

Office of Attorney General
ATTN: Dawn McFarland, Initiative Coordinator
1300 I Street
Sacramento, CA 95814

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

November 18, 2011

Re: Request for Title and Summary of Proposed Initiative

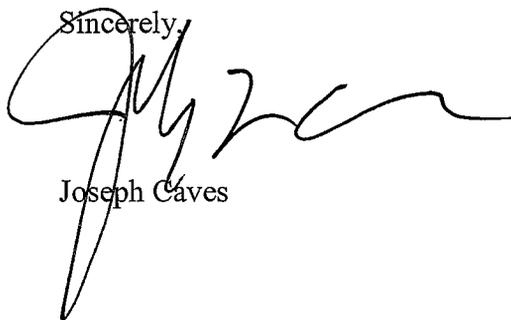
Dear Ms. McFarland,

I am submitting the "The California Clean Energy Jobs Act" for a proposed statewide ballot measure. I hereby request the Attorney General prepare a circulating title and summary of the chief purpose and point of the initiative measure, pursuant to Elections Code Section 9001 (a).

Enclosed please find a draft of the initiative, a \$200 check payable to the State of California, my signed statements and home address.

Thank you.

Sincerely,



Joseph Caves

THE CALIFORNIA CLEAN ENERGY JOBS ACT

Section 1. The People of the State of California do hereby find and declare all of the following:

(1) California is suffering from a devastating recession that has thrown more than a million Californians out of work.

(2) Current tax law both discourages multistate companies from locating jobs in California, and puts job-creating California companies at a competitive disadvantage.

(3) To address this problem, most other states have changed their laws to tax multistate companies on the percent of sales in that state, a tax approach referred to as the "single sales factor."

(4) If California were to adopt the single sales factor approach, the independent Legislative Analyst's Office estimates that state revenues would increase by as much as \$1.1 billion per year and create a net gain of 40,000 California jobs.

(5) In addition, by dedicating a portion of increased revenue to job creation in the energy efficiency and clean energy sectors, California can create tens of thousands of additional jobs right away, reducing unemployment, improving our economy, and saving taxpayers money on energy.

(6) Additional revenue would be available to public schools consistent with current California law.

Section 2: Division 16.3 is added to the Public Resources Code to Read:

Division 16.3 CLEAN ENERGY JOB CREATION

Chapter 1. General Provisions

26200. This Division shall be known and may be cited as the California Clean Energy Jobs Act.

26201. This Division has the following objectives:

(a) Create good paying energy efficiency and clean energy jobs in California.

(b) Put Californians to work repairing and updating schools and public buildings to improve their energy efficiency and make other clean energy improvements that create jobs and save energy and money.

(c) Promote the creation of new private sector jobs improving the energy efficiency of commercial and residential buildings.

(d) Achieve the maximum amount of job creation and energy benefits with available funds.

(e) Supplement, complement and leverage existing energy efficiency and clean energy programs to create increased economic and energy benefits for California in coordination with the California Energy Commission and the California Public Utilities Commission.

(f) Provide a full public accounting of all money spent and jobs and benefits achieved so the programs and projects funded pursuant to this division can be reviewed and evaluated.

Chapter 2. Clean Energy Job Creation Fund

26205. The Clean Energy Job Creation Fund is hereby created in the State Treasury. Except as provided in Section 26208, the sum of five hundred fifty million dollars (\$550,000,000) shall be transferred from the General Fund to the Job Creation Fund in fiscal years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. Moneys in the fund shall be available for appropriation for the purpose of funding projects that create jobs in California improving energy efficiency and expanding clean energy generation including all of the following:

(a) Schools and Public Facilities:

(1) Public Schools: Energy efficiency retrofits and clean energy installations, along with related improvements and repairs that contribute to reduced operating costs and improved health and safety conditions, on public schools.

(2) Universities and Colleges: Energy efficiency retrofits, clean energy installations and other energy system improvements to reduce costs and achieve energy and environmental benefits.

(3) Other public buildings and facilities: Financial and technical assistance including revolving loan funds, reduced interest loans or other financial assistance for cost effective energy efficiency retrofits and clean energy installations on public facilities.

(b) Job training and workforce development: Funding to the California Conservation Corps, Certified Community Conservation Corps, YouthBuild, and other existing workforce development programs to train and employ disadvantaged youth, veterans and others on energy efficiency and clean energy projects.

(c) Public-private partnerships: Assistance to local governments in establishing and implementing Property Assessed Clean Energy (PACE) programs or similar financial and technical assistance for cost effective retrofits that include repayment requirements. Funding shall be prioritized to maximize job creation, energy savings and geographical and economic

equity. Where feasible, repayment revenues shall be used to create revolving loan funds or similar on-going financial assistance programs to continue job creation benefits.

26206. The following criteria apply to all expenditures from the Clean Energy Job Creation Fund:

(a) Project selection and oversight shall be managed by existing state and local government agencies with expertise in managing energy projects and programs.

(b) All projects shall be selected based on in-state job creation and energy benefits for each project type.

(c) All projects shall be cost effective: total benefits shall be greater than project costs over time. Project selection may include consideration of non-energy benefits such as health and safety in addition to energy benefits.

(d) All projects shall require contracts that identify the project specifications, costs and projected energy savings.

(e) All projects shall be subject to audit.

(f) Program overhead costs shall not exceed 4% of total funding.

(g) Funds shall be appropriated only to agencies with established expertise in managing energy projects and programs.

(h) All programs shall be coordinated with the California Energy Commission and the California Public Utilities Commission to avoid duplication and maximize leverage of existing energy efficiency and clean energy efforts.

(i) Eligible expenditures include costs associated with technical assistance, and with reducing project costs and delays, such as development and implementation of processes that reduce the costs of design, permitting or financing or other barriers to project completion and job creation.

26208. If the Department of Finance and the Legislative Analyst jointly determine that the estimated annual increase in revenues as a result of the amendment, addition or repeal of Revenue and Taxation Sections 25128, 25128.5, 25136, and 25128.7, is less than one billion one hundred million dollars (\$1,100,000,000), the amount transferred to the Job Creation Fund shall be decreased to an amount equal to one half of the estimated annual increase in revenues.

Chapter 3. Accountability, Independent Audits, Public Disclosure

26210. (a) The Citizens Oversight Board is hereby created.

(b) The board shall be composed of nine members, three members shall be appointed by the State Treasurer, three members by the State Controller, and three members by the Attorney General. Each appointing office shall appoint one member who meets each of the following criteria:

(1) An engineer, architect or other professional with knowledge and expertise in building construction or design.

(2) An accountant, economist, or other professional with knowledge and expertise in evaluating financial transactions and program cost effectiveness.

(3) A technical expert in energy efficiency, clean energy, or energy systems and programs.

(c) The California Public Utilities Commission and the California Energy Commission shall each designate an ex officio member to serve on the Board.

(d) The Board shall do all of the following:

(1) Annually review all expenditures from the Job Creation Fund.

(2) Commission and review an annual independent audit of the Job Creation Fund and of a selection of projects completed to assess the effectiveness of the expenditures in meeting the objectives of this Division.

(3) Publish a complete accounting of all expenditures each year, posting the information on a publicly accessible website.

(4) Submit an evaluation of the program to the Legislature identifying any changes needed to meet the objectives of this Division.

Chapter 4. Definitions

26220. The following definitions apply to this division:

(a) "Clean Energy" means a device or technology that meets the definition of "renewable energy" in Section 26003, or that contributes to improved energy management or efficiency.

(b) "Board" means the Citizens' Oversight Board established in Section 26210.

(c) "Job Creation Fund" means the Clean Energy Job Creation Fund established in Section 26205.

(d) "Program overhead costs" include staffing for state agency development and management of funding programs pursuant to this division, but excluding technical assistance,

evaluation, measurement and validation, or costs related to increasing project efficiency or performance, and costs related to local implementation.

Section 3. Section 23101 of the Revenue and Taxation Code is amended to read:

23101. (a) "Doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

(1) The taxpayer is organized or commercially domiciled in this state.

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under ~~Section~~ Sections 25135 and ~~subdivision (b) of Section~~ 25136, and the regulations thereunder, as modified by regulations under Section 25137.

(3) The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars (\$50,000) or 25 percent of the taxpayer's total real property and tangible personal property. The value of real and tangible personal property and the determination of whether property is in this state shall be determined using the rules contained in Sections 25129 to 25131, inclusive, and the regulations thereunder, as modified by regulation under Section 25137.

(4) The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120, exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in this state shall be determined using the rules for assigning payroll contained in Section 25133 and the regulations thereunder, as modified by regulations under Section

25137.

(c) (1) The Franchise Tax Board shall annually revise the amounts in paragraphs (2), (3), and (4) of subdivision (b) in accordance with subdivision (h) of Section 17041.

(2) For purposes of the adjustment required by paragraph (1), subdivision (h) of Section 17041 shall be applied by substituting "2012" in lieu of "1988."

(d) The sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share of pass-through entities. For purposes of this subdivision, "pass-through entities" means a partnership or an "S" corporation.

Section 4. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, for taxable years beginning before January 1, 2013, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(b) If an apportioning trade or business derives more than 50 percent of its "gross business receipts" from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a "qualified business activity" means the following:

- (1) An agricultural business activity.
- (2) An extractive business activity.
- (3) A savings and loan activity.
- (4) A banking or financial business activity.

(d) For purposes of this section:

(1) "Gross business receipts" means gross receipts described in subdivision (e) or (f) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the

receipts are excluded from the sales factor by operation of Section 25137.

(2) "Agricultural business activity" means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. "Agricultural business activity" also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) "Extractive business activity" means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) "Savings and loan activity" means any activities performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) "Banking or financial business activity" means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) "Apportioning trade or business" means a distinct trade or business whose business income is required to be apportioned under Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.

(8) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the "gross business receipts" of the entire apportioning trade or

business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), or ~~subdivision (b) of Section 25128.5, Section 25128.5 or 25128.7,~~ as applicable.

Section 5. Section 25128.5 of the Revenue and Taxation Code is amended to read:

25128.5. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, and before January 1, 2013, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.

(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, and before January 1, 2013, all business income of an apportioning trade or business making an election described in subdivision (a) shall be apportioned to this state by multiplying the business income by the sales factor.

(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.

d) This section shall not apply to taxable years beginning on or after January 1, 2013, and as of December 1, 2013, is repealed.

Section 6. Section 25128.7 is added to the Revenue and Taxation Code, to read:

25128.7. Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2013, all business income of an apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, shall be apportioned to this state by multiplying the business income by the sales factor.

Section 7. Section 25136 of the Revenue and Taxation Code is amended to read:

25136. (a) For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, and before January 1, 2013, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or
(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(3) This subdivision shall apply, and subdivision (b) shall not apply, for any taxable year beginning on or after January 1, 2011, and before January 1, 2013, for which Section 25128.5 is not operative for any taxpayer subject to the tax imposed under this part.

(b) For taxable years beginning on or after January 1, 2011, and before January 1, 2013:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(5) (A) If Section 25128.5 is operative, then this subdivision shall apply in lieu of subdivision (a) for any taxable year for which an election has been made under subdivision (a) of Section 25128.5.

(B) If Section 25128.5 is not operative, then this subdivision shall not apply and subdivision (a) shall apply for any taxpayer subject to the tax imposed under this part.

(C) Notwithstanding subparagraphs (A) or (B), this subdivision shall apply for purposes of paragraph (2) of subdivision (b) of Section 23101.

(c) The Franchise Tax Board may prescribe those regulations as necessary or appropriate to carry out the purposes of subdivision (b).

(d) This section shall not apply to taxable years beginning on or after January 1, 2013, and as of December 1, 2013, is repealed.

Section 8. Section 25136 is added to the Revenue and Taxation Code, to read:

25136. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2013, sales, other than sales of tangible personal property, are in this state if:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the services in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

Section 9. Section 25136.1 is added to the Revenue and Taxation Code, to read:

25136.1. (a) For taxable years beginning on or after January 1, 2013, a qualified taxpayer that apportions its business income under Section 25128.7 shall apply the following provisions:

(1) Notwithstanding Section 25137, qualified sales assigned to this state shall be equal to 50 percent of the amount of qualified sales that would be assigned to this state pursuant to Section 25136 but for the application of this section. The remaining 50 percent shall not be assigned to this state.

(2) All other sales shall be assigned pursuant to Section 25136.

(b) For purposes of this section:

(1) "Qualified taxpayer" means a member, as defined in paragraph (10) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations as in effect on the effective date of the act adding this section, of a combined reporting group that is also a qualified group.

(2) "Qualified group" means a combined reporting group, as defined in paragraph

(3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as in effect on the effective date of the act adding this section, that satisfies the following conditions:

(A) Has satisfied the minimum investment requirement for the taxable year.

(B) For the combined reporting group's taxable year beginning in calendar year 2006, the combined reporting group derived more than 50 percent of its United States network gross business receipts from the operation of one or more cable systems.

(C) For purposes of satisfying the requirements of subparagraph (B), the following rules shall apply:

(i) If a member of the combined reporting group for the taxable year was not a member of the same combined reporting group for the taxable year beginning in calendar year 2006, the gross business receipts of that nonincluded member shall be included in determining the combined reporting group's gross business receipts for its taxable year beginning in calendar year 2006 as if the nonincluded member were a member of the combined reporting group for the taxable year beginning in calendar year 2006.

(ii) The gross business receipts shall include the gross business receipts of a qualified partnership, but only to the extent of a member's interest in the partnership.

(3) "Cable system" and "network" shall have the same meaning as defined in Section 5830 of the Public Utilities Code, as in effect on the effective date of the act adding this section. "Network services" means video, cable, voice, or data services.

(4) "Gross business receipts" means gross receipts as defined in paragraph (2) of subdivision (f) of Section 25120 (other than gross receipts from sales or other transactions between or among members of a combined reporting group, limited, if applicable, by Section 25110).

(5) "Minimum investment requirement" means qualified expenditures of not less than two hundred fifty million dollars (\$250,000,000) by a combined reporting group during the calendar year that includes the beginning of the taxable year.

(6) "Qualified expenditures" means any combination of expenditures attributable to this state for tangible property, payroll, services, franchise fees, or any intangible property distribution or other rights, paid or incurred by or on behalf of a member of a combined reporting group.

(A) An expenditure for other than tangible property shall be attributable to this state if the member of the combined reporting group received the benefit of the purchase or expenditure in this state.

(B) A purchase of or expenditure for tangible property shall be attributable to this state if the property is placed in service in this state.

(C) Qualified expenditures shall include expenditures by a combined reporting group for property or services purchased, used, or rendered by independent contractors in this state.

(D) Qualified expenditures shall also include expenditures by a qualified partnership, but only to the extent of the member's interest in the partnership.

(7) "Qualified partnership" means a partnership if the partnership's income and apportionment factors are included in the income and apportionment factors of a member of the combined reporting group, but only to the extent of the member's interest in the partnership.

(8) "Qualified sales" means gross business receipts from the provision of any network services, other than gross business receipts from the sale or rental of customer premises equipment. "Qualified sales" shall include qualified sales by a qualified partnership, but only to the extent of a member's interest in the partnership.

(c) The rules in this section with respect to qualified sales by a qualified partnership are intended to be consistent with the rules for partnerships under paragraph (3) of subdivision (f) of Section 25137-1 of Title 18 of the California Code of Regulations.