CALIFORNIA BUDGET PROJECT

budget brief

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WHAT WOULD PROPOSITION 31 MEAN FOR CALIFORNIA?

Proposition 31, which will appear on the November 6, 2012 statewide ballot, would allow local governments to preempt state policies with locally developed alternatives as part of new plans intended to alter how public services are delivered. In addition, the measure would make significant changes, some of them far-reaching, to state and local budgeting practices. Proposition 31 also would require a state spending cap proposal that was approved by the Legislature in 2010 to appear on the November 2014 statewide ballot. Proposition 31 is sponsored by the California Forward Action Fund and the Think Long Committee for California, with major funding from the Nicholas Berggruen Institute Trust and the Californians for Government Accountability Committee. This *Budget Brief* provides an overview of the measure and the policy issues it raises. The California Budget Project neither supports nor opposes Proposition 31.

What Would Proposition 31 Do?

Proposition 31, the "Government Performance and Accountability Act," would amend both the state Constitution and state law to make a number of changes affecting state and local governments. Proposition 31 would allow local governments to preempt state laws and regulations with locally developed alternatives as part of new plans intended to change how public services are delivered. The measure would permanently shift a portion of state sales tax revenues to local governments to help support implementation of the plans. Proposition 31 also would make a number of changes to state and local budgeting practices. These changes include giving the Governor unilateral authority to reduce state spending during a fiscal emergency and establishing new pay-as-you-go – "paygo" – rules that would restrict the Legislature's ability to increase spending or cut taxes.[1] In addition, Proposition 31 would require a state spending cap proposal, which the Legislature approved as a constitutional amendment in 2010 but has not yet gone before the voters, to appear on the November 2014 statewide ballot.

Proposition 31 Would Allow Local Governments To Preempt State Laws and Regulations Through New Plans

Proposition 31 would allow a group of local governments within a county to create a "Community Strategic Action Plan" (CSAP) with the goal of delivering services "more effectively and efficiently."[2] Local agencies that form a CSAP would be allowed to "integrate state or local funds that are allocated to them" in order to provide certain services "in a manner that will advance the goals" of the plan. Moreover, as part of the CSAP process, local jurisdictions – including the county, cities, and school districts – could find that a state law or regulation governing a state-funded program "is an obstacle to better outcomes" and "impedes progress" toward the goals of the CSAP. In these cases, local governments could develop local procedures for state-funded programs that are "functionally equivalent" to the objectives of state policy they would replace and – subject to state review – implement these procedures as part of the local plan.[3] In other words, local governments participating in a CSAP would be able to preempt state policies with their own locally designed alternatives.[4] A local procedure would be considered functionally equivalent to a state law or regulation "if it *substantially complies* with the policy and purpose of the statute or regulation."[5]

Proposition 31 would require local governments to submit their proposed alternative rules to the Legislature or, in the case of regulations, to the relevant state agency for review. A local procedure that replaces a state *law* would take effect automatically unless lawmakers in both houses of the Legislature reject the change by majority vote within 60 days.[6] Similarly, a local procedure that replaces a state *regulation* would go into effect automatically unless a state agency rejects the change within 60 days. Local procedures that go into effect would expire after four years, at which point they could be renewed through the same process.

Proposition 31 would require each CSAP to be evaluated periodically. For example, the Legislature would have to assess whether CSAPs "have improved the delivery and effectiveness of services" and decide whether state policies that local agencies have identified as "obstacles to improving results" should be amended or repealed.[7] In addition, counties would be required to evaluate CSAPs at least once every four years, and the Legislative Analyst's Office (LAO) would have to conduct a one-time review to assess the "fiscal impact" of the local plans and the extent to which they "have improved the efficiency and effectiveness of service delivery or reduced the demand for state-funded services."

Proposition 31 Would Permanently Shift State Sales Tax Dollars to Local Governments To Help Fund Their Plans

In addition to any state dollars that local governments already receive to provide state-funded services, local agencies that create CSAPs would receive a new and permanent source of state funding to help implement their local plans. Beginning in 2013-14, 0.035 percent of the state's share of the sales and use tax rate would be deposited into a new Performance and Accountability Trust Fund to support "the implementation of integrated service delivery" through the CSAPs.[8] According to the LAO, "the shift would increase revenues of the participating local governments in counties with plans by a total of about $200 million annually in the near term. The state government would lose a corresponding amount, which would no longer be available to fund state programs."[9]

Proposition 31 Would Give the Governor Unilateral Authority To Cut State Spending During a Fiscal Emergency

The state Constitution allows the Governor to declare a fiscal emergency and call the Legislature into special session if he or she estimates that spending will be substantially higher, or revenues substantially lower, than projected in the state budget. In response, the Legislature must send the Governor one or more bills to address the budget problem within 45 days. If lawmakers miss the deadline, they cannot act on other bills or adjourn until they send the required legislation to the Governor.[10] The Governor, however, currently has "very limited" power to cut state spending during a fiscal emergency "even if the Legislature does not act during that 45-day period," according to the LAO.[11]

Proposition 31 would significantly expand the Governor's authority by allowing him or her to unilaterally cut state spending to address a fiscal emergency if the Legislature fails to meet the 45-day deadline. Specifically, the Governor could issue an executive order to "reduce or eliminate any existing General Fund appropriation" not required by the state Constitution or by federal law. The size of the reduction could not exceed the amount needed to balance the state budget. Proposition 31 would allow the Legislature to override all or part of the Governor's executive order by a two-thirds vote of both the Assembly and the Senate.[12]

Proposition 31 Would Establish New "Paygo" Rules for Certain State Spending Increases and Tax Cuts

The Legislature generally may pass bills that increase or reduce state spending by a majority vote of both the Assembly and the Senate.[13] Lawmakers also may pass bills reducing a state tax by a majority vote, but increasing a state tax requires a two-thirds vote of each house. While lawmakers analyze the fiscal effects of bills prior to passage – and must show that the annual budget bill is balanced – they are not required to "identify how each new law would be financed," according to the LAO.[14] Proposition 31 would restrict the Legislature's ability to increase spending or cut taxes by establishing new pay-as-you-go – "paygo" – rules for legislation, including the budget bill and "trailer bills" that implement the budget.[15] This paygo requirement would apply to:

- **Spending increases of more than $25 million.** A bill that creates or expands a state program or agency and results in a "net increase in state costs" of more than $25 million in any fiscal year would be "void" unless the

Legislature provides "offsetting state program reductions or additional revenue, or a combination thereof," in the same bill or another bill.[16] Proposition 31 would exempt certain expenditures from the paygo rules. These include principal and interest payments on state general obligation (GO) bonds; restoration of program funding that was cut to help balance the state budget in any year after 2008-09; increases for "existing statutory responsibilities," such as cost-of-living and "workload" adjustments; increases associated with state employee collective bargaining agreements; one-time expenditures; and state funding increases required by federal law or a law in effect at the time of the measure's passage.

- **Tax cuts of more than $25 million.** A bill that "reduces a state tax or other source of state revenue" and results in a "net decrease in state revenue" of more than $25 million in any fiscal year would be "void" unless the Legislature provides offsetting spending reductions or revenue increases, or a combination of the two, in the same bill or another bill.[17]

Proposition 31 Would Establish a Two-Year or "Biennial" State Budget Cycle

The state Constitution requires the Governor to propose a balanced budget for the upcoming fiscal year on or before January 10 of each year.[18] Proposition 31 would require the Governor to propose, in odd-numbered years, a "biennial" budget for the subsequent two fiscal years. Beginning in January 2015, for example, the Governor's proposed budget would include recommended spending and estimated revenues for both 2015-16 and 2016-17.[19] Proposition 31 would allow the Governor to submit a supplemental budget to the Legislature on or before January 10 of each even-numbered year. The supplemental budget would "amend or augment the enacted biennial budget" and would move through the Legislature in the same manner as the biennial budget.

Proposition 31 Would Require State and Local Budgets To Meet New Reporting Requirements

Proposition 31 would impose a number of new budget reporting requirements on state and local governments. The measure includes proposals to:

- **Require the Legislature to include the Governor's spending and revenue estimates in the budget bill "immediately prior" to passage of the budget.** The state Constitution requires the Legislature to send a balanced budget to the Governor.[20] The Legislature determines which spending and revenue estimates to use in the budget bill and is not required to include or rely on estimates prepared by the Governor's Department of Finance (DOF). Proposition 31 would require the Legislature to "incorporate" into the budget bill the DOF's spending and revenue estimates for the biennial budget period. These estimates would have to be incorporated "immediately prior" to the Legislature's passage of the budget bill.

- **Require the Governor to identify one-time resources that are included in the proposed biennial budget.** The state Constitution requires the Governor to provide an estimate of state revenues for the upcoming fiscal year in his or her proposed budget.[21] Proposition 31 would require the Governor's proposed biennial budget to identify "total state resources" available to meet recommended state spending and to specify how much of those resources are projected to be one-time in nature.

- **Require state and local budgets to include new goals and outcome measures.** Proposition 31 would require the Governor's proposed biennial budget to include information aimed at improving "performance and accountability." For example, the Governor would have to state how the proposed budget would help to achieve "a prosperous economy, quality environment, and community equity, by working to achieve at least the following goals: increasing employment; improving education; decreasing poverty; decreasing crime; and improving health." The proposed budget also would have to include "outcome measures for each major expenditure of state government," describe how these measures relate to the overall goals specified by Proposition 31, and report on the state's progress in achieving these goals.[22] Local governments' adopted budgets would have to meet the same requirements. In addition, the measure would require local governments to develop their budgets in an "open and transparent" manner that "encourages the participation of all aspects of the community."

Proposition 31 Would Make Additional Changes to the State Legislative and Budget Processes

Proposition 31 would make a number of additional changes to the state legislative and budget processes. The measure includes proposals to:

- **Require that budget-related "trailer bills" be introduced in the Legislature along with the budget bill on or before January 10.** The state Constitution requires that a budget bill containing the Governor's proposed expenditures be introduced immediately in both houses of the Legislature.[23] However, budget-related "trailer bills," which make statutory changes needed to implement the budget, do not have to be introduced by this deadline. Proposition 31 would require the Governor to submit to the Legislature – along with the budget bill – "any legislation required to implement appropriations" in the proposed biennial budget or a supplemental budget.

- **Require a joint legislative committee to take action on the budget bill and trailer bills on or before June 1.** The Legislature may – but is not required to – create a two-house conference committee to reconcile the Assembly and Senate versions of the budget bill and related trailer bills. Proposition 31 would require the Assembly and Senate to refer their respective versions of the budget bill to a conference committee on or before May 1.[24] The committee, in turn, would be required to review the budget bill and budget-related trailer bills and report its recommendations to each house no later than June 1.

- **Require the Legislature to pass trailer bills by June 15.** The state Constitution requires the Legislature to pass the budget bill by midnight each June 15 or face a penalty.[25] Specifically, lawmakers permanently forfeit their pay and their reimbursement for travel and living expenses for each day after June 15 that a budget is not passed and sent to the Governor.[26] The Legislature, however, currently does not have to pass budget-related *trailer bills* on or before June 15. Proposition 31 would require the Legislature to pass trailer bills by midnight on June 15, although the measure does not impose a penalty on lawmakers for failing to meet this deadline.

- **Require bills to be in print and publicly available for at least three days prior to passage.** The state Constitution prohibits the Legislature from passing a bill "until the bill with amendments has been printed and distributed to the members."[27] Proposition 31 would prohibit the Legislature from passing any bill "until the bill with amendments has been in print and distributed to the members and available to the public for at least 3 days." The only exception would be bills passed during a special session "to address a state of emergency declared by the Governor arising out of a natural disaster or a terrorist attack."

- **Require the Legislature to pass most bills on or before June 29 during the second year of each two-year session.** The state Constitution generally requires lawmakers to pass bills on or before August 31 during an even-numbered year – that is, the second year of each two-year legislative session.[28] Proposition 31 would move this deadline up to June 29 for most bills.[29]

- **Require the Legislature to regularly review state programs.** The Legislature periodically exercises its discretion to review state agencies and programs. Proposition 31 would require the Legislature to "conduct program oversight and review" after July 4 of the second year of each two-year legislative session. Specifically, lawmakers would have to establish a "review schedule" for all state programs, whether managed by the state or by a local agency on behalf of the state, with each program to be reviewed at least once every five years. "The review process shall result in recommendations in the form of proposed legislation that improves or terminates programs," according to the measure.

Proposition 31 Would Require a Spending Cap Proposal To Appear on the November 2014 Ballot

In 2010, the Legislature approved a constitutional amendment, ACA 4 (Gatto, Chapter 174 of 2010), that would make significant changes to state budgeting practices. These changes would both severely limit increases in state spending and grant broad power to the Governor with no provision for legislative oversight. ACA 4 was originally scheduled to appear on the 2012 statewide presidential primary election ballot.[30] The Legislature subsequently moved the measure to the November 2014 statewide general election ballot in order to delay its impact until the economy could "more fully recover" from the recession.[31] Proposition 31 would require ACA 4 to appear on the November 2014 statewide ballot, thereby preventing lawmakers from moving it again, regardless of the state's fiscal condition in 2014.

What Policy Issues Are Raised by Proposition 31?

Proposition 31 could affect how local governments deliver public services and would make a number of changes, some of them far-reaching, to state and local budgeting practices. The measure raises several significant policy issues.

The New Authority That Proposition 31 Would Provide to Local Governments Raises a Number of Concerns

Proposition 31 would give local governments in each of California's 58 counties new authority to create Community Strategic Action Plans with the aim of changing how public services are delivered. Local governments that establish a CSAP would be allowed to preempt state laws and regulations with locally adopted alternatives unless the Legislature (in the case of laws) or a state agency (in the case of regulations) takes action to reject the proposed changes within 60 days. This proposal raises a number of concerns. In particular, the measure's CSAP provisions:

- **Could undermine key public protections and statewide standards.** Local governments that participate in CSAPs could alter environmental regulations, public-health policies, collective bargaining laws, eligibility standards for health and human services programs, or other longstanding state policies by asserting that a locally developed rule is "functionally equivalent" to the state law or regulation that it would replace. Consequently, Proposition 31 could result in widely varying local approaches across a range of policy areas in which uniform statewide standards may be more appropriate.

- **Could result in major policy changes that might not be approved through the state's standard review processes.** Currently, changes to state law and regulations are subject to longstanding review processes that include checks and balances as well as opportunities for public review and comment. Proposition 31 would significantly alter these review processes with respect to:

    - *Local procedures intended to preempt a state law.* Currently, bills to create or revise state laws must be approved by both the Assembly and the Senate and signed by the Governor in order to take effect.[32] Bills that pass one house of the Legislature, but not the other, cannot be enacted into law. Moreover, even if both houses approve a bill, the Governor could veto the legislation and send it back to lawmakers.[33] Proposition 31 would significantly alter this process of checks and balances with respect to local procedures intended to preempt a state law. First, the measure would provide no role for the Governor in this new process. Second, Proposition 31 would require *both* houses of the Legislature to *reject* – rather than to approve – a local rule in order to prevent that rule from being implemented. A local procedure would take effect by default, for example, if the Legislature deadlocked, with one house rejecting the change and the other house taking no action during the 60-day review period. Moreover, because Proposition 31 does not prohibit local governments from submitting alternative rules during legislative recesses, some "functionally equivalent" procedures could go into effect simply because state lawmakers have recessed and are not scheduled to reconvene for several months.[34]

    - *Local procedures intended to preempt a state regulation.* Currently, state regulations are adopted or revised by state agencies through a uniform and transparent process that includes numerous opportunities for public review and comment.[35] Agencies must take some action in order for a regulatory change to be implemented. If an agency takes no action, then no change will occur. In contrast, Proposition 31 would allow a local procedure intended to preempt a state regulation to take effect if an agency – in effect, the Governor – takes *no action* on the proposed change. Moreover, the measure does not require state agencies to review local rules as part of an open and transparent process that allows for public comment. Finally, while Proposition 31 would require an agency to justify its actions if it *rejects* a local rule, an agency would not have to provide an explanation if it allows a local rule to take effect.

- **Could allow local governments to use state funds in a manner that is not intended by state law.** Proposition 31 would allow local governments that participate in CSAPs to "integrate state or local funds that are allocated to them" in order to provide certain services "in a manner that will advance the goals" of the plan. The meaning, intent, and potential impact of this new authority are unclear. This provision, for example, could be interpreted to allow local agencies to use state funds in a manner that is not intended by state law so long as the dollars are used to "advance the goals" of the CSAP.

- **Would likely lead to litigation.** Proposition 31 declares that locally adopted procedures must "substantially comply" with the objectives of the state laws and regulations that they would replace. This phrase, however, is broadly worded and could lead to frequent litigation over whether a CSAP's alternative rules are, in fact, "functionally equivalent" to state laws or regulations.

Allowing the Governor To Unilaterally Cut State Spending During a Fiscal Emergency Would Shift Power Over the State Budget to the Executive Branch

Proposition 31 would allow the Governor to unilaterally cut state spending if the Legislature does not pass a bill that addresses a fiscal emergency declared by the Governor. This provision would shift power over the state budget from the Legislature to the executive branch. For example, the Governor could issue an *estimate* in November that state revenues for the current fiscal year will be $1 billion lower than assumed in the state budget passed five months earlier.[36] As currently allowed by the state Constitution, the Governor could then declare a fiscal emergency and call the Legislature into special session. Under Proposition

31, if the Assembly and Senate deadlocked and failed to pass a bill to close the $1 billion gap within 45 days, the Governor could – under this scenario – issue an executive order cutting General Fund spending by $1 billion in order to bring estimated expenditures in line with estimated revenues.[37]

The Governor's new midyear budget-cutting authority would be considerable: He or she could reduce or eliminate any state funding not required by the state Constitution or federal law, including funding for environmental protection, preschool and child care, Cal Grant college financial aid, the California State University, and the University of California, as well as some funding for schools and health and human services. Proposition 31 would require the Legislature to muster a difficult-to-achieve two-thirds vote in each house in order to override the Governor's order, meaning the midyear reductions imposed by the Governor would very likely take effect.

Requiring Lawmakers To Include DOF Estimates in the Budget Bill Could Further Increase the Governor's Authority Over the State Budget

Proposition 31 would require the Legislature to include the Governor's spending and revenue estimates – as prepared by the Department of Finance – in the budget bill "immediately prior" to passage of the budget. The intent and meaning of this new mandate is unclear. Depending on how it is interpreted, this requirement could shift additional power over state budget decisions from the Legislature to the executive branch. Specifically, this provision raises questions about whether the Legislature would have to use the Governor's spending and revenue forecast in showing that the budget bill is balanced. Currently, lawmakers may choose among estimates prepared by the DOF, the LAO, or the Legislature's own budget staff in meeting the constitutional requirement for a balanced budget.[38] However, by mandating that lawmakers "incorporate" the DOF's numbers into the budget bill, Proposition 31 could require the Legislature to use estimates that are at odds with those prepared by its own fiscal experts. This lack of clarity could lead to litigation over whether the Legislature has met its constitutional responsibility to pass a balanced budget.

The Paygo Provisions of Proposition 31 Raise a Number of Concerns

Proposition 31 generally would require bills that create or expand a program or agency and increase state costs by more than $25 million per year to provide offsetting spending reductions or revenue increases, or a combination of the two. Bills that reduce a state tax or another source of state revenue and result in a revenue loss of more than $25 million per year also would have to identify offsetting spending cuts and/or revenue increases. Paygo rules, if properly designed, can be an important component of public budgeting practices.[39] On the whole, however, Proposition 31's paygo provisions raise a number of concerns. In particular, the measure's paygo rules:

- **Would likely result in the cost of new or expanded programs being paid for with cuts to existing services, rather than tax increases.** Spending cuts and tax increases do not operate on a level playing field in California. The Legislature can reduce spending with a simple majority vote, but must achieve a two-thirds vote to raise any state tax, even if this involves closing costly and ineffective tax loopholes. Therefore, under Proposition 31, if lawmakers wanted to establish a new program with an annual cost exceeding $25 million, they would be unlikely to fund it with new revenues, given the great difficulty of meeting the supermajority vote threshold. Instead, the Legislature likely would have to offset the cost of the new program by reducing or eliminating funding for existing services. Alternatively, lawmakers could forego funding a new priority. Had Proposition 31 been in effect in 1997, for example, the Legislature might not have established the Healthy Families Program, which ultimately expanded affordable health coverage to hundreds of thousands of California children, with the federal government paying roughly two-thirds of the cost.[40]

- **Would apply even if the state is projected to have a large, ongoing structural surplus.** Proposition 31 would require spending cuts or tax increases to support new program costs even if state fiscal experts project the state will have a structural budget surplus – and therefore the revenues needed to fund new priorities – for a number of years.

- **Would not apply to ballot initiatives.** Proposition 31 would not require initiatives placed before the voters to adhere to paygo rules. Initiatives could propose significant new program expenditures or tax cuts without asking voters to fund these new costs with offsetting spending reductions and/or revenue increases. Spending and tax cut proposals that could not win legislative approval would be increasingly likely to shift to the ballot, leading to more ballot-box budgeting.

- **Would not apply to debt service on state GO bonds.** Debt service is a long-term obligation of the state that cannot be reduced during tough budget years. It is also one of the fastest-growing areas of the budget. Principal and interest payments on GO bonds have tripled as a share of General Fund revenues over the past two decades. Nonetheless, Proposition 31 would exempt debt service from its paygo requirements. This exemption could bias budget and policy decisions toward investment in infrastructure, through long-term bond debt, at the expense of investment in human capital, such as higher education and job training, which would be subject to the measure's paygo requirements.

- **Would likely lead to litigation, including challenges to the budget bill.** Proposition 31 specifies that bills that violate its paygo rules would be "void." However, the measure lacks a mechanism for certifying that its paygo requirements have been met. This omission could invite legal challenges from interest groups seeking to nullify bills – including the budget bill – that purportedly fail to fulfill the paygo requirements, thereby shifting key decisions to the courts.

Proposition 31 Would Run Counter to Its Own Paygo Rules

Proposition 31 would go against the spirit and intent of its paygo rules in two primary ways. First, the measure would permanently transfer a portion of state sales tax revenues – approximately $200 million per year at the outset – to local agencies to help fund the new CSAPs. As a result, these revenues would no longer be available to fund state services. Proposition 31, however, does not explicitly pay for this state revenue loss with offsetting program cuts or revenue increases as otherwise required by the measure's paygo mandate.[41] Second, Proposition 31's new budgeting and oversight procedures are estimated to cost the state "from millions to tens of millions of dollars annually, moderating over time," according to the LAO.[42] Local governments would face similar costs.[43] These estimates imply that state and local governments' increased costs could exceed $25 million per year – the threshold amount that would trigger paygo requirements under Proposition 31. However, the measure does not propose offsetting spending cuts or revenue increases in order to fund these new state and local responsibilities.

The Most Far-Reaching Changes in Proposition 31 Would Go Into the State Constitution, Making Them Difficult To Alter

Proposition 31's most sweeping changes – including the paygo rules, the Governor's new unilateral budget-cutting powers, and local governments' new authority to preempt state policies – would be placed in the state Constitution. Consequently, future policymakers would have to go back to the voters if these changes prove to be ill-advised or unworkable.[44] National budget experts, for example, caution states against putting paygo rules in their constitutions. While properly designed paygo rules "can help a state maintain an appropriate level of fiscal discipline under current conditions, … it is impossible to predict what circumstances will be like 25 or more years from now," according to the Center on Budget and Policy Priorities. "Once fiscal policy is embedded in a constitution, it becomes difficult or impossible to change, even if it no longer [is] useful or appropriate – or even if it is harmful."[45]

What Do Proponents Argue?

Proponents of Proposition 31, including retired California Supreme Court Justice Cruz Reynoso and former California Superintendent of Public Instruction Delaine Eastin, argue that "Budgets are often based on the influence of special interests rather than the outcomes Californians want to achieve. Proposition 31 forces state politicians to finally live within their means, and it gives voters and taxpayers critical information to hold politicians accountable."[46]

What Do Opponents Argue?

Opponents of Proposition 31, including the California League of Conservation Voters and the California Federation of Teachers, argue that the measure "adds layer upon layer of restrictions and poorly defined requirements, leaving key decisions up to unelected bureaucrats, decisions such as whether tax cuts are allowed or programs can be changed – decisions that will be challenged in court year after year."[47]

Conclusion

Proposition 31 would make sweeping changes affecting state and local governments. These changes include allowing local governments to preempt state laws and regulations with locally developed alternatives, giving the Governor unilateral authority to reduce state spending after a budget has been enacted, and establishing paygo rules that would restrict the Legislature's ability to boost spending or cut taxes. Proposition 31 raises a number of policy issues. For example, allowing local governments to substitute locally designed rules for state laws and regulations could both undermine statewide standards and result in significant policy changes that would not otherwise receive approval through the state's ordinary – and longstanding – review processes. The measure's paygo provisions also raise concerns. While properly designed paygo rules can be an important component of public budgeting practices, spending cuts and tax increases do not operate on a level playing field in California. Tax increases require a two-thirds vote of the Legislature, whereas spending cuts can be adopted by majority vote. Consequently, Proposition 31's paygo rules likely would result in the cost of new or expanded programs being paid for with cuts to existing services, rather than tax increases. Moreover, the measure's most far-reaching changes would be placed in the state Constitution, making them difficult to alter in the future if they prove to be ill-advised or unworkable.

Scott Graves prepared this Budget Brief. *The California Budget Project (CBP) neither supports nor opposes Proposition 31. This* Budget Brief *is designed to help voters reach an informed decision based on the merits of the issues. The CBP was founded in 1994 to provide Californians with a source of timely, objective, and accessible expertise on state fiscal and economic policy issues. The CBP engages in independent fiscal and policy analysis and public education with the goal of improving public policies affecting the economic and social well-being of low- and middle-income Californians. General operating support for the CBP is provided by foundation grants, subscriptions, and individual contributions. Please visit the CBP's website at www.cbp.org.*

ENDNOTES

1 Proposition 31 does not use the terms "pay-as-you-go" or "paygo" to describe its proposal to restrict the Legislature's ability to increase spending or reduce taxes. Nonetheless, the proposal reflects a version of paygo, in which certain spending increases or tax cuts must be offset with spending reductions and/or additional revenues. Therefore, this *Budget Brief* uses the term paygo to describe this component of Proposition 31. For an overview of the paygo concept, see Iris J. Lav, *PAYGO: Improving State Budget Discipline While Retaining Flexibility* (Center on Budget and Policy Priorities: September 22, 2011).

2 The CSAP would have to be approved by the governing bodies representing "the county, local government entities providing municipal services pursuant to the [CSAP] to at least a majority of the population in the county, and one or more school districts serving at least a majority of the public school pupils in the county."

3 Proposition 31 also would allow local governments to develop functionally equivalent procedures if "they need additional statutory authority to implement" the CSAP.

4 In addition to this new authority to preempt state policies, local governments that form a CSAP would be allowed to reapportion among themselves the local property taxes that they receive so long as the transfer is approved by a two-thirds vote of each local agency's governing board.

5 Emphasis added.

6 Proposition 31 requires a state agency – or a department – that rejects a local procedure to "include a statement setting forth the reasons for doing so."

7 This evaluation would occur as part of a new "program oversight and review" process that Proposition 31 would require the Legislature to implement. This new process is described later in this report.

8 These funds would be distributed to local agencies participating in CSAPs beginning in 2014-15. The sales and use tax is actually two separate taxes: a tax on the sale of tangible goods in California (the "sales tax") and a tax on goods purchased outside of the state for use in California (the "use tax"). Because sales and use taxes are complementary, they are typically referred to as the sales tax, and this *Budget Brief* will use the term "sales tax" to refer to both taxes.

9 Legislative Analyst's Office, "Proposition 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Analysis by the Legislative Analyst," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 21, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.

10 California Constitution, Article IV, Section 10(f).

11 Legislative Analyst's Office, "Proposition 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Analysis by the Legislative Analyst," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 23, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.

12 Lawmakers would have 20 days to override the executive order if the Legislature is in session, or 30 days if the Legislature is not in session.

13 The Legislature may pass – by a majority vote – the budget bill, budget "trailer bills" that contain an appropriation, and appropriations for public schools. Other bills that provide for appropriations from the state's General Fund require a two-thirds vote.

14 Legislative Analyst's Office, "Proposition 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Analysis by the Legislative Analyst," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 22, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012. Article IV, Section 12(g) of the California Constitution requires the Legislature to show that General Fund appropriations for the upcoming fiscal year – including General Fund dollars deposited in the state's reserve account – do not exceed estimated General Fund revenues.

15 Proposition 31 also would apply the paygo rules described in this section to the Governor's proposed budget.

16 This requirement also would apply to bills that create state-mandated local programs. The $25 million threshold would be adjusted annually for inflation using the California Consumer Price Index. Proposition 31 defines "additional revenue" as including "revenue to the state that results from specific changes made by federal or state law and that the state agency responsible for collecting the revenue has quantified and determined to be a sustained increase."

17 The $25 million threshold would be adjusted annually for inflation using the California Consumer Price Index.

18 California Constitution, Article IV, Section 12(a).

19 The measure would prohibit appropriations for the second year of the two-year budget cycle from being spent during the first year.

20 California Constitution, Article IV, Section 12(g).

[21] California Constitution, Article IV, Section 12(a).

[22] Proposition 31 would require the Governor – after consulting with "state employees and other interested parties" – to submit a plan to the Legislature by June 30, 2013, regarding implementation of these new provisions.

[23] California Constitution, Article IV, Section 12(c)(2).

[24] Proposition 31 states that the budget bill must be referred to "a joint committee of the Legislature, which may include a conference committee."

[25] California Constitution, Article IV, Sections 12(c)(3) and 12(h).

[26] California Constitution, Article IV, Section 12(h).

[27] California Constitution, Article IV, Section 8(b).

[28] California Constitution, Article IV, Section 10(c). Some bills may be passed after August 31 during even-numbered years, including bills calling elections, bills that take effect immediately, and bills passed after being vetoed by the Governor.

[29] Proposition 31 would allow the Legislature to pass two types of bills after June 29: bills that take effect immediately and bills passed after being vetoed by the Governor.

[30] AB 1619 (Committee on Budget, Chapter 732 of 2010).

[31] Senate Appropriations Committee analysis of SB 202 (September 9, 2011). SB 202 (Hancock, Chapter 558 of 2011) moved ACA 4 to the November 2014 statewide ballot.

[32] California Constitution, Article IV, Sections 8(b) and 10(a).

[33] California Constitution, Article VI, Section 10(a). Lawmakers may override the Governor's veto by a two-thirds vote of each house.

[34] For example, during the first year of each two-year session – the odd-numbered year – both the Assembly and Senate "meet from January until mid-September and then recess until January of the even-numbered year." California State Assembly, Office of the Chief Clerk, *Legislative Procedure* (Revised January 2011), p. 2. It is unclear whether or how lawmakers could be called back to Sacramento to consider locally adopted procedures if those procedures are submitted after lawmakers have recessed.

[35] According to the Office of Administrative Law, "every department, division, office, officer, bureau, board or commission in the executive branch of the California state government must follow the rulemaking procedures in the Administrative Procedures Act," which is "designed to provide the public with a meaningful opportunity to participate in the adoption of regulations or rules that have the force of law." Office of Administrative Law, *The Regular Rulemaking Process* (2007), downloaded from http://www.oal.ca.gov/Regular_ Rulemaking_Process.htm on September 19, 2012.

[36] California's fiscal year runs from July 1 through the following June 30.

[37] The Legislature could deadlock, for example, if Democrats controlled the Assembly and Republicans controlled the Senate and the two houses proposed different solutions to the budget problem identified by the Governor.

[38] California Constitution, Article IV, Section 12(g).

[39] For a discussion of the paygo concept, see Iris J. Lav, *PAYGO: Improving State Budget Discipline While Retaining Flexibility* (Center on Budget and Policy Priorities: September 22, 2011).

[40] The state budget provided $35.4 million for Healthy Families in 1998-99, the first year of implementation. Within two years, the program's General Fund appropriation rose to $154.2 million. Department of Finance, *1998-99 Final Budget Summary,* p. 334 and Department of Finance, *2000-01 Final Budget Summary,* pp. 459-460.

[41] Proposition 31 asserts that the state sales tax revenues shifted to local governments represent "in part ongoing savings that accrue to the state that are attributable to the 2011 realignment" as well as savings purportedly attributable to the changes that Proposition 31 would implement. It is not clear, however, that any of the savings associated with the 2011 realignment – which shifted responsibility and funding for certain services from the state to the counties – are still available to be "claimed" by Proposition 31 and used to offset the sales tax shift. Moreover, it is not clear that Proposition 31 would produce ongoing savings that would help to offset the cost of implementing the measure's provisions. The fiscal effects of Proposition 31 "generally would depend on future decisions by public officials and, therefore, are difficult to predict," according to the LAO. See Legislative Analyst's Office, "Proposition 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Analysis by the Legislative Analyst," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 25, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.

[42] Legislative Analyst's Office, "Proposition 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Analysis by the Legislative Analyst," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* pp. 24-25, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.

[43] Legislative Analyst's Office, "Proposition 31: State Budget. State and Local Government. Initiative Constitutional Amendment and Statute. Analysis by the Legislative Analyst," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 25, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.

[44] Under Article XVIII of the California Constitution, constitutional amendments can be placed before the voters either through a voter-sponsored ballot initiative or by the Legislature with a two-thirds vote of each house. The provisions of Proposition 31 that would amend state law, rather than the state Constitution, also would be difficult to change. These provisions could be amended "solely to further the purposes" of the measure by a bill passed by a two-thirds vote of each house of the Legislature and signed by the Governor.

[45] Iris J. Lav, *PAYGO: Improving State Budget Discipline While Retaining Flexibility* (Center on Budget and Policy Priorities: September 22, 2011), p. 11.

[46] "Argument in Favor of Proposition 31," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 26, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.

[47] "Argument Against Proposition 31," in Secretary of State's Office, *California General Election Tuesday, November 6, 2012: Official Voter Information Guide,* p. 27, downloaded from http://vig.cdn.sos.ca.gov/2012/general/pdf/complete-vig-v2.pdf on September 5, 2012.