

AMENDED IN SENATE FEBRUARY 14, 2009

AMENDED IN ASSEMBLY JANUARY 7, 2009

CALIFORNIA LEGISLATURE—2009–10 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 12

Introduced by Assembly Member Evans

January 5, 2009

~~An act relating to the Budget Act of 2008.~~ *An act to amend Sections 8880.5.5 and 8880.56 of, to add Article 4.5 (commencing with Section 8880.46.5) to Chapter 12.5 of Division 1 of Title 2 of, and to repeal Sections 8880.43 and 8880.67 of, the Government Code, relating to the California State Lottery, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, Evans. ~~Budget Act of 2008.~~ *California State Lottery.*

~~This bill would express the intent of the Legislature to make statutory changes relating to the Budget Act of 2008.~~

(1) The California State Lottery Act, subject to the approval by the voters, appropriates moneys, commencing with the 2009–10 fiscal year, on an annual basis from the General Fund to various educational entities based on specified factors. The act provides that specified provisions regarding General Fund appropriations may only be amended by a vote of the people.

This bill would, commencing with the 2010–11 fiscal year, adjust the method of annually calculating specified appropriations.

Existing law allows the director of the lottery to purchase or lease goods and services as are necessary for effectuating the purposes of the provisions governing the lottery.

This bill would instead provide that the director has express authority, subject only to commission approval, to make any and all expenditures as are necessary or reasonable for effectuating the purposes of those provisions. The bill would require that, with regard to employee incentives, the director shall exercise his or her authority consistent with laws relating to state employer–employee relations.

Existing law requires the director, in all procurement decisions, to award contracts to the responsible supplier submitting the lowest and best proposal that maximizes the benefits to the state in relation to the areas of security, competence, experience, and timely performance.

This bill would delete the requirement that the director award contracts to the responsible supplier submitting the lowest proposal.

Existing law requires the commission to adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than \$100,000.

This bill would instead require the commission to adopt and publish those procedures for any procurement or contract involving an expenditure of more than \$500,000.

The bill would declare that these provisions would become effective only when submitted to and approved by the voters.

(2) Existing law requires the director to engage an independent firm of certified public accountants, as specified, and requires the Controller to conduct certain audits of the lottery.

The bill would recodify those provisions of the act regarding audits and would require specified audits and postaudits to be posted on the Internet. The bill would declare that these provisions further the purposes of the act.

~~The~~

(3) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

(4) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8880.5.5 of the Government Code, as
2 added by Chapter 764 of the Statutes of 2008, is amended to read:

3 8880.5.5. (a) Notwithstanding Section 13340 of the
4 Government Code, commencing with the 2009–10 fiscal year and
5 each fiscal year thereafter, the following annual appropriations are
6 hereby made from the General Fund:

7 (1) To the State Department of Education, for allocation to
8 school districts, county offices of education, and charter schools
9 serving kindergarten and grades 1 to 12, inclusive, or any part
10 thereof, on the basis of an equal amount for each unit of average
11 daily attendance, as defined by law and adjusted pursuant to
12 subdivision (l) of Section 8880.5, an amount equal to the payments
13 made during the 2008–09 fiscal year pursuant to subdivision (a)
14 of Section 8880.5, adjusted for inflation and attendance. The
15 amount appropriated each year pursuant to this paragraph shall be
16 determined by multiplying the amount appropriated in the
17 preceding fiscal year by one plus the percent change in average
18 daily attendance, as defined by law and adjusted pursuant to
19 subdivision (l) of Section 8880.5, for school districts, county offices
20 of education, and charter schools serving kindergarten and grades
21 1 to 12, *inclusive*, from the second preceding fiscal year to the
22 preceding fiscal year and then by applying a cost-of-living
23 adjustment pursuant to paragraph (10) of this subdivision.

24 (2) To the Board of Governors of the California Community
25 Colleges, for allocation to community college districts, on the basis
26 of an equal amount for each full time equivalent student, as defined
27 by law, an amount equal to the payments made during the 2008–09
28 fiscal year pursuant to subdivision (b) of Section 8880.5, adjusted
29 for inflation and attendance. The amount appropriated each year
30 pursuant to this paragraph shall be determined by multiplying the
31 amount appropriated in the preceding fiscal year by one plus the
32 percent change in full time equivalent students for community
33 college districts from the second preceding fiscal year to the

1 preceding fiscal year and then by applying a cost of living
2 adjustment pursuant to paragraph (10) of this subdivision.

3 (3) To the Board of Trustees of the California State University,
4 an amount equal to the payments made during the 2008–09 fiscal
5 year pursuant to subdivision (c) of Section 8880.5, adjusted for
6 inflation and attendance. The amount appropriated each year
7 pursuant to this paragraph shall be determined by multiplying the
8 amount appropriated in the preceding fiscal year by one plus the
9 percent change in full-time equivalent students for the California
10 State University system from the second preceding fiscal year to
11 the preceding fiscal year and then by applying a cost-of-living
12 adjustment pursuant to paragraph (10) of this subdivision.

13 (4) To the Regents of the University of California, an amount
14 equal to the payments made during the 2008–09 fiscal year
15 pursuant to subdivision (d) of Section 8880.5, adjusted for inflation
16 and attendance. The amount appropriated each year pursuant to
17 this paragraph shall be determined by multiplying the amount
18 appropriated in the preceding fiscal year by one plus the percent
19 change in full-time equivalent students for the University of
20 California system from the second preceding fiscal year to the
21 preceding fiscal year and then by applying a cost-of-living
22 adjustment pursuant to paragraph (10) of this subdivision.

23 (5) To the Board of Directors of the Hastings College of the
24 Law, an amount equal to the payments made during the 2008–09
25 fiscal year pursuant to subdivision (e) of Section 8880.5, adjusted
26 for inflation and attendance. The amount appropriated each year
27 pursuant to this paragraph shall be determined by multiplying the
28 amount appropriated in the preceding fiscal year by one plus the
29 percent change in full-time equivalent students for the Hastings
30 College of the Law from the second preceding fiscal year to the
31 preceding fiscal year and then by applying a cost-of-living
32 adjustment pursuant to paragraph (10) of this subdivision.

33 (6) To the California Department of Corrections and
34 Rehabilitation, for educational programs serving kindergarten and
35 grades 1 to 12, inclusive, or any part thereof, an amount equal to
36 the payments made during the 2008–09 fiscal year pursuant to
37 subdivision (f) of Section 8880.5, adjusted for inflation and
38 attendance. The amount appropriated each year pursuant to this
39 paragraph shall be determined by multiplying the amount
40 appropriated in the preceding fiscal year by one plus the percent

1 change in equivalent average daily attendance for the Department
2 of Corrections and Rehabilitation Division of Juvenile Justice from
3 the second preceding fiscal year to the preceding fiscal year and
4 then by applying a cost-of-living adjustment pursuant to paragraph
5 (10) of this subdivision.

6 (7) To the State Department of Education, for support of the
7 State Special Schools, an amount equal to the payments made
8 during the 2008–09 fiscal year pursuant to subdivision (g) of
9 Section 8880.5, adjusted for inflation and attendance. The amount
10 appropriated each year pursuant to this paragraph shall be
11 determined by multiplying the amount appropriated in the
12 preceding fiscal year by one plus the percent change in equivalent
13 average daily attendance for the State Special Schools from the
14 second preceding fiscal year to the preceding fiscal year and then
15 by applying a cost-of-living adjustment pursuant to paragraph (10)
16 of this subdivision.

17 (8) To the State Department of Developmental Services, for
18 clients with developmental disabilities who are enrolled in
19 developmental center education programs, an amount equal to the
20 payments made to the State Department of Developmental Services
21 during the 2008–09 fiscal year pursuant to subdivision (h) of
22 Section 8880.5, adjusted for inflation and attendance. The amount
23 appropriated each year pursuant to this paragraph shall be
24 determined by multiplying the amount appropriated in the
25 preceding fiscal year by one plus the percent change in equivalent
26 average daily attendance for the State Department of
27 Developmental Services from the second preceding fiscal year to
28 the preceding fiscal year and then by applying a cost-of-living
29 adjustment pursuant to paragraph (10) of this subdivision.

30 (9) To the State Department of Mental Health, for clients with
31 mental disabilities who are enrolled in state hospital education
32 programs, an amount equal to the payments made to the State
33 Department of Mental Health during the 2008–09 fiscal year
34 pursuant to subdivision (h) of Section 8880.5, adjusted for inflation
35 and attendance. The amount appropriated each year pursuant to
36 this paragraph shall be determined by multiplying the amount
37 appropriated in the preceding fiscal year by one plus the percent
38 change in equivalent average daily attendance for the State
39 Department of Mental Health from the second preceding fiscal
40 year to the preceding fiscal year and then by applying a

1 cost-of-living adjustment pursuant to paragraph (10) of this
2 subdivision.

3 (10) The amounts appropriated pursuant to this subdivision shall
4 be increased each year by the change in the cost-of-living
5 determined pursuant to paragraph (1) of subdivision (e) of Section
6 8 of Article XIII B of the California Constitution.

7 (b) The amounts appropriated for the 2009–10 fiscal year
8 pursuant to paragraphs (1), (2), (6), (7), (8), and (9) of subdivision
9 (a) shall be in addition to the sums required by, and shall not be
10 considered towards fulfilling the funding requirements—of,
11 ~~paragraph (2) of subdivision (b) of Section 8 of Article XVI of the~~
12 ~~California Constitution.~~

13 (c) The amounts appropriated for the 2009–10 fiscal year
14 pursuant to paragraphs (1), (2), (6), (7), (8), and (9) of subdivision
15 (a) shall not offset or in any way reduce the maintenance factor
16 determined pursuant to subdivisions (d) and (e) of Section 8 of
17 Article XVI of the California Constitution, and shall be in addition
18 to the amount of maintenance factor allocated in the 2009–10 fiscal
19 year pursuant to subdivision (e) of Section 8 of Article XVI of the
20 California Constitution.

21 (d) Commencing with the ~~2009–10~~ 2010–11 fiscal year and
22 each fiscal year thereafter, for the purposes of making the
23 computations required by Section 8 of Article XVI of the California
24 Constitution, the appropriations made by paragraphs (1), (2), (6),
25 (7), (8), and (9) of subdivision (a) of this section *for the prior fiscal*
26 *year* shall be deemed to be included within the “total allocations
27 to school districts and community college districts from General
28 Fund proceeds of taxes appropriated pursuant to Article XIII B,”
29 as defined in subdivision (e) of Section 41202 of the Education
30 Code.

31 (e) Commencing with the ~~2009–10~~ 2010–11 fiscal year, the
32 percentage determined pursuant to paragraph (1) of subdivision
33 (b) of Section 8 of Article XVI of the California Constitution, as
34 adjusted pursuant to Chapter 2 (commencing with Section 41200)
35 of Part 24 of the Education Code, shall be increased by adding to
36 it the number of percentage points determined by dividing the total
37 amount allocated pursuant to subdivisions (a), (b), (f), (g), and (h)
38 of Section 8880.5 ~~of the Government Code~~ for the 2008–09 fiscal
39 year by the total General Fund revenues that may be appropriated

pursuant to Article XIII B of the California Constitution for the 2008–09 fiscal year.

(f) Commencing with the 2009–10 fiscal year, references in law to lottery education funds, to funds allocated pursuant to Section 8880.5, to funds allocated from the California State Lottery Education Fund, or similar references in law to the proceeds of lottery revenues allocated for the benefit of public education to the entities described in subdivisions (a), (b), (f), (g), and (h) of Section 8880.5 shall be deemed to be references to the funds appropriated pursuant to this section. This subdivision shall be broadly construed to effectuate its purpose.

SEC. 2. Section 8880.43 of the Government Code is repealed.

~~8880.43. Independent Audit of Lottery Finances~~

~~The director shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the lottery. The audited financial statements shall be presented to the commission, the Governor, the Controller, the Treasurer, the Attorney General, and the Legislature not more than 120 days after the close of the fiscal year.~~

SEC. 3. Article 4.5 (commencing with Section 8880.46.5) is added to Chapter 12.5 of Division 1 of Title 2 of the Government Code, to read:

Article 4.5. Public And Financial Accountability

8880.46.5. The director shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the lottery. The audited financial statements shall be presented to the commission, the Governor, the Controller, the Treasurer, the Attorney General, and the Legislature not more than 120 days after the close of the fiscal year. The independent auditor's report shall be posted on the Internet.

8880.46.6. The Controller shall conduct quarterly and annual postaudits of all accounts and transactions of the commission and other special postaudits as the Controller deems necessary. The Controller or his or her agents conducting an audit under this chapter shall have access and authority to examine any and all records of the commission, its distributing agencies, lottery contractors, and lottery game retailers. The Controller may issue

1 *a public report of any annual postaudit, which shall be posted on*
2 *the Internet.*

3 *SEC. 4. Section 8880.56 of the Government Code is amended*
4 *to read:*

5 *8880.56. (a) Notwithstanding any other provisions provision*
6 *of this chapter or of any other law, the director may purchase or*
7 *lease goods and services as are necessary for effectuating the*
8 *purposes of this chapter has express authority, subject only to*
9 *commission approval, to make any and all expenditures that are*
10 *necessary or reasonable for effectuating the purposes of this*
11 *chapter, including, but not limited to, payment for the costs of*
12 *supplies, materials, tickets, independent audit services, independent*
13 *studies, data transmission, advertising, promotion, consumer,*
14 *retailer, and employee incentives, public relations,*
15 *communications, compensation paid to the lottery game retailers,*
16 *bonding for lottery game retailers, printing, distribution of tickets*
17 *or shares, reimbursement of costs of services provided to the lottery*
18 *by other governmental entities, and payment for the costs of any*
19 *other goods and services necessary or reasonable for effectuating*
20 *the purposes of this chapter. The director may not contract with*
21 *any private party for the operation and administration of the*
22 *California State Lottery, created by this chapter. However, this*
23 *section does not preclude procurements which that integrate*
24 *functions such as game design, supply, advertising, and public*
25 *relations. In all procurement decisions, the director shall, subject*
26 *to the approval of the commission, award contracts to the*
27 *responsible supplier submitting the lowest and best proposal that*
28 *maximizes the benefits to the state in relation to the areas of*
29 *security, competence, experience, and timely performance, shall*
30 *take into account the particularly sensitive nature of the California*
31 *State Lottery and shall act to promote and ensure integrity, security,*
32 *honesty, and fairness in the operation and administration of the*
33 *lottery and the objective of raising net revenues for the benefit of*
34 *the public purpose described in this chapter. With regard to*
35 *employee incentives, the director shall exercise his or her authority*
36 *consistent with the provisions of Chapter 10.3 (commencing with*
37 *Section 3512) of Division 4 of Title 1.*

38 *(b) Notwithstanding any other provision of this chapter, the*
39 *following shall apply to contracts or procurement by the lottery:*

(1) To ensure the fullest competition, the commission shall adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than ~~one~~ five hundred thousand dollars ~~(\$100,000)~~ (\$500,000).

The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The director shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services.

(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than ~~one~~ five hundred thousand dollars ~~(\$100,000)~~ (\$500,000). The commission shall establish, as part of its bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

(3) The provisions of Article 1 (commencing with Section 11250) of Chapter 3 of Part 1 of Division 3 apply to the commission.

(4) The commission is subject to the Small Business Procurement and Contract Act, as provided in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3.

(5) In advertising or awarding any general contract for the procurement of goods and services exceeding five hundred thousand dollars (\$500,000), the commission and the director shall require all bidders or contractors, or both, to include specific plans or arrangements to utilize subcontracts with socially and economically disadvantaged small business concerns. The subcontracting plans shall delineate the nature and extent of the services to be utilized, and those concerns or individuals identified for subcontracting if known.

It is the intention of the Legislature in enacting this section to establish as an objective of the utmost importance the advancement of business opportunities for these small business concerns in the private business activities created by the California State Lottery. In that regard, the commission and the director shall have an affirmative duty to achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs.

1 By July 1, 1986, the commission shall adopt proposal evaluation
2 procedures, criteria, and contract terms which are consistent with
3 the advancement of business opportunities for small business
4 concerns in the private business activities created by the California
5 State Lottery and which will achieve the most feasible and
6 practicable level of participation by socially and economically
7 disadvantaged small business concerns in its procurement
8 programs. The proposal evaluation procedures, criteria, and
9 contract terms adopted shall be reported in writing to both houses
10 of the Legislature on or before July 1, 1986.

11 For the purposes of this section, socially and economically
12 disadvantaged persons include women, Black Americans, Hispanic
13 Americans, Native Americans (including American Indians,
14 Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans
15 (including persons whose origins are from Japan, China, the
16 Philippines, Vietnam, Korea, Samoa, Guam, the United States
17 Trust Territories of the Pacific, Northern Marianas, Laos,
18 Cambodia, and Taiwan), and other minorities or any other natural
19 persons found by the commission to be disadvantaged.

20 The commission shall report to the Legislature by July 1, 1987,
21 and by each July 1 thereafter, on the level of participation of small
22 businesses, socially and economically disadvantaged businesses,
23 and California businesses in all contracts awarded by the
24 commission.

25 (6) The commission shall prepare and submit to the Legislature
26 by October 1 of each year a report detailing the lottery's purchase
27 of goods and services through the Department of General Services.
28 The report shall also include a listing of contracts awarded for
29 more than one hundred thousand dollars (\$100,000), the name of
30 the contractor, amount and term of the contract, and the basis upon
31 which the contract was awarded.

32 ~~The~~

33 (c) The lottery shall fully comply with the requirements of
34 paragraphs (2) to (5), inclusive, of *subdivision (b)*, except that any
35 function or role which is otherwise the responsibility of the
36 Department of Finance or the Department of General Services
37 shall instead, for purposes of this subdivision, be the sole
38 responsibility of the lottery, which shall have the sole authority to
39 perform that function or role.

(d) Where a conflict exists between the provisions of this chapter and any other provision of law, the provisions of this chapter shall control.

SEC. 5. Section 8880.67 of the Government Code is repealed.
8880.67. State Controller Audits

~~The State Controller shall conduct quarterly and annual post-audits of all accounts and transactions of the Commission and other special post-audits as the State Controller deems necessary. The Controller or his agents conducting an audit under this Chapter shall have access and authority to examine any and all records of the Commission, its distributing agencies, Lottery Contractors, and Lottery Game Retailers.~~

SEC. 6. Sections 1 and 4 of this act amend Chapter 12.5 (commencing with Section 8880) of Division 1 of Title 2 of the Government Code, an initiative statute, and shall become effective only when submitted to and approved by the voters. Notwithstanding subdivision (b) of Section 19 of Chapter 764 of the Statutes of 2008, the Secretary of State shall submit Section 8880.5.5 of the Government Code, as amended by Section 1 of this act, and Section 8880.56 of the Government Code, as amended by Section 4 of this act, to the voters at the next statewide election instead of Section 8880.5.5 of the Government Code, as added by Section 6 of Chapter 764 of the Statutes of 2008, and Section 8880.56 of the Government Code, as amended by Section 12 of Chapter 764 of the Statutes of 2008.

SEC. 7. The Legislature finds and declares that Sections 2, 3, and 5 of this act further the purposes of the California State Lottery Act of 1984, enacted by Proposition 37 at the November 6, 1984, general election.

~~SECTION 1. It is the intent of the Legislature to make statutory changes relating to the Budget Act of 2008.~~

~~SEC. 2:~~

SEC. 8. This act addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

- 1 *In order to make the necessary statutory changes to increase*
- 2 *revenues at the earliest possible time, it is necessary that this act*
- 3 *take effect immediately.*

O