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

Megan Cosgrove

Code Sections Affected

Government Code §§ 8880.4, 8880.63, 880.64 (amended, repealed, and added), § 8880.4.5 (added and repealed)
AB 142 (Hayashi); 2010 STAT. Ch. 13

I. INTRODUCTION

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

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

1. Interview with Carolynn Miller, Cal. Pub. Sch. Teacher, in Sacramento, Calif. (July 10, 2010) (notes on file with the *McGeorge Law Review*) (noting that teachers must be told by May 15 of each year whether their position is available the following school year). Contrary to what many people believe, tenure does not guarantee a teacher job security during times of economic turmoil. *Id.* Despite having tenure, schools lay off teachers with less experience first when the state is facing a budget crisis. *Id.* Tenure makes it more difficult to fire teachers, but does not protect them from seniority-based layoffs. *Id.*

2. Timothy Daly & Arun Ramanathan, *California’s Quality-Blind Layoffs Law Harms Teachers and Students*, L.A. TIMES, Mar. 24, 2010, at A17 (opining on the “perverse” effects of “quality-blind” layoffs).

3. *More Calif. Schools Face Fiscal Crisis*, FRESNO BEE, June 30, 2010, at A1.

4. *Id.*

5. *See id.* (discussing the record-high 174 school districts that may not be able to meet their financial obligations over the next two years).

6. Robert Cruickshank, *Mass Teacher Layoffs Loom Again for California Schools*, CALITICS (Feb. 23, 2010, 10:00 AM), <http://calitics.com/diary/11153/mass-teacher-layoffs-loom-again-for-california-schools> (on

teachers were eventually rehired—the payment of their salaries made possible by federal stimulus funds.⁷ But the federal government has not renewed stimulus funds for education this year; furthermore, the Governor’s 2010-2011 budget proposes further education cuts, leading one commentator to note that “[t]he economic picture for our schools regrettably is bleak.”⁸

School officials do not question that California public schools need more money.⁹ Teacher layoffs, increased class sizes, program cuts, and shorter school weeks are ultimately harming the future of the state.¹⁰ Where that money will come from is another question.¹¹

One source of funding for California public schools is the California State Lottery.¹² As Governor Schwarzenegger noted in May 2007, however, the California Lottery is “an underperforming asset and is not run in the most efficient way.”¹³ As a result, the Lottery does not provide the school system with the funding it so desperately needs.¹⁴ By enacting Chapter 13, the Legislature hopes to ultimately increase the amount of funding allocated to California public schools.¹⁵

II. LEGAL BACKGROUND

In 1984, voters passed Proposition 37, creating the California State Lottery.¹⁶ Its purpose was to provide supplemental (not replacement) funding for California public schools.¹⁷ Since its inception, however, the California Lottery has proven to be less than effective in providing the funding that schools need.¹⁸ As a result, the Lottery has been the subject of various proposals for reform, none of which

file with the *McGeorge Law Review*).

7. *Id.*

8. *More Calif. Schools Facing Fiscal Crisis*, *supra* note 3 (quoting the state superintendent of public education, Jack O’Connell).

9. *See id.* (“The lack of funding is hurting our children, our schools, our neighborhoods, and our future.”).

10. *Id.*

11. *See California Governor Arnold Schwarzenegger Proposes Deep Budget Cuts*, WASH. POST, May 16, 2010, at A6 (noting that this fiscal year’s budget calls for the lowest spending in six years, and calls for a freeze on school funding, but that the forecasted deficit is 19.1 billion dollars nonetheless).

12. Calottery, *Lottery Funds at Work: Where Does All the Money Go?*, May 8, 2009, <http://www.calottery.com/support/lotteryfunds/> (on file with the *McGeorge Law Review*) (indicating that the Lottery gave over \$1 billion to public schools in the 2007/08 fiscal year).

13. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 24, 2010).

14. *See* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010) (highlighting that the California Lottery contributes the least per capita to public schools of the ten largest lottery states by population).

15. *Id.* at 5 (stating that the intent of the bill is to ultimately “increase the current level of funding allocated to public education”).

16. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 5 (Mar. 24, 2010).

17. *Id.*

18. *See id.* at 6 (relaying the governor’s comment that the California Lottery is underperforming).

have taken effect, until now.¹⁹ Multiple other states, quicker to enact amendments to their lotteries, have experienced successes still foreign to the California Lottery.²⁰ Chapter 13 is a response to this currently failing system.²¹

A. *The California State Lottery*

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

B. *Other Proposed Changes*

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

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

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

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

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

23. See *id.* at 6 (noting the Governor’s comment that the Lottery is run inefficiently).

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

25. *Id.*

26. *Id.*

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

28. *Id.*

Lottery, seeking to raise it to the level of efficiency and productivity of other state lotteries.²⁹

Most significantly, the Legislature chaptered AB 1654 in 2008.³⁰ The bill would have modernized the Lottery if voters had passed Proposition 1C, but voters rejected Proposition 1C in May of 2009.³¹ Among other changes, Proposition 1C would have allocated a larger percentage of Lottery revenue toward actual prizes.³² This expansion would have hypothetically enticed more people to play, thus generating greater revenue.³³

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

C. *But Other States Can Do It*

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

29. *Id.*

30. *Id.* at 7.

31. *Id.*

32. Jim Miller, *Proposed Lottery Makeover Proves Much Debated Ticket*, PRESS ENTERPRISE (Riverside, CA), May 11, 2009, at A1.

33. *Id.*

34. *Id.*

35. *Id.* The author notes that Proposition 1C was intended to "expand" the lottery in order to "help plug a multibillion-dollar hole in the state's sagging general fund." *Id.*

36. *Id.*

37. See ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 6-7 (Mar. 24, 2010) (revealing statistics from an exit poll that indicated 61% approval of modernizing the Lottery, but only 35% approval of borrowing from future profits and "debt-service payments on this borrowing").

38. See *id.* at 6-7 (March 24, 2010) (explaining numerous rejected amendments proposed since 2005).

39. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010) (noting that almost every other state has raised their prize payouts and increased profits as a result).

40. *Id.*

41. *Id.*

sales over the next eight years.⁴² Supporters of Chapter 13 hope to make the California Lottery system as productive as those of states like Massachusetts, New York, Texas, North Carolina, and Florida—all of which experience greater success with their respective lottery systems.⁴³

III. CHAPTER 13

Chapter 13 makes significant changes to Government Code section 8880 and others which make up the California State Lottery Act of 1984.⁴⁴ In an effort to “maximize lottery revenues available to supplement funding for public education,”⁴⁵ Chapter 13 raises the percentage of revenues from the sale of lottery tickets that goes back to the public as prizes or to benefit public education from 84% to 87% percent,⁴⁶ meaning that only 13%, as opposed to 16%, will go toward paying for the expenses of running the lottery itself.⁴⁷ Additionally, instead of mandating a 50% return in the form of prizes, Chapter 13 allows for but does not mandate a greater percentage.⁴⁸

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

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

42. SENATE APPROPRIATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 3 (Mar. 15, 2010).

43. *Id.*; SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010); Bing, *supra* note 21.

44. CAL. GOV'T CODE §§ 8880.4, 8880.4.5, 8880.63, 8880.64 (amended and enacted by Chapter 13).

45. *Id.* § 8880.4 (amended by Chapter 13).

46. Compare *id.* § 8880.4(a) (amended by Chapter 13) (“Not less than 87 percent of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education.”), with CAL. GOV'T CODE § 8880.4(a) (West 2005) (“Not less than 84 percent of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education.”).

47. Compare CAL. GOV'T CODE § 8880.4(a)(5) (amended by Chapter 13) (“No more than 16 percent of the total annual revenues shall be allocated for payment of expenses of the lottery . . .”), with CAL. GOV'T CODE § 8880.4(a)(5) (West 2005) (“No more than 13 percent of the total annual revenues shall be allocated for payment of expenses of the lottery . . .”).

48. *Id.* § 8880.4(a)(1) (amended by Chapter 13).

49. *Id.* § 8880.4(a)(2)(A) (amended by Chapter 13).

50. *Id.* § 8880.4.5(d) (enacted by Chapter 13).

51. *Id.* § 8880.4.5(a)-(b) (enacted by Chapter 13).

total net revenues paid to schools and the average net revenues of all post-enactment years are less than the total net revenues for the year prior to the enactment of Chapter 13, the amendments made by Chapter 13 will become inoperative, affected sections will return to their previous form, and the bill will operate as it did prior to these new provisions.⁵²

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

IV. ANALYSIS

By raising the percentage of income returned to the public by just 3% and allowing the percentage returned as prizes to be flexible, supporters of Chapter 13 hope that it will ultimately increase the amount of Lottery dollars given to benefit public education in California.⁵⁴ Because this amendment implicates only one risk⁵⁵ and its costs are minimal,⁵⁶ Chapter 13 has wide support and little criticism.⁵⁷

A. *The Hopeful Impact*

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

52. *Id.* § 8880.4.5(b)-(c) (enacted by Chapter 13).

53. *Id.* § 8880.4.5(e) (enacted by Chapter 13).

54. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 5 (Mar. 17, 2010) (“The intent of this bill is to allocate more money to prizes which in turn is expected to generate an increase in total sales revenue, allowing for an increase in the current level of funding allocated to public education.”).

55. *See id.* (noting that the bill “leave[s] the allocation [of funds] to public education vulnerable for one year . . .”).

56. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 4 (Mar. 24, 2010) (noting that the costs relating to the reporting requirement are “minor and absorbable”).

57. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (MAR. 17, 2010) (showing no registered opponents of the bill).

58. *Id.* at 5.

59. *Id.*

60. *Id.* at 6.

will “influence the consumers’ behavior on lottery spending.”⁶¹ Essentially, the success of Chapter 13 is contingent upon more people buying lottery tickets; hypothetically, if the prize is higher, more people will invest their hopes in a ticket.⁶² In turn, an increase in lottery ticket buyers equates to an increase in public school funding.⁶³

If the successes experienced by other states are any indication, Chapter 13 should succeed in ultimately giving more funding to public schools.⁶⁴

B. *There is Just One Risk*

The Legislature admits that Chapter 13 is risky: it leaves public school funding vulnerable for the first year.⁶⁵ “[I]n the event that a determination is made that funding provided to schools was less than the amount in [fiscal year] 2008-2009[,]” Chapter 13 becomes inoperative, but public schools will have already lost out on that money.⁶⁶ Because of the built-in contingency plan that would make Chapter 13 disappear if it proves unsuccessful, the real risk exists only in that very first year, but it is still a risk.⁶⁷ If Chapter 13 is unsuccessful, the bill will cause no additional harm after year one, but by that point the schools would have already lost the money for that year.⁶⁸

Nevertheless, because the effects have been positive in every other state that has implemented such a change, supporters are hopeful.⁶⁹ In fact, “a profit forecast predicts the lottery will increase annual profit by \$400 million, bringing total Lottery profits for public education to \$1.5 billion annually.”⁷⁰

C. *And What Will It Cost?*

Because Chapter 13 requires the Commission to gather and report data to the Controller and Legislature regarding the amount of total revenues given to public education for that year, the financial impact of Chapter 13 is a natural concern.⁷¹ The process of collecting and compiling data will certainly cost the state, and in a time of financial crisis, any spending may be worrisome. The Senate

61. *Id.* at 5.

62. *See id.* (noting the external factors that will affect the ultimate success of Chapter 13).

63. *Id.*

64. *Id.* at 6 (“[In all states implementing changes] every time without exception, raising the payout has increased sales and profits returned to beneficiaries.”).

65. *Id.* at 5.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 6 (listing numerous people and agencies in support of the bill, with no recording opposition).

70. *Id.* at 6-7.

71. *See* CAL. GOV’T CODE § 8880.4.5(a) (enacted by Chapter 13) (mandating that the commission make yearly reports to the Controller and the Legislature).

Appropriations Committee, however, estimates that these costs will be “minor and absorbable.”⁷² Thus, the only real financial concern, should Chapter 13 fail to increase the allocation of funding to schools, will likely belong to California’s public schools.⁷³

V. CONCLUSION

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

72. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 4 (Mar. 24, 2010).

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

74. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010) (quoting a supporter as saying that every U.S. lottery that has raised prize payouts has experienced greater revenue and greater benefits to the beneficiary as a result); *More Calif. Schools Facing Fiscal Crisis*, *supra* note 3 (noting the negative impact of budget cuts on schools).

75. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 142, at 5 (Mar. 24, 2010).

76. *Id.*

77. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 142, at 6 (Mar. 17, 2010) (showing no opponents to Chapter 13).