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Lessons Learned from the Failure of AB 1X 1: The Health Care Security and Cost Reduction Act

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I. Introduction

Last year Governor Arnold Schwarzenegger (R) and Assembly Speaker Fabian Nuñez (D) came very close to enacting comprehensive health care reform that would bring health care coverage to 3.6 million additional Californians, including 800,000 children. Their effort, as represented by AB 1X 1 (Nuñez), was a 200-page piece of legislation that sought to rebuild California’s ailing health care system through a framework of reforms and coverage expansions.

Key elements of the plan included a “pay or play” requirement on employers, the creation of a new state purchasing pool to provide subsidized and unsubsidized coverage to individuals, a mandate on every Californian to obtain health coverage, a requirement that health plans offer guaranteed-issue products to the individual market, and vast coverage expansions of state health programs such as Medi-Cal and Healthy Families.

The total price tag of the bill was estimated to be \$15 billion in the first full year of implementation (Fiscal Year 2010–11) which would be paid for through a variety of sources, including a hospital fee of 4 percent on net patient revenues, employer contributions, tobacco tax, increased state funding, and drawing down additional federal funding, among others.

On December 17, 2008, AB 1X 1 passed California Assembly on a 46-31 vote. But just over five weeks later, on January 28, 2008, the bill failed to pass the Senate Health Committee—garnering only one aye vote, three abstentions, and seven no votes. After seeing the writing on the wall, Assembly Speaker Fabian Nuñez declined to ask for reconsideration and the bill died.

A survey by the *Field Poll* released one month later found that nearly three in four voters (73 percent) were concerned about the state’s failure to enact health reform legislation. The survey found that three times as many Californians expect the state health care system to be worse in five years, as opposed to better. Some 57 percent of voters said they were very concerned about either not having, or potentially losing, their health coverage—up from 48 percent in 2006.

This paper seeks to explore why AB 1X 1, and its accompanying ballot measure, were constructed the way they were, and assess the reasons leading to their downfall. It

draws on a series of publicly available stories and reports as well as a series of conversations with key participants in the health care reform effort.

The California case is instructive in drawing lessons and conclusions about reform, both at the state level as the state Legislature considers comprehensive reform, and at the federal level, as the Obama Administration pursues comprehensive health care reform.

Many of the stakeholders who focused on California's reform effort have since refocused on the federal level, which makes the California case particularly relevant. President Obama's reform plan also seeks to address many of the same issues addressed by AB 1X 1: coverage for the uninsured, cost containment, affordability protections, insurance market reform, prevention, and bulk purchasing of health insurance, among others.

II. The Case for Reform

There is no shortage of evidence that illustrates the need to reform the state health care system.

Health care costs in the United States far exceed those of other developing countries with 15.3 percent of our nation's gross domestic product (GDP) being devoted to health care costs, and health care costs averaging \$6,401 per person in 2005, according to a 2008 brief by the California Healthcare Foundation (CHFC) titled "Snapshot: Healthcare Costs 101."

European nations spend roughly 50 percent less than the United States on health care as a percentage of GDP. "Despite the perception that U.S. health care is primarily financed by the private sector, public funds account for 46 percent of medical spending," states the brief.

Health care spending in California reached a new peak of \$169 billion in 2004—some 11 percent of the state's economy, according to data compiled by the CHFC. Health care spending has increased at an average of 8 percent between 1980 and 2004, more than twice the rate of economic growth during that same period. Current projections indicate that health care spending is likely to exceed 20 percent of GDP by 2025.

Spending on health care continues to outpace inflation. In 2008, health insurance premiums increased by an alarming 8.3 percent in California—compared to a three percent increase in the prices of other consumer goods, according to the December 2008 California Employer Health Benefits Survey published by the CHFC. Health insurance premiums have more than doubled since 2002, states the survey.

More than 20 percent of the non-elderly population in California, an estimated 6.5 million residents, lacked health insurance coverage in 2005, states the Senate Health Committee analysis of AB 1X 1, citing the UCLA Center for Health Policy Research.

“The percentage of the non-elderly population with employer sponsored coverage declined from 56.4 percent to 54.3 percent between 2001 and 2005, while the percentage with Medi-Cal or Healthy Families coverage increased from 13.7 percent to 15.8 percent during the same time period,” states that analysis.

A recent survey by the Kaiser Family Foundation found that one in four Americans say their family had a problem paying for health care sometime during the past year, and 28 percent reported that someone in their family has delayed seeking health care in the past year, states the Senate Health Committee analysis.

III. The Road to Reform: Origins of AB 1X 1

The origins of AB 1X 1 can be traced back to 2003 when then-Governor Gray Davis (D) signed Senate Bill 2 (Burton and Speier). The bill proposed a “pay or play” system that sought to encourage more employers to provide health insurance for their employees by requiring them to either provide insurance to their employees or pay into a state health insurance purchasing program. The bill only applied to employers with 50 or more employees, but would have applied to employers with 20 to 49 employees if a new state tax credit was enacted to help fund the coverage. SB 2 also proposed to establish a program to assist lower-income employees with paying their share of health care premiums.

“Health care researchers estimated that the provisions of SB 2 could eventually result in more than 1 million uninsured employees and their dependents receiving health coverage,” states an analysis by the Legislative Analyst’s Office (LAO).

SB 2 would have gone into effect January 1, 2004. However, opponents succeeded in qualifying Proposition 72, which was a referendum on this new law. Proposition 72 narrowly passed in November 2004, effectively repealing the provisions of SB 2.

Labor was a big backer of SB 2, but was deeply divided over AB 1X 1.

In 2006, the state of Massachusetts enacted legislation requiring that all residents be covered by some sort of insurance. Since 2006, health reform advocates across the nation have studied the Massachusetts model. AB 1X 1 resembled the Massachusetts legislation and its financing mechanisms in some aspects, but was found to be broader and included a more stable financing plan, according to Health Access, a health advocacy group.

The passage of the Massachusetts reform in 2006, proved to the nation that universal health care coverage could be enacted by filling in the coverage gaps in the current system, reforming many aspects of the existing system, and drawing down more federal dollars. A major alternative to the Massachusetts reform model is a single-payer system in which the government plays a central role in financing and managing the health care system, as opposed to the private sector.

The Massachusetts plan requires all residents to purchase insurance, requires employers to contribute for their employees insurance or pay into a state purchasing pool, and expands eligibility for a series of state and federal health care programs to cover poor and underserved communities. The success of the Massachusetts model is still a subject of much debate.

The Massachusetts plan's mandate for individuals to buy insurance took effect on July 1, 2007. The state estimates that somewhere between 50 percent and 75 percent of the uninsured have gained health insurance in the 18 month period between July 1, 2006 and December 31, 2007, according to the Senate Health Committee's analysis of AB 1X 1.

Governor Promises Universal Health Care Reform

In July 2006 Governor Schwarzenegger surprised everyone by saying that he was going to introduce universal health care reform if he was reelected in November 2006. In the fall, the Governor assembled a team to develop a universal health care plan. The

Governor's announcement encouraged legislative leaders to begin developing their own universal health care plans.

In December 2006 legislative leaders in both the Senate and the Assembly introduced legislation to reform California's health care system. Senate pro Tempore Don Perata introduced SB 48 (Perata) and two weeks later Assembly Speaker Nuñez introduced AB 8 (Nuñez).

AB 8 is the predecessor of AB 1X 1. Some of the provisions were similar to AB 1X 1 but there were a number of significant differences. Most notably, AB 8 was a much narrower bill. AB 8 would have required employers to spend 7.5 percent of social security wages on health care expenditures for full and part-time workers and their dependents, or pay an equivalent fee to a newly created California Health Care Trust fund. The bill would have created a state purchasing pool to provide health coverage to employees of employers who opt to pay into the fund. It would have also expanded eligibility for Medi-Cal and Healthy Families coverage for low-income children and parents, and established various cost containment measures. The bill was estimated to cost \$8.8 billion annually which would be offset by \$9.2 billion in new revenues, primarily raised from employers.

SB 48 contained provisions similar to AB 8, but later contained a mandate for individuals with income above 400 percent of the federal poverty line to maintain a minimum level of coverage.

Governor Releases Health Care Reform Proposal

In January 2007 Governor Schwarzenegger announced his own plan to extend health care coverage to California's uninsured population and implement a series of other health care reforms. The Governor's proposal imposed an individual mandate requiring all Californians to maintain a minimum level of health insurance, attempted to contain health care costs so that individuals could afford to purchase coverage, and promoted various measures that were meant to improve the overall health of Californians. The Governor's proposal required all employers with 10 or more employees to spend at least four percent of their social security payroll on employee health benefits or pay the difference into a state purchasing fund.

The Administration estimated that once the plan was fully implemented, it would cost about \$14 billion annually from all government sources, with additional costs of \$2.7

billion to individuals and employers, according to a February 2007 LAO analysis. (Note: The Administration released its proposal in January, but did not provide language for its proposal, with modifications, until October 9, 2007. See LAO charts in the Appendix to this report which summarize the sources of coverage and financing)

In February 2007, Senator Sheila Kuehl, Chair of the Senate Health Committee, reintroduced SB 840 to establish a single-payer health reform program in California (two similar bills were introduced in prior sessions: SB 921 was held in the Assembly Health Committee in 2004, and SB 840 was vetoed by Governor Schwarzenegger in September 2006).

Both the Assembly and Senate health reform bills, AB 8 and SB 48, moved through the legislative process before being merged into the Assembly measure, AB 8, in July 2007. The Administration was in ongoing conversations with the Senate and Assembly leadership regarding health care reform.

Committee hearings were held on the various health care reform proposals in the Winter and Spring of 2007, but the health care reform debate stalled in the summer of 2007 when the state was grappling with what would become the third-longest budget stalemate in California history.

The California Senate did not approve the 2007–08 budget until August 21, 2007, and the Governor did not sign the budget until August 24, 2007.

On September 10, 2007, AB 8 was passed by the full Senate and Assembly. On September 1, 2007, the Governor signaled his intention to veto AB 8, and called an extraordinary special session of the Legislature to consider comprehensive health care reform.

In October, the Governor vetoed AB 8. In his veto message, the Governor stated that he opposed AB 8 because it does not achieve coverage for all individuals, which is necessary to reduce health care costs for everyone, and that comprehensive reform cannot place the majority of the financial burden on any one segment of the economy. The Governor called for health care reform that “shares responsibility” and is “fiscally sustainable.”

IV. A Policy Window Opens: The Fall of 2007

The Administration and the Senate and Assembly leadership had worked hard all year to refine their health care reform plans, but it was not until the first extraordinary session of the Legislature was called, that real progress could be made in forging agreement between the legislative leaders and the Governor.

Senate President Pro Tempore Don Perata and Assembly Speaker Fabian Nuñez had an opportunity to shape policy with AB 8 but legislative staff said they could not engage the Administration on health care reform until the budget was passed in late August.

On September 11, Assembly Speaker Fabian Nuñez introduced AB 1X 1 as a spot bill, with Senate Pro Tem Perata as a principal co-author. The introduced form of the bill simply stated the intent of the California Legislature to enact comprehensive health care reform. (Language was eventually amended into the bill on November 8.)

On October 9, the Administration released the first public draft of the legislative language to implement the Governor's plan, which included several additions and modifications from the plan outlined in January. Significantly, the overall reform plan depended on voter approval of a statewide ballot initiative that would implement the financing elements of the plan. The ballot initiative will be discussed in more detail later.

On October 31, the Assembly Health Committee held an informational hearing on the plan and heard from the various stakeholders.

The Administration's proposal was similar to AB 8 in many ways. It covered children and adults with incomes of up to 300 percent of the federal poverty line and eliminated the Medi-Cal asset test for certain adults. The proposed coverage expansions for parents, effective January 1, 2010, would have been provided through a benchmark plan in a statewide purchasing program known as the California Cooperative Health Insurance Purchasing Program, and would cover Knox-Keene health care benefits plus prescription drugs.

The Administration's proposal differed from AB 8 in that it required every California resident to maintain a minimum level of health coverage for themselves and their dependents, effective July 1, 2010. AB 8 did not include this individual mandate.

To finance the plan, the Administration proposed to collect an unspecified amount of revenue from counties based on enrollment in coverage of low-income adults now served by counties, a 4 percent fee on hospital patient revenues, employer fees ranging from 0 to 4 percent of payroll based on employer size and payroll, funds obtained through licensing the state lottery, and other state savings resulting from the increased number of insured persons, the increased use of health information technology, and reduced medical losses.

AB 1X 1 passed out of the Assembly Health Committee on November 14, on a 12-5 party line vote. AB 1X 1, as amended November 8, responded to the Governor's veto message of AB 8, "particularly to the Governor's concerns regarding universality, and individual mandate, and diversity of funding," states the Assembly Health Committee analysis of the bill. The bill was estimated to expand health coverage to more than two-thirds of California's 4.9 million uninsured population, including all children.

V. A Compromise Is Reached

Throughout the remainder of November and the first half of December, the Speaker's Office continued to meet with the Governor's office and Senate leadership to reconcile the policy differences with AB 1X 1 to produce a compromise proposal that was satisfactory to the parties involved. Significant amendments were agreed upon during these negotiations that satisfied certain constituencies and alienated others.

The product of these negotiations was amended into AB 1X 1 on December 17, while the bill was on the Assembly floor. The bill passed the Assembly on that same day on a 46-31 party line vote and was sent to the Senate. The Governor indicated that he would likely sign the legislation into law.

AB 1X 1, as amended December 17, 2007, contained the major elements of the Administration's proposal, but included provisions that were the direct product of negotiations between the legislative leadership and the Administration.

Enactment of the bill, titled the "Health Care Security and Cost Reduction Act," was dependent upon passage of a related ballot measure, titled the "Secure and Affordable Health Care Act of 2008," which contained the financing provisions (as filed December 28, 2007, with the state Attorney General).

“AB 1X 1 contains a number of compromise provisions aimed at addressing the Governor’s concerns, while incorporating some issues of critical importance to Speaker Nuñez, including concerns about affordability,” states an analysis by the CHFC.

As mentioned above, AB 1X 1 included a broader individual mandate, with some exceptions, for affordability that were not included in the Governor’s original proposal. Under AB 1X 1, families earning less than 250 percent of the federal poverty level (FPL) would be exempt from the mandate if the cost of coverage exceeds 5 percent of income. Individuals and families earning 250 to 400 percent of the FPL, and select early retirees, would receive a tax credit to help make coverage more affordable, according to the CHCF analysis.

While AB 8 originally proposed an employer fee of 7.5 percent, the Governor proposed a 4 percent fee. Under AB 1X 1, employers would pay fees on a sliding scale of 1 percent to 6.5 percent of social security payroll depending on the size of the firm to help small businesses.

Funding for AB 1X 1 would also come from a wider variety of sources than under AB 8, including a 4 percent hospital fee, fees on employers, and an increased tobacco tax.

The LAO reviewed the key components of AB 1X 1 in a January 22, 2008, letter to Senator Perata.

AB 1X 1 Summary: The bill proposed to create “a pay or play system” for employers to establish a mandate on each Californian to have insurance, with some exceptions. Lower-income individuals would be excluded from the mandate when the cost of coverage exceeds 5 percent of family income, and in other situations of hardship which was not defined, according to an analysis by the CHCF.

Employers would be required to offer coverage or contribute between 1 percent and 6.5 percent of payroll, depending on company payroll size, toward the cost of employee coverage through a purchasing pool or “connector.” AB 1X 1 also proposed to expand eligibility for public health insurance programs for children and parents, contingent upon subsequent budget allocations, according to the CHCF analysis. The bill also included provisions to improve transparency and quality, promote preventative care, promote the use of health information technology, better manage chronic disease, and contain health care costs.

Coverage: Estimates provided by Massachusetts Institute of Technology economics professor Jonathan Gruber Ph.D., determined that the proposal, when fully funded, would extend coverage to 3.6 million of California’s 5.1 million uninsured, including nearly all children. An estimated 2.87 million uninsured adults (under age 65) would be covered, and 760,000 uninsured children would be covered. The vast majority of uninsured Californians who would be newly covered under AB 1X 1 earn less than 400 percent of the FPL, states the CHCF analysis.

Financing: The bill was estimated to cost \$14.4 billion when fully implemented. The key financing components included increased federal funding, employer contributions, and county contributions. The bill also included a 4 percent hospital fee on net patient revenues and an increase in the state tobacco tax to \$1.75, through passage of a ballot initiative subject to approval of the voters.

Financing Trigger: Under the proposed initiative, the Director of Finance would be required to review the funds available twice annually, and project the funds to be available in support of AB 1X 1 to determine whether the revenues are sufficient to fund the programs and provider rates in the current fiscal year, and in either of the two following fiscal years. If the director determines that the funds are not sufficient, he would be required to notify the Governor and the Legislature. If the Legislature did not pass legislation within 180 days, several key provisions contained in AB 1X 1 would become inoperative, including the individual mandate, the requirement for insurers to offer coverage without regard to medical status, and the Medi-Cal coverage expansions for adults, among others.

The Appendix to this report contains two summary charts of AB 1X 1 which were prepared by the LAO.

VI. Senate President Pro Tempore Don Perata Puts the Brakes on Reform

On December 10, 2007, the Thursday just prior to the Assembly’s passage of AB 1X 1, Senator Don Perata issued a statement saying that he was “encouraged by the progress the Governor, the Assembly Speaker and I have made this year developing a plan for extending health care insurance to the many Californians who do not have it.”

“While I still strongly favor the concept, I have been shocked by the recent revelation that next year’s budget is facing a \$14 billion deficit and what that could mean. It would be imprudent and impolitic to support an expansion of health care coverage without knowing how we’re going to pay for vital health programs the state now provides for poor children, their families and the aged, blind and disabled,” Perata stated.

“The real issue now is the deficit and how this squares with everything else that we are going to do.”

Despite Senator Perata’s statement, Speaker Nuñez called Assemblymembers back to the Capitol on Monday, December 17, for a floor session to vote on AB 1X 1.

“After a solid year of hard work and negotiation, we are now only inches away from finalizing the framework for an historic agreement to deliver universal health care for the people of California,” Speaker Nuñez said.

“I am so confident that we will be successful in reaching agreement that I have called for the Assembly to meet on Monday, December 17, in order to take up and pass AB 1X 1. With only a little more work and cooperation, California can once again show the nation how it’s done,” Speaker Nuñez said.

The Assembly approved AB 1X 1 on Monday, December 17, 2007, sending the bill to the Senate for consideration.

Two days later, on December 19, Senator Perata issued another statement:

“I welcome the progress being made in the Assembly to pass a workable health care reform plan. I look forward to the Senate receiving the legislation and taking a close look at it.

As I said last week, I am very concerned about the projected \$14 billion budget deficit, its impact on existing state health programs and how this relates to our efforts to improve health care coverage for Californians.

For that reason, I have asked the Legislative Analyst to examine the long-term fiscal impacts of the health care reform legislation on the state’s general fund. This analysis,

combined with the Governor's proposed budget, will help determine how we can move forward in a fiscally responsible manner."

On December 17, Senator Perata sent a letter to Legislative Analyst Elizabeth Hill, asking her to provide an independent fiscal analysis of AB 1X 1.

"Your report would be especially helpful when the Legislature reconvenes in January and Senate policy and fiscal committees begin conducting public hearings," the letter stated.

Senator Perata forwarded to the LAO the fiscal analysis of AB 1X 1 completed by Jonathan Gruber, a professor of economics at the Massachusetts Institute of Technology. This analysis was subsequently called the Gruber Model and built an economic model to project the costs of major portions of AB 1X 1.

VII. Legislative Analyst's Office Issues Report

On January 22, 2008, the LAO issued its fiscal report on AB 1X 1 and its implementing ballot measure.

In short, the report found that by the fifth year of implementation (2014–15) AB 1X 1 would be underfunded by an estimated \$300 million to \$1.5 billion a year, depending on a number of variables.

The LAO report said that they adjusted the fiscal estimates of AB 1X 1 proponents to correct for technical estimating errors and used their own estimate of tobacco tax revenues. The LAO estimated the fiscal impact of AB 1X 1 using two different assumptions of health care premiums: \$250 per month per person (which is what the proponents of the measure assumed for their estimates) and \$300 per month per person because the LAO believes that the \$250 premium level may be difficult to achieve.

"Based on our estimates, we conclude that under the \$250 premium scenario, there are sufficient revenues to support the program in the first year of operation (2010–11). However, by the fifth year of the program (2014–15), annual costs exceed revenues by \$300 million," stated the report. The report noted that the fund would still have a positive cumulative balance because the collection of the tobacco tax and employer fees commence before program costs are incurred.

“Under the \$300 premium assumption, costs exceed revenues by \$122 million in the first year of operation and this shortfall increases to \$1.5 billion by the fifth year of the program. In addition, the fund balance shows a deficit of almost \$4 billion by the end of that period, even with the early collection of the tobacco tax and employer fees,” the report further stated.

The report also identified a number of other potential fiscal risks and uncertainties that could negatively affect the fiscal solvency of AB 1X 1 by more than an additional \$1.5 billion annually. These risks include: matching federal funding which may not materialize, federal waivers to redirect federal funds which may not be granted, a higher than expected actual number of the uninsured population, higher than expected health care inflation, and diminished revenues from the tobacco tax as fewer people smoke, among others.

The report concluded that “any plan to reform the state’s health care system, by the nature of its complexity, will involve financial risk over the long term. Many of the risks discussed above would be shared by any health reform plans that attempt to maintain the current system of employer-provided coverage while expanding public programs to cover the uninsured.”

VIII. AB 1X 1 Dies in Senate Health Committee

Senator Perata initially decided to delay the Senate vote on AB 1X 1 until January 16, 2008, but the chair of the Senate Health Committee, Senator Sheila Kuehl (D), postponed the hearing until January 23, to provide additional time to wait for the release of the LAO fiscal analysis.

The LAO analysis came out on January 22, and on January 23, the Senate Health Committee held a 10 1/2 hour hearing to hear from the proponents and opponents of the measure and a report from Legislative Analyst Elizabeth Hill.

The 11-member Senate Health Committee was composed of seven Democrats and five Republicans. AB 1X 1 did not receive a single Republican vote in the Assembly and Republican votes were not counted on in the Senate.

Chair Restates Her Opposition to the Bill

Senate Health Committee Chair Sheila Kuehl, who favors a single-payer approach to health care reform, openly opposed the measure from the beginning, which meant that AB 1X 1 proponents would need the votes of all of the committee's remaining six Democrats to secure passage. "I've been very clear with all the advocates and everybody that I do not favor the bill," Senator Kuehl told *Capitol Alert*.

Passage of the bill came under doubt the weekend before the January 23, hearing when Senator Leland Yee (D) told the *Associated Press* that he would oppose AB 1X 1. He made the decision just hours before the Legislative Analyst's report was released.

Yee said he had doubts about the financing, and came to his decision after consulting labor leaders in his San Francisco district, according to a January 28, *Capitol Alert* story.

"I am a little dismayed that some committee members have seen fit, or maybe one committee member, is seeing fit to pre-judge the LAO's report without reading it. Be that as it may, I guess we all approach our work in a different manner," said Senator Perata at the January 23, hearing, according to *Capitol Alert*.

The reports noting that AB 1X 1 did not have the votes sparked rumors around the capitol building that Senator Perata could stack the Senate Health Committee to get the bill out. But in an interview with the *San Jose Mercury News* on January 23, Senator Perata said he would not change the committee membership.

At the January 23, hearing, several of the committee's remaining Democrats raised issues with AB 1X 1, but did not indicate how they would vote. There was also some speculation that Senator Abel Maldonado (R), widely acknowledged as the Senate's most moderate Republican, could buck the GOP party line and vote for the bill.

"I want to read the analyst's report completely and make a good, sound decision...My heart wants to have something in place that gives the uninsured insurance, but my mind asks, 'Does this thing pencil out?'," Senator Maldonado told the *Associated Press*.

"What you have in front of you is by no means the worst-case analysis," Hill said at the January 23, hearing—noting that it would be likely the new health care program would be a drain on the state General Fund, according to an *Associated Press* report.

Hill said she estimated conservatively that within five years the program would cost the state between \$300 million and \$1.5 billion a year, and annual costs to the state could reach \$3 billion if other problems arose.

The Governor's Secretary of Health and Human Services, Kim Belshe, said passage of the bill was a "life-or-death matter."

"People are dying today because they don't have insurance...People are dying for a lack of this state moving forward on comprehensive reform," Belshe said, noting that California currently has about 5.1 million people without coverage and that allowing that to continue was tantamount to letting some of them die of conditions that would otherwise be treated, according to a report by the *Associated Press*.

"I do resent the fact somehow that if we don't pass this bill, we're going to cause people to die," said Senator Leland Yee, according to the AP.

Senator Yee said the bill would force people to buy insurance, even if they could not afford it, a claim which the bill's sponsors denied.

Speaker Pleads His Case But Committee Democrats Voice Concerns

"We believe the necessary affordability provisions are there," said Assembly Speaker Nuñez, referring to provisions in the bill that would provide poor uninsured people with an exemption from the bill's mandates, or with subsidies or tax credits to make the purchase of insurance affordable.

Senator Kuehl also said she opposed the bill, and said it would force consumers to buy insurance without regulating the cost.

Senator Gloria Negrete McLeod (D) said she was concerned that the many poor people in her district would not be able to afford the insurance required by AB 1X 1.

Senator Darrell Steinberg (D) said the LAO report found that the measure could be as much as \$4 billion in the red, adding that the fiscal question "is at the heart of the issue for me," according to *Capitol Alert*. Senator Elaine Alquist (D) expressed similar reservations about the cost.

Committee Recesses But Reconvenes Five Days Later

Six hours into the hearing, and after it became clear that the bill did not have the votes for passage, Senator Kuehl said she would delay a vote on AB 1X 1 until January 28, at the request of Senator Perata.

Five days later, on January 28, the Senate Health Committee reconvened to consider AB 1X 1. However, based on media reports and word from around the Capitol, the death of AB 1X 1 was already deemed a forgone conclusion.

Of the seven Democrats on the Senate Health Committee, only Senator Mark Ridley-Thomas announced in advance of the vote that he would support AB 1X 1 and issued the following statement on January 23:

“I recognize that this bill contains trade-offs. However, I am convinced any solution that seeks to address a problem as big and as complicated as health care reform is going to necessitate trade-offs. That is how representative democracy works, and we cannot let perfect be the enemy of the good.”

“I do not believe there will be a better, improved bill next year, or the year after that. If we don’t take this opportunity to expand health care, we will be stuck with the status quo for the foreseeable future, and that’s just not good enough.”

Assembly Speaker Fabian Nuñez Issues “Eulogy” on Failure of AB 1X 1

Assembly Speaker Fabian Nuñez had the following words to say to the committee:

“Let me get right down to the point. It’s pretty clear to me, based upon conversations that I’ve had either with members of the committee or other people who have spoken with members of the committee, and clearly public statements that are in the press, that today the bipartisan compromise that was struck with Governor Schwarzenegger to bring about health care reform to 3.6 million Californians, including 800,000 children, will not be making its way out of the committee today.”

“I know that’s the reality we’re going to be dealing with after your vote here today, so I don’t think there’s a whole lot for me to say other than I do want to pose a challenge to the people who don’t support this bill....I would challenge the members of the Senate to

come up with a plan that's doable, and that can withstand the same type of scrutiny that AB 1X 1 was put through in this committee, the same kind of analysis by the Legislative Analyst, that is going to respond to the needs of those poor families who have absolutely no health care today. ...I do think that the challenge of leadership is about working out our differences, and we did the very best we could. I don't know that you, given the circumstances, could have had a better product before you to consider."

Speaker Nuñez concluded by thanking the committee and saying he looked forward to their vote.

Committee Members State Their Concerns

Every member of the committee, except Senator Mark Wyland, gave a speech before casting their vote, according to *Capitol Alert*. Senators expressed concerns about the bill's financing before voting down the bill, on a 1-7 vote, with three Senators abstaining.

Senator Mark Ridley-Thomas cast the only "aye" vote. Senators Sheila Kuehl (D-chair), Abel Maldonado (R), Dave Cox (R), Sam Aanestad (R), Gloria Negrete-McLeod (D), Leland Yee (D), and Mark Wyland (R) all voted "no."

The following three Senators abstained: Darrell Steinberg (D), Elaine Alquist (D), and Gil Cedillo (D).

A *Capitol Alert* story recounted the following comments made by Senator Elaine Alquist (D) who said she "wanted to vote for this bill" but there was not a financial plan to pay for it to her satisfaction.

Senator Leland Yee (D) said "it pains me to turn my back on the particular bill." He went on to say that the bill was "fundamentally flawed" and he could not vote for the measure "in good conscience."

Senator Darrell Steinberg, who was on the verge of becoming the Senate President pro Tempore-Elect, said the vote was not the final step and promised that the Legislature would be "working in the months ahead to advance this cause."

“What do we do in the meantime? Senator Ridley-Thomas asked rhetorically, following Senator Steinberg’s comments. “We vote for this bill,” concluded Senator Ridley-Thomas.

Senator Cedillo said health reform is an “ongoing process” but that he was not prepared to move forward at this time. Cedillo was a co-author and staunch supporter of Senator Kuehl’s single-payer bill, SB 840.

Senator Sam Aanestad (R) said the bill’s finances did not work out but pledged to work with Democrats in the future.

“I just couldn’t get it to pencil out,” Senator Maldonado said, noting that he “really wanted to vote for it.”

Senator Dave Cox (R) said the bill was “based upon fairy tale-type assumptions.”

“It doesn’t matter how many good things are in the bill if there isn’t money to pay for them,” Senator Kuehl said, adding that the LAO report gave her and her Senate colleagues and members of the Assembly “a good deal of pause.”

After the vote, Speaker Nuñez did not ask for reconsideration of the measure, saying the “message is pretty clear.”

Senator Perata Issues Statement on Failure of AB 1X 1

Senator Don Perata issued the following statement after the bill failed in committee.

“For years, I have been working with the Governor, Speaker and my Senate Colleagues to reform health care in California. My goal has always been to bring high quality, accessible, affordable health care to all Californians. I believe that the only way to truly achieve this is through single-payer health care, for which I have long advocated. Insurance-based plans have the potential to help Californians, but should only act as short-term placeholders for greater reform. I had hoped that AB 1X 1 could be such an interim solution. Unfortunately, over the last few weeks, I have come to the conclusion that this proposal would not protect the safety net for the most vulnerable Californians nor be a financially responsible move with the current budget crisis.”

Senator Perata went on to cite the LAO study and say that the Legislature should restore base programs before creating new ones.

“For all these reasons, I cannot support AB 1X 1 at this time,” Senator Perata concluded, noting that he will continue to work to develop a plan to provide coverage for Californians.

Governor Issues Statement on the Failure of AB 1X 1

Governor Arnold Schwarzenegger issued a statement in which he said:

“Despite the Senate’s rejection of our comprehensive health care reform bill, I want the people of California to know I will not give up trying to fix our broken health care system. The issue is too important and the crisis is too serious to walk away after all the great progress we have made. The problems will not disappear. In fact, they are likely to get worse.”

“When I proposed comprehensive health care reform in my 2007 State of the State speech, I knew that it would be difficult to fix our broken system. If it were easy, California would have gotten universal coverage 60 years ago—that’s when Governor Earl Warren’s reform plan fell short by a single vote.”

“I am someone who does not give up. Especially when there is a problem as big and as serious as health care that needs to be fixed. One setback is just that—a setback. I still believe comprehensive health care reform is needed in California. We will keep moving forward. I can promise you that.”

IX. Picking Up the Pieces: Explaining Why AB 1X 1 Failed

To gain insight into why AB 1X 1 failed in the Senate, a series of interviews with key staff in the Administration and Legislature were conducted. The identity of the participants will remain anonymous to protect their privacy.

Several common threads emerged from these conversations that will be discussed in greater detail later.

Conversations with Senate staff indicate that timing was a major issue in the defeat of AB X1 1.

The Governor released an outline for reforming health care in January 2007, but the language was not provided until October 2007, after the budget standoff was resolved. Legislative staff say they were surprised by the scope of the Governor's January 2007 health care reform proposal, and the health care reform debate was moving along in the Spring of 2007 as the Perata and Nuñez bills moved through the legislative process.

On June 21, 2007, Speaker Nuñez and Senator Perata held a press conference to announce that they were merging their two health care reform bills, AB 8 (Nuñez) and SB 48 (Perata), into one bill, AB 8 (Nuñez/Perata).

Budget Standoff Distracts Attention from Health Care Reform

The budget standoff in the summer of 2007, distracted the attention of the Governor and legislative leaders away from health care reform. "The Governor would not engage until the budget is passed," said one key legislative staffer close to the AB 1X 1 debate. The budget was not signed until August 24.

Administration officials said the budget standoff was a distraction from the health reform debate but that conversations and meetings continued on health care reform throughout the summer of 2007.

In the waning days of the 2007 legislative year, Senator Perata and Speaker Nuñez presented to the Governor their health care reform bill, AB 8, but on September 1, the Governor signaled his intention to veto AB 8 and called an extraordinary special session of the Legislature to consider comprehensive health care reform.

Governor Decides to Appeal to Voters for AB 1X 1 Financing

Legislative staff said the budget standoff led the Governor to the realization that he would not be able to get any Republican votes for health care reform. This realization encouraged the Governor and Speaker Nuñez to turn to a strategy of enacting program change in the bill but then attaching its financing mechanisms to an accompanying ballot measure for November 2008 Presidential election ballot, which was expected to yield a large Democratic turnout that would be favorable to reform.

The California Constitution requires a two-thirds vote for tax increases, which means that some Republican votes would be necessary to increase taxes to pay for health care coverage expansions. Legislative staff said there was speculation that much of the financing, such as the hospital fees and other potential fee revenue, could be enacted with only a majority vote. However, the Governor indicated that he did not support funding health care reform with majority vote fee revenue.

The ballot measure that was to accompany AB 1X 1 was not submitted to the Secretary of State's Office until December 28, 2007.

The decision to go to the voters to finance AB 1X 1 created additional issues which ended up contributing to the demise of AB 1X 1. As mentioned previously, linking AB 1X 1 to a ballot measure, added a very strict timeline to the passage of AB 1X 1.

In order for the financing piece of AB 1X 1 to qualify for the ballot in November 2008, it was necessary for the ballot measure to be submitted very shortly after the Assembly vote on December 17, to allow time to collect the required number of signatures to place the measure on the November ballot, according to guidelines submitted by the California Secretary of State's Office.

The initiative measure contained language stating that it is being enacted with the expectation that the Legislature passes, and the Governor signs, a bill that is "essentially the same" as AB 1X 1 as amended December 17, 2007, states the Senate Health Committee analysis.

This meant that the Senate had very little time to consider the complicated bill and its companion ballot measure. By January 22, when the LAO report on the financing was released and the Senate Health Committee prepared to take up the bill, it was far too late to amend AB 1X 1. Senate staff said it was very significant to Senator Perata and other Senators that AB 1X 1 could not be amended by the Senate Health Committee.

The existence of the ballot measure, and the inability to garner the two-thirds vote for revenues, also made it apparent to many Senators that they would likely have to go back to voters for revenues in the event that AB 1X 1 was underfunded. Some believed this would be a huge obstacle to future efforts to keep the program solvent and was tough for many Senators to swallow.

In addition, putting the financing components in a ballot measure meant that there was a good chance that the measure would be defeated by the voters. There were rumors around the Capitol that the tobacco industry and health insurers were prepared to spend \$100 million or more to defeat the measure.

Field Poll Finds Health Care Reform Popular with the Public

An April 2008 *Field Poll* found that 67 percent of voters approved of the health plan's general approach of sharing the costs of health insurance among individuals, employers and government, as opposed to having this responsibility rest solely with government, employers or individuals. Most of the individual funding sources garnered large majorities of voters, except for increasing hospital fees by 4 percent, which was opposed by 77 percent of voters.

Senate staff said the Assembly passed AB 1X 1 without a solid funding plan worked out. In November, the Legislature found out that the state's budget crisis was getting more severe, a development that made many Senators concerned about AB 1X 1's potential impact on the General Fund, Senate staff said.

These concerns prompted Senator Perata to ask the Legislative Analyst to study the financing for the bill in detail.

Senate staff said Senator Perata was concerned about the bottom line: "When you are cutting programs, how do you pay for an expansion when we can't even pay for what we have?" one staffer said. Senator Perata summarized all of his concerns about AB 1X 1 in a January 28, letter to the Governor and Speaker Nuñez. The letter stated that the plan is structurally underfunded and could exacerbate the state's structural budget shortfall and the plan's "trigger off" mechanism provides limited options to the Legislature because new revenues would still require a two-thirds vote of the Legislature.

Legislative staff also said the complexity and sheer breadth of AB 1X 1 made it difficult to pass and easy to attack. The 200-page bill was very complex, staff said, noting that "too much detail makes it hard to get just right."

"The Governor's plan was so complex [AB 1X 1] and all encompassing that nobody could explain it," one Senate staffer said.

“The more elements and facets the plan has, the easier it is to attack,” said a health consultant, drawing a parallel to the failed Clinton plan in the mid-1990s. “If you try to solve everything at once, you’ll never get there,” the staffer said.

AB 1X 1 was attacked from both the left and the right, just as the Clinton plan was in the mid-1990s. The single-payer advocates, labor groups, and variety of other groups on the left opposed the bill for not going far enough, but Republicans, Blue Cross, insurance companies, and other business groups opposed the government’s entrance into private markets.

Labor Support for AB 1X 1 Divided

Labor was also divided with the Service Employees International Union California, American Federation of State, County, and Municipal Employees, California State Council of Laborers, California Conference of Carpenters, and California State Pipe Trades Council in support, but the AFL-CIO national, California Nurses Association (CNA), and California Conference of Machinists opposed.

On the other hand, a number of the labor organizations and other supporters of the bill requested a long list of amendments to the bill that were noted in the Senate Health Committee analysis.

The California Labor Federation stated that it would support the bill if it was amended to outline the benefit standard for plans offered by the purchasing pool, predicate the individual mandate upon guaranteed affordability and the availability of quality coverage, and clarify the benefits of the health plans to which the tax credit is linked. The California Labor Federation also proposed amendments to the initiative to include a separate test on the payroll assessment for full-time and part-time employees and include penalties to enforce the assessment, including penalties for employers who misclassify employees as independent contractors. The Labor Federation also wanted the employer assessment to be adjustable by a majority vote of the Legislature.

The CNA opposed the bill, stating that the health insurance provided under the bill would not be universal, affordable, or of high quality. CNA believed the bill would force bare bones plans on Californians and employers that have high out-of-pocket costs and no controls on price. CNA stated that the bill would implement a punitive individual mandate and would not fairly distribute responsibility, risk and benefits among employees, employers, individuals and government. CNA said insurance

companies and employers would reap the lion's share of the benefits from the bill, according to the Senate Health Committee analysis.

Other labor organizations, including the California Teamsters, the United Food and Commercial Workers Union, and the California Conference of Machinists, stated that the bill fails to obligate employers to pay a percentage of health care costs for both high- and low-wage workers. Furthermore, the bill would allow employers to meet the statutory obligations without paying anything toward low-wage workers, and instead place low-wage workers into a state-subsidized purchasing pool. These labor organizations also wanted a guarantee of affordability and voiced similar concerns as mentioned previously about enacting penalties on employers for misclassifying their employees as independent contractors.

Senate staff said they thought there would have been a chance to get the bill out if it was allowed to be amended. One staffer noted that it was "bizarre" for the Governor to propose significant cuts to health programs in his proposed January 2007–08 budget while at the same time proposing a sweeping health care coverage expansion.

Several key Senate staffers said they were kept in the loop of what amendments were being made in the Assembly, but that there were so many that it was hard to keep track of them.

They noted that there just was not enough time for the Assembly committee [health] to point out all the flaws. Senate Health Committee staff said that Senator Kuehl wanted to make sure the bill was fully vetted, but the fact that the committee could not amend the bill was difficult for members to swallow, especially Senator Kuehl.

"If it could have been amended, the bill could have been improved, but I don't think it would have changed the costs," one staffer said. Senate staff also noted that it was "impossible to know" if the economic modeling for the bills costs would hold up as anticipated. "There were just so many unknowns," the staffer added.

The Administration's Response

Administration officials said there was a unique opportunity to reform health care in late 2007, but blamed Senator Perata for not providing the leadership to make passage of AB 1X 1 a reality.

“The stars were in alignment,” one Administration official said. Administration officials said they believe that it was politics that killed the bill in the Senate.

“There was plenty of time,” said another Administration official, noting that there was enough time for the Senate to consider the bill. The Administration said the Senate should have scheduled the Senate Health Committee hearing earlier so that they could have amended the bill. “Nobody had amendments in the committee,” said the officials.

Administration officials were “very surprised” when Senator Perata expressed reservations about AB 1X 1 prior to the December 17, Assembly vote.

Administration officials said Senator Perata and his staff were deeply engaged in the bill when the plan was being considered in the Assembly. “Don Perata was always engaged. . . Perata voiced a lot of optimism stage by stage,” said one Administration official.

“There were significant changes made to the bill and the companion ballot measure to accommodate the Senate prior to the Assembly vote,” the officials said, suggesting that the bill died the day it passed the Assembly when Senator Perata said he was concerned about the costs and deficit. The Governor and Administration held 2,000 meetings with stakeholders to develop the proposed reforms prior to the Assembly vote, stated one Administration official.

Sen. Perata Involved in the Process Every Step of the Way

Senator Perata and his office were involved at both the member level and staff level throughout the process, according to Administration officials.

These officials said the Governor held regular meetings with Speaker Nuñez and Senator Perata at which health care reform was discussed. “Sometimes we just had general meetings where they would talk about health care reform,” said one official.

The meetings with Senator Perata were always “positive” and “he [Perata] believed it could be done,” according to the official for the Administration. There was validation from Senator Perata that the Speaker and Administration were “moving in the right direction” with the proposal and the framework that was being used, the official said. Senate staff close to Senator Perata said the Pro Tempore was optimistic until news came out about the state’s budget deficit.

Administration officials agreed that Senator Perata made their job harder in the Senate by delaying the Senate consideration of the proposal until after the release of the LAO report. This delay effectively removed the Senate's ability to amend the proposal. But they said Senator Perata could have still moved the bill through the Senate if he took a greater leadership role in seeing the bill through the Senate.

Administration Official Says AB 1X 1 Financing Was “Pretty Tight”

“The financing was pretty tight,” said an Administration official, noting that the Governor had repeatedly insisted that the bill have more money, which is why they increased the employer fee from their original proposal. When questioned about Senate staff's assertion that there was no fiscal analysis done of the bill when it left the Assembly, the official said that was not true, “there were fiscal analyses of the bill.” The Assembly Appropriations Committee examined the financing provisions of the bill but the exact language of the ballot measure was not filed until after the Assembly vote on December 28, 2007.

Administration officials said they had a hard time with arguments from Senator Sheila Kuehl and many other Senators who were concerned about the \$300 million to \$1.5 billion in annual shortfalls estimated by the LAO. “Many of these members already voted for Senator Kuehl's single-payer bill,” said one Administration official.

SB 840 (Kuehl) passed the Senate floor on June 6, 2007, on a 23-15 vote, with all but two Senate Democrats voting for the bill. May 22, 2008, the LAO analysis of that bill found that the bill would result in a net annual shortfall of \$42 billion in 2011–12 (the first full year of operations) and \$46 billion in 2015–16. SB 840 was eventually sent to the Governor and vetoed.

To achieve near universal health care, potential operating deficits of \$300 to \$1.5 billion were miniscule compared with the deficits projected under Senator Kuehl's single-payer bill.

Administration Officials Believe Cost Concerns Were Dramatically Overstated

Administration officials said the Senate was correct to say that there were some cost issues. On the other hand, they said they thought that the cost arguments were dramatically overstated by opponents and that many opponents of AB 1X 1 used them as cover to oppose a bill which they did not like for other reasons.

Officials said the LAO analysis provided huge validation of AB 1X 1's framework and financing components, and found that the plan could have fully penciled out. The bill also included a trigger, which was a "huge fail safe" against underfunding, said one official.

The Administration admitted that the bill was not perfect, in that "there were a lot of places that you would have to come back to and fill in later," said one official. But officials for the Administration said Senator Perata could have made this case to Senators to appeal for their votes.

One Administration official said there was little chance "when a leader says you're on your own." The bill would have passed if Senator Perata had said "we want you to do this" as opposed to giving Senators a "pass to take a walk," which is what he essentially did by not encouraging them to vote for the bill, the official continued.

Administration Officials Say Blue Cross, Tobacco Industry and California Medical Association Were Instrumental in the Defeat of AB 1X 1

Administration officials said the opponents to the bill were instrumental in its defeat. "Blue Cross and the tobacco industry focused in on the Senate Committee," said one official, noting that they were the bill's two most powerful adversaries. Administration officials said the California Medical Association (CMA) was also instrumental in the defeat of the bill and was working to kill the bill in the Senate.

CMA was concerned that the proposed financing for the bill would not fully fund all of its provisions, particularly those that would ensure access to affordable coverage through the purchasing pool. CMA was worried that the sweeping Medi-Cal eligibility expansions would not be accompanied by money to increase Medi-Cal reimbursement rates, which would be provided for in the bill, but be contingent upon a budget appropriation which may not occur. CMA also stated that the bill would provide flexibility to health plans in establishing provider networks that could be inadequate and limit access to care. CMA believed the bill's scope of practice language was vague, among other concerns.

Administration officials said they stopped meeting with Blue Cross three months prior to the Senate Committee vote. Blue Cross, the biggest health insurer in the state, had a number of concerns about the bill. According to the Senate Health Committee analysis,

they believed the provisions requiring insurance companies to issue insurance to individuals in five coverage categories, would destabilize the individual market and that consumers should drive decisions on what insurance products are acceptable to decrease costs.

Blue Cross said the bill would eliminate an insurer's ability to provide discounts to healthier individuals, resulting in younger and healthier enrollees dropping individual coverage, which would increase costs for other enrollees. Blue Cross stated that the five coverage categories proposed by the bill would likely require maternity benefits and a name-brand drug benefit, which would significantly increase premiums and increase costs for hundreds of thousands of Blue Cross enrollees who pay for affordable products that do not offer such benefits.

Another official said the AFL-CIO national had several concerns about the bill. These union leaders opposed the bill because they did not believe it would provide "affordable" coverage and pushed for the highest employer contribution—7.5 percent—to get the greatest amount of revenue from employers. "There was big opposition from them," the official continued, noting that he believed that "affordability" was not the real issue behind their opposition.

The tobacco industry was strongly opposed to the \$1.75 per pack tobacco tax hike and focused on defeating the measure in the Senate, Administration officials said.

Influential Business Organizations Lobby Against Bill

Various influential business organizations, such as the California Chamber of Commerce, the California Restaurant Association, the National Federation of Independent Business, the California Taxpayers' Association and the California Manufacturing and Technology Association, lobbied against the bill as well. The business groups said the bill was likely to be underfunded and many of the bill's provisions, most notably the purchasing pool, would be suspended in this event, leaving many without coverage. Business industry lobbyists said that many Californians, particularly the self-employed, rely on affordable policies for their health coverage and AB1X 1 would impose substantial premium increases on these individuals.

One official said Senator Darrell Steinberg tried to broker a compromise to save AB 1X 1 in the Senate, but his effort was unsuccessful.

One official close to the Governor said a big reason why AB 1X 1 was able to be negotiated so well was the personal chemistry between Speaker Nuñez and Governor Schwarzenegger. “They liked and trusted each other, they got in a zone,” the official said, noting that this chemistry was a huge contributor to the creation and success of AB 1X 1, as well as the passage of the landmark greenhouse gas bill, AB 32 (Nuñez). Media accounts have indicated that such chemistry did not exist between the Governor and Senator Perata and Speaker Nuñez. Some media accounts have noted that there is a cold relationship between Senator Perata and his two leadership counterparts.

Additional Observations from Legislative Staff

Several other key legislative staffers had additional insight into why AB 1X 1 failed.

A Legislative health staffer, who watched the health care reform effort closely, said the bill did not have enough of a coordinated support effort by supporters. “It wasn’t big enough and strong enough.”

She said there was enough in there for people not to like, but not enough to encourage them to get behind it. She agreed that it was problematic that the bill could not be amended in the Senate. The Administration disputes this claim, noting that there was strong and active support from supporters of the bill.

Many Senators who supported a single-payer approach did not want the bill. “Fiscal issues were a convenient excuse,” the staffer said.

“I heard they took a vote in the caucus and they didn’t have the votes,” the staffer said, noting that Senator Perata then decided to let the committee do what it wanted with the bill. The staffer said that she thought the failure of support for AB 1X 1 was some combination of Senators being influenced by the bill’s formal opposition and the opposition of Senator Kuehl and the single-payer advocates.

She said the bill probably would have gotten more votes in committee if it was likely to pass, but once it was clear from media reports that the bill was going down, Democratic committee members made a political decision to abstain or vote against the bill.

For example, the staffer said Senator Steinberg had been positive about the reform effort just one day earlier when he sat on a panel at the California Health Policy Forum, but ended up abstaining from voting for the bill the next day, citing fiscal concerns.

“It’s really popular to blame the single-payer advocates but they’re a ridiculous scapegoat,” said a Senate staffer who followed the reform effort closely. The staffer said that there is evidence that the Massachusetts model, upon which AB 1X 1 was based, is not performing that well. The Massachusetts reform model has been a lot more expensive than expected, has not covered everyone, and failed to control health care costs, the staffer said.

“It’s totally political, people who want the reform don’t want to talk about problems with the Massachusetts model,” the staffer said.

Administration officials say AB 1X 1 does not follow the Massachusetts model and that the only real similarity is that there is an individual mandate to have insurance.

A study by Health Access, entitled “Health Reform in California and Massachusetts: Different from Start to Finish,” found that AB 1X 1 would provide a “broader benefit to California consumers than what was passed in Massachusetts.”

“In addition, the California proposal has a much more stable financing structure of significant new dollars to improve the state’s health care system, and goes far beyond Massachusetts in trying to control health care costs,” the study stated.

The Senate staffer said a lot of businesses and business groups who did not put in letters opposing AB 1X 1, such as the California Chamber of Commerce and Los Angeles Chamber of Commerce, were making rounds against the bill.

“There was nobody really for the bill,” the staffer said, noting that of the list of supporters there was a lot of support if amended. Many supporters provided the Senate Health Committee with a long list of amendments that they wanted to see made to the bill.

One Administration official disagreed with this assertion, countering that “whoever told me that was not getting the calls that he was,” noting that the phone was ringing off the hook in support of AB 1X 1. “The support was wide and the support was very

deep,” the official said. The bill had several dozen supporters, of which more than a dozen were “support if amended,” according to the Senate Health Committee analysis.

The Senate staffer had heard that a vote had been taken in the caucus and that the bill did not have the votes. “Members in the caucus would have gone for it if the Pro Tem said you should go for it,” the staffer said, noting that Senator Perata did not do this because he was not necessarily going for it.

The Senate staffer said the “single-payer advocates provided some cover for Senators who wanted to oppose it and once everyone knew it wasn’t going to go, there was no reason for the progressives to go for it.”

She said the “single-payer people were opposing the bill because they wanted single payer but none of the single-payer people were saying single-payer or nothing.”

For example, Senator Cedillo would have likely voted for it but there was no reason to anger the labor leaders who were against the bill by voting for AB 1X 1 if it was going down anyway. Administration officials note that Senator Kuehl was pretty clear in that she only wanted single-payer reform and other groups such as the California Nurses Association made this clear as well.

The Senate staffer said the bill needed to regulate the costs of insurance premiums, otherwise you could not mandate people to buy the coverage, but that’s something that the insurance companies would never go for. The staffer said Speaker Nuñez and the Governor’s office did not get a deal out of the insurance companies that was be acceptable to most parties in the Senate.

Another staffer for a key Democratic Senator said his boss was opposed to the individual mandate and could not vote for the bill because she believed it would “bankrupt” the state’s General Fund. The LAO report showed that the bill was underfunded, and recent history has shown that it is nearly impossible to achieve the two-thirds vote to raise revenues, which means the burden would fall on the state’s General Fund.

Several observers inside the Capitol noted that Senator Perata appeared to be firmly on board with AB X1 1 until mid-December, but there was a change in him that turned him against the bill. Nobody was able to quite put their finger on what the real reasons may have been, in addition to his public statements.

X. Moving Forward: Lessons Drawn from the Failure of AB 1X 1

A close examination of the reasons for the failure of AB X1 1 proves instructive for future reform efforts. Furthermore, several lessons can be drawn that could significantly enhance the chances of future reform efforts.

Timing: Several observers in the Senate noted that timing was a real issue. The budget standoff in the Summer of 2007, stalled the health care debate. The Governor did not propose language for his own proposal until October 9, 2007, and Speaker Nuñez did not propose AB 1X 1 until September 11, 2007.

By the time a compromise was reached on AB 1X 1 with the Administration, and the bill passed the Assembly, it was already mid-December. Given the late December deadline to put the financing provisions of AB 1X 1 on the November ballot, the bill could not be amended in the Senate Health Committee unless it was heard almost immediately by the committee. Representatives from the Administration argued that there was enough time to consider amendments to AB 1X 1 in the Senate, but Senator Perata closed this window of opportunity by refusing to hear the bill until mid-January at the earliest. This effectively killed the bill by denying Senators the opportunity to amend the bill.

LESSON LEARNED: FUTURE REFORM EFFORTS NEED TO START EARLY AND TO ALLOW TIME TO WORK THROUGH UNFORESEEN DELAYS.

Obtain Strong Leadership Support For Reform: By its nature, health care reform is extremely complex and easy to attack due to its sheer breadth and scope. Even if AB 1X 1 had included another \$1.5 billion in funding, skeptics could have said the bill was drastically underfunded and pointed to additional financing risks noted in the LAO analysis which total \$1.5 billion or more. There are so many variables in a proposal as all encompassing as AB 1X 1, which means there will always be a number of ways for skeptics and opponents to pick the bill apart.

Strong leadership in support of AB 1X 1 in the Senate by Senate President pro Tempore Don Perata appears to be the only thing that could have saved the bill when all was said and done. Speaker Nuñez and the Governor had reached a compromise and were prepared to see the bill signed into law. Speaker Nuñez ushered the bill through the Assembly with all Democrat Assemblymembers in support of the bill. Blue Cross and the tobacco industry opposed the bill in the Assembly too, and there are single-payer

supporters in the Assembly, but Speaker Nuñez overcame this opposition and convinced the caucus that they needed to pass the bill. The bill would have never passed the Assembly if Speaker Nuñez did as Perata did—told his caucus that he was not going to tell them how to vote and they were free to make up their own mind on the legislation. This would have opened the door to doubts and let the arguments of the opposition take hold and sway the votes of significant numbers of Assemblymembers.

Speaker Nuñez and the Administration kept in close consultation with Senator Perata as the bill was being negotiated in the Assembly, and even took a number of amendments requested by his office and major stakeholders. But in the end, Senator Perata turned on the bill, and nobody was able to explain exactly why apart from his public statements.

LESSON LEARNED: FUTURE REFORM EFFORTS MUST HAVE FULL BUY-IN FROM THE SENATE AND ASSEMBLY LEADERSHIP AS WELL AS THE GOVERNOR’S OFFICE. LEADERS MUST BE ACTIVELY ENGAGED IN ENCOURAGING THEIR MEMBERS TO VOTE FOR REFORM.

Everyone Must Give Up Something: Administration officials noted that AB 1X 1 came together as the result of a “rare alignment” of interest groups and stakeholders. They said the Governor and Speaker Nuñez had to push their constituencies to make concessions that they did not necessarily want to make. The Speaker was able to convince much of his labor constituency to make concessions on the individual mandate by making coverage more affordable for the poor. The Governor was able to get business interests to accept the employer fee and the hospitals to accept the fee on health providers.

“Everyone gave up something,” one Administration official said. The compromise was not perfect and in the end factions of the business, labor, and health care community opposed AB 1X 1 for various reasons which helped lead to the defeat of AB 1X 1. On January 28, 2008, Speaker Nuñez admitted to the Senate Health Committee that the bill was not perfect but challenged the Senate to come up with a better solution, noting that he doubted a better compromise could have been presented to the committee given all circumstances and all the scrutiny that AB 1X 1 had to endure.

By the same token, reform efforts must provide supporters with policies that encourage them to actively support the reform effort.

LESSON LEARNED: THE ROAD TO ACHIEVING COMPREHENSIVE HEALTH REFORM NEEDS LEADERS THAT CAN CONVINCe THEIR CONSTITUENCIES TO COMPROMISE ON KEY ISSUES.

Create a Solid Fiscal Foundation: The Administration said the Governor was extremely careful to make sure AB 1X 1 was fully funded, and worked with Speaker Nuñez to amend the bill to this end. The Administration believed that AB 1X 1 was fully funded, and the LAO study found that AB 1X 1 could in fact pencil out under favorable circumstances. But the LAO study also found that there were a number of potential financial risks that could lead to the plan being underfunded by several billions of dollars annually. This was enough to feed fears in the Senate which ended up killing the bill.

LESSON LEARNED: FUTURE REFORM PLANS MUST BE FULLY FUNDED AND BE ABLE TO BE DEFENDED ON SOLID FISCAL GROUNDS.

XI. Conclusion: Where Do We Go From Here?

The AB X1 1 case study shows how close California came to enacting comprehensive health care reform. As noted above, it also helped provide valuable lessons for future state reform efforts.

The election of President Barack Obama has kept health care reform a high priority on the national agenda. President Obama promised comprehensive health care reform during his campaign and even set aside money in his budget proposal for health care reform. Additional federal dollars for health care coverage and reform will serve to make it easier for the states to expand coverage.

Administration officials believe that proponents of health care reform should not give up on comprehensive reform because AB 1X 1 created a framework that is still viable.

Administration officials agree that it was not the policy issues that ultimately killed the bill and encourage the Legislature to try again under different circumstances.

“The stars were in alignment,” said an Administration official, noting that many of the stakeholders in health care reform debate in California are now leading the charge for comprehensive federal reform in Washington, DC.

“You’re almost there. You’re on the one-yard line,” another Administration official noted. The official noted that the persons holding the positions of Chair of the Senate Health Committee and Senate President pro Tempore were against the plan, but those positions have since turned over.

Some say it will be more difficult given the current budget situation and the severity of the economic downturn. Governor Schwarzenegger said he will not give up and promised to revive health care reform at the state level, but the Administration has been relatively quiet on the issue since the demise of AB 1X 1 and continued state deficit problems exacerbated by a deteriorating economy.

One Legislative health consultant said he has heard of some groups talking about taking AB 1X 1 and putting it on the ballot in 2010.

After AB 1X 1 went down in the Senate in January 2008, several individual members decided to introduce bills that seek to implement pieces of AB X1 1. Most of these bills were vetoed by Governor Schwarzenegger in September 2008, because the Governor said he is opposed to a piecemeal approach to health care reform.

For example, Senator Kuehl authored SB 1440, which would have required health plans and health insurers to spend at least 85 percent of premiums on health care benefits, a requirement known as a medical loss ratio. This bill was vetoed by the Governor in September 2008.

Senator Steinberg authored SB 1522, which would have required the Department of Managed Care and the Commissioner of the California Department of Insurance to jointly develop a system to categorize health insurance policies into five categories ranging from comprehensive to catastrophic coverage. This bill failed on the Assembly floor.

Assemblymember Mervyn Dymally authored AB 2, which would have revised and restructured the Major Risk Medical Insurance Program, which provides subsidized and individual health care coverage for medically uninsurable persons with pre-existing conditions. This bill was vetoed by the Governor in September 2008.

Future proposals are likely to include many of the aspects included in AB 1X 1, including a large draw down on federal dollars, a purchasing pool, and tax changes to make coverage affordable, the health consultant said.

A number of bills that seek to address the same issues addressed by AB X1 1 have been introduced in the 2009–2010 legislative session. These bills as well as future bills promise to keep the health care reform debate alive in California for years to come.

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Note on the Peer Review of Paper

I would like to thank the health care experts and contributors from the State Legislature and Administration who provided input for this paper and peer reviewed the paper after it was written to provide suggestions for improvement. These suggestions were incorporated into the paper where possible and served to make it a better paper.

Some of the peer reviewers suggested that the paper contain additional viewpoints from major stakeholders outside of the State Capitol to provide a broader perspective on the AB 1X 1 debate. Even though the paper would benefit from additional stakeholder interviews, such an expanded review is beyond the scope of funding and timeline for this project.

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Appendix

Chart #1:
Summary Chart
Prepared by the Legislative Analyst's Office
for the Governor's January 2007 Health Care Reform Proposal

Figure 3
Governor's Health Coverage Plan
Proposed Sources of Coverage for the Uninsured

Currently Uninsured Population	Total Uninsured	Proposed Source of Coverage					
		Medi-Cal	Healthy Families	State Purchasing Pool	Local Government	Employer-Based Coverage	Individual Private Insurance
Children (Regardless of Citizenship Status) In Families:							
Up to 100% of the FPL ^a	220,000	220,000	—	—	—	—	—
Between 100% and 300% of the FPL	250,000	—	250,000	—	—	—	—
Above 300% of the FPL	260,000	—	—	—	—	210,000	50,000
Total Children	730,000	220,000	250,000	—	—	210,000	50,000
Adults:							
Legal residents up to 100% of the FPL	630,000	630,000	—	—	—	—	—
Legal residents between 100% and 250% of the FPL	1,200,000	—	—	1,000,000	—	200,000	—
Legal residents above 250% of the FPL	1,100,000	—	—	—	—	370,000	730,000
Undocumented adults	950,000	—	—	—	750,000	40,000	160,000
Total Adults	3,880,000	630,000	—	1,000,000	750,000	610,000	890,000
Total Uninsured Persons	4,610,000^b	850,000	250,000	1,000,000	750,000	820,000	940,000

^a Federal Poverty Level.
^b Although the Governor's plan states that it will provide coverage to 4.8 million uninsured persons, the administration has only presented population estimates for these 4.6 million persons. The difference may be attributable to rounding or other technical data issues.
Source: Administration's estimates.

Appendix

**Chart #2:
Summary Chart
Prepared by the Legislative Analyst's Office
for the Governor's January 2007 Health Care Reform Proposal**

Figure 6 Governor's Health Coverage Plan Combines State, Federal, and Local Spending				
<i>Annual Costs and Revenues (In Millions)</i>				
	Government			Total
	State	Local	Federal	
Expenditures				
Expand Medi-Cal and Healthy Families	\$1,283	—	\$1,357	\$2,639
State purchasing pool coverage ^a	1,135	—	1,135	2,270
County coverage for undocumented adults	—	\$1,000	1,000	2,000
Medi-Cal provider rate increase	2,208	—	1,832	4,040
Health promotion measures	150	—	150	300
Subtotals	\$4,775	\$1,000	\$5,474	\$11,249
Less: Redirected funds	\$203	\$1,000	\$1,766	\$2,969
Net new expenditures	\$4,572	—	\$3,708	\$8,280
Revenues				
Decreased income tax and related revenue	-\$900	—	-\$7,500 ^b	-\$8,400
Increased revenue from employers	1,000	—	—	1,000
Increased revenue from hospitals and physicians	3,472	—	—	3,472
Shift of county funds to state	1,000	-\$1,000	—	—
Total revenue	\$4,572	-\$1,000	-\$7,500	-\$3,928
Net Costs	—	\$1,000	\$11,208	\$12,208
^a Amounts do not include \$2.7 billion that the Governor's plan estimates will be contributed by individuals (\$1.3 billion) and employers (\$1.4 billion) toward the cost of health insurance premiums. The administration does not consider these funds to be state revenues or expenditures.				
^b The administration estimates that this loss of federal revenue will result from certain components of the Governor's plan, but these funds do not directly affect any aspect of the coverage plan.				
Note: Figures may not total due to rounding. Source: Administration's estimates.				

Appendix

Chart #3: Summary of AB 1X 1 Prepared by the Legislative Analyst's Office

Figure 1

Key Components of HCR Health Coverage Expansion

Individual Mandate. Beginning July 1, 2010, every California resident would be required to maintain a minimum level of health insurance coverage, known as minimum creditable coverage, that would be established by the Managed Risk Medical Insurance Board (MRMIB). Exemptions to the mandate would be given to individuals and families by MRMIB, based on income levels and hardships.

Health Insurance Market Provisions. The Health Care Reform (HCR) would require insurers to provide a range of health insurance coverage plans to purchasers ("guaranteed issue") who are subject to the individual mandate. The health insurance coverage plans offered by insurers would be required to meet coverage criteria that would be developed by MRMIB.

State Health Care Purchasing Pool Program. The state would establish a new "purchasing pool" program, the California Cooperative Health Insurance Purchasing Program (Cal-CHIP), administered by MRMIB. The board would negotiate and purchase health insurance for eligible enrollees, mainly employees (and their dependents) of employers who pay a prescribed fee, and other persons that choose to purchase health insurance through the pool.

Public Health Care Program Expansion and Support for Low-Income Persons. Public health programs would be expanded to cover additional persons and certain low-income persons would receive additional assistance as follows:

- Healthy Families Program expansion for children (regardless of immigration status) in families with incomes up to 300 percent of federal poverty level (FPL). The FPL is currently about \$20,700^a annually for a family of four and about \$10,200 annually for a single person.
- Cal-CHIP Healthy Families Plan to cover adults with incomes between 100 percent and 250 percent of FPL.
- Medi-Cal expansion to single, medically indigent adults with incomes up to 250 percent of FPL—benefits may be less than standard Medi-Cal.
- Medi-Cal expansion to adults ages 19 and 20 earning less than 250 percent of FPL—benefits may be less than traditional Medi-Cal.
- New coverage program for childless adults with incomes under 100 percent of FPL—benefits may be less than traditional Medi-Cal.
- Individuals without employer coverage and with incomes from 250 percent to 400 percent of FPL would receive a tax subsidy to help purchase coverage through the pool.
- Individuals and families earning less than 250 percent of FPL can obtain coverage through the new purchasing pool and their contribution would not exceed 5 percent of family income.
- Persons with incomes up to 150 percent of FPL would pay no premiums or out-of-pocket costs.

Medi-Cal Provider Rate Increases. The HCR also proposes to increase Medi-Cal rates paid to physicians and hospitals.

Prevention Programs. The HCR would establish programs to improve management of high cost and chronic diseases including diabetes, and to promote tobacco cessation and obesity prevention.

^a Revised January 25, 2008.

Appendix

Chart #4: Summary Chart of AB 1X 1 Financing Mechanisms Prepared by the Legislative Analyst's Office

Figure 2

Key Components of HCR Financing

Federal Funds. The Health Care Reform (HCR) anticipates federal funds will pay for a substantial portion of the proposed coverage expansions and rate increases. The state would need to obtain federal approval for amendments to existing waivers and the state plan or obtain new ones in order to claim some of these federal funds needed to finance HCR.

Hospital Fee. The HCR would impose a 4 percent tax on net patient revenues for private and public hospitals.

Cigarette Tax Increase. The HCR would increase taxes paid on cigarettes by \$1.75 per pack. (Under current law this would have the effect of increasing the excise tax on other tobacco products.) These revenues would decline over time because of the well-established ongoing erosion of smoking activity unrelated to this measure. The initiative proposes to backfill (1) the Proposition 99 Health Education Account, Research Account, and portions of the Unallocated Account; (2) Proposition 10 programs excluding children's health insurance programs; and (3) and the Breast Cancer Fund from the tax increase.

Employer Contributions. Employers would be required to meet a minimum spending level on health care for their workers of between 1 percent and 6.5 percent of their Social Security wages depending on the payroll size of the employer as follows:

- 1 percent for firms with wages up to \$250,000.
- 4 percent for firms with wages up to \$1 million.
- 6 percent for firms with wages up to \$15 million.
- 6.5 percent for firms with wages over \$15 million.

Employers could meet the minimum spending level either by purchasing health care services directly from providers or paying a fee to the state (referred to as "pay or play") thereby allowing their workers to obtain coverage through a new state purchasing pool. Employer contributions to the purchasing pool would also include so-called "horizontal equity." (Horizontal equity would allow individuals who are offered employer coverage to choose instead to obtain coverage through the California Cooperative Health Insurance Purchasing Program [Cal-CHIP]. For persons choosing Cal-CHIP instead of employer coverage, their employer's contribution towards coverage would follow them into the pool.)

Individual Contributions. Individuals obtaining coverage through the state purchasing pool would contribute towards their coverage through premiums and potentially other payments.

County Share of Cost. Counties collectively would pay 40 percent of the costs of state coverage for some categories of uninsured. These payments would reflect a shift in coverage from the counties to the state for some persons, generally indigent adults.

State Program Savings. When fully implemented, HCR would result in annual savings by potentially eliminating or restructuring some state health programs that would become redundant under HCR.

California Health Trust Fund. Under the initiative, the California Health Trust Fund (CHTF) would be created in the State Treasury. The HCR-related funds paid by employers, Cal-CHIP enrollees, cities, counties, hospitals, as well as proceeds from the cigarette tax would be deposited into the CHTF. The moneys in the fund would be exclusively available for providing health care coverage and at the end of a fiscal year any monies that had not been spent would be carried forward to the next fiscal year.