

## **PROPOSITION 172 FUNDS: A NEED FOR TRANSPARENCY**

### **SUMMARY**

In 1993, California voters approved Proposition 172 which required a one-half cent sales tax in each county be reserved for public safety purposes. Mendocino County currently accounts for its use of Proposition 172 funds using a methodology that is not transparent to the public or the departments affected. This has resulted in a perception that public safety is not receiving all of these funds as required by law. The Grand Jury recommends that the County change its annual budget format to make clear to the public the distribution of Proposition 172 revenues to County public safety agencies.

### **BACKGROUND**

The Grand Jury received a complaint from a member of the public alleging that the County is not managing Proposition 172 funds appropriately to support County public safety agencies.

### **METHODOLOGY**

In conducting its investigation, the Grand Jury met with the Mendocino County Auditor-Controller, the Sheriff, Chief Probation Officer, the District Attorney, and the Chief Executive Officer. The Jury also examined public documents and pertinent statutes, and conducted a survey of the budgets of 20 other California counties. One juror was recused from participation and approval of this report.

## **FACTS AND DISCUSSION**

On November 2, 1993, California voters enacted Proposition 172, the Local Public Safety Protection and Improvement Act of 1993. The Act established a permanent statewide half-cent sales tax for support of local public safety functions in cities and counties. This measure was placed before the voters by the Legislature and the Governor as partial mitigation for the property tax transfers included in the 1993-94 State budget. Following approval, the ballot measure was codified as Government Code 30051 et seq. The State distributes revenue resulting from Proposition 172 Funds to the counties, which then further distribute it to other local agencies in the county that provide public safety services. According to the statute:<sup>1</sup>

"Public safety services" includes, but is not limited to sheriffs, police, fire protection, county district attorneys, county corrections, and ocean lifeguards. "Public safety services" does not include courts.

The original Proposition 172 was intended to replace sales tax proceeds that had been diverted to public schools. In 1994, Maintenance of Effort (MOE) language was adopted by the legislature to ensure that local jurisdictions were unable to supplant their general fund contributions to public safety services with Proposition 172 funds. These local jurisdictions must update their MOE calculations annually. In brief, Proposition 172 revenues may not replace, but rather must supplement general fund revenues for public safety.

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<sup>1</sup> GC 30052(1)

Mendocino County receives Proposition 172 funds from the State on a monthly basis and the Auditor-Controller deposits them into the County's Public Safety Augmentation Fund. Portions of the funds are then allocated to municipalities in the county (see Appendix A). The distribution formula used by Mendocino County does not include fire (special) districts who receive no Proposition 172 funds.<sup>2</sup> The remainder is transferred to the County general fund—in 2014-2015, this amounted to \$5,298,236.

The County Executive Office (CEO) and the Auditor-Controller develop the annual recommended County budget in a cooperative effort. The budget is then submitted to the Board of Supervisors for approval. Currently County budgets show the Proposition 172 funds received from the State as revenue, but they do not document any specific allocations to the Sheriff, District Attorney, Jail, or Probation, such as is done with Asset Forfeiture revenues.<sup>3</sup> Instead, the County uses its Maintenance of Effort (MOE) computation to account for the allocation of these funds. The MOE calculation is intended to document that these funds are dedicated to public safety services and demonstrate that minimum funding levels for public safety functions equal or exceed the 1992-1993 base year funding, adjusted by a growth factor.

However, the Auditor-Controller has been unable to adequately explain the MOE calculation used by Mendocino County to either the Grand Jury, the District Attorney, or the Sheriff in a manner that is readily understandable or in a fashion that clearly demonstrates the allocation of these funds to these entities. Moreover, the Auditor-Controller stated that the MOE calculation has not been updated yearly as required.

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<sup>2</sup> A recent attempt to place an initiative on the ballot to require distributions to fire agencies was adjudicated in Superior Court.

<sup>3</sup> For an example see Appendix B, which is an extract from the County's 2014-2015 Final Budget.

This lack of clarity has led some, both county officials and members of the public, to question whether the County has improperly diverted Proposition 172 funds to purposes other than public safety. Statements from county officials have fueled such questions. For example, an email dated May 26, 2009, from the Auditor-Controller to the District Attorney states:

Our Public Safety Sales Tax (prop 172) funds go into BU 1000 (Non-departmental revenue), along with all other discretionary revenues not allocable to one specific department. They aren't spread to the public safety departments, but what this does is spread the pain to all net county cost consuming departments equally.

The use of the current MOE methodology as the only method of illustrating allocation of Proposition 172 funds has been questioned in particular by Mendocino County District Attorneys and Sheriffs for decades. For example, a memorandum dated March 25, 2003 from the District Attorney to the Auditor-Controller states:

- It was clearly *not* the intent of the People, nor in the "*spirit*" of Proposition 172, to place the Public Safety Augmentation Funds in some vague, indistinguishable line item known only to the Auditor and the CEO.
- It was clearly *not* the intent of the People, nor in the "*spirit*" of Proposition 172, to slip the Public Safety Augmentation Funds into the General Fund in a *Sub Rosa* manner, resulting in the Public Safety Organizations having knowledge of neither the amount of the funds nor their disposition.

- It was clearly *not* the intent of the People, nor in the "*spirit*" of Proposition 172, that the Public Safety Organizations would get no distinct revenue credit for the "*dedicated revenue source*" for which the People voted.
- It was clearly *not* the intent of the People, nor in the "*spirit*" of Proposition 172, that a county Auditor undermine the People's desire for increased Public Safety Funding, and then excuse this betrayal of the Peoples' trust by saying, "it's legal."

The current County Sheriff went so far as to hire outside counsel to provide a legal opinion as to the legality of using Proposition 172 revenue for purposes other than public safety. The outside counsel opined that "...Prop 172 funding is intended to be supplemental to local funding for public safety, not a replacement" and that "Prop 172 funding must be classified as a restricted revenue source for the purposes of the §56810 calculation of the property tax exchange in an incorporation."

In addition to conducting interviews, the Grand Jury examined the budgets of 20 randomly chosen California counties and discovered that 70% of them clearly showed Proposition 172 funds as revenue for particular county public safety departments. Moreover, these counties did so in a way that an average person could find this in their county's budget. For an example, see Appendix C, which consists of an excerpt from the County of Yolo budget.

Finally, it should be noted that both the CEO and the Auditor-Controller have recently expressed a willingness to alter the format of the County budget to make the allocation of Public Safety

Augmentation Funds more transparent beginning in 2016-2017. The Auditor-Controller has stated this would not be difficult to achieve.

## **FINDINGS**

- F1. The current method of budgeting the distribution of Proposition 172 funds to County government public safety is not transparent, either to the public or to the County agencies eligible to receive these funds.
- F2. This lack of transparency violates the spirit of the original proposition and could be easily rectified by a simple alteration to the format of the County budget.
- F3. The Auditor-Controller has been able to demonstrate the appropriate distribution of Proposition 172 Funds to municipalities within the County. However, the Auditor-Controller has been unable to demonstrate that the remaining Proposition 172 revenues have been entirely distributed to County public safety agencies as required.
- F4. The failure to update the MOE calculation annually as required, has placed the County in a position of non-compliance with State requirements.

## **RECOMMENDATIONS**

The Grand Jury recommends that:

- R1. The CEO and the Auditor-Controller adopt a method of budgeting Proposition 172 funds to County government public safety in a manner that is transparent to the public and to

- affected agencies, and employ this method for FY2016-2017 and subsequent budget cycles. (F1-F3)
- R2. The new budgeting method clearly demonstrates the full distribution of Proposition 172 funds to County public safety agencies. (F1-F3)
- R3. The Auditor-Controller resume performing the MOE calculation annually and report on its completion to the Board of Supervisors annually as well. (F4)

## **RESPONSES**

Pursuant to Penal Code §933.05, responses are required from the following individuals:

Board of Supervisors (All Findings and Recommendations)

County Executive Officer, Mendocino County (All Findings and All Recommendations)

Auditor-Controller, Mendocino County (All Findings and Recommendations)

Sheriff, Mendocino County (All Findings and Recommendations)

District Attorney, Mendocino County (All Findings and Recommendations)

## Appendix A

### County of Mendocino – Public Safety Augmentation Fund

#### ½ Cent Sales Tax

	Account No.	Factor	Amount
City of Fort Bragg	2110-760051	0.002365	1326.55
City of Point Arena	2110-760061	0.000307	172.20
City of Ukiah	2110-760070	0.007508	4,211.30
City of Willits	2110-760080	0.006701	3758.65
County Gen (BU 100)	ND-821510	0.983119	551,439.63
		1.00000	560,908.33
Amount to Apportion	560,908.33	Period: October 2015	



# Appendix B

## SHERIFF'S OFFICE

SHERIFF-CORONER ..... 2310

*THOMAS D. ALLMAN, Sheriff-Coroner*

State Controller County of Mendocino County Budget Form  
 County Budget Act State of California Schedule 9  
 2010 Budget Unit Financing Uses Detail  
 BOS Adopted Budget for Fiscal Year 2014-15

Classification:  
 Function: 2 Public Protection Budget Unit: 2310 Mendocino County Sheriff  
 Activity: 202 Public Protection - Police Protection Fund: 1100 County General

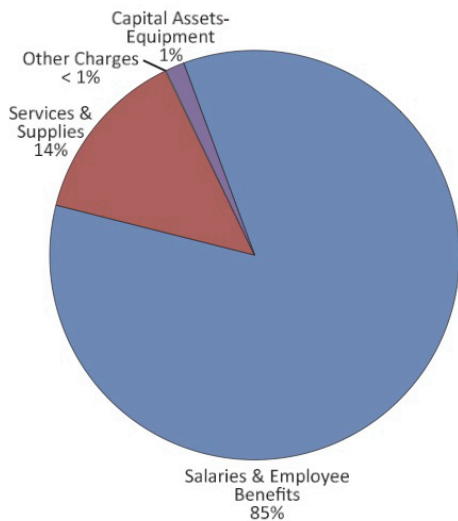
Financing Uses Classification	2012-13 Budget	2012-13 Actuals	2013-14 Budget	2013-14 Actuals	2014-15 Request	2014-15 Recommend	2014-15 Adopted
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
<i>as of 6/30/14</i>							
<b>Revenues</b>							
822600 Other Permit	520	488	520	655	600	600	600
822601 Gun Permit	30,000	34,190	28,000	32,350	32,000	32,000	32,000
823110 Crim Just Const Fund	250,000	196,700	250,000	211,600	196,000	196,000	196,000
823130 Warrant System	16,000	10,112	10,000	6,276	10,000	10,000	10,000
823204 Misc Court Fine	151,867	128,752	0	135,591	129,000	129,000	166,329
823210 Fine Judicial Dist	0	(5)	0	9	0	0	0
823300 Forfeiture & Penalty	0	638	0	553	0	0	0
<b>823310 Asset Forfeiture</b>	<b>240,000</b>	<b>151,400</b>	<b>249,756</b>	<b>449,659</b>	<b>0</b>	<b>0</b>	<b>40,733</b>
825344 2011 Realign Pub Safety	0	4,826	1,423,036	1,319,158	1,425,000	1,425,000	1,425,000
825398 SB90 Reimb	0	177	0	0	0	0	0
825490 State Other	530,425	655,077	708,097	821,555	777,000	977,000	1,005,349
825670 Federal Other	62,500	69,540	15,000	46,020	15,000	15,000	15,000
825810 Other Govt Aid	0	9,313	0	0	0	0	0
826204 Appeal Abatement Fee	0	1,140	0	0	0	0	0
826223 Civil Fee Sheriff	25,000	92,511	25,000	108,773	25,000	25,000	67,715
826242 Dom Animal Care	22,000	22,000	22,000	22,000	22,000	22,000	22,000
826250 Law Enforcement Services	160,741	163,617	166,011	178,562	131,575	131,575	131,575
826254 Sher Pt Arena Contract	100,000	135,229	100,000	100,000	100,000	100,000	100,000
826257 Med Marij Zip Tie	300,000	1,109,825	40,000	60,188	40,000	40,000	40,000
826258 Restitution 11470.2 H&S	0	19,600	824,000	1,656,737	1,500,000	1,500,000	1,500,000
826390 Other Charges	11,000	1,164	1,000	1,203	1,000	1,000	1,000
827600 Other Sales	0	6,722	0	3,032	1,000	1,000	1,000
827700 Other	0	2,590	0	5,500	500	500	500
827707 Donation	0	0	0	0	0	0	0
827802 Oper Transfer In	0	0	0	0	0	0	0
<b>Total Revenues</b>	<b>1,900,053</b>	<b>2,815,603</b>	<b>3,862,420</b>	<b>5,159,420</b>	<b>4,405,675</b>	<b>4,605,675</b>	<b>4,754,801</b>
<b>Salaries &amp; Employee Benefits</b>							
861011 Regular Employees	5,355,537	5,242,099	5,925,855	5,771,531	6,015,875	6,004,881	6,021,681
861012 Extra Help	30,000	73,008	87,447	111,128	90,000	90,000	94,800
861013 Overtime Reg Emp	1,103,307	1,356,986	1,103,307	1,487,619	1,100,000	1,100,000	1,100,000
861021 Co Cont Retirement	2,120,564	2,178,052	2,298,701	2,280,396	2,269,179	2,265,033	2,268,532
861022 Co Cont OASDI	385,958	382,834	448,103	419,549	423,846	423,072	424,039
861023 Co Cont Medicare	90,946	91,248	106,373	100,699	99,475	99,293	99,606
861024 Co Cont Retire Incr	1,197,245	1,225,597	1,297,641	1,303,220	1,319,577	1,317,166	1,318,532
861030 Co Cont Health Ins	902,838	869,307	1,056,964	1,046,293	1,129,662	1,127,598	1,127,598
861031 Co Cont Unemp Ins	18,263	18,263	0	0	16,050	16,050	16,050
861035 Co Cont Workers Comp	585,952	475,929	477,094	459,101	459,101	910,225	910,225
<b>Total Salaries &amp; Employee Benefits</b>	<b>11,790,610</b>	<b>11,913,322</b>	<b>12,801,485</b>	<b>12,979,535</b>	<b>12,922,765</b>	<b>13,353,318</b>	<b>13,381,063</b>
<b>Services &amp; Supplies</b>							
862050 Clothing/Pers Items	1,472	1,419	1,472	642	0	0	0
862060 Communications	105,958	108,779	100,454	116,949	110,000	110,000	110,000
862101 Insurance - General	345,735	344,555	141,417	141,417	141,417	380,236	380,236
862120 Maint - Equip	102,746	90,708	92,719	29,637	30,000	30,000	30,000
862130 Maint - Strc/Imp/Grnds	0	7,306	0	0	0	0	0
862150 Memberships	7,470	6,245	7,470	7,063	7,000	7,000	7,000

### Appendix C

#### SUMMARY – YOLO COUNTY SHERIFF-CORONER 2014-15 BUDGET

	Actual 2011-12	Actual 2012-13	Budget 2013-14	Requested 2014-15	Recommended 2014-15
<b>Revenues</b>					
Licenses,Permits & Franchises	\$305,986	\$404,985	\$354,260	\$404,260	\$404,260
Fines, Forfeits & Penalties	\$5,461	\$10,800	\$8,000	\$8,000	\$8,000
Revenue Fr Use Of Money & Prop	\$128,983	\$148,353	\$191,500	\$191,500	\$191,500
Public Safety Sls Tax Prop 172	\$9,346,412	\$9,829,033	\$10,625,353	\$10,944,114	\$11,244,114
Hhs Realignment Ii Rev 2011	\$4,193,547	\$4,938,351	\$5,204,745	\$5,341,527	\$5,341,527
Intergovt Revenue-State	\$943,693	\$639,602	\$636,245	\$686,245	\$686,245
Intergovt Revenue-Federal	\$277,105	\$150,296	\$267,000	\$107,000	\$107,000
Intergovt Rev-Other	\$1,115	\$0	\$0	\$0	\$0
Charges For Services	\$1,948,208	\$1,642,945	\$1,635,472	\$1,694,507	\$1,694,507
Miscellaneous	\$338,598	\$446,089	\$212,300	\$247,300	\$247,300
Other Financing Sources	\$4,209,950	\$4,428,228	\$1,858,610	\$1,668,303	\$1,668,303
Transfer Adjustments	(\$2,270,556)	(\$2,726,202)	\$0	\$0	\$0
<b>Total Revenue</b>	<b>\$19,428,502</b>	<b>\$19,912,480</b>	<b>\$20,993,485</b>	<b>\$21,292,756</b>	<b>\$21,592,756</b>
<b>Appropriations</b>					
Salaries And Employee Benefits	\$25,271,911	\$26,305,971	\$27,631,580	\$31,216,162	\$28,609,675
Services And Supplies	\$3,987,611	\$4,649,278	\$4,356,865	\$4,772,516	\$4,692,516
Other Charges	\$13,200	\$23,097	\$15,700	\$15,701	\$15,701
Capital Assets-Equipment	\$765,196	\$448,792	\$540,747	\$809,747	\$514,747
Operating Transfers Out	\$2,298,556	\$2,754,202	\$238,000	\$28,000	\$0
Intrafund Transfers	(\$104,872)	(\$83,830)	(\$190,000)	(\$50,000)	(\$50,000)
Transfer Adjustments	(\$2,270,556)	(\$2,726,202)	\$0	\$0	\$0
<b>Total Appropriations</b>	<b>\$29,961,046</b>	<b>\$31,371,308</b>	<b>\$32,592,892</b>	<b>\$36,792,126</b>	<b>\$33,782,639</b>
<b>Use of fund balance available</b>	<b>(\$375,535)</b>	<b>\$748,477</b>	<b>\$693,049</b>	<b>\$554,590</b>	<b>\$554,590</b>
<b>Net County Cost</b>	<b>\$10,908,079</b>	<b>\$10,710,351</b>	<b>\$10,906,358</b>	<b>\$14,944,780</b>	<b>\$11,635,293</b>

**Expenditures**



**Revenues**

