of flooding, including, but not limited to:

(i) Avoiding or minimizing the risks of flooding to new development.

(ii) Evaluating whether new development should be located in flood hazard zones, and identifying construction methods or other methods to minimize damage if new development is located in flood hazard zones.

(iii) Maintaining the structural and operational integrity of essential public facilities during flooding.

(iv) Locating, when feasible, new essential public facilities outside of flood hazard zones, including hospitals and health care facilities, emergency shelters, fire stations, emergency command centers, and emergency communications facilities or identifying construction methods or other methods to minimize damage if these facilities are located in flood hazard zones.

(v) Establishing cooperative working relationships among public agencies with responsibility for flood protection.

(C) Establish a set of feasible implementation measures designed to carry out the goals, policies, and objectives established pursuant to subparagraph (B).

(3) Upon the next revision of the housing element on or after January 1, 2014, the safety element shall be reviewed and updated
as necessary to address the risk of fire for land classified as state responsibility areas, as defined in Section 4102 of the Public Resources Code, and land classified as very high fire hazard severity zones, as defined in Section 51177. This review shall consider the advice included in the Office of Planning and Research’s most recent publication of “Fire Hazard Planning, General Planning—General Plan Technical Advice Series” and shall also include all of the following:

(A) Information regarding fire hazards, including, but not limited to, all of the following:
   (i) Fire hazard severity zone maps available from the Department of Forestry and Fire Protection.
   (ii) Any historical data on wildfires available from local agencies or a reference to where the data can be found.
   (iii) Information about wildfire hazard areas that may be available from the United States Geological Survey.
   (iv) General location and distribution of existing and planned uses of land in very high fire hazard severity zones and in state responsibility areas, including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open space designations of homeowner associations.
   (v) Local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services.

(B) A set of goals, policies, and objectives based on the information identified pursuant to subparagraph (A) for the protection of the community from the unreasonable risk of wildfire.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives based on the information identified pursuant to subparagraph (B) including, but not limited to, all of the following:
   (i) Avoiding or minimizing the wildfire hazards associated with new uses of land.
   (ii) Locating, when feasible, new essential public facilities outside of high fire risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize
damage if these facilities are located in a state responsibility area
or very high fire hazard severity zone.

(iii) Designing adequate infrastructure if a new development is
located in a state responsibility area or in a very high fire hazard
severity zone, including safe access for emergency response
vehicles, visible street signs, and water supplies for structural fire
suppression.

(iv) Working cooperatively with public agencies with
responsibility for fire protection.

(D) If a city or county has adopted a fire safety plan or document
separate from the general plan, an attachment of, or reference to,
a city or county’s adopted fire safety plan or document that fulfills
commensurate goals and objectives and contains information
required pursuant to this paragraph.

(4) Upon the next revision of a local hazard mitigation plan,
adopted in accordance with the federal Disaster Mitigation Act of
2000 (Public Law 106-390), on or after January 1, 2017, or, if a
local jurisdiction has not adopted a local hazard mitigation plan,
beginning on or before January 1, 2022, the safety element shall
be reviewed and updated as necessary to address climate adaptation
and resiliency strategies applicable to the city or county. This
review shall consider advice provided in the Office of Planning
and Research’s General Plan Guidelines and shall include all of
the following:

(A) (i) A vulnerability assessment that identifies the risks that
climate change poses to the local jurisdiction and the geographic
areas at risk from climate change impacts, including, but not limited
to, an assessment of how climate change may affect the risks
addressed pursuant to paragraphs (2) and (3).

(ii) Information that may be available from federal, state,
regional, and local agencies that will assist in developing the
vulnerability assessment and the adaptation policies and strategies
required pursuant to subparagraph (B), including, but not limited
to, all of the following:

(I) Information from the internet-based Cal-Adapt tool.

(II) Information from the most recent version of the California
Adaptation Planning Guide.

(III) Information from local agencies on the types of assets,
resources, and populations that will be sensitive to various climate
change exposures.
(IV) Information from local agencies on their current ability to
deal with the impacts of climate change.

(V) Historical data on natural events and hazards, including
locally prepared maps of areas subject to previous risk, areas that
are vulnerable, and sites that have been repeatedly damaged.

(VI) Existing and planned development in identified at-risk
areas, including structures, roads, utilities, and essential public
facilities.

(VII) Federal, state, regional, and local agencies with
responsibility for the protection of public health and safety and
the environment, including special districts and local offices of
emergency services.

(B) A set of adaptation and resilience goals, policies, and
objectives based on the information specified in subparagraph (A)
for the protection of the community.

(C) A set of feasible implementation measures designed to carry
out the goals, policies, and objectives identified pursuant to
subparagraph (B) including, but not limited to, all of the following:

(i) Feasible methods to avoid or minimize climate change
impacts associated with new uses of land.

(ii) The location, when feasible, of new essential public facilities
outside of at-risk areas, including, but not limited to, hospitals and
health care facilities, emergency shelters, emergency command
centers, and emergency communications facilities, or identifying
construction methods or other methods to minimize damage if
these facilities are located in at-risk areas.

(iii) The designation of adequate and feasible infrastructure
located in an at-risk area.

(iv) Guidelines for working cooperatively with relevant local,
regional, state, and federal agencies.

(v) The identification of natural infrastructure that may be used
in adaptation projects, where feasible. Where feasible, the plan
shall use existing natural features and ecosystem processes, or the
restoration of natural features and ecosystem processes, when
developing alternatives for consideration. For purposes of this
clause, “natural infrastructure” means using natural ecological
systems or processes to reduce vulnerability to climate change
related hazards, or other related climate change effects, while
increasing the long-term adaptive capacity of coastal and inland
areas by perpetuating or restoring ecosystem services. This
includes, but is not limited to, the conservation, preservation, or
sustainable management of any form of aquatic or terrestrial
vegetated open space, such as beaches, dunes, tidal marshes, reefs,
seagrass, parks, rain gardens, and urban tree canopies. It also
includes systems and practices that use or mimic natural processes,
such as permeable pavements, bioswales, and other engineered
systems, such as levees that are combined with restored natural
systems, to provide clean water, conserve ecosystem values and
functions, and provide a wide array of benefits to people and
wildlife.

(D) (i) If a city or county has adopted the local hazard
mitigation plan, or other climate adaptation plan or document that
fulfills commensurate goals and objectives and contains the
information required pursuant to this paragraph, separate from the
general plan, an attachment of, or reference to, the local hazard
mitigation plan or other climate adaptation plan or document.

(ii) Cities or counties that have an adopted hazard mitigation
plan, or other climate adaptation plan or document that substantially
complies with this section, or have substantially equivalent
provisions to this subdivision in their general plans, may use that
information in the safety element to comply with this subdivision,
and shall summarize and incorporate by reference into the safety
element the other general plan provisions, climate adaptation plan
or document, specifically showing how each requirement of this
subdivision has been met.

(5) Upon the next revision of the housing element on or after
January 1, 2020, the safety element shall be reviewed and updated
as necessary to identify residential developments in any hazard
area identified in the safety element that do not have at least two
emergency evacuation routes.

(6) Upon the next revision of the housing element or the hazard
mitigation plan, after July 1, 2024, whichever occurs first, the
safety element shall be reviewed and updated as necessary to
include a comprehensive retrofit strategy to reduce the risk of
property loss and damage during wildfires. The comprehensive
retrofit strategy shall include, but is not limited to, all of the
following:

(A) A list of the types of retrofits needed in an area based on
fire risk.
(B) A process for identifying and inventorying structures in need of retrofit for fire hardening. The strategy shall prioritize the identification and inventorying of residential structures in very high fire risk areas.

(C) Goals and milestones for completing needed retrofit work.

(D) Potential funding sources and financing strategies to pay for needed retrofits on public and private property.

(E) Once adopted, the planning agency shall submit the adopted comprehensive retrofit strategy to the Office of Planning and Research for inclusion in the clearinghouse established pursuant to Section 71360 of the Public Resources Code.

(7) After the initial revision of the safety element pursuant to paragraphs (2), (3), (4), (5), and (6), the planning agency shall review and, if necessary, revise the safety element upon each revision of the housing element or local hazard mitigation plan, but not less than once every eight years, to identify new information relating to flood and fire hazards, climate adaptation and resiliency strategies, and retrofit updates applicable to the city or county that was not available during the previous revision of the safety element.

(8) Cities and counties that have flood plain management ordinances that have been approved by FEMA that substantially comply with this section, or have substantially equivalent provisions to this subdivision in their general plans, may use that information in the safety element to comply with this subdivision, and shall summarize and incorporate by reference into the safety element the other general plan provisions or the flood plain ordinance, specifically showing how each requirement of this subdivision has been met.

(9) Before the periodic review of its general plan and before preparing or revising its safety element, each city and county shall consult the California Geological Survey of the Department of Conservation, the Central Valley Flood Protection Board, if the city or county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code, and the Office of Emergency Services for the purpose of including information known by and available to the department, the agency, and the board required by this subdivision.

(10) To the extent that a county’s safety element is sufficiently detailed and contains appropriate policies and programs for
adoption by a city, a city may adopt that portion of the county’s
safety element that pertains to the city’s planning area in
satisfaction of the requirement imposed by this subdivision.

(h) (1) An environmental justice element, or related goals,
policies, and objectives integrated in other elements, that identifies
disadvantaged communities within the area covered by the general
plan of the city, county, or city and county, if the city, county, or
city and county has a disadvantaged community. The
environmental justice element, or related environmental justice
goals, policies, and objectives integrated in other elements, shall
do all of the following:

(A) Identify objectives and policies to reduce the unique or
compounded health risks in disadvantaged communities by means
that include, but are not limited to, the reduction of pollution
exposure, including the improvement of air quality, and the
promotion of public facilities, food access, safe and sanitary homes,
and physical activity.

(B) Identify objectives and policies to promote civic engagement
in the public decisionmaking process.

(C) Identify objectives and policies that prioritize improvements
and programs that address the needs of disadvantaged communities.

(2) A city, county, or city and county subject to this subdivision
shall adopt or review the environmental justice element, or the
environmental justice goals, policies, and objectives in other
elements, upon the adoption or next revision of two or more
elements concurrently on or after January 1, 2018.

(3) By adding this subdivision, the Legislature does not intend
to require a city, county, or city and county to take any action
prohibited by the United States Constitution or the California
Constitution.

(4) For purposes of this subdivision, the following terms shall
apply:

(A) “Disadvantaged communities” means an area identified by
the California Environmental Protection Agency pursuant to
Section 39711 of the Health and Safety Code or an area that is a
low-income area that is disproportionately affected by
environmental pollution and other hazards that can lead to negative
health effects, exposure, or environmental degradation.
(B) “Public facilities” includes public improvements, public services, and community amenities, as defined in subdivision (d) of Section 66000.

(C) “Low-income area” means an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.

SEC. 7. Section 65302.11 is added to the Government Code, to read:

65302.11. (a) Upon each revision of the housing element on or after July 1, 2024, each city or county that contains a very high fire risk area shall amend the land use element of its general plan to contain all of the following with respect to lands located within a very high fire risk area:

(1) (A) The goals contained in the most recent Strategic Fire Plan for California prepared by the Department of Forestry and Fire Protection.

(B) The locations of all very high fire risk areas within the city or county.

(C) The data and analysis described in the Office of Planning and Research’s most recent publication of “Fire Hazard Planning–General Plan Technical Advice Series.”

(D) The goals of any local hazard mitigation plan, community wildfire protection plan, and climate adaptation plan that has been adopted by the governing body of the city or county.

(2) Objectives and policies, based on the goals, data, and analysis identified pursuant to paragraph (1), for the protection of lives and property from unreasonable risk of wildfire. These objectives and policies shall take into consideration, and be consistent with, the information, goals, policies, objectives, and implementation measures included in the safety element in accordance with paragraph (3) of subdivision (g) of Section 65302.

(3) Feasible implementation measures designed to carry out the goals, objectives, and policies established pursuant to this subdivision.

(b) (1) After the initial amendment of the land use element pursuant to subdivision (a), the governing body of the city or county shall review all of the following upon each subsequent
revision of the housing element, but not less than once every eight
years:
(A) The implementation of the wildfire risk reduction standards,
as defined in Section 65012, within the jurisdiction. The governing
body shall make written findings, based upon substantial evidence,
regarding whether the city or county has implemented the wildfire
risk reduction standards during the preceding planning period, or
made adequate progress toward implementing the wildfire risk
reduction standards as provided in subdivision (b) of Section
65012.
(B) The designation of lands within the jurisdiction as very high
fire hazard severity zones pursuant to subdivision (b) of Section
51179. The governing body shall make written findings, based
upon substantial evidence, supporting the determinations made in
accordance with that subdivision.
(2) The draft findings required under this subdivision shall be
submitted to the State Board of Forestry and Fire Protection and
to every local agency that provides fire protection to territory in
the city or county at least 90 days prior to adoption by the
governing body.
(A) The State Board of Forestry and Fire Protection shall, and
a local agency may, review the draft findings and recommend
changes to the city or county within 60 days of its receipt regarding
both of the following:
(i) Whether the city or county has implemented the wildfire risk
reduction standards during the preceding planning period, or made
adequate progress toward implementing the wildfire risk reduction
standards as provided in subdivision (b) of Section 65012.
(ii) Whether the designation of lands within the jurisdiction as
very high fire hazard severity zones is appropriate.
(B) (i) Prior to the adoption of its draft findings, the governing
body shall consider the recommendations, if any, made by the
State Board of Forestry and Fire Protection and any local agency
that provides fire protection to territory in the city or county. If
the governing body determines not to accept all or some of the
recommendations, if any, made by the State Board of Forestry and
Fire Protection or the local agency, the governing body shall
communicate in writing to the State Board of Forestry and Fire
Protection or the local agency, its reasons for not accepting the
recommendations.
(ii) If the governing body proposes not to adopt the State Board of Forestry and Fire Protection’s recommendations concerning its draft findings, the State Board of Forestry and Fire Protection, within 15 days of receipt of the governing body’s written response, may request in writing a consultation with the governing body to discuss the State Board of Forestry and Fire Protection’s recommendations and the governing body’s response. The consultation may be conducted in person, electronically, or telephonically. If the State Board of Forestry and Fire Protection requests a consultation pursuant to this subparagraph, the governing body shall not approve the draft element or draft amendment until after consulting with the State Board of Forestry and Fire Protection. The consultation shall occur within 30 days after the State Board of Forestry and Fire Protection’s request.

(C) The State Board of Forestry and Fire Protection shall notify the city or county and may notify the Office of the Attorney General that the city or county is in violation of state law if the State Board of Forestry and Fire Protection finds that the written findings do not substantially comply with this section, or that the city or county has otherwise failed to substantially comply with this section or with Section 65860.2.

(3) Any interested person may bring an action to compel compliance with the requirements of this subdivision. The action shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

(c) For purposes of this section, “very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 8. Section 65584 of the Government Code is amended to read:

65584. (a) (1) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the department shall determine the existing and projected need for housing for each region pursuant to this article. For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing need shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county.

(2) It is the intent of the Legislature that cities, counties, and cities and counties should undertake all necessary actions to encourage, promote, and facilitate the development of housing to
accommodate the entire regional housing need, and reasonable
actions should be taken by local and regional governments to
ensure that future housing production meets, at a minimum, the
regional housing need established for planning purposes. These
actions shall include applicable reforms and incentives in Section
65582.1.

(3) The Legislature finds and declares that insufficient housing
in job centers hinders the state’s environmental quality and runs
counter to the state’s environmental goals. In particular, when
Californians seeking affordable housing are forced to drive longer
distances to work, an increased amount of greenhouse gases and
other pollutants is released and puts in jeopardy the achievement
of the state’s climate goals, as established pursuant to Section
38566 of the Health and Safety Code, and clean air goals.

(b) The department, in consultation with each council of
governments, shall determine each region’s existing and projected
housing need pursuant to Section 65584.01 at least two years prior
to the scheduled revision required pursuant to Section 65588. The
appropriate council of governments, or for cities and counties
without a council of governments, the department, shall adopt a
final regional housing need plan that allocates a share of the
regional housing need to each city, county, or city and county at
least one year prior to the scheduled revision for the region required
by Section 65588. The allocation plan prepared by a council of
governments shall be prepared pursuant to Sections 65584.04 and
65584.05.

(c) Notwithstanding any other provision of law, the due dates
for the determinations of the department or for the council of
governments, respectively, regarding the regional housing need
may be extended by the department by not more than 60 days if
the extension will enable access to more recent critical population
or housing data from a pending or recent release of the United
States Census Bureau or the Department of Finance. If the due
date for the determination of the department or the council of
governments is extended for this reason, the department shall
extend the corresponding housing element revision deadline
pursuant to Section 65588 by not more than 60 days.

(d) The regional housing needs allocation plan shall further all
of the following objectives:
(1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.

(2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, the encouragement of efficient development patterns, and the achievement of the region’s greenhouse gas reductions targets provided by the State Air Resources Board pursuant to Section 65080.

(3) Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.

(4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent American Community Survey.

(5) Affirmatively furthering fair housing.

(6) Promoting resilient communities. Furthering this objective shall include reducing development pressure within very high fire risk areas. This paragraph shall apply only to the regional housing needs allocation plan for the seventh and subsequent revisions of the housing element.

(e) For purposes of this section, “affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.
For purposes of this section, “household income levels” are as determined by the department as of the most recent American Community Survey pursuant to the following code sections:

1. Very low incomes, as defined by Section 50105 of the Health and Safety Code.
2. Lower incomes, as defined by Section 50079.5 of the Health and Safety Code.
3. Moderate incomes, as defined by Section 50093 of the Health and Safety Code.
4. Above moderate incomes are those exceeding the moderate-income level of Section 50093 of the Health and Safety Code.

Notwithstanding any other provision of law, determinations made by the department, a council of governments, or a city or county pursuant to this section or Section 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, 65584.06, 65584.07, or 65584.08 are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 9. Section 65584.04 of the Government Code is amended to read:

65584.04. (a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop, in consultation with the department, a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall further the objectives listed in subdivision (d) of Section 65584.

(b) (1) No more than six months before the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (e) that will allow the development of a methodology based upon the factors established in subdivision (e).

(2) With respect to the objective in paragraph (5) of subdivision (d) of Section 65584, the survey shall review and compile information that will allow the development of a methodology based upon the issues, strategies, and actions that are included, as
available, in an Analysis of Impediments to Fair Housing Choice or an Assessment of Fair Housing completed by any city or county or the department that covers communities within the area served by the council of governments, and in housing elements adopted pursuant to this article by cities and counties within the area served by the council of governments.

(3) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(4) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(5) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (e) before the public comment period provided for in subdivision (d).

(c) The council of governments shall electronically report the results of the survey of fair housing issues, strategies, and actions compiled pursuant to paragraph (2) of subdivision (b). The report shall describe common themes and effective strategies employed by cities and counties within the area served by the council of governments, including common themes and effective strategies around avoiding the displacement of lower income households. The council of governments shall also identify significant barriers to affirmatively furthering fair housing at the regional level and may recommend strategies or actions to overcome those barriers. A council of governments or metropolitan planning organization, as appropriate, may use this information for any other purpose, including publication within a regional transportation plan adopted pursuant to Section 65080 or to inform the land use assumptions that are applied in the development of a regional transportation plan.

(d) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and
councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community as well as members of protected classes under Section 12955. The proposed methodology, along with any relevant underlying data and assumptions, an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, how each of the factors listed in subdivision (e) is incorporated into the methodology, and how the proposed methodology furthers the objectives listed in subdivision (e) of Section 65584, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written or electronic request for the proposed methodology and published on the council of governments’, or delegate subregion’s, internet website. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(e) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction’s existing and projected jobs and housing relationship. This shall include an estimate based on readily available data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to low-wage workers as well as an estimate based on readily available data, of projected job growth and projected household growth by income level within each member jurisdiction during the planning period.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.
(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis, including land zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts conversion to nonagricultural uses.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of that jurisdiction that prohibits or restricts its conversion to nonagricultural uses.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county and land within an unincorporated area zoned or designated for agricultural protection or preservation that is subject to a local ballot measure that was approved by the voters of the jurisdiction that prohibits or restricts conversion to nonagricultural uses.

(5) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583,
that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(6) The percentage of existing households at each of the income levels listed in subdivision (f) of Section 65584 that are paying more than 30 percent and more than 50 percent of their income in rent.

(7) The rate of overcrowding.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) The housing needs of individuals and families experiencing homelessness. If a council of governments has surveyed each of its member jurisdictions pursuant to subdivision (b) on or before January 1, 2020, this paragraph shall apply only to the development of methodologies for the seventh and subsequent revisions of the housing element.

(11) The loss of units during a state of emergency that was declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2), during the planning period immediately preceding the relevant revision pursuant to Section 65588 that have yet to be rebuilt or replaced at the time of the analysis.

(12) The region’s greenhouse gas emissions targets provided by the State Air Resources Board pursuant to Section 65080.

(13) The amount of land in each member jurisdiction that is within a very high fire risk area, by allocating a lower proportion of housing to a jurisdiction if it is likely that the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites pursuant to Section 65583 in order to meet its housing need allocation. In determining whether it is likely the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites pursuant to Section 65583 in order to meet its housing need allocation, the council of governments, or delegate subregion as applicable, shall consider factors that include, but are not limited to, the following:

(A) (i) The percentage of land described in subparagraph (B) of paragraph (2) within the jurisdiction that includes a very high fire risk area.
(ii) Whether suitable alternative sites exist outside the jurisdiction, but within the region, to accommodate the remaining regional housing need.

(B) Any determination by a council of governments, or delegate subregions, as applicable, to establish, or not establish, a lower allocation under this paragraph for a jurisdiction containing a very high fire risk area shall be supported by a data-driven analysis demonstrating that the reduced allocation is, or is not, appropriate, including evidence-based consideration of the factors set forth in clauses (i) and (ii) of subparagraph (A).

(C) This paragraph shall apply only to the development of methodologies for the seventh and subsequent revisions of the housing element.

(D) For the purposes of this paragraph, “very high fire risk area” has the same meaning as defined in Section 65011.

(14) Any other factors adopted by the council of governments, that further the objectives listed in subdivision (d) of Section 65584, provided that the council of governments specifies which of the objectives each additional factor is necessary to further. The council of governments may include additional factors unrelated to furthering the objectives listed in subdivision (d) of Section 65584 so long as the additional factors do not undermine the objectives listed in subdivision (d) of Section 65584 and are applied equally across all household income levels as described in subdivision (f) of Section 65584 and the council of governments makes a finding that the factor is necessary to address significant health and safety conditions.

(f) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (e) was incorporated into the methodology and how the methodology furthers the objectives listed in subdivision (d) of Section 65584. The methodology may include numerical weighting. This information, and any other supporting materials used in determining the methodology, shall be posted on the council of governments’, or delegate subregion’s, internet website.

(g) The following criteria shall not be a justification for a determination or a reduction in a jurisdiction’s share of the regional housing need:
(1) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county.

(2) Prior underproduction of housing in a city or county from the previous regional housing need allocation, as determined by each jurisdiction’s annual production report submitted pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.

(3) Stable population numbers in a city or county from the previous regional housing needs cycle.

(h) Following the conclusion of the public comment period described in subdivision (d) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, and as a result of consultation with the department, each council of governments, or delegate subregion, as applicable, shall publish a draft allocation methodology on its internet website and submit the draft allocation methodology, along with the information required pursuant to subdivision (e), to the department.

(i) Within 60 days, the department shall review the draft allocation methodology and report its written findings to the council of governments, or delegate subregion, as applicable. In its written findings the department shall determine whether the methodology furthers the objectives listed in subdivision (d) of Section 65584. If the department determines that the methodology is not consistent with subdivision (d) of Section 65584, the council of governments, or delegate subregion, as applicable, shall take one of the following actions:

(1) Revise the methodology to further the objectives listed in subdivision (d) of Section 65584 and adopt a final regional, or subregional, housing need allocation methodology.

(2) Adopt the regional, or subregional, housing need allocation methodology without revisions and include within its resolution of adoption findings, supported by substantial evidence, as to why the council of governments, or delegate subregion, believes that the methodology furthers the objectives listed in subdivision (d) of Section 65584 despite the findings of the department.
(j) If the department’s findings are not available within the time limits set by subdivision (i), the council of governments, or delegate subregion, may act without them.

(k) Upon either action pursuant to subdivision (i), the council of governments, or delegate subregion, shall provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion, as applicable, and to the department, and shall publish the adopted allocation methodology, along with its resolution and any adopted written findings, on its internet website.

(l) The department may, within 90 days, review the adopted methodology and report its findings to the council of governments, or delegate subregion.

(m) (1) It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan.

To achieve this goal, the allocation plan shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.

(2) The final allocation plan shall ensure that the total regional housing need, by income category, as determined under Section 65584, is maintained, and that each jurisdiction in the region receive an allocation of units for low- and very low income households.

(3) The resolution approving the final housing need allocation plan shall demonstrate that the plan is consistent with the sustainable communities strategy in the regional transportation plan and furthers the objectives listed in subdivision (d) of Section 65584.

SEC. 10. Section 65584.06 of the Government Code is amended to read:

65584.06. (a) For cities and counties without a council of governments, the department shall determine and distribute the existing and projected housing need, in accordance with Section 65584 and this section. If the department determines that a county or counties, supported by a resolution adopted by the board or boards of supervisors, and a majority of cities within the county or counties representing a majority of the population of the county or counties, possess the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the distribution of the regional housing need, the department shall delegate this responsibility to the cities and county or counties.
(b) The distribution of regional housing need shall, based upon available data and in consultation with the cities and counties, take into consideration market demand for housing, the distribution of household growth within the county assumed in the regional transportation plan where applicable, employment opportunities and commuting patterns, the availability of suitable sites and public facilities, the needs of individuals and families experiencing homelessness, agreements between a county and cities in a county to direct growth toward incorporated areas of the county, or other considerations as may be requested by the affected cities or counties and agreed to by the department. As part of the allocation of the regional housing need, the department shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. Consideration of suitable housing sites or land suitable for urban development is not limited to existing zoning ordinances and land use restrictions of a locality, but shall include consideration of the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(c) (1) The distribution of regional housing need pursuant to this section shall also take into consideration the amount of land in each city and each county that is within a very high fire risk area, by allocating a lower proportion of housing to a jurisdiction if it is likely that the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites pursuant to Section 65583 in order to meet its housing need allocation. In determining whether it is likely the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites pursuant to Section 65583 in order to meet its housing need allocation, the department shall consider factors that include, but are not limited to, the following:

(A) The percentage of land described in subparagraph (B) of paragraph (2) of subdivision (e) of Section 65584.04 within the jurisdiction that includes a very high fire risk area.
(B) Whether suitable alternative sites exist outside the jurisdiction, but within the region, to accommodate the remaining regional housing need.

(2) Any determination to establish, or not establish, a lower allocation under this paragraph for a jurisdiction containing a very high fire risk area shall be supported by a data-driven analysis demonstrating that the reduced allocation is, or is not, appropriate, including evidence-based consideration of the factors set forth in paragraph (1).

(3) This paragraph shall apply only to the development of methodologies for the seventh and subsequent revisions of the housing element.

(d) Within 90 days following the department’s determination of a draft distribution of the regional housing need to the cities and the county, a city or county may propose to revise the determination of its share of the regional housing need in accordance with criteria set forth in the draft distribution. The proposed revised share shall be based upon comparable data available for all affected jurisdictions, and accepted planning methodology, and shall be supported by adequate documentation.

(e) (1) Within 60 days after the end of the 90-day time period for the revision by the cities or county, the department shall accept the proposed revision, modify its earlier determination, or indicate why the proposed revision is inconsistent with the regional housing need.

(2) If the department does not accept the proposed revision, then, within 30 days, the city or county may request a public hearing to review the determination.

(3) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(4) The date of the hearing shall be at least 10 but not more than 15 days from the date of the notification.

(5) Before making its final determination, the department shall consider all comments received and shall include a written response to each request for revision received from a city or county.

(f) If the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the department grants a revised allocation pursuant to subdivision (d), the department shall ensure that the total regional housing need.
need is maintained. The department’s final determination shall be in writing and shall include information explaining how its action is consistent with this section. If the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the department. The department, within its final determination, may adjust the allocation of a city or county that was not the subject of a request for revision of the draft distribution.

(g) The department shall issue a final regional housing need allocation for all cities and counties within 45 days of the completion of the local review period.

(h) Statutory changes enacted after the date the department issued a final determination pursuant to this section shall not be a basis for a revision of the final determination.

(i) For purposes of this section, “very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 11. Section 65860.2 is added to the Government Code, to read:

65860.2. (a) Not more than 12 months following the amendment of the land use element of a city’s or county’s general plan pursuant to Section 65302.11, each city or county that contains a very high fire risk area, as defined in Section 65011, shall adopt a very high fire risk overlay zone or otherwise amend its zoning ordinance so that it is consistent with the general plan, as amended.

(b) Notwithstanding any other law, the minimum requirements set forth in this section shall apply to all cities, including charter cities, and counties that contain a very high fire risk area. The Legislature finds and declares that establishment of minimum requirements for wildfire protection in very high fire risk areas is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Except as expressly stated, it is not the intent of the Legislature to limit the ordinances, rules, or regulations that a city or county may otherwise adopt and enforce beyond the minimum requirements outlined in this section.

SEC. 12. Section 65865.6 is added to the Government Code, to read:

65865.6. (a) Notwithstanding any other law and subject to subdivision (b), after the amendments to the land use element of the city’s or county’s general plan and zoning ordinances required
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by Sections 65302.11 and 65860.2 have become effective, the
legislative body of a city or county that contains a very high fire
risk area, as defined in Section 65011, shall not enter into a
development agreement for property that is located within such a
very high fire risk area unless the city or county finds, based on
substantial evidence in the record that the project and all structures
within the project are protected from wildfire risk in accordance
with the wildfire risk reduction standards in effect at the time that
the development agreement is entered into, or wildfire protection
standards adopted by the city or county that meet or exceed the
wildfire risk reduction standards in effect at the time that the
development agreement is entered into.

(b) Subdivision (a) shall apply only to a development agreement
entered into on or after the date upon which the statutes of
limitation specified in subdivision (c) of Section 65009 have run
with respect to the amendments to a city’s or county’s general plan
and zoning ordinances required by Sections 65302.11 and 65860.2
or, if the amendments and any associated environmental documents
are challenged in court, the validity of the amendments and any
associated environmental documents has been upheld in a final
decision.

(c) For purposes of this section, “wildfire risk reduction
standards” means the wildfire risk reduction standards set forth in
Section 65012 that are adopted pursuant to Section 65013 or
implemented by the city or county pursuant to subparagraph (B)
or (C) of paragraph (1) or subparagraph (B), (C), or (D) of
paragraph (2) of subdivision (a) of Section 65012.

(d) This section shall not be interpreted to change or diminish
the requirements of any other law or ordinance relating to fire
protection. In the event of conflict among the wildfire risk
reduction standards, or between the wildfire risk reduction
standards and the requirements of any other law relating to fire
protection, such conflicts shall be resolved in a manner which on
balance is most protective against potential loss from wildfire
exposure. Nothing in this section shall be construed to limit the
existing authority of a city or county under any other law from
adopting ordinances, rules, or regulations beyond the minimum
requirements outlined in this section.

(e) For purposes of this section, “very high fire risk area” has
the same meaning as defined in Section 65011.
SEC. 13. Section 65962.3 is added to the Government Code, to read: 

65962.3. (a) Notwithstanding any other law, and subject to subdivision (b), after the amendments to the land use element of the city’s or county’s general plan and zoning ordinances required by Sections 65302.11 and 65860.2 have become effective, a city or county that contains a very high fire risk area, as defined in Section 65011, shall not approve a discretionary permit or other discretionary entitlement that would result in the construction of a new building or construction that would result in an increase in allowed occupancy for an existing building, or a ministerial permit that would result in the construction of a new residence, for a project that is located within such a very high fire risk area unless the city or county finds, based on substantial evidence in the record that the project and all structures within the project are protected from wildfire risk in accordance with the wildfire risk reduction standards defined in Section 65012, or wildfire protection standards in effect at the time the application for the permit or entitlement is deemed complete, adopted by the city or county that meet or exceed the wildfire risk reduction standards in effect at the time the application for the permit or entitlement is deemed complete. Approval of a final map or parcel map that conforms to a previously approved tentative map pursuant to Section 66458 shall not constitute approval of a ministerial permit for purposes of this section.

(b) Subdivision (a) shall only apply to a discretionary permit, discretionary entitlement, or ministerial permit issued on or after the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run with respect to the amendments to a city’s or a county’s general plan and zoning ordinances required by Sections 65302.11 and 65860.2 or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) This section shall not be interpreted to waive or reduce a city or county’s obligation pursuant to Section 65863 to ensure that its housing element inventory accommodates, at all times throughout the housing element planning period, its remaining share of its regional housing need.
(d) This section shall not be interpreted to change or diminish the requirements of any other law or ordinance relating to fire protection. In the event of conflict among the wildfire risk reduction standards, or between the wildfire risk reduction standards and the requirements of any other law relating to fire protection, such conflicts shall be resolved in a manner which on balance is most protective against potential loss from wildfire exposure. Nothing in this section shall be construed to limit the existing authority of a city or county under any other law from adopting ordinances, rules, or regulations beyond the minimum requirements outlined in this section.

(e) For purposes of this section, “wildfire risk reduction standards” means those wildfire risk reduction standards set forth in Section 65012 that are adopted pursuant to Section 65013 or implemented by the city or county pursuant to subparagraph (B) or (C) of paragraph (1) of or subparagraph (B), (C), or (D) of paragraph (2) of subdivision (a) of Section 65012.

(f) For purposes of this section, “very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 14. Section 66474.03 is added to the Government Code, to read:

66474.03. (a) Notwithstanding any other law and subject to subdivision (b), after the amendments to the land use element of the city’s or county’s general plan and zoning ordinances required by Sections 65302.11 and 65860.2 have become effective, each city and each county that contains a very high fire risk area, as defined in Section 65011, shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, for a subdivision that is located within such a very high fire risk area unless, in addition to any findings required under Section 66474.02, the city or county finds, based on substantial evidence in the record that the project and all structures within the project are protected from wildfire risk in accordance with the wildfire risk reduction standards in effect at the time the application for the tentative map or parcel map is deemed complete, or wildfire protection standards adopted by the city or county that meet or exceed the wildfire risk reduction standards in effect at the time the application for the tentative map or parcel map is deemed complete.

(b) Subdivision (a) shall only apply to an approval of a tentative map, or a parcel map for which a tentative map was not required,
on or after the date upon which the statutes of limitation specified
in subdivision (c) of Section 65009 have run with respect to the
amendments to the land use element of the city’s or county’s
general plan and zoning ordinances required by Sections 65302.11
and 65860.2 or, if the amendments and any associated
environmental documents are challenged in court, the validity of
the amendments and any associated environmental documents has
been upheld in a final decision.

(c) For purposes of this section, “wildfire risk reduction
standards” means those wildfire risk reduction standards set forth
in Section 65012 that are adopted pursuant to Section 65013 or
implemented by the city or county pursuant to subparagraph (B)
or (C) of paragraph (1) or subparagraph (B), (C), or (D) of
paragraph (2) of subdivision (a) of Section 65012.

(d) This section shall not be interpreted to change or diminish
the requirements of any other law or ordinance relating to fire
protection. In the event of conflict among the wildfire risk
reduction standards, or between the wildfire risk reduction
standards and the requirements of any other law relating to fire
protection, such conflicts shall be resolved in a manner which on
balance is most protective against potential loss from wildfire
exposure. Nothing in this section shall be construed to limit the
existing authority of a city or county under any other law from
adopting ordinances, rules, or regulations beyond the minimum
requirements outlined in this section.

SEC. 15. Section 13132.7 of the Health and Safety Code is
amended to read:

13132.7. (a) Within a very high fire hazard severity zone
designated by the Director of Forestry and Fire Protection pursuant
to Article 9 (commencing with Section 4201) of Chapter 1 of Part
2 of Division 4 of the Public Resources Code and within a very
high fire hazard severity zone designated by a local agency
pursuant to Chapter 6.8 (commencing with Section 51175) of Part
1 of Division 1 of Title 5 of the Government Code, the entire roof
covering of every existing structure where more than 50 percent
of the total roof area is replaced within any one-year period, every
new structure, and any roof covering applied in the alteration,
repair, or replacement of the roof of every existing structure, shall
be a fire retardant roof covering that is at least class B as defined
in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(b) In all other areas, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class C as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(c) Notwithstanding subdivision (b), within state responsibility areas classified by the State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except for those state responsibility areas designated as moderate fire hazard responsibility zones, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(d) (1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class A as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard severity zone if the jurisdiction fulfills both of the following requirements:
(A) Adopts the model ordinance approved by the State Fire Marshal pursuant to Section 51189 of the Government Code or an ordinance that substantially conforms to the model ordinance of the State Fire Marshal.

(B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

(e) The State Building Standards Commission shall incorporate the requirements set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to the California Building Standards Code in accordance with Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(f) Nothing in this section shall limit the authority of a city, county, city and county, or fire protection district in establishing more restrictive requirements, in accordance with current law, than those specified in this section.

(g) This section shall not affect the validity of an ordinance, adopted prior to the effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a city, county, city and county, or fire protection district, unless the ordinance mandates a standard that is less stringent than the standards set forth in subdivision (a), in which case the ordinance shall not be valid on or after the effective date for the relevant roofing standard specified in subdivisions (a) and (b).

(h) Any qualified historical building or structure as defined in Section 18955 may, on a case-by-case basis, utilize alternative roof constructions as provided by the State Historical Building Code.

(i) The installer of the roof covering shall provide certification of the roof covering classification, as provided by the manufacturer or supplier, to the building owner and, when requested, to the agency responsible for enforcement of this part. The installer shall also install the roof covering in accordance with the manufacturer’s listing.

(j) No wood roof covering materials shall be sold or applied in this state unless both of the following conditions are met:

(1) The materials have been approved and listed by the State Fire Marshal as complying with the requirements of this section.

(2) The materials have passed at least 5 years of the 10-year natural weathering test. The 10-year natural weathering test required by this subdivision shall be conducted in accordance with
at a testing facility recognized by the State Fire Marshal.

(k) The Insurance Commissioner shall accept the use of fire
retardant wood roof covering material that complies with the
requirements of this section, used in the partial repair or
replacement of nonfire retardant wood roof covering material, as
complying with the requirement in Section 2695.9 of Title 10 of
the California Code of Regulations relative to matching
replacement items in quality, color, and size.

(l) No common interest development, as defined in Section 4100
or 6534 of the Civil Code, may require an owner to install or repair
a roof in a manner that is in violation of this section. The governing
documents, as defined in Section 4150 or 6552 of the Civil Code,
of a common interest development within a very high fire severity
zone shall allow for at least one type of fire retardant roof covering
material that meets the requirements of this section and that is, at
a minimum, class B, as defined in the International Building Code.

SEC. 16. Section 4123.6 is added to the Public Resources Code,
to read:

4123.6. (a) For purposes of this section:
(1) “Department” means the Department of Forestry and Fire
Protection.
(2) “Program” means the Wildfire Risk Reduction Planning
Support Grants Program established by this section.
(3) “Small jurisdiction” means either of the following:
(A) A county that had a population of less than 250,000 as of
January 1, 2019.
(B) A city located within a county described in subparagraph
(A) that contains a very high fire risk area.
(b) (1) The Wildfire Risk Reduction Planning Support Grants
Program is hereby established for the purpose of providing small
jurisdictions that contain very high fire risk areas with grants for
planning activities to enable those jurisdictions to meet the
requirements set forth in the act adding this section.
(2) Upon appropriation by the Legislature for purposes of this
section, the department shall distribute grant funds under the
program, in accordance with subdivision (e).
(c) The department shall administer the program and, consistent
with the requirements of this section, provide grants to jurisdictions
for the purposes described in paragraph (1) of subdivision (b).
(d) A small jurisdiction that receives an allocation of grant funds pursuant to this section shall use that allocation solely for wildfire risk reduction planning activities, including, but not limited to, one or more of the following:

1. Updating planning documents and zoning ordinances, including general plans, community plans, specific plans, local hazard mitigation plans, community wildfire protection plans, climate adaptation plans, and local coastal programs to implement Sections 65302.11 and 65860.2 of the Government Code.

2. Developing and adopting a comprehensive retrofit strategy in accordance with paragraph (6) of subdivision (g) of Section 65302 of the Government Code.

3. Reviewing and updating the local designation of lands within the jurisdiction as very high fire hazard severity zones pursuant to subdivision (b) of Section 51179 of the Government Code.

4. Implementing the wildfire risk reduction standards set forth in Sections 65012 and 65013 of the Government Code or local wildfire protection standards that meet or exceed those wildfire risk reduction standards, including development and adoption of any appropriate local ordinances, rules, or regulations.

5. Establishing and initial funding of an enforcement program in accordance with subparagraph (C) of paragraph (1) of subdivision (a) of Section 65012 of the Government Code.

6. Performing infrastructure planning, including for access roads, water supplies providing fire protection, or other public facilities necessary to support the wildfire risk reduction standards set forth in Sections 65012 and 65013 of the Government Code.

7. Partnering with other local entities to implement wildfire risk reduction.

8. Updating local planning processes to otherwise support wildfire risk reduction.

9. Completing any environmental review associated with the activities described in paragraphs (1) to (8), inclusive.

10. Covering the costs of temporary staffing or consulting needs associated with the activities described in paragraphs (1) to (9), inclusive.

(e) (1) The amount described in paragraph (2) of subdivision (b) shall be allocated in each year for which funding is made available for the program to small jurisdictions in accordance with this subdivision.
The department shall administer a noncompetitive, over-the-counter application process for grants funded by the allocation specified in paragraph (1) for wildfire risk reduction planning activities, as described in subdivision (d), for small jurisdictions.

(3) The department shall award no more than three hundred fifty thousand dollars ($350,000), and no less than two hundred fifty thousand dollars ($250,000), to a qualifying small jurisdiction.

(4) Any qualifying small jurisdiction may submit an application for funding, in the form and manner prescribed by the department, in order to receive an allocation of funds pursuant to this subdivision. An application submitted pursuant to this paragraph shall include a description of the proposed uses of funds, in accordance with subdivision (d). The department shall verify whether each funding request meets the minimum criteria established by this subdivision and make awards on a continuous basis based on those criteria.

(f) Of any amount appropriated for purposes of this section, up to 5 percent of those funds may be set aside for program administration by the department.

(g) For purposes of this section, “very high fire risk area” has the same meaning as defined in Section 65011.

SEC. 17. Section 4290 of the Public Resources Code is amended to read:

4290. (a) The board shall adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to state responsibility area lands under the authority of the department, and to lands classified and designated as very high fire hazard severity zones, as defined in subdivision (i) of Section 51177 of the Government Code. These regulations apply to the perimeters and access from the perimeters to all residential, commercial, and industrial building construction within state responsibility areas approved after January 1, 1991, and within lands classified and designated as very high fire hazard severity zones, as defined in subdivision (i) of Section 51177 of the Government Code after July 1, 2021. The regulations shall conform as nearly as practicable with the regulations adopted by the State Fire Marshal pursuant to Section 65013. The board may not adopt building standards, as defined in Section 18909 of the Health and Safety Code, under the authority of this section. As an integral
part of fire safety standards, the State Fire Marshal has the authority
to adopt regulations for roof coverings and openings into the attic
areas of buildings specified in Section 13108.5 of the Health and
Safety Code. The regulations apply to the placement of mobile
homes as defined by National Fire Protection Association
standards. These regulations do not apply where an application
for a building permit was filed prior to January 1, 1991, or to parcel
or tentative maps or other developments approved prior to January
1, 1991, if the final map for the tentative map is approved within
the time prescribed by the local ordinance. The regulations shall
include all of the following:

1. Road standards for fire equipment access.
2. Standards for signs identifying streets, roads, and buildings.
3. Minimum private water supply reserves for emergency fire
use.
4. Fuel breaks and greenbelts.

(b) The board shall, on and after July 1, 2021, periodically
update regulations for fuel breaks and greenbelts near communities
to provide greater fire safety for the perimeters to all residential,
commercial, and industrial building construction within state
responsibility areas and lands classified and designated as very
high fire hazard severity zones, as defined in subdivision (i) of
Section 51177 of the Government Code, after July 1, 2021. These
regulations shall include measures to preserve undeveloped
ridgelines to reduce fire risk and improve fire protection. The board
shall, by regulation, define “ridgeline” for purposes of this
subdivision.

(c) These regulations do not supersede local regulations which
equal or exceed minimum regulations adopted by the state.

(d) The board may enter into contracts with technical experts
to meet the requirements of this section.

SEC. 18. No reimbursement is required by this act pursuant
to Section 6 of Article XIIIB of the California Constitution because
a local agency or school district has the authority to levy service
charges, fees, or assessments sufficient to pay for the program or
level of service mandated by this act, within the meaning of Section
CORRECTIONS:

Heading—Line 1.
Item B-12
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 7, 2021
SUBJECT: Senate Bill 16 (Skinner) - Peace officers: release of records
ATTACHMENTS: 1. Summary Memo – SB 16
2. League of California Cities – Letter of Opposition
3. Bill Text – SB 16

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 16 (Skinner) - Peace officers: release of records (SB 16) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 16 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 16, the Liaisons may recommend the following actions:

1) Support SB 16;
2) Support if amended SB 16;
3) Oppose SB 16;
4) Oppose unless amended SB 16;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 16, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
June 2, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 16 (Skinner) Peace officers: release of records


Summary
This bill expands the categories of police personnel records subject to disclosure under the California Public Records Act (CPRA) and modifies existing provisions regarding the release of records subject to disclosure.

Specifically, this bill would:
- Makes personnel records related to the following categories of incidents subject to disclosure under the CPRA:
  - Records of every incident involving unreasonable uses of force or excessive uses of force.
  - Records related to sustained findings that an officer failed to intervene against another officer using unreasonable or excessive force.
  - Records related to sustained findings of unlawful arrests and unlawful searches.
  - Records related to sustained findings of officers engaged in conduct involving prejudice or discrimination based on specified protected classes.
- Permits the disclosure of records that would be otherwise subject to disclosure when they relate to an incident in which an officer resigned before an investigation is completed.
- Requires that agencies retain all complaints and related reports or findings currently in possession of a department or agency.
- Clarifies that the identity of victims and whistleblowers may be redacted in addition to witnesses and complainants.
- Codifies existing California Supreme Court case-law requiring law enforcement agencies to cover the costs of editing records.
- Prohibits assertion of the attorney-client privilege to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity’s attorney, or billing records related to the work done by the attorney.
- Requires records subject to disclosure be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.
- Eliminates the limitation on judges to only consider misconduct complaints against officers from the previous five years when determining relevancy for admissibility in criminal proceedings.
- Requires that each law enforcement agency request and review the prior personnel files of any officer they hire.
- Requires that every officer employed as a peace officer immediately report all uses of force by the officer to the officer's employing agency.
- Provides that phases-in implementation of this bill so that records relating to incidents that relate to the new categories of offenses added by this bill that occurred before January 1, 2022, shall not be required to be disclosed until January 1, 2023. However, records of incidents that occur after January 1, 2022, shall be subject to disclosure pursuant to the provisions of this bill.

**Background**

In 2018, the Legislature passed SB 1421 (Skinner, Chapter 988), which represented a paradigm shift in how local and state police agencies must disclose information when police use force or are subject to sustained findings of misconduct related to sexual assault and dishonesty.

When SB 1421 went into effect on January 1, 2019, every law enforcement agency in California received a request for records made subject to disclosure by the new law. Many of the requests sought a comprehensive release of all existing and relevant records from the agencies. Despite changes to the law, agencies across the state have taken actions that have delayed or denied the public access to records for which disclosure should be mandated. For example, Downey, Inglewood, Fremont, and Morgan Hill destroyed records before January 1, 2019, to avoid producing responsive documents.

Additional attempts to thwart disclosure have taken numerous forms. By March 2019, the Los Angeles Times reported that 170 agencies were in active litigation or refusing to disclose records arguing, among other things, that the law did not apply to records created before 2019. This litigation has created substantial delays in access and has encouraged agencies to fight in court rather than invest in resources to disclose the records. Agencies are also setting up roadblocks to disclosure. For example, the City of Anaheim demanded a $3,000 deposit before it would begin the process to disclose records to a mother about the death of her unarmed son at the hands of police.

In the flurry of litigation over SB 1421, one court of appeal discussed an open legal question regarding the interpretation of the law: whether the CPRA’s discretionary (i.e., voluntary) exemptions can be asserted to withhold records that are mandated for disclosure by SB 1421. In Bacerra v. Superior Court, 44 Cal. App. 5th 897 (2020), the court recognized that the interest behind exemptions in the CPRA could be asserted through the balancing test language in 832.7(b)(6). Through that exemption, an agency may redact records as necessary based on another law that protects that information from disclosure. However, the court also said the discretionary exemptions in the CPRA do not swallow SB 1421’s mandate to disclose specified documents and information. This bill clarifies the application of the attorney-client privilege to SB 1421 records. This provision explicitly incorporates the privilege into the 832.7 disclosure scheme. The provision is intended to prevent the redaction of factual information uncovered in an investigation conducted by a public entity simply because they hire an attorney to conduct the investigation. This bill permits the redaction of legal opinions and the arguments or reasoning for these opinions. The purpose of this provision is to prevent the prevention of disclosure of factual information that would otherwise be subject to disclosure if the agency hired an investigator that was not an attorney.

Even though California has radically shifted its confidential treatment of police records, it remains an outlier when it comes to the public's right to know about police misconduct and use of force.
At least 20 other states have far more open access, including New York, which eliminated its statutory scheme for confidentiality in police personnel records this summer. California’s law remains narrowly focused on disclosing only specified categories of misconduct and uses of force. By expanding the categories of disclosure, the bill adds to SB 1421’s structure of mandating disclosure about the most critical incidents, including all uses of force, wrongful arrests and wrongful searches, and records related to an officer’s biased or discriminatory actions.

**Status of Legislation**
SB 16 passed off the Senate Floor and is currently pending in the Assembly Rules Committee.

**Arguments in Support**
According to the Conference of California Bar Associations (CCBA), "The CCBA seeks to promote justice through laws in California by bringing together attorney volunteers from around the State to identify, debate, and promote creative, non-partisan changes to the law for the benefit of all Californians. In 2015, the CCBA approved Resolution 07-02-2015, which sought to amend specific California laws to force disclosure of confidential police disciplinary records. The CCBA previously relied on Resolution 07-02-2015 to support SB 1421 from the 2017-2018 Regular Session. Because SB 16 is also germane to the goals of Resolution 07-02-2015, the CCBA similarly supports SB 16. In 2018, SB 1421 gave Californians, for the first time in 40 years, access to a limited set of records related to an officer's use of force, sexual misconduct, or on-the-job dishonesty. However, under current law, Californians have no right to know about officers who use excessive but non-deadly force or have a history of engaging in racist or biased actions. Such public access to information on officer conduct is essential to build trust between law enforcement and the communities they serve."

While SB 1421 was a significant breakthrough, it did not go far enough. For example, Californians would not have been able to access records about the past misconduct of Derek Chauvin, the Minneapolis officer who murdered George Floyd, unless his past use of force complaints were classified as "causing great bodily injury" or "deadly." SB 16 remedies this by opening access to additional records, bringing California much closer to states like New York, Florida, Georgia, Kentucky, Ohio, and Washington. Opening access to additional categories of officer conduct provides communities with the tools to identify officers with a history of misconduct and hold local police agencies accountable. SB 16 also includes provisions to ensure that officers with a history of misconduct can't just quit their jobs, keep their records secret, and move on to another jurisdiction with their past actions not disclosed."

**Arguments in Opposition:**
According to the California State Sheriffs' Association (CSSA), "Until the enactment of SB 1421 from 2018, statute and case law provided enhanced and appropriate privacy protections for peace officer personnel records as well as methods and circumstances under which records could be accessed. SB 1421 made specified records available for public disclosure. Still, it mainly limited the scope of what could be released to records relating to uses of force that resulted in death or great bodily injury or other situations in which a complaint of wrongdoing had been sustained. SB 16 eliminates the requirement that records made available for release regarding uses of force be limited to cases involving death or great bodily injury and instead makes nearly all records relative to nearly any use of force available to the public. The bill also adds to the types of complaints about which records would be public."
Further, the bill's language providing that the attorney-client privilege shall not be asserted to limit the disclosure of factual information is unnecessary. It could undermine the effective representation of local governments by their counsel. Under existing case law and generally speaking, information that is not otherwise privileged does not become privileged simply because it is communicated to an attorney.

Additionally, permitting disclosure of billing records as the litigation unfolds could allow plaintiffs to determine where the attorneys representing the municipality are focusing their efforts on defense, including what theories or defenses they intend to pursue. Additionally, we strongly object to provisions that establish civil fines and the ability to seek costs and attorney’s fees if an agency fails to disclose, timely disclose, or properly redact specified records. It often takes considerable time to appropriately redact and prepare records for release. This reality will be exacerbated by the increased number of records made available to the public by the bill. Even a harmless mistake or an inadvertent delay in the release could subject already cash-strapped local agencies to significant financial harm.”

**Support**
- Alameda County Public Defender’s Office
- American Association of Independent Music
- American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties
- Artist Rights Alliance
- Asian Americans Advancing Justice - California
- Asian Solidarity Collective
- Black Music Action Coalition
- California Attorneys for Criminal Justice
- California Civil Liberties Advocacy
- California Faculty Association
- California Immigrant Policy Center
- California Innocence Coalition: Northern California
- California Innocence Project, California
- Innocence Project, Loyola Project for the Innocent
- California News Publishers Association
- California Nurses Association
- California Public Defenders Association
- Californians for Safety and Justice
- City of Oakland
- Community Advocates for Just and Moral Governance
- Conference of California Bar Associations
- County of Los Angeles Board of Supervisors
- Drug Policy Alliance
- Ella Baker Center for Human Rights
- Equal Rights Advocates
- Friends Committee on Legislation of California
- League of Women Voters of California
- Los Angeles County Chief Executive Office
- Music Artists Coalition
- National Association of Social Workers, California Chapter
- Nextgen California
- Oakland Privacy
- Pillars of the Community
- Prosecutors Alliance of California
- Recording Industry Association of America
- San Francisco District Attorney’s Office
- San Francisco Public Defender
- San Leandro for Accountability, Transparency and Equity
- Screen Actors Guild-American Federation of Television and Radio Artists
- SEIU California
- Showing Up for Racial Justice North County San Diego
- Showing Up for Racial Justice San Diego
- Smart Justice California
- Songwriters of North America
- Team Justice
- Think Dignity
- UC Berkeley’s Underground Scholars Initiative
- Uprise Theatre
- Voices for Progress
- We the People - San Diego

**Opposition**
- California Association of Joint Powers Authorities
California Law Enforcement Association of Records Supervisors
California Narcotic Officers' Association
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
City of Fountain Valley
City of Thousand Oaks
League of California Cities
Los Angeles Professional Peace Officers Association
Public Risk Innovation, Solutions, and Management
Attachment 2
March 1, 2021

The Honorable Steven Bradford  
Chair, Senate Public Safety Committee  
State Capitol Building, Room 2059  
Sacramento, CA 95814  

RE: SB 16 (Skinner) Peace Officers. Release of Records  
Notice of OPPOSITION  

Dear Senator Bradford,

The League of California Cities (Cal Cities) must respectfully oppose Senate Bill 16. This measure is excessive in the types of personnel records it makes subject to disclosure, overly punitive in the imposition of civil fines and other monetary damages levied on local agencies when records are not disclosed, and unnecessarily burdensome in requiring local agencies to indefinitely retain all records.

Cal Cities supports maintaining the confidentiality of personnel matters and protecting public safety personnel discipline records from public disclosure, as appropriate.

As written, SB 16 would unjustifiably expand SB 1421 by providing for the disclosure of police personnel records for every incident involving use of force, regardless of whether the officer was exonerated or if a complaint was not sustained. This provision is neither practical from an administrative standpoint nor helpful toward the objective of fostering trust between law enforcement and the communities they serve. In fact, the release of officer records for every single incident involving any use of force, especially those in which the officer is entirely within departmental policy, will generate the misperception that there was “something wrong” with the officer’s conduct.

As a means of enforcing this far-reaching disclosure policy, SB 16 would impose a $1,000 civil fine per day, for each day beyond 30 days that records subject to disclosure are not disclosed. This provision is overly punitive, as it does not account for the practical challenges of complying with the required timelines of this measure, particularly for smaller cities and police departments with limited personnel who are already facing the prospect of cutting services and staff in the wake of the COVID-19 pandemic.

Aside from the measure’s proposed expansive disclosure requirements, SB 16 would additionally force local law enforcement agencies to retain, indefinitely, all complaints currently in their possession. Cities would have to pay for local police departments’ additional data storage space, as well as hire additional staff to sort through the numerous complaints exempt from disclosure under the California Public Records Act, but mandated to be retained under SB 16 in order to respond to these requests. Such a change will only exacerbate the budget crisis facing cities as a result of the COVID-19 pandemic.

In order to encourage and facilitate compliance with new transparency and ethics requirements, state laws should be consistent, avoid redundancy, and be mindful of the practical challenges associated with implementation.

Our communities can benefit from continued dialogue around law enforcement review and discipline.
Unfortunately, this measure is not limited in how it would open police officer personnel records to the public. This policy imbalance that prioritizes public disclosure of records over an officer’s privacy, regardless of whether they were proven to have exhibited proper conduct, is disconcerting.

For these reasons, the League opposes SB 16. If you have any questions, please feel free to contact me at (916) 658-8252.

Sincerely,

[Signature]

Elisa Arcidiacono
Legislative Representative

cc. The Honorable Nancy Skinner
Members, Senate Public Safety Committee
Kapri Walker, Consultant, Senate Public Safety Committee
Eric Csizmar, Consultant, Senate Republican Caucus
Attachment 3
Introduced by Senator Skinner

December 7, 2020

An act to amend Section 1045 of the Evidence Code, and to amend Sections 832.5, 832.7, and 832.12 of, and to add Section 832.13 to, the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery. Existing law sets forth exceptions to this policy, including, among others, records relating to specified incidents involving the discharge of a firearm, sexual assault, perjury, or misconduct by a peace officer or custodial officer. Existing law makes a record related to an incident involving the use of force against a person resulting in death or great bodily injury subject to disclosure. Existing law requires a state or local agency to make these excepted records available for inspection pursuant to the California Public Records Act, subject to redaction as specified.

This bill would, commencing July 1, 2022, would make every incident involving use of force to make a member of the public comply with an officer, force that is unreasonable, unreasonable or excessive force excessive, and any sustained finding that an officer failed to intervene against another officer using unreasonable or excessive force, subject
to disclosure. The bill would, commencing July 1, 2022, require records relating to sustained findings of unlawful arrests and unlawful searches to be subject to disclosure. The bill would, commencing July 1, 2022, also require the disclosure of records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes. The bill would make the limitations on delay of disclosure inapplicable until January 1, 2023, for the described records relating to incidents that occurred before January 1, 2022. The bill would require the retention of all complaints and related reports or findings currently in the possession of a department or agency, as specified. The bill would require that records relating to an incident in which an officer resigned before an investigation is completed to also be subject to release. For purposes of releasing records, the bill would prohibit assertion of the attorney-client privilege to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity’s attorney, or billing records related to the work done by the attorney. The bill would expand the authorization to redact records to allow redaction to preserve the anonymity of victims and whistleblowers. The bill would require records subject to disclosure to be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except as specified. The bill would impose a civil fine not to exceed $1,000 per day for each day beyond 30 days that records subject to disclosure are not disclosed. The bill would entitle a member of the public who successfully files suit for the release of records to twice the party’s reasonable costs and attorney’s fees. By imposing additional duties on local law enforcement agencies, the bill would impose a state-mandated local program.

(2) Existing law authorizes an agency to delay the release of a record involving the discharge of a firearm or the use of force during an active criminal investigation, as provided.

This bill would expand the authorization to delay the release of records during an investigation to include records of incidents involving sexual assault and dishonesty by officers, and the records of incidents involving prejudice or discrimination, wrongful arrests, and wrongful searches that are required to be made public by this bill.

(3) Existing law requires a court, in determining the relevance of evidence, to exclude from trial any information consisting of complaints
concerning peace officer conduct that is more than 5 years older than the subject of the litigation.

This bill would delete that provision.

(4) Existing law requires an agency or department employing peace officers to make a record of any investigations of misconduct. Existing law requires a peace officer seeking employment with a department or agency to give written permission to the hiring agency or department to view that file.

This bill would require each department or agency to request and review that file prior to hiring a peace officer. The bill would also require every person employed as a peace officer to immediately report all uses of force by the officer to the officer’s department or agency. By imposing additional duties on local law enforcement, the bill would impose a state-mandated local program.

(5) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.


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

1 SECTION 1. Section 1045 of the Evidence Code is amended to read:
2 1045. (a) This article does not affect the right of access to
3 records of complaints, or investigations of complaints, or discipline
4 imposed as a result of those investigations, concerning an event
or transaction in which the peace officer or custodial officer, as
defined in Section 831.5 of the Penal Code, participated, or which
the officer perceived, and pertaining to the manner in which the
officer performed the officer’s duties, provided that information
is relevant to the subject matter involved in the pending litigation.
(b) In determining relevance, the court shall examine the
information in chambers in conformity with Section 915, and shall
exclude from disclosure both of the following:
(1) In any criminal proceeding the conclusions of any officer
investigating a complaint filed pursuant to Section 832.5 of the
Penal Code.
(2) Facts sought to be disclosed that are so remote as to make
disclosure of little or no practical benefit.
(c) In determining relevance where the issue in litigation
concerns the policies or pattern of conduct of the employing
agency, the court shall consider whether the information sought
may be obtained from other records maintained by the employing
agency in the regular course of agency business which would not
necessitate the disclosure of individual personnel records.
(d) Upon motion seasonably made by the governmental agency
which has custody or control of the records to be examined or by
the officer whose records are sought, and upon good cause showing
the necessity thereof, the court may make any order which justice
requires to protect the officer or agency from unnecessary
annoyance, embarrassment or oppression.
(e) The court shall, in any case or proceeding permitting the
disclosure or discovery of any peace or custodial officer records
requested pursuant to Section 1043, order that the records disclosed
or discovered may not be used for any purpose other than a court
proceeding pursuant to applicable law.
SEC. 2. Section 832.5 of the Penal Code is amended to read:
832.5. (a) (1) Each department or agency in this state that
employs peace officers shall establish a procedure to investigate
complaints by members of the public against the personnel of these
departments or agencies, and shall make a written description of
the procedure available to the public.
(2) Each department or agency that employs custodial officers,
as defined in Section 831.5, may establish a procedure to
investigate complaints by members of the public against those
custodial officers employed by these departments or agencies,
provided however, that any procedure so established shall comply
with the provisions of this section and with the provisions of
Section 832.7.

(b) Complaints and any reports or findings relating to these
complaints shall be retained, complaints, including all complaints
and any reports currently in the possession of the department or
agency, shall be retained for a period of no less than five
years for records where there was not a sustained finding of
misconduct and for not less than 15 years where there was a
sustained finding of misconduct. A record shall not be destroyed
while a request related to that record is being processed or any
process or litigation to determine whether the record is subject to
release is ongoing. All complaints retained pursuant to this
subdivision may be maintained either in the peace or custodial
officer’s general personnel file or in a separate file designated by
the department or agency as provided by department or agency
policy, in accordance with all applicable requirements of law.
However, prior to any official determination regarding promotion,
transfer, or disciplinary action by an officer’s employing
department or agency, the complaints described by subdivision
(c) shall be removed from the officer’s general personnel file and
placed in separate file designated by the department or agency, in
accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined
by the peace or custodial officer’s employing agency to be
frivolous, as defined in Section 128.5 of the Code of Civil
Procedure, or unfounded or exonerated, or any portion of a
complaint that is determined to be frivolous, unfounded, or
exonerated, shall not be maintained in that officer’s general
personnel file. However, these complaints shall be retained in
other, separate files that shall be deemed personnel records for
purposes of the California Public Records Act (Chapter 3.5
(commencing with Section 6250) of Division 7 of Title 1 of the
Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer’s employing
agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer’s employing
agency shall not use the complaints contained in these separate
files for punitive or promotional purposes except as permitted by
subdivision (f) of Section 3304 of the Government Code.
(3) Management of the peace or custodial officer’s employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer’s personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) “General personnel file” means the file maintained by the agency containing the primary records specific to each peace or custodial officer’s employment, including evaluations, assignments, status changes, and imposed discipline.

(2) “Unfounded” means that the investigation clearly established that the allegation is not true.

(3) “Exonerated” means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

SEC. 3. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney’s office, or the Attorney General’s office.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:
(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) Commencing July 1, 2022, an incident involving the use of force to make a member of the public comply with an officer, force that is unreasonable, or excessive force against a person by a peace officer or custodial officer. A complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, “sexual assault” means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, “member of the public” means any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Commencing July 1, 2022, any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to,
verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Commencing July 1, 2022, any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurred before January 1, 2022, shall not be subject to the time limitations in paragraph (8) until January 1, 2023.

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, whether the officer’s action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(3) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.
(4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(5) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(7) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.
An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in the misconduct or used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis
for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the misconduct or use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency’s discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(8) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(9) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of
fees covering direct costs of duplication pursuant to subdivision (b) of Section 6253 of the Government Code shall not include the costs of editing or redacting the records.

(10) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (7), (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure. For every day beyond 30 days after the date which a record is to be disclosed, as required by this subdivision, an agency shall be subject to a civil fine not to exceed one thousand dollars ($1,000) per day for each day that the records are not disclosed.

(11) Notwithstanding subdivision (d) of Section 6259 of the Government Code, a member of the public who files a suit pursuant to Section 6258 of the Government Code for records required by this subdivision that are found to have been improperly withheld or improperly redacted shall be entitled to twice the party’s reasonable costs and attorney’s fees. Costs and fees awarded pursuant to this paragraph shall be paid by the public agency.

(12) For purposes of releasing records pursuant to this subdivision, the attorney-client privilege shall not be asserted to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity’s attorney, or billing records related to the work done by the attorney.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party’s own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer’s
agent or representative, publicly makes a statement they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer’s employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer’s personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer’s personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public’s right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 4. Section 832.12 of the Penal Code is amended to read:

832.12. (a) Each department or agency in this state that employs peace officers shall make a record of any investigations of misconduct involving a peace officer in the officer’s general personnel file or a separate file designated by the department or agency. A peace officer seeking employment with a department or agency in this state that employs peace officers shall give written permission for the hiring department or agency to view the officer’s general personnel file and any separate file designated by a department or agency.
(b) Prior to employing any peace officer, each department or agency in this state that employs peace officers shall request, and the hiring department or agency shall review, any records made available pursuant to subdivision (a).

SEC. 5. Section 832.13 is added to the Penal Code, to read:

832.13. Every person employed as a peace officer shall immediately report all uses of force by the officer to the officer’s department or agency.

SEC. 6. The Legislature finds and declares that Sections 2 and 3 of this act, which amend Sections 832.5 and 832.7 of the Penal Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act furthers public access and provides greater transparency with respect to certain law enforcement records.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

However, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
Item B-13
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 49 (Umberg) - Business License Fees: Coronavirus (COVID-19) Pandemic: Waiver: Tax Credit (SB 49) involves a policy matter that has a nexus to the City’s adopted Legislative Platform language. Specifically, the following statement may apply to SB 49 as it impacts the City’s ability to collect regulatory license fees:

- Oppose legislation that would preempt the City’s authority over local taxes and fees.

On March 16, 2021, the City Council adopted a position of “Support if Amended” on a prior version of SB 49. The City requested the bill be amended so that it prorated the reimbursements for waived state and local operating fees for the duration of the shutdown to just the time a business was closed. The bill has since been amended and no longer applies to local taxes. Therefore, this is being brought back to the City Council Liaison/Legislative/Lobby Committee for reconsideration.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 49 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 49, the Liaisons may recommend the following actions:

1) Oppose SB 49;
2) Support SB 49;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Any recommendation, other than Support if Amended, will require the concurrence of the City Council as the City has an adopted position on SB 49. Should the Liaisons recommend a change in the City’s position on this bill, then staff will place this item on a future City Council agenda.
Attachment 1
May 27, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 49 (Umberg) Income taxes: credits: California Fair Fees Tax Credit.

The City has taken a “Support if Amended” position on a prior version of SB 49. The City requested the bill be amended so that it prorated the reimbursements for waived state & local operating fees for the duration of the shutdown to just the time a business was closed. The bill has since been amended and no longer applies to local taxes.

After amendments were taken in early March, The California State Association of Counties, Urban Counties of California, Rural County Representatives of California, League of California Cities, and California Association of Environmental Health Administrators are now neutral on this bill, stating “The current version of the bill removes provisions that would have had a negative impact on local government revenue, while providing financial relief to businesses that have been impacted by COVID-19 stay-at-home orders.”

Summary of Prior Version as Amended February 1, 2021

SB 49 (Umberg) would have prospectively waived state & local operating fees for eligible businesses during the remainder of the duration of State Stay at Home Orders and retrospectively reimburse state & local operating fees paid by eligible businesses during state or local Stay at Home Orders, through the creation of a tax credit. Specifically, this bill would have:

- Prohibited state agencies from collecting regulatory license fees from businesses that are subject to state licensure if the business has temporarily ceased operations in response to a COVID-19 stay-at-home order and other specified conditions.
- Prohibited a city or county that licenses businesses from collecting any regulatory license fee imposed on similarly impacted businesses.
- To claim the exemption from license fees under these provisions, the bill would have require the business to declare, under penalty of perjury, that it has complied with all applicable COVID-19 stay-at-home orders.
- The bill would have allowed a credit against those taxes for each taxable year beginning on or after January 1, 2022, and before January 1, 2023, for eligible costs paid or incurred in eligible costs by a taxpayer that meets certain criteria, including that the taxpayer has temporarily ceased business operations in response to a COVID-19 stay-at-home order, as defined, before January 1, 2022.
- Defined “eligible costs” for these purposes as any amount paid to a state agency or a local government in connection with a permit, license, or other mandatory operating cost imposed by the state or a local government.
• Required a taxpayer claiming this credit to declare, under penalty of perjury, that it has complied with all applicable COVID-19 stay-at-home orders.

**Version:** Amended in the Senate May 11, 2021

**Summary**
This bill would, for taxable years 2021 through 2026, allow qualified taxpayers to claim the “California Fair Fees Tax Credit.” Taxpayers could carry forward any unused credits for up to seven years. A qualified taxpayer is a business that meets all of the following requirements: (1) requires substantial in-person contact to conduct its business operation, (2) temporarily ceased business operations for at least 30 consecutive days during the taxable year in response to an emergency order, as defined, and (3) had gross receipts of $10 million or less over the three preceding taxable years.

The amount of credit allowed under SB 49 would vary depending on the number of consecutive days a business was closed due to an emergency order, as follows: (1) for those business that were closed for at least 30 consecutive days during the taxable year, but not more than 90 consecutive days: $1,000, (2) for those businesses that were closed for at least 90 consecutive days during the taxable year, but not more than 180 consecutive days: $3,000, and (3) for those businesses that were closed for at least 180 consecutive days during the taxable year: $6,000. If a business was impacted by the shut-down orders in taxable year 2020, they could receive a tax credit in 2021.

Finally, the bill would require the Legislative Analyst’s Office, in coordination with FTB to provide a report by January 1, 2022 (and annually thereafter through 2027) to measure effectiveness of the credit using specified metrics.

**Background**
In response to the COVID-19 pandemic, the state began taking action to support small businesses in several ways, including tax credits and tax relief. Related to tax credits and tax relief, the California state government took the following actions: 1) the Legislature passed and Governor Newsom signed AB 1577 (Burke, Chapter 39, Statutes of 2020), which allows small businesses to exclude PPP loans from state taxes; 2) SB 1447 (Bradford, Caballero, Cervantes, Chapter 41, Statutes of 2020), which created a Main Street hiring tax credit that authorized a $100 million hiring tax credit program for qualified small businesses; 3) the Governor provided a 90-day extension to small businesses in state and local taxes and an extension of all licensing deadlines and requirements for several industries; 4) the Governor waived the $800 minimum franchise tax for new businesses in their first year of business creation; 5) the Governor authorized sales tax relief by providing a 12-month interest-free payment plan for up to $50,000 of sales and use tax liability through the California Department of Tax and Fee Administration (CDTFA).

The state has also taken the following actions related to small business grants and programs since the start of the COVID-19 pandemic. First, Governor Newsom provided $125 million in small business loans. Originally, the California Infrastructure Economic Development Bank (iBank) provided $100 million in loan guarantees for small businesses that may not have been eligible for federal relief. Then, in November 2020 Governor Newsom announced the California Rebuilding Fund (the Fund), a public-private partnership that drives capital from private, philanthropic and public sector resources – including a $25 million anchor commitment and $50 million guarantee allocation from the California Infrastructure and Economic Development Bank (iBank) – to Community Development Financial Institutions (CDFIs). Second, the Governor added $12.5 million to the Fund in late November 2020 so that it could be fully capitalized, saying this money
will “help the 3rd party administrator of the fund raise $125 million to make more low-interest loans to small businesses with less access to loans from traditional banking institutions.” Third, the state secured $30 billion in Federal Small Business Relief. California secured an SBA disaster declaration in March 2020 to make the Economic Injury Disaster Loans (EIDL) program available for California small businesses and private non-profit organizations. Fourth, the state provided micro-grants to immigrant social entrepreneurs, allocating $10 million in the 2020-21 California budget for Social Entrepreneurs for Economic Development (SEED) to provide micro-grants to immigrant social entrepreneurs. Fifth, the state provided $500 million via the OSBA in November 2020 for small businesses impacted by the pandemic and the health and safety restrictions. Funds were awarded in early 2021 via CDFIs to distribute relief through grants of up to $25,000 to underserved micro and small businesses throughout the state. An additional almost $2.1 billion was added for small business grants of up to $25,000 with the passage of SB 87 (Caballero, Chapter 7, Statutes of 2021) in February 2021, with provisions that specified the recent OSBA grants would not be included in overall gross income tax calculations.

**Status of Legislation**
SB 49 is currently pending on the Senate Floor. The bill must be approved on the Senate Floor by June 4, 2021.

**Arguments in Support**
California Chamber of Commerce writes in support, “Small businesses are the cornerstone of California’s economy. They have shouldered a tremendous burden to retain their employees and continue operating despite shutdowns, capacity limitations, and indoor operation restrictions. Despite the fact, the licensees covered under SB 49 were shutdown much of the last year, they still owed state and local fees and taxes that are typically required for businesses to operate. SB 49 will restore fairness under the law and provide a small amount of relief for struggling licensees.”

**Support**
California Chamber of Commerce  
California Restaurant Association  
Garden Grove Chamber of Commerce

**Opposition**
There is no formally registered opposition to the bill.
Attachment 2
Senator Bill No. 49

Introduced by Senator Umberg
(Principal coauthor: Assembly Member Daly)
(Coauthors: Senators Min, Newman, and Ochoa Bogh)

December 7, 2020

An act to add and repeal Sections 17053.70 and 23670 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

SB 49, as amended, Umberg. Income taxes: credits: California Fair Fees Tax Credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill would allow a credit against those taxes for each taxable year beginning on or after January 1, 2022, and before January 1, 2027, to a taxpayer that meets certain criteria, including that the taxpayer temporarily ceased business operations for at least 30 consecutive days during the taxable year in response to an emergency order, as defined. The amount of credit would vary based on the number of consecutive days the qualified taxpayer has ceased business operations during the taxable year, with a maximum amount of $6,000.
if the qualified taxpayer has temporarily ceased business operations for at least 180 consecutive days, as provided. For taxable years beginning on or after January 1, 2021, and before January 1, 2022, only, if a qualified taxpayer temporarily ceased business operations during the 2020 calendar year, the bill would provide for an additional credit amount. The bill would designate the credit allowed under its provisions as the California Fair Fees Tax Credit. The bill would require a taxpayer claiming this credit to declare, under penalty of perjury, that it has complied with all applicable emergency orders.

Existing law requires that any bill introduced on or after January 1, 2020, that would authorize certain tax expenditures, as defined, or tax exemptions contain, among other things, specific goals, purposes, and objectives that the tax expenditure or exemption will achieve, detailed performance indicators, and data collection requirements.

This bill would include additional information required for any bill authorizing a new tax expenditure.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

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

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

This bill would take effect immediately as a tax levy.


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

SECTION 1. Section 17053.70 is added to the Revenue and Taxation Code, to read:

(a) For each taxable year beginning on or after January 1, 2022, 2021, and before January 1, 2027, 2026, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, to a qualified taxpayer the applicable of the following amounts:

1. If the qualified taxpayer has temporarily ceased business operations for at least 30 consecutive days, but less than 90
consecutive days, during the taxable year, one thousand dollars ($1,000).

(2) If the qualified taxpayer has temporarily ceased business operations for at least 90 consecutive days, but less than 180 consecutive days, during the taxable year, the sum of the credit amount specified in subparagraph (A) and two thousand dollars ($2,000).

(3) If the qualified taxpayer has temporarily ceased business operations for 180 consecutive days or more during the taxable year, the sum of the credit amounts specified in subparagraph (B) and three thousand dollars ($3,000).

(2) For taxable years beginning on or after January 1, 2021, and before January 1, 2022, only, if a qualified taxpayer temporarily ceased business operations during the 2020 calendar year, the qualified taxpayer shall be allowed the applicable of the following amounts, which shall be in addition to any amount allowed under paragraph (1):

(A) If the qualified taxpayer temporarily ceased business operations for at least 30 consecutive days, but less than 90 consecutive days, during the 2020 calendar year, one thousand dollars ($1,000).

(B) If the qualified taxpayer temporarily ceased business operations for at least 90 consecutive days, but less than 180 consecutive days, during the 2020 calendar year, the sum of the credit amount specified in subparagraph (A) and two thousand dollars ($2,000).

(C) If the qualified taxpayer has temporarily ceased business operations for 180 consecutive days or more during the 2020 calendar year, the sum of the credit amounts specified in subparagraph (B) and three thousand dollars ($3,000).

(b) For purposes of this section:

(1) “Emergency order” means any order issued by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), any state agency, or any local government that requires the closure of businesses in response to a state of emergency.
(2) “Qualified taxpayer” means a taxpayer for which all of the following apply:

(A) The taxpayer is a business that requires substantial in-person contact to conduct its business operations.

(B) The taxpayer temporarily ceased business operations for at least 30 consecutive days during the taxable year or in the 2020 calendar year in response to an emergency order.

(C) The taxpayer had average annual gross receipts of ten million dollars ($10,000,000) or less over the three preceding taxable years.

(3) “State of emergency” means a state of emergency proclaimed by the Governor pursuant to Article 13 (commencing with Section 8625) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(c) A qualified taxpayer claiming a credit allowed by this section shall declare, under penalty of perjury, that the qualified taxpayer has complied with all applicable emergency orders, in the form and manner prescribed by the Franchise Tax Board.

(d) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following taxable year, and the succeeding six years if necessary, until the credit is exhausted.

(e) The credit allowed by this section and Section 23670 shall be known, and may be cited, as the California Fair Fees Tax Credit.

(f) This section shall remain in effect only until December 1, 2027, 2026, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit is exhausted.

SEC. 2. Section 23670 is added to the Revenue and Taxation Code, to read:

23670. (a) For each taxable year beginning on or after January 1, 2022, 2021, and before January 1, 2027, 2026, there shall be allowed as a credit against the “tax,” as defined in Section 23036, to a qualified taxpayer the applicable of the following amounts:

(1) The amount of credit allowed to a qualified taxpayer shall be the applicable of the following amounts:

(A) If the qualified taxpayer has temporarily ceased business operations for at least 30 consecutive days, but less than 90
consecutive days, during the taxable year, one thousand dollars ($1,000).

(2)

(B) If the qualified taxpayer has temporarily ceased business operations for at least 90 consecutive days, but less than 180 consecutive days, during the taxable year, the sum of the credit amount specified in paragraph (1) subparagraph (A) and two thousand dollars ($2,000).

(3)

(C) If the qualified taxpayer has temporarily ceased business operations for 180 consecutive days or more during the taxable year, the sum of the credit amounts specified in paragraph (2) subparagraph (B) and three thousand dollars ($3,000).

(2) For taxable years beginning on or after January 1, 2021, and before January 1, 2022, only, if a qualified taxpayer temporarily ceased business operations during the 2020 calendar year, the qualified taxpayer shall be allowed the applicable of the following amounts, which shall be in addition to any amount allowed under paragraph (1):

(A) If the qualified taxpayer temporarily ceased business operations for at least 30 consecutive days, but less than 90 consecutive days, during the 2020 calendar year, one thousand dollars ($1,000).

(B) If the qualified taxpayer temporarily ceased business operations for at least 90 consecutive days, but less than 180 consecutive days, during the 2020 calendar year, the sum of the credit amount specified in subparagraph (A) and two thousand dollars ($2,000).

(C) If the qualified taxpayer has temporarily ceased business operations for 180 consecutive days or more during the 2020 calendar year, the sum of the credit amounts specified in subparagraph (B) and three thousand dollars ($3,000).

(b) For purposes of this section:

(1) “Emergency order” means any order issued by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code), any state agency, or any local government that requires the closure of businesses in response to a state of emergency.
(2) “Qualified taxpayer” means a taxpayer for which all of the following apply:
   (A) The taxpayer is a business that requires substantial in-person contact to conduct its business operations.
   (B) The taxpayer temporarily ceased business operations for at least 30 consecutive days during the taxable year or the 2020 calendar year in response to an emergency order.
   (C) The taxpayer had average annual gross receipts of ten million dollars ($10,000,000) or less over the three preceding taxable years.

(3) “State of emergency” means a state of emergency proclaimed by the Governor pursuant to Article 13 (commencing with Section 8625) of Chapter 7 of Division 1 of Title 2 of the Government Code.

(c) A qualified taxpayer claiming a credit allowed by this section shall declare, under penalty of perjury, that the qualified taxpayer has complied with all applicable emergency orders, in the form and manner prescribed by the Franchise Tax Board.

(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “net tax” in the following taxable year, and the succeeding six years if necessary, until the credit is exhausted.

(e) The credit allowed by this section and Section 17053.70 shall be known, and may be cited, as the California Fair Fees Tax Credit.

(f) This section shall remain in effect only until December 1, 2027, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit is exhausted.

SEC. 3. For purposes of complying with Section 41 of the Revenue and Taxation Code, the Legislature finds and declares the following with respect to Sections 17053.70 and 23670 of the Revenue and Taxation Code, as added by this act, hereafter referred to as “the tax credit.”

(a) The specific goals, purposes, and objectives that the tax credit will achieve are as follows:

(1) Ensuring that businesses are compensated for fees paid to local and state government when those local and state governments disallowed their operations due to a proclaimed state of emergency, including, but not limited to, a pandemic, fire, flood, or earthquake.
(2) To the extent possible, providing equity for businesses during a state of emergency.

(3) To the extent possible, curbing the closure of small businesses and the laying off of employees during a state of emergency.

(b) Detailed performance indicators for the Legislature to use in determining whether the tax credit allowed by this act meet those goals, purposes, and objectives are as follows:

(1) The number of tax credits claimed by businesses, which is evidence of businesses being charged by governmental entities when governments are also disallowing them to open.

(2) To the extent feasible, the number of small business prevented from closing or laying off employees as a result of the tax credit.

(c) The Legislative Analyst’s Office shall, on an annual basis beginning January 1, 2022, and each January 1 thereafter until January 1, 2027, collaborate with the Franchise Tax Board to review the effectiveness of the tax credit. The review shall include, but not be limited to, the metrics described above.

(d) The data collection requirements for determining whether the tax credit are meeting, failing to meet, or exceeding those specific goals, purposes, and objectives are as follows:

(1) To assist the Legislature in determining whether the tax credit allowed by this act meet the goals, purposes, and objectives specified in subdivision (a), and in carrying out their duties under subdivision (c), the Legislative Analyst’s Office may request information from the Franchise Tax Board.

(2) (A) The Franchise Tax Board shall provide any data requested by the Legislative Analyst’s Office pursuant to this subdivision.

(B) The disclosure provisions of this paragraph shall be treated as an exception to Section 19542 of the Revenue and Taxation Code under Article 2 (commencing with 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.
SEC. 5. This act provides for a tax levy within the meaning of
Article IV of the California Constitution and shall go into
immediate effect.
Item B-14
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 1, 2021
SUBJECT: Senate Bill 519 (Wiener) - Controlled substances: decriminalization of certain hallucinogenic substances

ATTACHMENTS: 1. Summary Memo – SB 519
2. Bill Text – SB 519

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 519 (Wiener) - Controlled substances: decriminalization of certain hallucinogenic substances (SB 519) involves a policy matter that has a nexus to the City’s adopted Legislative Platform language. Specifically, the following statement may apply to SB 519 as it impacts the City’s ability to collect regulatory license fees:

- Oppose any efforts to further decriminalize existing crimes in California or lessen the sentences of any offenses that would result in the release of serious criminals who would further harm the safety of the public and law enforcement personnel.

The City’s state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for SB 519 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 519, the Liaisons may recommend the following actions:
1) Oppose SB 519;
2) Support SB 519;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position of oppose, then staff will prepare a letter for the Mayor to sign as the legislation appears to be consistent with the City’s Legislative Platform. Any other positions recommended by the Liaisons will require the concurrence of the City Council and staff will place this item on a future City Council agenda.
Attachment 1
May 26, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 519 (Wiener) Controlled substances: decriminalization of certain hallucinogenic substances.

Version: Amended in the Senate May 20, 2021

Summary
SB 519 would legalize the possession for personal use and the social sharing of psilocybin, psilocin, dimethyltryptamine (DMT), ibogaine, lysergic acid diethylamide (LSD), 3,4-methylenedioxymethamphetamine (MDMA), mescaline, and ketamine, by and with persons 21 years of age or older; provides penalties for possession of these substances on school grounds as well as possession by, or sharing with, persons under 21; and requires the State Department of Public Health (DPH) to convene a working group to research and make recommendations to the Legislature on the regulation and use of the substances included in this bill.

Specifically, this bill would:
- Remove or excludes mescaline, ketamine, DMT, ibogaine, LSD, psilocybin, psilocin, and MDMA from several legal offenses.
- Provide that all of the following is lawful for a natural person 21 years of age or older:
  - The possession, processing, obtaining, or transportation of mescaline for personal use or for social sharing.
  - The ingesting of mescaline.
  - The social sharing of mescaline.
  - The possession, planting, cultivating, harvesting, or processing of plants capable of producing mescaline, on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants.
- Provide that possession of mescaline by a person 21 years of age or older on the grounds of any school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is a misdemeanor.
- Provide that the punishment for a person who knowingly gives away or administers mescaline to a person who is under 18 years of age in violation of law is imprisonment in a county jail for a period of not more than six months or by a fine of not more than $500, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.
• Provide that the punishment for a person 18 years of age or over who knowingly gives away or administers mescaline to a minor under 14 years of age in violation of law is imprisonment in the state prison for a period of 3, 5, or 7 years.

• Provide that a person who knowingly gives away or administers mescaline to a person who is at least 18 years of age, but under 21 years of age is guilty of an infraction.

• Provide that possession of mescaline by a person under 18 years of age is punishable as an infraction. Requires the minor to either: (1) complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days, commencing when the drug education or counseling services are made available to them for a first offense; or (2) complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days, commencing when the drug education or counseling services are made available to them for a second or subsequent offense.

• Provide that possession of mescaline by a person at least 18 years of age but less than 21 years of age is punishable as an infraction.

• Provide that mescaline or related products involved in any way with conduct deemed lawful are not contraband nor subject to seizure. Prohibits lawful conduct from constituting the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.

• Define the following terms:
  o “Financial gain” means the receipt of money or other valuable consideration in exchange for the item being shared. Does not include reasonable fees for counseling, spiritual guidance, or related services that are provided in conjunction with administering or use of mescaline under the guidance and supervision, and on the premises, of the person providing those services.
  o “Personal use” means for the personal ingestion or other personal and noncommercial use by the person in possession.
  o “Social sharing” means the giving away or consensual administering of mescaline by a person 21 years of age or older, to another person 21 years of age or older, not for financial gain, including in the context of group counseling, spiritual guidance, community-based healing, or related services.

• Provide that all of the following is lawful for a natural person 21 years of age or older: the possession, processing, obtaining, or transportation of DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA for personal use or for social sharing; the ingesting of DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA; the social sharing of DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA; and the possession, planting, cultivating, harvesting, or processing of plants capable of producing of DMT, ibogaine, LSD, psilocybin, psilocyn, and ketamine, on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants including spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn for that purpose.

• Include all of the same criminal penalties with respect to DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA as apply to mescaline under the provisions of this bill.

• Repeal the provision of law that makes it unlawful for a person who, with the intent to produce psilocybin or psilocyn, cultivates any spores or mycelium capable of producing mushrooms or other material which contains such a controlled substance.

• Repeal the provision of law that makes it unlawful to transport, import into this state, sell, furnish, gives away, or offer to transport, import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn.

• Provide that the analogue statute does not apply to MDMA.
• Provide that, upon change in federal law permitting the prescription, furnishing, or dispensing of a psilocybin, psilocyn, DMT, ibogaine, mescaline, LSD, or MDMA product, a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice who prescribes, furnishes, or dispenses that product in accordance with federal law, shall be deemed to be in compliance with state law.

• Require DPH to convene a working group, as specified, to research and make recommendations to the Legislature regarding, among other things, the regulation and the substances made lawful by this bill, as specified.

Background
Hallucinogens are a diverse group of drugs that alter a person’s perception or awareness of their surroundings. Some hallucinogens are found in plants and fungi, and some are synthetically produced. Hallucinogens can be consumed in a variety of ways, including swallowed as tablets, pills, or liquid, consumed raw or dried, snorted, injected, inhaled, vaporized, smoked, or absorbed through the lining of the mouth using drug-soaked pieces of paper. Common hallucinogens include LSD, DMT, psilocybin, peyote, mescaline, and ketamine.

Many hallucinogenic substances, including LSD, DMT, mescaline, and psilocybin are classified as Schedule I substances under the state’s Uniform Controlled Substances Act. Schedule I substances are defined as those controlled substances having no medical utility and that have a high potential for abuse. There is research, however, that indicates that some of these substances have therapeutic benefits.

In recent years, the U.S. Federal Drug Administration (FDA) has designated psilocybin as a “breakthrough therapy” to treat severe depression. In addition, the FDA recently granted “breakthrough therapy” status to MDMA-assisted psychotherapy to treat post-traumatic stress disorder. The “breakthrough therapy” designation is “a process designed to expedite the development and review of drugs that are intended to treat a serious condition and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over available therapy on a clinically significant endpoint.”

In recent years, efforts to deprioritize the policing or prosecution of conduct related to certain hallucinogens have gained support across the country, with measures passing in Oakland, Santa Cruz, Ann Arbor, Denver, and Washington D.C, among others. In 2020, Oregon voters approved Measure 109, the Psilocybin Services Act, which directs the Oregon Health Authority to create a state-licensed, psilocybin-assisted therapy program over the next two years. In doing so, the state will determine how to regulate the manufacturing, transportation, delivery, sale, and purchase of psilocybin products as well as the provision of psilocybin services. During the same election, Oregon voters approved Measure 110 which reduced the penalty for personal noncommercial possession of small amounts of a Schedule I-IV controlled substance, including several hallucinogens, from a criminal offense to a civil violation resulting in a maximum fine of $100.

Status of Legislation
SB 519 was just approved on the Senate Floor and will be pending in the State Assembly.

Arguments in Support
Heroic Hearts Project, a sponsor of this bill, states it has been working with veterans for four years, most of whom sought help after having tried everything the Department of Veterans Affairs had to offer with little to no success. Psychedelic treatment options provided these veterans with a level of relief and healing that many had come to believe was no longer possible. Heroic Hearts has more than 500 veteran candidates on the waiting list. Heroic Hearts and Veterans Exploring
Treatment Solutions, another sponsor of this bill, as well as other supporters who advocate for the use of hallucinogens for therapeutic purposes argue stigma behind psychedelic substances often overshadows its legitimate medicinal value and promise. In the 1960s, researchers were conducting promising studies on the effectiveness of psychedelic substances to treat ailments such as depression and PTSD, until the War on Drugs halted this work. Modern research clearly demonstrates that these psychedelic substances can be a tool for healing and have a promising future for mental health treatment. The sponsors also state that beyond halting this promising research, the War on Drugs also enacted the policy of criminalizing people for the possession or personal use of controlled substances. Today, we know this is a failed policy approach as it does not improve public safety, deter personal use, or help people who may be experiencing substance use disorder. The sponsors argue it is time that California stop criminalizing people that possess and use substances that have immense medicinal potential and look towards how California should thoughtfully regulate legal use to these substances.

**Arguments in Opposition:**
Opponents of this bill, largely law enforcement entities, state that this bill will have the tragic and unintended consequence of increasing the current problem of fentanyl tragedies, and that social sharing is essentially unregulated sharing where there is no assurance that the drugs that are shared will not contain fatal amounts of fentanyl. The California Narcotics Officers Association states that the more prudent approach is the creation of reliable paths to treatment that will provide tangible treatment programs to assist in breaking the chemical bondage that characterizes these substances. Opponents believe that communities will be forced to combat widespread proliferation, and individuals will be at an increased risk for abuse and overuse of these substances. The Peace Officers’ Research Association of California believes many of the penalties related to controlled substances work as a deterrent or a reason for individuals to get the treatment they need to turn their lives around, and this bill will cause an increase in the selling and personal use of drugs, which will lead to greater crime and arrests in our communities.

**Support**
- Heroic Hearts Project (co-source)
- Veterans Exploring Treatment Solutions (co-source)
- California Attorneys for Criminal Justice
- Chacruna Institute
- City of Berkeley
- City of Oakland Councilmember Noel Gallo
- City of Oakland Councilmember Sheng Thao
- DC Marijuana Justice
- Decriminalize Nature
- Dr. Bronner’s
- Entheogenic Research, Integration, and Education Board
- Health in Justice Action Lab
- Law Enforcement Action Partnership
- McAllister Garfield, P.C.
- Multidisciplinary Association for Psychedelic Studies
- New Approach Advocacy
- North Star Project
- Pacific Neuroscience Institute
- Sacred Garden Community Church
- San Francisco Bay Area Hispanic Chamber of Commerce
- San Francisco Psychedelic Society
- San Francisco Public Defender
- Students for Sensible Drug Policy, UC Berkeley Chapter
- The Huichol Center for Cultural Survival and Traditional Arts
- Unlimited Sciences
- Veterans of War

**Opposition**
- California College and University Police Chiefs Association
- California Narcotic Officers’ Association
- California Police Chiefs Association
- California State Sheriffs’ Association
- Congress of Racial Equality
- International Faith Based Coalition
- Peace Officers’ Research Association of California
Attachment 2
An act to amend Sections 11054, 11150.2, 11350, 11364, 11364.7, 11365, 11377, 11379, 11379.2, 11382, and 11550 of, to add Sections 11350.1, 11356.8, 11356.9, 11377.1, 11382.8, 11382.9, and 11402 to, to add and repeal Section 131065 of, to repeal Section 11999 of, and to repeal Article 7 (commencing with Section 11390) of Chapter 6 of Division 10 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing law categorizes certain drugs and other substances as controlled substances and prohibits various actions related to those substances, including their manufacture, transportation, sale, possession, and ingestion.

This bill would make lawful the possession for personal use, as described, and the social sharing, as defined, of psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, mescaline, lysergic acid diethylamide (LSD), ketamine, and 3,4-methylenedioxymethamphetamine (MDMA), by and with persons
21 years of age or older. The bill would provide penalties for possession of these substances on school grounds, or possession by, or sharing with, persons under 21 years of age.

The bill would also provide for the dismissal and sealing of pending and prior convictions for offenses that would be made lawful by the passage of this bill, as specified. The bill would require the Department of Justice to identify those records and provide them to local jurisdictions to initiate the required proceedings.

(2) Existing law prohibits the cultivation, transfer, or transportation, as specified, of any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn. This bill would repeal those provisions.

(3) Existing law, contingent upon specified changes in federal law regarding the federally controlled substance cannabidiol, would deem a physician, pharmacist, or other healing arts licensee who prescribes, furnishes, or dispenses a product composed of cannabidiol in accordance with that federal law, to be in compliance with state law governing those acts, as specified. This bill would make those provisions also applicable to the controlled substances made lawful by this bill.

(4) Existing law creates a Research Advisory Panel, as specified, to conduct hearings on, and in other ways study, research projects concerning cannabis or hallucinogenic drugs. This bill would require the State Department of Public Health to convene a working group, as specified, to research and make recommendations to the Legislature regarding, among other things, the regulation and use of the substances made lawful by this bill, as specified.

(5) Existing law prohibits the possession of drug paraphernalia, as defined. This bill would exempt from this prohibition, paraphernalia related, as specified, to these specific substances. The bill would also exempt from the prohibition items used for the testing and analysis of controlled substances.

(6) Existing law states the intent of the Legislature that the messages and information provided by various state drug and alcohol programs promote no unlawful use of any drugs or alcohol. This bill would repeal those provisions.
(7) By eliminating and changing the elements of existing crimes and creating new offenses, and by requiring new duties of local prosecutors, this bill would impose a state-mandated local program.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(8) This bill would state that its provisions are severable.


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

SECTION 1. The Legislature finds and declares all of the following:

(a) The War on Drugs has entailed overwhelming financial and societal costs, and the policy behind it does not reflect a modern understanding of substance use nor does it accurately reflect the potential therapeutic benefits or harms of various substances.

(b) Criminalization has not deterred drug use, and has instead made drug use less safe. It has created an unregulated underground market in which difficult-to-verify dosages and the presence of adulterants, including fentanyl, make the illicit drug supply dangerous.

(c) Lack of honest drug education has laid the groundwork for decades of misinformation, stigma, and cultural appropriation, which have all contributed to increasing the dangers of drug use.

(d) Harm reduction tools including drug-checking kits, gas chromatography mass spectrometry machines, milligram scales, and capsules allow users to make more accurate, safer, evidence-based decisions about their personal use. Allowing such paraphernalia can increase public health and safety.

(e) Research is advancing to support the use of psychedelic compounds with psychotherapy to treat mental health disorders,
such as anxiety, depression, post-traumatic stress disorder and
substance use disorder.
(f) Measure 109 in Oregon, which passed in November 2020
with a 56 percent vote of the state population, will establish a
regulated psilocybin therapy system in Oregon to provide people
therapeutic access to psilocybin.
(g) Measure 110 in Oregon, which passed in November 2020
with a 58 percent vote of the state population, decriminalized the
personal possession of all drugs, and almost 20 countries around
the world including Portugal, Czech Republic, and Spain have
expressly or effectively decriminalized the personal use of all
substances.
(h) The City of Oakland and the City of Santa Cruz have both
passed resolutions decriminalizing and deprioritizing the
enforcement of the possession, use, and propagation of psychedelic
plants and fungi. Since June 2019, the Cities of Ann Arbor,
Michigan; Somerville, Massachusetts; and Cambridge,
Massachusetts; have all decriminalized the possession, use, and
propagation of psychedelic plants and fungi at the local level. Also,
in 2020, Washington, D.C., passed Initiative 81 to decriminalize
and deprioritize the possession and use of psychedelic plants and
fungi with 76 percent voter approval.
(i) To responsibly transition away from criminalization, protect
people who use or may use drugs, and avoid negative
environmental or cultural impacts, it is necessary to review the
full legal context in which these changes to the law are made,
incorporate evidence-based policy, consult with experts, and
maintain open discourse based in harm reduction, reciprocity, and
human rights into the process of developing alternative regulatory
systems.
(j) This act will allow for the noncommercial, personal use and
sharing of specified controlled substances, including for the
purposes of group counseling and community-based healing, or
other related services.
(k) These changes in law will not affect any restrictions on the
driving or operating a vehicle while impaired or an employer’s
ability to restrict the use of controlled substance by its employees,
or affect the legal standard for negligence.
(l) Peyote is specifically excluded from the list of substances
to be decriminalized, and any cultivation, harvest, extraction,
tincture or other product manufactured or derived therefrom, because of the nearly endangered status of the peyote plant and the special significance peyote holds in Native American spirituality. Section 11363 of the Health and Safety Code, which makes it a crime in California to cultivate, harvest, dry, or process any plant of the genus Lophophora, also known as Peyote, is not amended or repealed.

(m) The State of California fully respects and supports the continued Native American possession and use of peyote under federal law, 42 U.S.C. 1996a, understanding that Native Americans in the United States were persecuted and prosecuted for their ceremonial practices and use of peyote for more than a century and had to fight numerous legal and political battles to achieve the current protected status, and the enactment of this legislation does not intend to undermine explicitly or implicitly that status.

SEC. 2. Section 11054 of the Health and Safety Code is amended to read:

11054. (a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol.
2. Allylprodine.
3. Alphacetylmethadol (except levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
5. Alphamethadol.
8. Betameprodine.
11. Clonitazene.
12. Dextromoramide.
1 (15) Difenoxin.
2 (16) Dimenoxadol.
3 (17) Dimepheptanol.
4 (18) Dimethylthiambutene.
5 (19) Dioxaphetyl butyrate.
6 (20) Dipipanone.
7 (21) Ethylmethylthiambutene.
8 (22) Etonitazene.
9 (23) Etoxeridine.
10 (24) Furethidine.
11 (25) Hydroxypethidine.
12 (26) Ketobemidone.
13 (27) Levomoramide.
14 (28) Levophenacylmorphan.
15 (29) Morpheridine.
16 (30) Noracymethadol.
17 (31) Norlevorphanol.
18 (32) Normethadone.
19 (33) Norpipanone.
20 (34) Phenadoxone.
21 (35) Phenampromide.
22 (36) Phenomorphan.
23 (37) Phenoperidine.
24 (38) Piritramide.
25 (39) Proheptazine.
26 (40) Properidine.
27 (41) Properidine.
28 (42) Racemoramide.
29 (43) Tilidine.
30 (44) Trimeperidine.
31 (45) Any substance which contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.
32 (46) Any substance which contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.
33 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
34 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
35 (c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives,
its salts, isomers, and salts of isomers whenever the existence of
those salts, isomers, and salts of isomers is possible within the
specific chemical designation:

1. Acetorphine.
2. Acetyldihydrocodeine.
5. Codeine-N-Oxide.
6. Cyprenorphine.
7. Desomorphine.
8. Dihydromorphine.
10. Etorphine (except hydrochloride salt).
11. Heroin.
15. Morphine methylbromide.
17. Morphine-N-Oxide.
18. Myrophine.
22. Pholcodine.
23. Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or
unless listed in another schedule, any material, compound, mixture,
or preparation, which contains any quantity of the following
hallucinogenic substances, or which contains any of its salts,
isomers, and salts of isomers whenever the existence of those salts,
isomers, and salts of isomers is possible within the specific
chemical designation (for purposes of this subdivision only, the
term “isomer” includes the optical, position, and geometric
isomers):

1. 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other
   names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;
   4-bromo-2,5-DMA.
2. 2,5-dimethoxyamphetamine—Some trade or other names:
   2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

5-methoxy-3,4-methylenedioxyamphetamine.

4-methyl-2,5-dimethoxyamphetamine—Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP.”

3,4-methylenedioxyamphetamine.

3,4,5-trimethoxyamphetamine.

Bufotenine—Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.

Dimethyltryptamine—Some trade or other names: DMT.

Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1’,2’:1,2] azepino [5,4-b] indole; Tabernantheiboga.

Lysergic acid diethylamide.

Cannabis.

Mescaline, derived from plants presently classified botanically in the Echinopsis or Trichocereus genus of cacti, including, without limitation, the Bolivian Torch Cactus, San Pedro Cactus, or Peruvian Torch Cactus, but not including mescaline derived from any plant described in paragraph (15).

Peyote—Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

N-ethyl-3-piperidyl benzilate.

N-methyl-3-piperidyl benzilate.

Psilocybin.

Psilocyn.

Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological
activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

(1) Cocaine base.

(2) Fenethylline, including its salts.
N-Ethylamphetamine, including its salts.

SEC. 3. Section 11150.2 of the Health and Safety Code is amended to read:

11150.2. (a) Notwithstanding any other law, if cannabidiol is excluded from Schedule I of the federal Controlled Substances Act and placed on a schedule of the act other than Schedule I, or if a product composed of cannabidiol is approved by the federal Food and Drug Administration and either placed on a schedule of the act other than Schedule I, or exempted from one or more provisions of the act, so as to permit a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice, to prescribe, furnish, or dispense that product, the physician, pharmacist, or other authorized healing arts licensee who prescribes, furnishes, or dispenses that product in accordance with federal law shall be deemed to be in compliance with state law governing those acts.

(b) Notwithstanding any other law, if psilocybin, psilocyn, dimethyltryptamine, ibogaine, mescaline, lysergic acid diethylamide, or 3,4-methylenedioxymethylamphetamine is excluded from Schedule I of the federal Controlled Substances Act and placed on a schedule of the act other than Schedule I, or if a product composed of one of these substances is approved by the federal Food and Drug Administration and either placed on a schedule of the act other than Schedule I, or exempted from one or more provisions of the act, so as to permit a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice, to prescribe, furnish, or dispense that product, the physician, pharmacist, or other authorized healing arts licensee who prescribes, furnishes, or dispenses that product in accordance with federal law shall be deemed to be in compliance with state law governing those acts.

(c) For purposes of this chapter, upon the effective date of any of the changes in federal law described in subdivision (a) or (b), notwithstanding any other state law, a product composed of the excluded substance may be prescribed, furnished, dispensed, transferred, transported, possessed, or used in accordance with federal law and is authorized pursuant to state law.

(d) This section does not apply to any product containing cannabidiol that is made or derived from industrial hemp, as defined in Section 11018.5 and regulated pursuant to that section.
SEC. 4. Section 11350 of the Health and Safety Code is amended to read:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (15) or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) Except as otherwise provided in this division, whenever a person who possesses any of the controlled substances specified in subdivision (a), the judge may, in addition to any punishment provided for pursuant to subdivision (a), assess against that person a fine not to exceed seventy dollars ($70) with proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of their inability to pay the fine permitted under this subdivision.

(c) Except in unusual cases in which it would not serve the interest of justice to do so, whenever a court grants probation pursuant to a felony conviction under this section, in addition to any other conditions of probation which may be imposed, the following conditions of probation shall be ordered:

(1) For a first offense under this section, a fine of at least one thousand dollars ($1,000) or community service.

(2) For a second or subsequent offense under this section, a fine of at least two thousand dollars ($2,000) or community service.
(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

d) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

e) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

SEC. 5. Section 11350.1 is added to the Health and Safety Code, to read:

11350.1. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) of this section and notwithstanding any other law, all of the following shall be lawful for a natural person 21 years of age or older and shall not be a violation of state or local law:

(1) The possession, processing, obtaining, or transportation of mescaline, as described in paragraph (14) of subdivision (d) of Section 11054, for personal use or for social sharing.

(2) The ingesting of mescaline.

(3) The social sharing of mescaline.

(4) The possession, planting, cultivating, harvesting, or processing of plants capable of producing mescaline, except for the plant presently classified botanically as Lophophora williamsii Lemair, on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants.

(b) Possession of mescaline by a person 21 years of age or over on the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is punishable as a misdemeanor.

c) (1) A person who knowingly gives away or administers mescaline to a person who is under 18 years of age in violation of law shall be punished by imprisonment in a county jail for a period
of not more than six months or by a fine of not more than five
hundred dollars ($500), or by both that fine and imprisonment, or
by imprisonment pursuant to subdivision (h) of Section 1170 of
the Penal Code.

(2) Notwithstanding paragraph (1), a person 18 years of age or
over who knowingly gives away or administers mescaline to a
minor under 14 years of age in violation of law shall be punished
by imprisonment in the state prison for a period of three, five, or
seven years.

(3) A person who knowingly gives away or administers
mescaline to a person who is at least 18 years of age, but under 21
years of age is guilty of an infraction.

(d) Except as otherwise provided, possession of mescaline by
a person under 18 years of age is punishable as an infraction and
shall require:

(1) Upon a finding that a first offense has been committed, four
hours of drug education or counseling and up to 10 hours of
community service over a period not to exceed 60 days,
commencing when the drug education or counseling services are
made available to them.

(2) Upon a finding that a second offense or subsequent offense
has been committed, six hours of drug education or counseling
and up to 20 hours of community service over a period not to
exceed 90 days, commencing when the drug education or
counseling services are made available to them.

(e) Except as otherwise provided, possession of mescaline by
a person at least 18 years of age but less than 21 years of age is
punishable as an infraction.

(f) Mescaline or related products involved in any way with
conduct deemed lawful by this section are not contraband nor
subject to seizure, and no conduct deemed lawful by this section
shall constitute the basis for detention, search, or arrest, or the
basis for the seizure or forfeiture of assets.

(g) As used in this section, the following terms are defined as
follows:

(1) “Financial gain” means the receipt of money or other
valuable consideration in exchange for the item being shared.
“Financial gain” does not include reasonable fees for counseling,
spiritual guidance, or related services that are provided in
conjunction with administering or use of mescaline under the
guidance and supervision, and on the premises, of the person
providing those services.

(2) “Personal use” means for the personal ingestion or other
personal and noncommercial use by the person in possession.

(3) “Social sharing” means the giving away or consensual
administering of mescaline by a person 21 years of age or older,
to another person 21 years of age or older, not for financial gain,
including in the context of group counseling, spiritual guidance,
community-based healing, or related services.

SEC. 6. Section 11356.8 is added to the Health and Safety
Code, to read:

11356.8. (a) A person currently serving a sentence for a
conviction, whether by trial or by open or negotiated plea, who
would not have been guilty under Section 11350.1 or 11402 had
those sections been in effect at the time of the offense may petition
for a recall or dismissal of sentence before the trial court that
entered the judgment of conviction in the case to request
resentencing or dismissal in accordance with those sections.

(b) Upon receiving a petition under subdivision (a), the court
shall presume the petitioner satisfies the criteria in subdivision (a)
unless the party opposing the petition proves by clear and
convincing evidence that the petitioner does not satisfy the criteria.
If the petitioner satisfies the criteria in subdivision (a), the court
shall grant the petition to recall the sentence or dismiss the sentence
because it is legally invalid unless the court determines that
granting the petition would pose an unreasonable risk of danger
to public safety.

(1) In exercising its discretion, the court may consider, but shall
not be limited to evidence provided for in subdivision (b) of Section
1170.18 of the Penal Code.

(2) As used in this section, “unreasonable risk of danger to
public safety” has the same meaning as provided in subdivision
(c) of Section 1170.18 of the Penal Code.

(c) A person who is serving a sentence and is resentenced
pursuant to subdivision (b) shall be given credit for any time
already served and shall be subject to supervision for one year
following completion of their time in custody or shall be subject
to whatever supervision time they would have otherwise been
subject to after release, whichever is shorter, unless the court, in
its discretion, as part of its resentencing order, releases the person
from supervision. In that case, the person is subject to parole supervision under Section 3000.08 of the Penal Code or postrelease community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides; or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has completed their sentence for a conviction under this article or Chapter 6.5 (commencing with Section 11400), whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under Section 11350.1 or 11402 had those sections been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in their case to have the conviction dismissed and sealed because the prior conviction is now legally invalid.

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as established under Sections 11350.1 and 11402.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(i) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(j) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of Section 11350.1 or 11402.
(k) A resentencing hearing ordered under this section shall constitute a “postconviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).

(l) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense under Section 11350.1 or 11402.

(m) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

SEC. 7. Section 11356.9 is added to the Health and Safety Code, to read:

11356.9. (a) On or before July 1, 2022, the Department of Justice shall review the records in the state summary criminal history information database and shall identify past convictions that are potentially eligible for recall or dismissal of sentence or dismissal and sealing pursuant to Section 11356.8. The department shall notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence or dismissal and sealing.

(b) The prosecution shall have until July 1, 2023, to review all cases and determine whether to challenge the recall or dismissal of sentence or dismissal and sealing.

(c) (1) The prosecution may challenge the resentencing of a person pursuant to this section when the person does not meet the criteria established in Section 11356.8 or presents an unreasonable risk to public safety.

(2) The prosecution may challenge the dismissal and sealing of a person pursuant to this section who has completed their sentence for a conviction when the person does not meet the criteria established in Section 11356.8.

(3) On or before July 1, 2023, the prosecution shall inform the court and the public defender’s office in their county when they are challenging a particular recall or dismissal of sentence or dismissal and sealing. The prosecution shall inform the court when they are not challenging a particular recall or dismissal of sentence or dismissal and sealing.

(4) The public defender’s office, upon receiving notice from the prosecution pursuant to paragraph (3), shall make a reasonable
effort to notify the person whose resentencing or dismissal is being
challenged.
(d) If the prosecution does not challenge the recall or dismissal
of sentence or dismissal and sealing by July 1, 2023, the court shall
reduce or dismiss the conviction pursuant to Section 11356.8.
(e) The court shall notify the department of the recall or
dismissal of sentence or dismissal and sealing and the department
shall modify the state summary criminal history information
database accordingly.
(f) The department shall post general information on its internet
website about the recall or dismissal of sentences or dismissal and
sealing authorized in this section.
(g) It is the intent of the Legislature that persons who are
currently serving a sentence or who proactively petition for a recall
or dismissal of sentence or dismissal and sealing pursuant to
Section 11356.8 be prioritized for review.
SEC. 8.
SEC. 6. Section 11364 of the Health and Safety Code is
amended to read:
11364. (a) It is unlawful to possess an opium pipe or any
device, contrivance, instrument, or paraphernalia used for
unlawfully injecting or smoking (1) a controlled substance specified
in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of
Section 11054, specified in paragraph (15) or (20) of subdivision
(d) of Section 11054, specified in subdivision (b) or (c) of Section
11055, or specified in paragraph (2) of subdivision (d) of Section
11055, or (2) a controlled substance that is a narcotic drug
classified in Schedule III, IV, or V.
(b) This section shall not apply to hypodermic needles or
syringes that have been containerized for safe disposal in a
container that meets state and federal standards for disposal of
sharps waste.
(c) Until January 1, 2026, as a public health measure intended
to prevent the transmission of HIV, viral hepatitis, and other
bloodborne diseases among persons who use syringes and
hypodermic needles, and to prevent subsequent infection of sexual
partners, newborn children, or other persons, this section shall not
apply to the possession solely for personal use of hypodermic
needles or syringes.
SEC. 9.

SEC. 7. Section 11364.7 of the Health and Safety Code is amended to read:

11364.7. (a) (1) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

(2) A public entity, its agents, or employees shall not be subject to criminal prosecution for distribution of hypodermic needles or syringes or any materials deemed by a local or state health department to be necessary to prevent the spread of communicable diseases, or to prevent drug overdose, injury, or disability to participants in clean needle and syringe exchange projects authorized by the public entity pursuant to Chapter 18 (commencing with Section 121349) of Part 4 of Division 105.

(3) This subdivision does not apply to any paraphernalia that is intended to be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body, any of the following substances:

(A) Dimethyltryptamine (DMT).
(B) Ibogaine.
(C) Lysergic acid diethylamide (LSD).
(D) Mescaline.
(E) Psilocybin.
(F) Psilocyn.
(G) Ketamine.
(H) 3,4-methylenedioxymethamphetamine (MDMA).

(b) Except as authorized by law, any person who manufactures with intent to deliver, furnish, or transfer drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,
prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body cocaine, cocaine base, heroin, phencyclidine, or methamphetamine in violation of this division shall be punished by imprisonment in a county jail for not more than one year, or in the state prison.

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years younger, or who, upon the grounds of a public or private elementary, vocational, junior high, or high school, possesses a hypodermic needle, as defined in paragraph (7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) The violation, or the causing or the permitting of a violation, of subdivision (a), (b), or (c) by a holder of a business or liquor license issued by a city, county, or city and county, or by the State of California, and in the course of the licensee’s business shall be grounds for the revocation of that license.

(e) All drug paraphernalia defined in Section 11014.5 is subject to forfeiture and may be seized by any peace officer pursuant to Section 11471 unless its distribution has been authorized pursuant to subdivision (a).

(f) If any provision of this section or the application thereof to any person or circumstance is held invalid, it is the intent of the Legislature that the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

SEC. 10.

SEC. 8. Section 11365 of the Health and Safety Code is amended to read:

11365. (a) It is unlawful to visit or to be in any room or place where any controlled substances which are specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
specified in paragraph (15) or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) or paragraph (2) of subdivision (d) of Section 11055, or which are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such activity is occurring.

(b) This section shall apply only where the defendant aids, assists, or abets the perpetration of the unlawful smoking or use of a controlled substance specified in subdivision (a). This subdivision is declaratory of existing law as expressed in People v. Cressey (1970) 2 Cal. 3d 836.

SEC. 11.

SEC. 9. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), (13), (14), (15), (18), (19), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) The judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant’s ability to pay, and no defendant shall be denied
probation because of their inability to pay the fine permitted under this subdivision.

(c) It is not unlawful for a person other than the prescription holder to possess a controlled substance described in subdivision (a) if both of the following apply:

(1) The possession of the controlled substance is at the direction of or with the express authorization of the prescription holder.

(2) The sole intent of the possessor is to deliver the prescription to the prescription holder for its prescribed use or to discard the substance in a lawful manner.

(d) This section does not permit the use of a controlled substance by a person other than the prescription holder or permit the distribution or sale of a controlled substance that is otherwise inconsistent with the prescription.

SEC. 12.

SEC. 10. Section 11377.1 is added to the Health and Safety Code, to read:

11377.1. (a) Except as otherwise provided in Sections 11377.5 and subdivisions (b), (c), (d), and (e) of this section, and notwithstanding any other law, all of the following shall be lawful for a natural person 21 years of age or older and shall not be a violation of state or local law:

(1) The possession, processing, obtaining, or transportation of a controlled substance specified in paragraph (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054, or in subdivision (g) of Section 11056, for personal use or for social sharing.

(2) The ingesting of a substance described in paragraph (1).

(3) The social sharing of a substance described in paragraph (1).

(4) The possession, planting, cultivating, harvesting, or processing of plants capable of producing a substance described in paragraph (1), on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants including spores or mycelium capable of producing mushrooms or other material which contain a controlled substance specified in paragraph (18) or (19) of subdivision (d) of Section 11054, for that purpose.

(b) Possession of a controlled substance specified in paragraph (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054, or in subdivision (g) of Section 11056, by a person 21 years of age
or over, on the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is punishable as a misdemeanor.

(c) (1) A person who knowingly gives away or administers a controlled substance specified in paragraph (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054, or in subdivision (g) of Section 11056, to a person who is under 18 years of age in violation of law shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred dollars ($500), or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

(2) Notwithstanding paragraph (1), a person 18 years of age or over who knowingly gives away or administers a substance described in paragraph (1) to a minor under 14 years of age in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(3) A person who knowingly gives away or administers a substance described in paragraph (1) to a person who is at least 18 years of age, but under 21 years of age is guilty of an infraction.

(d) Except as otherwise provided, possession of a controlled substance specified in paragraph (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054, or in subdivision (g) of Section 11056, by a person under 18 years of age is punishable as an infraction and shall require:

(1) Upon a finding that a first offense has been committed, four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days, commencing when the drug education or counseling services are made available to them.

(2) Upon a finding that a second offense or subsequent offense has been committed, six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days, commencing when the drug education or counseling services are made available to them.

(e) Except as otherwise provided, possession of a controlled substance specified in paragraph (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054, or in subdivision (g) of Section
A controlled substance described in this section or any related product involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.

(g) As used in this section, the following terms are defined as follows:

1. “Financial gain” means the receipt of money or other valuable consideration in exchange for the item being shared. “Financial gain” does not include reasonable fees for counseling, spiritual guidance, or related services that are provided in conjunction with administering or use of a controlled substance described in this section under the guidance and supervision, and on the premises, of the person providing those services.

2. “Personal use” means for the personal ingestion or other personal and noncommercial use by the person in possession.

3. “Social sharing” means the giving away or consensual administering of a controlled substance described in this section by a person 21 years of age or older, to another person 21 years of age or older, not for financial gain, including in the context of group counseling, spiritual guidance, community-based healing, or related services.

SEC. 13. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b), in Section 11377.1, and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified...
in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, six, or nine years.

(c) For purposes of this section, “transports” means to transport for sale.

(d) Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory, accessory theory, or a conspiracy theory.

SEC. 14.

SEC. 12. Section 11379.2 of the Health and Safety Code is amended to read:

11379.2. Except as otherwise provided in Section 11377.1 and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale or sells any controlled substance specified in subdivision (g) of Section 11056 shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

SEC. 15.

SEC. 13. Section 11382 of the Health and Safety Code is amended to read:

11382. Except as otherwise provided in Section 11377.1, every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (a) classified in Schedule III, IV, or V and which is not a narcotic drug, or (b) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any
person, or offers, arranges, or negotiates to have that controlled
substance unlawfully sold, delivered, transported, furnished,
administered, or given to any person and then sells, delivers,
furnishes, transports, administers, or gives, or offers, or arranges,
or negotiates to have sold, delivered, transported, furnished,
administered, or given to any person any other liquid, substance,
or material in lieu of that controlled substance shall be punished
by imprisonment in the county jail for not more than one year, or
pursuant to subdivision (h) of Section 1170 of the Penal Code.

SEC. 16. Section 11382.8 is added to the Health and Safety
Code, to read:

11382.8. (a) A person currently serving a sentence for a
conviction, whether by trial or by open or negotiated plea, who
would not have been guilty under Section 11377.1, had those
sections been in effect at the time of the offense may petition for
a recall or dismissal of sentence before the trial court that entered
the judgment of conviction in the case to request resentencing or
dismissal in accordance with those sections.

(b) Upon receiving a petition under subdivision (a), the court
shall presume the petitioner satisfies the criteria in subdivision (a)
unless the party opposing the petition proves by clear and
convincing evidence that the petitioner does not satisfy the criteria.
If the petitioner satisfies the criteria in subdivision (a), the court
shall grant the petition to recall the sentence or dismiss the sentence
because it is legally invalid unless the court determines that
granting the petition would pose an unreasonable risk of danger
to public safety.

(1) In exercising its discretion, the court may consider, but shall
not be limited to evidence provided for in subdivision (b) of Section
1170.18 of the Penal Code.

(2) As used in this section, “unreasonable risk of danger to
public safety” has the same meaning as provided in subdivision
(c) of Section 1170.18 of the Penal Code.

(e) A person who is serving a sentence and is resentenced
pursuant to subdivision (b) shall be given credit for any time
already served and shall be subject to supervision for one year
following completion of their time in custody or shall be subject
to whatever supervision time they would have otherwise been
subject to after release, whichever is shorter, unless the court, in
its discretion, as part of its resentencing order, releases the person

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from supervision. In that case, the person is subject to parole supervision under Section 3000.08 of the Penal Code or postrelease community supervision under subdivision (a) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides; or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) A person who has completed their sentence for a conviction under this article or former Article 7 (commencing with Section 11390), whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under Section 11377.1, had those sections been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in their case to have the conviction dismissed and sealed because the prior conviction is now legally invalid.

(f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under Section 11377.1.

(g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).

(h) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(i) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(j) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of Section 11377.1.
(k) A resentencing hearing ordered under this section shall constitute a “postconviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).

(f) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense under Section 11377.1.

(m) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.

SEC. 17. Section 11382.9 is added to the Health and Safety Code, to read:

11382.9. (a) On or before July 1, 2022, the Department of Justice shall review the records in the state summary criminal history information database and shall identify past convictions that are potentially eligible for recall or dismissal of sentence or dismissal and sealing, pursuant to Section 11382.8. The department shall notify the prosecution of all cases in their jurisdiction that are eligible for recall or dismissal of sentence or dismissal and sealing.

(b) The prosecution shall have until July 1, 2023, to review all cases and determine whether to challenge the recall or dismissal of sentence or dismissal and sealing.

(c) (1) The prosecution may challenge the resentencing of a person pursuant to this section when the person does not meet the criteria established in Section 11382.8 or presents an unreasonable risk to public safety.

(2) The prosecution may challenge the dismissal and sealing of a person pursuant to this section who has completed their sentence for a conviction when the person does not meet the criteria established in Section 11382.8.

(3) On or before July 1, 2023, the prosecution shall inform the court and the public defender’s office in their county when they are challenging a particular recall or dismissal of sentence or dismissal and sealing. The prosecution shall inform the court when they are not challenging a particular recall or dismissal of sentence or dismissal and sealing.

(4) The public defender’s office, upon receiving notice from the prosecution pursuant to paragraph (3), shall make a reasonable
(d) If the prosecution does not challenge the recall or dismissal of sentence or dismissal and sealing by July 1, 2023, the court shall reduce or dismiss the conviction pursuant to Section 11382.8.

(e) The court shall notify the department of the recall or dismissal of sentence or dismissal and sealing and the department shall modify the state summary criminal history information database accordingly.

(f) The department shall post general information on its internet website about the recall or dismissal of sentences or dismissal and sealing authorized in this section.

(g) It is the intent of the Legislature that persons who are currently serving a sentence or who proactively petition for a recall or dismissal of sentence or dismissal and sealing pursuant to Section 11382.8 be prioritized for review.

SEC. 14. Article 7 (commencing with Section 11390) of Chapter 6 of Division 10 of the Health and Safety Code is repealed.

SEC. 15. Section 11402 is added to the Health and Safety Code, to read:

11402. (a) As provided in this section, this chapter does not apply to 3,4-methylenedioxymethamphetamine, otherwise known as MDMA.

(b) Except as otherwise provided in this section, all of the following shall be lawful for a natural person 21 years of age or older and shall not be a violation of state or local law:

1. The possession, processing, obtaining, or transportation of MDMA for personal use or for social sharing.

2. The ingesting of MDMA.

3. The social sharing of MDMA.

(c) Possession of MDMA by a person 21 years of age or over, on the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is punishable as a misdemeanor.

(d) (1) A person who knowingly gives away or administers MDMA to a person who is under 18 years of age in violation of law shall be punished by imprisonment in a county jail for a period
of not more than six months or by a fine of not more than five
hundred dollars ($500), or by both such fine and imprisonment,
or by imprisonment pursuant to subdivision (h) of Section 1170
of the Penal Code.

(2) Notwithstanding paragraph (1), a person 18 years of age or
over who knowingly gives away or administers MDMA to a minor
under 14 years of age in violation of law shall be punished by
imprisonment in the state prison for a period of three, five, or seven
years.

(3) A person who knowingly gives away or administers MDMA
to a person who is at least 18 years of age, but under 21 years of
age is guilty of an infraction.

(e) Except as otherwise provided, possession of MDMA by a
person under 18 years of age is punishable as an infraction and
shall require:

(1) Upon a finding that a first offense has been committed, four
hours of drug education or counseling and up to 10 hours of
community service over a period not to exceed 60 days,
commencing when the drug education or counseling services are
made available to them.

(2) Upon a finding that a second offense or subsequent offense
has been committed, six hours of drug education or counseling
and up to 20 hours of community service over a period not to
exceed 90 days, commencing when the drug education or
counseling services are made available to them.

(f) Except as otherwise provided, possession of MDMA by a
person at least 18 years of age but less than 21 years of age is
punishable as an infraction.

(g) MDMA or any related product involved in any way with
conduct deemed lawful by this section are not contraband nor
subject to seizure, and no conduct deemed lawful by this section
shall constitute the basis for detention, search, or arrest, or the
basis for the seizure or forfeiture of assets.

(h) As used in this section, the following terms are defined as
follows:

(1) “Financial gain” means the receipt of money or other
valuable consideration in exchange for the item being shared.
“Financial gain” does not include reasonable fees for counseling,
spiritual guidance, or related services that are provided in
conjunction with administering or use of MDMA under the
guidance and supervision, and on the premises, of the person providing those services.

(2) “Personal use” means for the personal ingestion or other personal and noncommercial use by the person in possession.

(3) “Social sharing” means the giving away or consensual administering of MDMA by a person 21 years of age or older, to another person 21 years of age or older, not for financial gain, including in the context of group counseling, spiritual guidance, community-based healing, or related services.

SEC. 20.

SEC. 16. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) A person shall not use, or be under the influence of any controlled substance that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. A person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not more than one year in a county jail. The court may also place a person convicted under this subdivision on probation for a period not to exceed five years.

(b) (1) A person who is convicted of violating subdivision (a) when the offense occurred within seven years of that person being convicted of two or more separate violations of that subdivision, and refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subdivision (c), shall be punished by imprisonment in a county jail for not less than 180 days nor more than one year. In no event does the court have the power to absolve a person convicted of a violation of subdivision (a) who is punishable under this subdivision from the obligation of spending at least 180 days in confinement in a county jail unless there are no licensed drug rehabilitation programs reasonably available.
(2) For the purpose of this section, a drug rehabilitation program is not reasonably available unless the person is not required to pay more than the court determines that they are reasonably able to pay in order to participate in the program.

(c) (1) The court may, when it would be in the interest of justice, permit a person convicted of a violation of subdivision (a) punishable under subdivision (a) or (b) to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in a county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program.

(2) In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subdivision, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(d) In addition to any fine assessed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against a person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant’s ability to pay, and a defendant shall not be denied probation because of their inability to pay the fine permitted under this subdivision.

(e) (1) Notwithstanding subdivisions (a) and (b) or any other law, a person who is unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense punishable by imprisonment in a county jail for not exceeding one year or in state prison.

(2) As used in this subdivision “immediate personal possession” includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subdivision (e) is punishable upon the second and each subsequent conviction by imprisonment in the state prison for two, three, or four years.

(g) This section does not prevent deferred entry of judgment or a defendant’s participation in a preguilty plea drug court program under Chapter 2.5 (commencing with Section 1000) of Title 6 of
Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision (b) or (c) of Section 243 of the Penal Code or with a violation of subdivision (e) shall be ineligible for deferred entry of judgment or a preguilty plea drug court program.

SEC. 21.

SEC. 22.

SEC. 17. Section 11999 of the Health and Safety Code is repealed.

SEC. 22.

SEC. 18. Section 131065 is added to the Health and Safety Code, to read:

131065. (a) The State Department of Public Health shall convene a working group to study and make recommendations regarding possible regulatory systems that California could adopt to promote safe and equitable access to certain substances in permitted legal contexts, including facilitated group use of substances and spiritual use of substances in groups, and recommending options for caregiving including facilitated services, therapy, end-of-life care, and compassionate use of those controlled substance specified in paragraph (10), (11), (12), (14), (18), or (19) of subdivision (d) of Section 11054, or in subdivision (g) of Section 11056, and of 3,4-methylenedioxymethamphetamine.

(b) The State Public Health Officer or their designee shall chair the working group.

(c) The working group shall include, without limitation, persons with expertise in psychedelic therapy, medicine and public health, drug policy, harm reduction, and traditional indigenous use of psychedelic substances, including representatives from the National Council of the Native American Church and Indian tribes in California.

(d) The working group is authorized to contract with outside entities, including public or private universities for research assistance.

(e) The working group shall study, without limitation, all of the following:
(1) The available research on the safety and efficacy of using controlled substances specified in subdivision (a) in a therapeutic setting for treating depression, anxiety, addiction, and other mental health conditions.

(2) The available research on the public health and public safety implications of decriminalizing controlled substances specified in subdivision (a).

(3) The available research on the safe use of controlled substances specified in subdivision (a) for other uses including as part of religious, spiritual, or creative experiences.

(4) Regulated use models for the controlled substances specified in subdivision (a) from other jurisdictions.

(f) The working group shall develop policy recommendation regarding, without limitation, all of the following:

(1) The authorization of various controlled substances for regulated uses.

(2) The appropriate regulation of the therapeutic use of controlled substances, including qualifications, training, and licensing of therapists or facilitators.

(3) The regulation of controlled substances specified in subdivision (a) for nontherapeutic use, including responsible marketing.

(4) Safe and equitable access, use, and delivery of the controlled substances specified in subdivision (a).

(5) Policies for minimizing use-related risks related to product safety, appropriate use, and impacts of detrimental substance abuse.

(g) The working group shall, by no later than January 1, 2024, submit a report to the Legislature, detailing their findings.

(h) The report required by subdivision (g) shall be submitted in compliance with Section 9795 of the Government Code.

(i) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 23.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the
meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 24.
SEC. 20. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
Item B-15
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 7, 2021
SUBJECT: Senate Bill 693 (Stern) - Pupil instruction: genocide education: the Holocaust

ATTACHMENTS: 1. Summary Memo – SB 693
               2. League of California Cities – Letter of Opposition
               3. Bill Text – SB 693

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 693 (Stern) - Pupil instruction: genocide education: the Holocaust (SB 693) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

Councilmember Julian Gold has requested this item be considered by the Legislative/Lobby Liaisons. The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 693 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 693, the Liaisons may recommend the following actions:

1) Support SB 693;
2) Support if amended SB 693;
3) Oppose SB 693;
4) Oppose unless amended SB 693;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 693, then staff will place the item on a future City Council Agenda for concurrence.
June 1, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 693 (Stern) Pupil instruction: Genocide Education: The Holocaust

Version: As Amended in the Senate on May 20, 2021

Summary
Establishes the Governor’s Council on Genocide and Holocaust Education and requires the council to develop best practices to facilitate the instruction on genocide and the Holocaust, identify available resources that are aligned to the best practices, and identify programs and resources to train teachers to provide education on genocide and the Holocaust; and (2) Requires the California Department of Education (CDE) to make available the best practices and approved lessons, resources, and materials to support the integration of instruction on genocide and the Holocaust, and to conduct a voluntary study to assess the impact of the instruction based on the best practices. Specifically,

1) Establishes the Governor’s Council on Genocide and Holocaust Education and requires the council to be responsible for coordinating efforts between the CDE and individuals and organizations that are experts in the field of education on genocide, including the Holocaust.

2) Requires the council to consist of 17 members appointed by the Governor, who have particular interest or expertise on genocide, including the Holocaust, and to serve without compensation. However, if funding is available for this purpose from private sources, members of the council may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the council.

3) Requires the council to develop best practices to facilitate the instruction on genocide, including the Holocaust, that aligns with academic content standards for pupils who are enrolled in grades 4 to 12, inclusive, and the offering of instruction that is appropriate for pupils who are enrolled in kindergarten and grades 1 to 3, inclusive.

4) Requires the council to develop a process to identify available resources, and work with CDE to establish new resources, that align with the best practices developed by the council, academic content standards, and the history-social science curriculum framework.

5) States that the Legislature strongly encourages school districts and charter schools with pupils in grades 4 to 12, inclusive, to integrate the best practices into instruction on genocide, including the Holocaust, that meets existing academic content standards and the history-social science curriculum framework for these pupils.
6) Requires the best practices developed by the council to encourage innovation, equity, accessibility, and flexibility, and respect diversity, leading to instruction for pupils that complies with all of the following:

   a) Is age appropriate.

   b) Is sequential or thematic in its method of study.

   c) Communicates the connection between national, ethnic, racial, or religious intolerance and following acts committed with the intent to destroy, in whole or in part, a national, ethncial, racial, or religious group:

      i) Killing members of the group.

      ii) Causing serious bodily or mental harm to members of the group.

      iii) Deliberately inflicting on the group conditions of life calculated to bring about, in whole or in part, its physical destruction.

      iv) Imposing measures intended to prevent births within the group.

      v) Forcibly transferring children of the group to another group.

   d) Communicates the impact of personal responsibility, civic engagement, and societal response in the context of the subjects described in (c) above.

   e) Includes the use of personal narratives and multimedia primary source materials, including video testimony, photographs, artwork, diary entries, letters, government documents, maps, and poems as sources of knowledge and inquiry.

   f) Uses appropriate tools and innovative learning modes to encourage inquiry, social emotional development, respect for others, critical thinking, and empathy.

   g) Provides opportunities and skills to consider the relationships between historical and contemporary experiences, including opportunities to contextualize and analyze patterns of human behavior by individuals and groups, at the local, state, national, and international level.

   h) Stimulates pupils’ reflection on the roles and responsibilities of citizens in democratic societies to combat misinformation, indifference, and discrimination by developing critical thinking skills and using tools of resistance, including protest, reform, and celebration.

   i) Provides opportunities to reflect on the importance of remembrance, including opportunities to honor the memories of genocide survivors and their cultural legacies.

   j) Is designed to do all of the following, where appropriate:

      i) Prepare pupils to confront the immorality of genocide, the Holocaust, and other crimes against humanity, such as events in Nanjing, China, and Japanese
internment camps during World War II, and to reflect on the causes of related historical events.

ii) Address the breadth of the history of the Holocaust, including the Third Reich dictatorship, concentration camp system, persecution of Jews and non-Jews, Jewish and non-Jewish resistance, and post-World War II trials, and other genocides perpetrated against humanity, including, but not limited to, the Armenian Genocide, the Genocide against the Tutsi in Rwanda, and other genocides committed in Africa, Asia, Latin America, South America, and Europe.

iii) Develop pupils’ respect for cultural diversity and help pupils gain insight into the importance of the protection of international human rights for all people.

iv) Promote pupils’ understanding of how the Holocaust contributed to the need for the term “genocide” and led to international legislation that recognized genocide as a crime.

7) Requires the council to work in consultation with the CDE and organizations and individuals that provide educational expertise and resources related to education on genocide, including the Holocaust, to align the best practices with academic content standards and frameworks.

8) Requires the best practices to, among other things, suggest the minimum amount of instruction necessary to adequately educate pupils on genocide, including the Holocaust.

9) Requires the CDE to distribute information on appropriate curriculum materials and guidelines to school districts and charter schools, and to make available the best practices and approved lessons, resources, and materials to support the integration of instruction on genocide, including the Holocaust.

10) Requires the council to work with the CDE to provide resources to school districts and charter schools so they may incorporate the best practices on teaching genocide, including the Holocaust, into their accredited in-service training programs.

11) Requires the council to do all of the following:

   a) Identify, to the extent possible, all sources of strategies and content for providing and enhancing education on genocide, including the Holocaust, to pupils.

   b) Convene working groups comprised of individuals and organizations with significant expertise in the field of education on genocide, including the Holocaust, to advise the council. The working groups shall include certificated public-school teachers.

   c) Advise the Superintendent of Public Instruction and school districts and charter schools on strategies and content for providing and enhancing genocide and Holocaust education for teacher training and to pupils.

   d) Identify, to the extent possible, all programs and resources to train teachers to provide education on genocide, including the Holocaust, to pupils and share these programs and resources with the SPI, school districts, and charter schools.

   e) Coordinate with the CDE on the identification of resources for purposes of the bill.
f) Explore the opportunity to develop best practices for instruction of pupils in kindergarten and grades 1 to 3, inclusive.

g) Promote, within school districts, charter schools, and the general population of the state, implementation of education on genocide, including the Holocaust.

h) Work with the CDE to establish a small grants program to foster cooperation and innovation among teachers and schools to develop strategies to apply the best practices effectively. Individuals or schools receiving a grant shall be required to participate in an impact evaluation study, developed by the CDE, to assess best practices and implementation of the grant.

i) On or before January 1, 2028, and each January 1 thereafter, submit an annual report to the Legislature on the status of education on genocide, including the Holocaust, in the state.

j) Approve professional development recommendations and materials for teaching the topic of genocide, including the Holocaust.

12) States that the Legislature strongly encourages school districts and charter schools to provide genocide professional development programs to teachers and authorizes professional development programs to donated and funded through public-private partnerships.

13) Authorizes, to the extent permitted by the California Constitution, the CDE to provide guidelines and any other materials developed in accordance with this section to a private school maintaining any of grades 4 to 12, inclusive, in the state, upon receiving a request from the private school.

14) Requires the CDE to conduct a study reviewing how instruction on genocide, including the Holocaust, is offered pursuant to this bill to assess the impact of the instruction. Participation of a school district or charter school in the study must be voluntary. In conducting the study, a school district and charter school participating in the study that is providing instruction pursuant to the best practices shall provide the CDE with information on whether the school district and charter school offers the instruction and the way the instruction is offered. On or before January 1, 2027, and each January 1 thereafter, the CDE shall submit a report to the Governor and appropriate policy and fiscal committees of the Legislature that includes all of the following information for the previous school year:

a) The number of school districts and charter schools that offered instruction on genocide, including, the Holocaust.

b) The number of school districts and charter schools that used the curriculum materials and guidelines distributed by the CDE.

c) The number of school districts and charter schools that provided professional development teacher training programs pursuant to this bill.

d) A description of the manner in which school districts and charter schools provided instruction on genocide, including the Holocaust, including the number of hours of
instruction offered, the grade levels in which the instruction was provided, and the
courses in which the instruction was provided.

e) Recommendations for improvements to the offering of instruction on genocide, including
the Holocaust, including recommendations for legislation.

Status of Legislation
SB 693 was just approved on the Senate Floor and will be pending in the State Assembly.

Discussion
This bill intends to fill the Holocaust education gap by providing resources and best practices
materials to teachers. This will ensure all California students have receive robust Holocaust and
genocide best practices within existing curriculum standards and the social studies framework.”

According to the author’s office, “A recent study by Schoen Cooperman Research surveyed
11,000 Millennials and Gen-Z Americans across 50 states to look at the state of Holocaust
knowledge as well as the perceptions of the Holocaust. The author cites the following as evidence
that stronger curriculum is necessary:

- Almost 2/3rds of young American adults do not know that 6 million Jews and 5 million
  others were killed during the Holocaust.
- More than 1 in 10 believe Jews caused the Holocaust.
- Of adults aged between 18 and 39, almost half (48%) could not name a single
  concentration camp or ghetto established during World War.
- 23% believed the Holocaust was a myth, or had been exaggerated, or they were not sure.
- 12% said they had definitely not heard, or did not think they had heard, about the
  Holocaust.
- 49% had seen Holocaust denial or distortion posts on social media or elsewhere online.
- Only an estimated 54% of the entire world population has even heard of the Holocaust.
- 19% of American adults say, ‘Jews still talk too much about what happened to them in the
  Holocaust.’

AB 2016 (Alejo, Ch. 327, Stats. 2016) required the IOC to develop, and the SBE to adopt, an
ethnic studies model curriculum. The development process elicited controversy, as there were
concerns over which groups the ethnic studies model curriculum would ultimately include, and on
some of the specifics within the initial draft. After public comment periods and a revision, CDE
ultimately recommended that the model curriculum increase the breadth and depth of the four
foundational disciplines of ethnic studies—African American Studies, Asian American Studies,
Chicana/o/x Latina/o/x Studies, and Native American Studies. Additionally, the CDE proposed
updating and expanding an existing set of resources—where all sample lessons are housed—to
further reflect California's diversity by offering instructional materials that raise the voices of many
identities whose experiences intersect with the core disciplines of ethnic studies, such as Arab
Americans, Armenian Americans, Jewish Americans, and Sikh Americans. The model curriculum and additional sample lessons were adopted by the SBE on March 18, 2021.

Existing resources on genocide and the Holocaust. The Holocaust and other genocides are currently referenced in several CDE curriculum documents, including (1) the Model Curriculum for Human Rights and Genocide, which was originally developed in 1987, is posted on the CDE website as a PDF file, and addresses the Armenian, Cambodian, and Rwandan Genocides; and (2) the History–Social Science Framework, which underwent a major revision in 2016 and contains extensive content on the Armenian Genocide and the Holocaust, and mentions several other examples of genocide. Genocide is also addressed in the Ethnic Studies Model Curriculum that was recently adopted development.

Support
Superintendent of Public Instruction Tony Thurmond (source)
Anti-defamation League
Armenian Assembly of America
Armenian Film Foundation
Discovery Education
Hadassah, the Women’s Zionist of America
Israeli-American Civic Action Network
Jewish Public Affairs Committee
Los Angeles County Office of Education
National Association for Armenian Studies and Research
Pomegranate Foundation
Simon Wiesenthal Center

Opposition
None reported
Attachment 2
An act to add Section 51221.1 to the Education Code, relating to pupil instruction.

LEGISLATIVE COUNSEL'S DIGEST


Existing law requires the State Department of Education to incorporate age-appropriate materials relating to, among other things, genocide and the Holocaust into publications that provide examples of curriculum resources for teacher use, consistent with the subject frameworks on history and social science. Under existing law, the Legislature encourages the incorporation of survivor, rescuer, liberator, and witness oral testimony into the teaching of genocide and the Holocaust.

This bill would establish the Governor’s Council on Genocide and Holocaust Education to, among other things, establish best practices for, and promote implementation of, education on genocide, including the Holocaust, and submit an annual report to the Legislature, as specified. The bill would strongly encourage school districts and charter schools with pupils in grades 4 to 12, inclusive, to integrate the best practices into instruction on genocide, including the Holocaust, that
meets existing academic content standards and the history-social science curriculum framework for these pupils. The bill would require the department to conduct a study on the manner in which the instruction is offered to assess the impact of the instruction.


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

SECTION 1. Section 51221.1 is added to the Education Code, to read:

51221.1. (a) As used in this section, the following definitions apply:

(1) “Council” means the Governor’s Council on Genocide and Holocaust Education.

(2) “Genocide” means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group:

(A) Killing members of the group.

(B) Causing serious bodily or mental harm to members of the group.

(C) Deliberately inflicting on the group conditions of life calculated to bring about, in whole or in part, its physical destruction.

(D) Imposing measures intended to prevent births within the group.

(E) Forcibly transferring children of the group to another group.

(3) “Holocaust” means the systematic, bureaucratic, state-sponsored persecution and murder of approximately 6,000,000 Jews and 5,000,000 other individuals by the Nazi regime and its collaborators.

(b) The Governor’s Council on Genocide and Holocaust Education is hereby established. The council shall be responsible for coordinating efforts between the department and individuals and organizations that are experts in the field of education on genocide, including the Holocaust.

(c) The council shall consist of 17 members appointed by the Governor. Members of the council shall be individuals who have particular interest or expertise on genocide, including the Holocaust. Members of the council shall serve without
compensation. However, if funding is available for this purpose
from private sources, members of the council may be reimbursed
for their actual and necessary expenses incurred in the performance
of their official duties as members of the council.
(d) (1) The council shall develop best practices to facilitate the
instruction on genocide, including the Holocaust, that aligns with
academic content standards for pupils who are enrolled in grades
4 to 12, inclusive. The best practices shall also facilitate the
offering of instruction that is appropriate for pupils who are
enrolled in kindergarten and grades 1 to 3, inclusive.
(2) The council shall develop a process to identify available
resources, and work with the department to establish new resources,
that align with the best practices developed by the council,
academic content standards, and the history-social science
curriculum framework.
(e) The Legislature strongly encourages school districts and
charter schools with pupils in grades 4 to 12, inclusive, to integrate
the best practices into instruction on genocide, including the
Holocaust, that meets existing academic content standards and the
history-social science curriculum framework for these pupils. The
best practices shall encourage innovation, equity, accessibility,
and flexibility, and respect diversity, leading to instruction for
pupils that complies with all of the following:
(1) Is age appropriate.
(2) Is sequential or thematic in its method of study.
(3) Communicates the connection between national, ethnic,
racial, or religious intolerance and the subjects described in
paragraph (2) of subdivision (a).
(4) Communicates the impact of personal responsibility, civic
engagement, and societal response in the context of the subjects
described in paragraph (2) of subdivision (a).
(5) Includes the use of personal narratives and multimedia
primary source materials, including video testimony, photographs,
artwork, diary entries, letters, government documents, maps, and
poems as sources of knowledge and inquiry.
(6) Uses appropriate tools and innovative learning modes to
encourage inquiry, social emotional development, respect for
others, critical thinking, and empathy.
(7) Provides opportunities and skills to consider the relationships
between historical and contemporary experiences, including
opportunities to contextualize and analyze patterns of human behavior by individuals and groups, at the local, state, national, and international level.

(8) Stimulates pupils' reflection on the roles and responsibilities of citizens in democratic societies to combat misinformation, indifference, and discrimination by developing critical thinking skills and using tools of resistance, including protest, reform, and celebration.

(9) Provides opportunities to reflect on the importance of remembrance, including opportunities to honor the memories of genocide survivors and their cultural legacies.

(10) Is designed to do all of the following, where appropriate:

(A) Prepare pupils to confront the immorality of genocide, the Holocaust, and other crimes against humanity, such as events in Nanjing, China, and Japanese internment camps during World War II, and to reflect on the causes of related historical events.

(B) Address the breadth of the history of the Holocaust, including the Third Reich dictatorship, concentration camp system, persecution of Jews and non-Jews, Jewish and non-Jewish resistance, and post-World War II trials, and other genocides perpetrated against humanity, including, but not limited to, the Armenian Genocide, the Genocide against the Tutsi in Rwanda, and other genocides committed in Africa, Asia, Latin America, South America, and Europe.

(C) Develop pupils' respect for cultural diversity and help pupils gain insight into the importance of the protection of international human rights for all people.

(D) Promote pupils' understanding of how the Holocaust contributed to the need for the term “genocide” and led to international legislation that recognized genocide as a crime.

(f) (1) The council shall work in consultation with the department and organizations and individuals that provide educational expertise and resources related to education on genocide, including the Holocaust, to align the best practices with academic content standards and frameworks. The best practices shall, among other things, suggest the minimum amount of instruction necessary to adequately educate pupils on genocide, including the Holocaust.
(2) The department shall distribute information on appropriate curriculum materials and guidelines to school districts and charter schools.

(g) (1) The council shall work with the department to provide resources to school districts and charter schools so they may incorporate the best practices on teaching genocide, including the Holocaust, into their existing accredited in-service training programs.

(2) The department shall make available the best practices and approved lessons, resources, and materials to support the integration of instruction on genocide, including the Holocaust.

(h) The council shall do all of the following:

(1) Identify, to the extent possible, all sources of strategies and content for providing and enhancing education on genocide, including the Holocaust, to pupils.

(2) Convene working groups comprised of individuals and organizations with significant expertise in the field of education on genocide, including the Holocaust, to advise the council. The working groups shall include certificated public school teachers.

(3) Advise the Superintendent and school districts and charter schools on strategies and content for providing and enhancing genocide and Holocaust education for teacher training and to pupils.

(4) Identify, to the extent possible, all programs and resources to train teachers to provide education on genocide, including the Holocaust, to pupils and share these programs and resources with the Superintendent, school districts, and charter schools.

(5) Coordinate with the department on the identification of resources for purposes of this section.

(6) Explore the opportunity to develop best practices for instruction of pupils in kindergarten and grades 1 to 3, inclusive.

(7) Promote, within school districts, charter schools, and the general population of the state, implementation of education on genocide, including the Holocaust.

(8) Work with the department to establish a small grants program to foster cooperation and innovation among teachers and schools to develop strategies to apply the best practices effectively. Individuals or schools receiving a grant shall be required to participate in an impact evaluation study, developed by the
department, to assess best practices and implementation of the grant.

(9) On or before January 1, 2028, and each January 1 thereafter, submit an annual report to the Legislature on the status of education on genocide, including the Holocaust, in the state. A report to be submitted pursuant to this paragraph shall be submitted in compliance with Section 9795 of the Government Code.

(i) The council shall develop approve professional development recommendations and materials for teaching the topic of genocide, including the Holocaust. The department shall develop a professional development program for teaching the topic of genocide, including the Holocaust, to school districts and charter schools. The Legislature strongly encourages school districts and charter schools to provide genocide professional development programs to teachers pursuant to this section. Professional development programs may be donated and funded through public-private partnerships.

(j) To the extent permitted by the California Constitution, the department may provide guidelines, in-service training, guidelines and any other materials developed in accordance with this section to a private school maintaining any of grades 4 to 12, inclusive, in the state, upon receiving a request from the private school.

(k) The department shall conduct a study on the manner in which instruction on genocide, including the Holocaust, is offered pursuant to this section to assess the impact of the instruction. Participation of a school district or charter school in the study shall be voluntary. In conducting the study, a school district and charter school participating in the study that is providing instruction pursuant to this section shall provide the department with information on whether the school district and charter school offers the instruction and the manner in which the instruction is offered. On or before January 1, 2027, and each January 1 thereafter, the department shall submit a report to the Governor and appropriate policy and fiscal committees of the Legislature that includes all of the following information for the previous school year:

(1) The number of school districts and charter schools that offered instruction on genocide, including, the Holocaust.

(2) The number of school districts and charter schools that used the curriculum materials and guidelines distributed by the department pursuant to paragraph (2) of subdivision (f).
(3) The number of school districts and charter schools that provided professional development teacher training programs pursuant to subdivision (i).

(4) A description of the manner in which school districts and charter schools provided instruction on genocide, including the Holocaust, including the number of hours of instruction offered, the grade levels in which the instruction was provided, and the courses in which the instruction was provided.

(5) Recommendations for improvements to the offering of instruction on genocide, including the Holocaust, including recommendations for legislation.
Item B-16
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: June 7, 2021
SUBJECT: Request to Sign on to Letter by Westside Cities Council of Governments to the State of California Requesting an Extension of the October 15, 2021 Housing Element Adoption Deadline

ATTACHMENTS: 1. SCAG Letter  
2. Draft WSCCOG Letter

To comply with state housing law, jurisdictions within California must update their housing element every eight (8) years. The Southern California Association of Governments (“SCAG”) has sent a letter to the State requesting a six month extension of the October 15, 2021 deadline to adopt an updated housing element (Attachment 1).

The Westside Cities Council of Governments (“WSCCOG”) will be considering sending a similar letter at their June 10, 2021 meeting (Attachment 2), asking for a six-month extension of the housing element submittal deadlines.

The letters list multiple reasons for extending the deadline including:

- The California Department of Housing and Community Development (“HCD”) has only recently issued guidance for the inclusion of the Affirmatively Further Fair Housing (“AFFH”) in the new Housing Elements. This requirement was enacted by AB 685 (Chapter 85965, Statutes of 2018).
- If local jurisdictions are unable to identify enough sites suitable for residential development in their Housing Element, they generally have three years to make the necessary rezonings. For the 6th Cycle, the number of rezonings in the SCAG region is likely to be substantial and will require internal consistency with the jurisdiction’s General Plan with other elements, such as the land use, circulation, conservation, safety, environmental justice, or open space elements. As such, more time is being requested so work may be done concurrently on these items, rather than as separate actions.
- Local jurisdictions had to quickly divert resources and staff as well as completely rethink effective community outreach events due to the COVID-19 pandemic. In some cases, jurisdictions have had to reduce their planning departments’ resources given the fiscal crisis impacting their budgets. This has caused a delay in the housing element update process.

The cities of Beverly Hills, Culver City, Santa Monica, and West Hollywood have indicated they are able to meet the current October 15, 2021; however, the WSCCOG will be seeking approval on June 10, 2021 to send a letter to HCD on behalf of its member cities requesting a six month extension.
May 3, 2021

The Honorable Anthony Rendon
Speaker, California State Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Toni Atkins
President pro Tempore,
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

Re: Policy Requests to Support Local Agency Efforts to Meet State Housing Goals

Dear Speaker Rendon and President pro Tempore Atkins:

On behalf of the Southern California Association of Governments (SCAG), thank you for your continued leadership, especially during the past 13 months. SCAG recognizes the competing demands for your time and attention, not the least of which relates to the state’s on-going housing affordability crisis. We thank the Legislature for its investment in the critical programs that are making a difference in this area. For our part, the 191 cities and six counties in the SCAG region are committed to taking actions to address this problem.

While the resources recently provided to cities, counties, and regions are helping with the land-use planning needed to do our part, we respectfully request additional flexibility to assist our jurisdictions to complete meaningful and impactful Housing Element updates, ensuring continued eligibility for critical housing funding.

Meeting our Region’s Housing Goals in Unusual Times

SCAG has completed its 6th cycle Regional Housing Needs Assessment (RHNA), which covers the planning period from October 2021 through October 2029, and the California Department of Housing and Community Development (HCD) has approved our final allocations. The resulting Regional Housing Needs Allocation Plan provides a sustainable vision for housing in Southern California that for the first time includes planning for the existing need of 836,857 units to address overcrowded and unsafe housing conditions in the region’s most accessible locations. In addition, the region will plan for 504,970 units to accommodate population growth.

To meet this cumulative housing need, fifty-four of our local jurisdictions are required to plan for a total number of housing units, that
if produced, would increase their existing housing stock by more than twenty percent. This level of change in most jurisdictions will require upzoning to a degree not contemplated by the restrictive timeframes in current statute. It will also require the time to thoughtfully and meaningful engage communities to find local solutions and champions who are invested in the hard work of making housing plans a reality.

SCAG continues to assist our member agencies to update their Housing Elements and prepare to meet their RHNAs. SCAG has programmed a significant portion of its Regional Early Action Program (REAP) allocation to accelerate housing production in support of our local jurisdictions’ Housing Element updates and their implementation. Our local governments are also leveraging their Local Early Action Program (LEAP) grants from HCD for these and related activities. Technical assistance, however, is not sufficient to overcome the challenges to attaining housing element compliance posed by the cumulative effect of new housing element requirements, COVID-related public engagement constraints on local government, and the substantially larger RHNA allocation in order to account for existing need.

Four Policy Requests to Support Local Agency Efforts to Meet State Housing Goals

For these reasons, SCAG proposes the following amendments of Housing Element law to address housing need and flexibility that would assist jurisdictions to attain compliant housing elements. The cities and counties of Southern California—representing half of the state’s population—need these options to complete meaningful and impactful housing element updates that will result in the acceleration of housing production and preservation of existing affordable housing.

1. **Amend the Alternative Sites provision of Government Code 65583(c)(1) to allow up to 25 percent of the RHNA to be accommodated with acquisition and rehabilitation of existing housing units and/or preservation of units with expiring covenants through new covenants.**

   Over the last several decades, the supply of housing at rents that are affordable to low-income households has sharply declined, forcing residents out of their neighborhoods to find affordable housing. By acquiring this housing, removing it from the speculative market, and preserving it as affordable, communities can keep vulnerable residents housed, reduce displacement, and grow the supply of deed-restricted affordable housing. In addition, many existing covenanted units are facing expiration of covenants and could flip to market rate units.

   Amending the alternative sites provision to ensure that these naturally occurring affordable units and “at risk” units count toward RHNA goals, would encourage the preservation of existing affordable housing stock at risk of conversion to market rate. By preserving naturally occurring affordable housing units at risk of market-rate conversion through new covenants, a balance would be struck between preservation and
fostering new development opportunities. Expanding eligibility of alternative sites would be consistent with recent flexibility afforded jurisdictions with Project HomeKey projects.

2. **Extend the deadline for SCAG region jurisdictions to submit Housing Element updates by an additional six months.**

With the recent approval our final RHNA allocations, SCAG region cities and counties are putting their LEAP and REAP funds to work. The SCAG region’s total determination for the 6th cycle RHNA is 1.3 million units, more than three times larger than the determination provided under the 5th cycle. In addition, the 6th cycle Housing Element updates are subjected to several new statutory requirements. For the SCAG region, Housing Element updates are due on October 15, 2021, meaning SCAG jurisdictions must comply with new requirements sooner than those in some other regions.

Housing Element updates are time intensive, costly, and rightly require robust and inclusive community engagement. In addition to providing an inventory and analysis of sites that are available for housing development, housing element updates must also identify the development of programs that eliminate barriers to housing, assist in the development and preservation of low- and moderate-income housing, and address the needs of persons at risk of or experiencing homelessness. Housing Element updates also require updates of other General Plan elements and accompanying environmental review and certifications.

One of the new requirements for Housing Element updates enacted by AB 686 (Chapter 958, Statutes of 2018) requires jurisdictions to Affirmatively Further Fair Housing (AFFH). This requirement must be included in SCAG region Housing Element updates by the October 15, 2021 deadline even though HCD has only recently issued guidance regarding the expectations for housing element AFFH compliance. AFFH requirements require reconciliation with other requirements of the Housing Element site inventory and with concurrent and transitional requirements to meet AFFH provisions of federal law.

In summary, additional time is one of the tools needed for SCAG region cities and counties to complete these important tasks while producing Housing Element updates that truly address the state’s housing crisis.

3. **Modify the deadlines for required rezoning.**

If local jurisdictions are unable to identify enough sites suitable for residential development in their Housing Element, they generally have three years to make the necessary rezonings. For the 6th Cycle, the number of rezonings in the SCAG region is
likely to be substantial and will require internal consistency of the General Plan with other elements, such as the land use, circulation, conservation, safety, environmental justice, or open space elements.

As with Housing Element updates, these changes are similarly time intensive, costly, and rightly require robust and inclusive community engagement. For those jurisdictions undertaking concurrent comprehensive general plan amendments, rezoning and associated environmental clearance, a modest extension of the rezonings deadline, coupled with a Housing Element update due date extension, could enable jurisdictions to use LEAP and REAP funds to make these changes concurrent with the rezoning required by the housing element, rather than as separate regulatory actions.

4. **Allow inter-jurisdictional agreements for cities and counties to meet a portion of their RHNA allocations, so long as AFFH requirements are still achieved.**

AB 1771 (Bloom, Chapter 989, Statutes of 2018) removed the tool that allowed jurisdictions to agree to an alternative distribution of housing allocations, meaning that cities and counties may no longer broker an agreement to trade or transfer a portion of their RHNA allocation.

During the 5th cycle RHNA covering the planning period from 2013-2021, no cities in the SCAG region availed themselves of this opportunity. For the previous cycle, however, HCD assigned the SCAG region a housing need range of 409,060 to 438,030 units. Although inter-jurisdictional agreements were not widely used, reinstating it would provide local governments with a tool that grants some level of flexibility while ensuring that the overall number of needed housing units in the region remains the same.

SCAG is supportive of this flexibility especially for small to medium sized jurisdictions that, by nature, have less land suitable for residential development than their large city counterparts. The loss of this flexibility heavily limits their ability to identify sites with a realistic development capacity. In addition, many smaller jurisdictions have extremely limited development history, especially with infill or other non-vacant sites, which will make demonstrating development likelihood very challenging. Therefore, SCAG proposes the legislature consider reinstating inter-jurisdictional agreements while enacting certain parameters such as limiting the percentage of a jurisdiction’s RHNA allocation that may be traded, restricting the ability to trade away affordable units only, or requiring that a RHNA allocation trade be among contiguous cities only (irrespective of a county line).

These flexibilities would support local jurisdictions in updating their Housing Elements to meet their share of the region’s housing need, identify sites that will meet more stringent development requirements, and importantly allow the State’s $250 million investment in the LEAP and REAP
programs to really do its work by allowing jurisdictions the time and thoughtfulness needed for the dramatic rezoning required in Southern California.

The State itself has recognized the challenges posed by separate statutory amendments of RHNA and the housing element, including new very prescriptive housing element site inventory requirements, and as evidenced by AB 101, which recognized the need to “revamp” the RHNA for future cycles but omitted consideration of the feasibility of implementing RHNAs within the corresponding 6th cycle housing element updates.

SCAG respectfully requests the legislature to consider including the above flexibilities as part of a budget trailer bill. The issue is time sensitive for several reasons, but especially because a compliant housing element adopted by December 31, 2021 is a criterion for local governments to receive 2021 SB 2 Permanent Local Housing Allocation (PLHA) funds. Over $81 million in PLHA funding was awarded to SCAG jurisdictions in the last funding round in 2020 and many jurisdictions could be disqualified from eligibility in the next funding round due to the possibility of not meeting the housing element deadline and compliance requirements for the 6th cycle.

Thank you for your consideration of our request for these additional flexibilities. SCAG appreciates the dialogue you have always afforded. If we can provide any additional information on the requests outlined above, please do not hesitate to contact Kevin Gilhooley, Legislation Manager, at (213) 236-1878.

Sincerely,

Kome Ajise
Executive Director
Attachment 2
RE:  Request for Extension of Housing Element Submissions

Dear Speaker Rendon and President pro Tempore Atkins:

On behalf of the [COG NAME], thank you for your leadership in taking early and aggressive action in response to the Coronavirus Disease 2019 (COVID-19). [COG NAME] is comprised of [# OF JURISDICTIONS SERVED] diverse member jurisdictions in [COUNTY NAME] county. I am writing to request additional time for our local jurisdictions to take the steps necessary to thoughtfully plan for their future housing needs. Specifically, in light of the staff capacity and community outreach hurdles currently facing local governments caused by COVID-19, we request an additional six-months for our cities to complete their Housing Element updates for the 6th Housing Element cycle.

As you know, the Southern California region received a housing need determination of 1.3 million units from the California Department of Housing and Community Development (HCD), nearly three times larger than the determination provided under the previous cycle. Currently, the Southern California Association of Governments (SCAG), the agency responsible for allocating the 1.3 million units to jurisdictions in Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties, is nearing a final allocation for its member jurisdictions following the adoption of a methodology. SCAG staff anticipates draft allocations to be noticed in September 2020, followed by an appeals process with a final allocation in February 2021. Local jurisdictions are required to submit an updated housing element to HCD by October 2021.

To be clear, we remain committed to working with the state and other partners in addressing our housing crisis. We recognize that the circumstances relating to COVID-19 should not be used as a broad reason to delay important requirements and timelines. There are, however, limited and targeted situations where adjustments will help ensure a better outcome, provided that they keep the state and local governments on target toward meeting housing goals.

Government Code 65583(c)(7) requires: "The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.” Many of our member
jurisdictions are currently in the middle of their housing element update processes, which involve detailed planning development and community outreach. COVID-19 upended this momentum, however, as our member agencies have had to unexpectedly shift to address the crisis. Local jurisdictions had to quickly divert resources and staff and completely rethink effective community outreach events. In some cases, jurisdictions have had to reduce their planning departments’ resources given the fiscal crisis impacting their budgets. This has understandably caused a delay in the housing element update process. The current challenges facing cities and counties limit the ability of local jurisdictions to deliver housing elements of the quality and caliber, and with the robust community input, needed to fully address the housing crisis. Housing elements are complex documents that serve as the cornerstone for local policies. To be done right, they require extensive community outreach and input.

In light of these circumstances, [COG NAME] respectfully requests a six-month extension of the submittal deadline of the 6th Cycle Housing Element update. This modest extension provides our cities the flexibility to thoughtfully develop a detailed housing element and to find creative solutions to ensure meaningful community engagement across economic sectors. Thank you for your time and consideration of this request. If you have any questions, you can contact me at [CONTACT INFO].

Sincerely,

[COG PRESIDENT]
Item B-17
Verbal updates on legislative issues will be presented by the City’s lobbyists.