ChangeLab Solutions

Law & policy innovation for the common good.

CREATING A CALIFORNIA STATE WELLNESS TRUST

Legal & Practical Recommendations

Table of Contents

Executive Summary

California, along with states across the country, faces ongoing chronic and preventable health challenges. However, even though proven interventions can increase the length and quality of life and save money by creating community conditions that keep people healthy, there has been little investment in prevention activities nationwide. To help address this funding gap, the California Alliance for Prevention Funding (CAPF) was formed to explore the development of a state wellness trust (SWT) that could provide a sustainable stream of funding for primary prevention activities and target investment toward population-level interventions. In developing such an SWT, California would have the opportunity to set priorities for prevention, establish measures to ensure preventive services are accessible to all citizens, and develop innovative and effective systems for delivering them—thereby improving health and lowering costs.

This paper describes the legal and practical considerations California must grapple with in developing its own state wellness trust. CAPF envisions an SWT as a source of sustainable funding for local and state initiatives that promote health equity and prevent the leading causes of illness, injury, and premature death. CAPF further envisions a California SWT as an entity that will (1) equitably distribute funds to local health departments as well as community-based, regional, and statewide nonprofit organizations; and (2) equitably benefit all residents, reaching people in all geographies, of all ages, and of all races and ethnicities.

Although there is no single recommended template for structuring an SWT, ChangeLab Solutions has outlined the following considerations for devising a framework by reviewing collaborative approaches to improving population health, analyzing existing SWT models, and conducting extensive legal research:

- **Guiding principles for establishing and managing an SWT:** including developing a central mission and putting policies and structures in place to ensure neutrality, accountability to stakeholders, flexibility, transparency, and sound governance
- **Choice of legal entity:** including considerations such as whether an SWT should be formed as a state entity or a nonprofit entity and whether it should be created as a new entity or housed within an existing agency or organization
- **Core organizational components:** including identified SWT stakeholders, a responsive governing body that represents stakeholder interests, an administrative body capable of facilitating SWT functions, and a core wellness fund the SWT can draw upon
- **Potential funding sources for an SWT:** including state taxes and tax credits, bonds, and other complementary public and private funding sources
- **Fund allocation and distribution considerations:** including the mechanism for distribution (grants or formula allocations), the criteria for distribution (e.g., particular populations, priority activities, or equity goals), the balance of SWT investments in near- and long-term prevention activities; and stakeholder capacity and training needs

While there is no single template for structuring an SWT, this report identifies recommendations addressing the following key considerations for stakeholders seeking to create an SWT: how to

structure and govern an SWT, how to fund the SWT, and how to use the SWT's resources to fund prevention initiatives. These recommendations do not detail specific answers to the questions above, but instead are intended to provide guidance regarding the strengths and limitations of the various options available.

Summary of Recommendations

Recommendation #1—Establish a State Entity with an Advisory Board or Commission

Based on our research, we believe that a state entity is the best option for hosting and administering an SWT. Notably, existing wellness funds in Oklahoma, Minnesota, and Massachusetts are all state agencies and can serve as a model for a California SWT. Whether to form the SWT as a new state entity or house it within an existing state entity is primarily a political consideration; however, an SWT established in state government would have the option of using tax and/or bond revenue as a dedicated and stable primary funding source. In contrast, an SWT structured as a private nonprofit foundation would have to secure significant private funds to establish a permanent endowment to finance its activities, build up an endowment over time through smaller donations or grants, or continually fight to secure its funding. This may not be practical or realistic—whether an SWT could secure sufficient private capital to fulfill its objectives and how long that would take is unknown. Further, there are open questions as to whether a nonprofit SWT would duplicate the efforts of existing health foundations or would end up competing with other health nonprofits for limited funding. To ensure that a government-run SWT is responsive to the needs of stakeholders and fulfills its foundational goal of advancing health equity and sustainably supporting prevention with broad reach, the agency could have an advisory board or commission with members who represent priority communities or populations.

Recommendation #2—Use a Special Tax to Create a Dedicated Primary Funding Source

Although there are political hurdles to enacting tax legislation in California, a special tax that creates revenue dedicated for a government-run SWT would best fulfill the goal of establishing a reliable and sustainable long-term funding source. Such a tax could include, for example, a special excise tax on sugar-sweetened beverages, a tax on health insurers, or a health care provider tax like the one used to finance Minnesota's wellness fund. Beyond these specific examples, there are other options to increase existing tax revenue and earmark the proceeds for an SWT. Tax legislation is preferable to other types of state financing mechanisms because, unlike bonds or tax credits, taxes generate new revenue for the state and do not decrease available revenue for existing state programs. Additionally, if successfully enacted, taxes are a more sustainable approach to establishing a significant public fund than relying on private grants and donations. Furthermore, tax revenue could be leveraged to increase the SWT's impact by pooling it with these complementary state and private funding sources.

Recommendation #3—Adopt Strategies to Ensure an Equitable Funding Allocation

Our research did not identify any conclusive best practices for funding allocation. The following strategies, however, may help balance horizontal and vertical equity considerations and advance the SWT's core goal of improving population health for all Californians:

- Adopt policies in the SWT's foundational documents to ensure that the SWT has statewide reach that is equitably targeted
- Ensure that the SWT's governing body or advisory board has flexibility to set funding priorities and criteria while maintaining reach and equity and adequately represents a

diverse range of stakeholder interests, including public health experts, government and nonprofit leaders, and members of priority communities who will be affected by the SWT's work

- Consider a hybrid approach to funding allocation that includes regular allocations to health departments or their designees as well as competitive grants to statewide nonprofits and regional and community-based partners

- Ensure that most program resources will reach populations or locations with high resource needs

- Promote a mix of key, evidence-based interventions and testing and evaluation of innovative approaches

Introduction to State Wellness Trusts

California, along with states across the country, faces ongoing chronic and preventable health challenges. In California alone, health care expenditures for the top 6 conditions (cardiovascular disease, cancer, asthma, arthritis, depression, and diabetes) cost $98 billion in 2010,[1] while chronic diseases and injury, most of which are preventable, account for 80% of deaths in California.[2] Meanwhile, nearly two-thirds of adults in California are overweight or obese, greatly increasing their risk of premature illness and death,[3] and 55% of California's adult population has pre-diabetes, undiagnosed diabetes, or is already diagnosed with diabetes.[4]

However, even though proven interventions can increase the length and quality of life and save money by creating community conditions that keep people healthy in the first place,[5] there has been little investment in prevention activities nationwide. In fact it is estimated that only 3% of total national health expenditures is associated with prevention activities.[6] Most of this investment is focused on infectious disease and other issues, rather than preventing the leading causes of death and illness. There are a variety of reasons for this lack of investment, including a lack of awareness of the effectiveness and value of prevention interventions, a health care delivery system that is primarily designed to cure existing diseases rather than prevent potential diseases, and financial disincentives for prevention.[7]

To help address this funding gap, states across the country have begun exploring efforts to build on the National Wellness Trust model originally proposed by the Center for American Progress[8] to develop their own state models for prevention funding. By focusing investment on primary prevention[9] activities and targeting investment on population-level interventions through community-focused initiatives, states have the opportunity to set priorities for prevention, establish measures to ensure preventive services are accessible to all citizens, and develop innovative and effective systems for delivering them—thereby improving health and lowering costs.

The California Alliance for Prevention Funding and ChangeLab Solutions have identified 3 successful state prevention funding models that have been developed in Oklahoma, Minnesota, and Massachusetts, which can functionally be called state wellness trusts and which provide inspiration for California. This paper seeks to describe the legal and practical considerations California must grapple with in developing its own state wellness trust.

Research Approach and Methodology

The California Alliance for Prevention Funding consulted with ChangeLab Solutions to research potential funding sources for an SWT and explore how those sources would affect an SWT's governance structure and the fund distribution. Providing guidance on these issues requires an assessment of 3 key questions:

- What are potential funding sources for an SWT?
- What are the key organizational components of an SWT?
- What considerations should an SWT take in allocating and distributing its funds?

Although there is no single recommended template for structuring an SWT, ChangeLab Solutions has outlined, in order:

- guiding principles for establishing and managing an SWT;
- core organizational components shared by successful SWTs;
- potential funding sources for an SWT; and
- fund allocation and distribution considerations.

To provide guidance on the central legal and practical issues related to SWTs, ChangeLab Solutions has drawn upon the following:

- **Research on collaborative approaches to improving population health:** To understand the goals, activities, and outcomes of SWTs specifically and other collaborative and population health improvement efforts more generally, we have examined 3 primary sources of information: (1) the California Alliance for Prevention Funding (CAPF) Concept Paper and Fact Sheet, (2) literature on a variety of models for collaboration and health delivery system redesign, and (3) ChangeLab Solutions' 2015 paper on accountable communities for health.

- **Case studies and legal research:** We have researched several state-level prevention organizations, including the Oklahoma Tobacco Settlement Endowment Trust, the Massachusetts Prevention and Wellness Trust Fund, and the Minnesota State Health Improvement Program. We have examined how these organizations were legally structured to understand potential benefits and limitations of various options that could inform the development of an SWT. Because there are multiple ways to establish an SWT, our analysis also focuses on best practices and legal and practical considerations for implementing an SWT in California.

State Wellness Trust Assumptions

An SWT can take a variety of different forms based on its primary sources of funding. As a result, we have made several assumptions, drawing heavily on the CAPF concept paper, regarding the desired scope and authority of the wellness trust to focus this report:

- **Equitable benefit:** An SWT is envisioned as working for the benefit all residents, promoting greater equity and health and reaching residents in all geographies, of all ages, and of all races and ethnicities.

- **Equitable distribution:** An SWT is envisioned as distributing to, and coordinating between and among, local health departments; community-based, regional, and statewide nonprofit organizations; and state government according to established criteria.

- **Sustainable funding:** The goal of establishing an SWT is to ensure long-term, sustainable funding of evidence-based local and state initiatives to promote health equity and prevent the leading causes of illness, injury, and premature death.

Guiding Principles of an SWT

Implicit in the creation of a SWT is the ability for it to interact with existing formal structures and processes within the health system and with community stakeholders to address chronic health conditions and implement prevention initiatives on a state-wide basis. An SWT is conceived of as filling the current prevention funding gap by providing funding to local preventive health stakeholders who are best situated to identify and address local preventive health concerns. Under this framework, an SWT must have a structure that allows it to complement the full range and efficacy of prevention work being done at the local level while also balancing the needs and priorities of the state in distribution of funding to organizations conducting preventive work across the state in an equitable manner. This is key for developing resident and stakeholder trust in the newly formed institution and in building popular support for continued investment in its work. To achieve this, an SWT must balance the 6 following guiding principles in deciding on its structure, funding, and distribution:

1. Clear Mission and Values

At the forefront, an SWT must have a clear mission and values that influence everything else in the organization. The mission and values of the SWT will not only be baked into the organization's foundational documents (whether in enabling legislation for state entities or articles of incorporation for nonprofits), they must also be incorporated into every decision, rule, and regulation made by the governing board and administrative organization. It is only through such active use of the mission that real interpretation and implementation occurs. A successful incorporation of an SWT's mission and values means the SWT has: [10]

- **Vertical integration of mission:** The administrative staff and governing body should understand the mission of the SWT and actively use it in their work as a lens for all decisions.

- **Horizontal integration of mission:** The mission of the SWT is understood by not only stakeholders, but other organizations doing complementary work as well. Horizontally integrating an SWT's mission ensures the best possible use of SWT and partner organization resources toward the best possible outcomes for common constituents.

- **Ends orientation:** An SWT must have clearly identified goals for its work. This includes identifying critical indicators by which it can measure its success and using such tools to measure program accomplishments for intermediate and long-term outcomes.

- **Future orientation:** An SWT must always look toward and plan for future challenges to ensure it has the capacity to change without losing mission focus. As such, an SWT must continually identify how it can achieve its mission while adjusting to potential changes and challenges in its own funding, and in the types of health initiatives it is funding. This includes identifying both emerging health challenges and new and innovative prevention initiatives that may need seed funding from an SWT to prove their value and efficacy.

One practical consideration in identifying a clear organizational mission is weighing whether the SWT should identify 1 clear mission and dedicate all of its funds to achieving that mission, or whether the SWT should identify 1 primary mission and a small number of similarly aligned secondary missions. While having a single clear mission can focus the SWT's efforts, identifying a few aligned secondary missions may allow an SWT to engage with a broader set of stakeholders, allowing it to benefit politically.

2. Neutrality

Community health is a dynamic and complex issue, affected by multiple sectors (including health, education, government, economic development, and more). A key issue of all collaborative efforts is developing trust among stakeholders, especially when some stakeholders might be competitors. An SWT that attempts to bring multiple sectors together to advance a common goal must be viewed as neutral (not having a vested interest in advancing the goals of any individual participant) as well as nonpartisan and apolitical (not having a vested interest in advancing the goals of any particular political party) in order to gain the trust of a broad group of stakeholders. An SWT must develop and implement organizational rules, regulations, and practices that build stakeholder trust while simultaneously balancing the funding of established evidence-based health initiatives with newer, innovative, and potentially untested preventive health programs.

3. Accountability to Stakeholders

An SWT must ultimately be held accountable to the mission of improving statewide health outcomes. It must reflect the needs of the communities it serves and should target priority populations who are particularly vulnerable to health and health care disparities.[11] Decisions about specific interventions, as well as when and how to distribute available funds, should be made by balancing achievement of intermediate and long-term statewide health improvement measures with the more immediate local needs of the communities. As such, the SWT should provide opportunities for community input and representation on the governing body to ensure that the governing body's decisionmaking process reflects broader community needs.

There are many ways to establish community accountability within an organization. For example, for federally qualified health centers (FQHCs) to be eligible for funding under Section 330 of the Public Health Services Act (known as a § 330 grant), the majority of their governing board members must be patients. This unique requirement ensures that FQHCs are responsive to the needs of the community and ensures community accountability.[12] While it may be difficult for an SWT to include similar requirements for stakeholder representation on its own governing body due to the challenge of ensuring equitable stakeholder representation, it may wish to consider requiring some level of stakeholder representation on the governing bodies of the entities that it is funding.

A second potential method for establishing community accountability and ensuring meaningful community engagement is through the creation of an SWT advisory board or steering committee that contains representatives from the community and can influence, with certain limitations,[13] SWT actions.

4. Flexibility

Key challenges to implementing preventive health initiatives are (1) insufficient and interrupted funding, (2) restrictive funding sources, and (3) challenges in measuring the impact of such initiatives. As such, an SWT must remain flexible in its decisionmaking process for funding prevention work; it must balance the need to fund effective programs in a sustained fashion with the desire to fund innovative initiatives. Beyond this, while an SWT is envisioned as having a dedicated funding stream, it may also maintain flexibility to qualify for various forms of complementary funding (described in further detail on pages 43 through 52). Finally, to maintain the flexibility to receive and distribute various types of funding, an SWT must comply with the legal, reporting, and fiscal requirements of the funders and governing standards, such as generally accepted accounting principles. The provision of these services requires a certain level of staff expertise in financial analysis, accounting, and law.

5. Transparency

An SWT should be transparent about its goals and mission, governance and decisionmaking process, funding, and stakeholder and public engagement process. Transparency sheds light on an organization's practices, and enhances incentives for ethical, efficient, and effective operations and facilitates oversight by the public and others.[14] Transparency in the decisionmaking process of the governing body and allocation of funds from the wellness fund is especially important for an SWT, not only in ensuring that the SWT is acting in the best interest of the public, but also in building trust with stakeholder organizations, affirming its nonpartisanship, and in making the case for more funds being directed to and through the SWT for prevention efforts.

6. Sound Governance

An SWT must establish sound governance—the processes for directing and controlling the actions, affairs, policies, and functions of the organization. A sound governance structure ensures effective decisionmaking; accountability to the community; representation of stakeholders' interests; proper fiduciary, fiscal, and social responsibilities; and control over funding and staff. There are 5 standards that set the foundation for good governance of an organization:

- **Accountability** refers to the standard, method, agreement, or common understanding that ensures participating stakeholders follow through on commitments made to the SWT and/or comply with goals, objectives, directives, or delegated actions. Accountability ensures that the stakeholders undertake and complete the activities necessary for the SWT to be successful. It also works in the other direction, ensuring that the SWT responds to the needs of stakeholders and the community at large through reporting, transparency, and engagement. Accountability can be created by incorporating documents of the SWT, governing the rules and procedures for directing and controlling the affairs of the fund, and establishing written agreements between the SWT and the organizations it is funding.

- To ensure the appropriate people or bodies are making various decisions, it is critical to establish the **structure** of the SWT. Within an SWT, control starts at the governing body. By adopting a set of rules or regulations, the governing body can create the structure of the SWT and delegate control to certain individuals, such as officers, senior managers, or key staff. Although control over an organization's activities and finances may be delegated to certain individuals, the SWT must ensure that it does so in compliance with state law.

- As a state agency, an SWT is responsible for **sound fiscal management.** This includes responsibility for the financial matters of any SWT undertaking, such as accounting systems, compliance with regulations, internal controls, managing accounts, and filing reports or tax returns. The SWT must manage these funds in accordance with the provisions of its governing documents and the rules and regulations it adopts.

- An SWT must be able to use its available funds effectively and with **agility,** ensuring that funds reach communities for their intended purposes in a timely fashion, through competent partners**,** while respecting principles of sound public fiscal management. An SWT should have the ability to contract within a reasonable period of time with a wide scope of public and nonprofit partners and, when needed, with for-profit organizations, such as for auditing services or communications campaigns. One potential strategy to achieve this principle for a state agency is to exempt the agency from certain administrative requirements of the public contracting code in the agency's authorizing legislation.

- As a state agency, an SWT must abide by state law concerning **conflict of interest,** contained within the California Government Code.[15] In particular, the governing board, which may include representatives from stakeholder organizations, must be careful to ensure that funding allocation decisions do not violate conflict of interest rules. As such, it is imperative that an SWT adopt conflict of interest policies and procedures consistent with state law and provide training to SWT employees and representatives.

Choice of Legal Entity

An SWT is envisioned as a statewide mechanism to assure long-term, sustainable funding of local and state initiatives to promote health equity and prevent the leading causes of illness, injury, and premature death in California. This could be accomplished through 2 different organizational structures. First, an SWT could be incorporated as a nonprofit charitable[16] foundation[17] similar to The California Endowment.[18] To distinguish the efforts of the SWT from The California Endowment, which operates as a more traditional private philanthropy that uses a competitive grant system to achieve its mission, the SWT could focus on providing dedicated funding to public health departments and their community partners across the state. Second, the SWT could be formed as a new state entity or created within an existing state agency similar to the 3 SWTs identified in this paper.

While creating an SWT as a nonprofit charitable foundation may provide some advantages, principal among them the ability to pursue and qualify for more types of complementary funding, there are compelling reasons for designing a California SWT as a state entity, particularly with regards to receiving state funding for its activities. Advantages and disadvantages of each type of organization are discussed in Table 1 below.

TABLE 1: Pros and Cons of Choice of Legal Entity

	Pros	Cons
State entity	• Is subject to many transparency laws (Brown Act, Fair Political Practices Rules) that create accountability • **Can be sustainably funded through taxes** • Experienced fiscal services are readily available • Has a long history of providing public health, health care, and social services • Public service purpose aligns with the goals and objectives of an SWT • All existing SWT models have been formed as state entities to access state funds • Is more likely to attain broad population reach	• Is ultimately responsible to the authorities appointing the governing body and not the stakeholders (although this can be mitigated in designing the governing body in the authorizing legislation or through the creation of an advisory committee) • There is a risk of funds being diverted to other uses as needed (although this can be addressed in authorizing legislation) • Contracting and project implementation may be slowed due to existing procedures or laws • State politics may supersede an attempt to be neutral • Has less flexibility in amending internal regulations, policies, and processes

Nonprofit foundation	• Has more flexibility to access potential complementary funding sources (discussed on pages 43 to 52) • Can conduct joint ventures with other organizations • Has a structure familiar to most stakeholder organizations • The composition of a governing board is not restricted by law • Is not constrained by geography or jurisdiction • Has a greater ease of experimentation	• Is not subject to same transparency requirements as government agencies • **There is no immediate source available to endow a foundation; cannot raise capital as easily** • Obtaining 501(c)(3) tax exemption determination can be a slow process • Could be duplicative of existing prevention organizations or have to compete for funding • Is less likely to make sustained allocations to support public efforts • Is historically less likely to ensure broad and sustained reach in spending

Additionally, an SWT can be formed as a new legal entity, housed within an existing organization, or formed through some combination of the two. There are no legal parameters dictating whether an SWT should be formed as a new organization or as an extension of an existing organization. There are, however, some practical considerations that may lead a state to choose one option over the other. The pros and cons of these options are outlined in Table 2 below.

TABLE 2: Pros and Cons of Existing or New Organization

	Pros	Cons
Existing organization	• Minimizes number of new employee hires • Leverages strengths and specialized expertise of an existing organization • Minimizes overall time to start up if existing organizations are ready • Uses existing resources, systems, and experience	• It is more difficult to find a truly "neutral" organization that will put a broad, state-wide mission ahead of its own organizational preferences • Primary accountability is to its own governing body, which could supersede accountability to other stakeholders or the community • May be less adaptable to new ideas or innovation • May have limited staff capacity • May be burdened by existing organizational politics and public perception • May be burdened by inefficient administrative procedures

New organization	• Can be a neutral entity, provided stakeholders are equitably represented • Is not required to change any existing system to implement an SWT • Is less hindered by the history that existing state agencies carry with them • May find it easier to build trust with stakeholders • Has flexibility to create the governing body and include methods for stakeholders' input	• Takes time to establish stable operations: hire staff, establish internal systems (e.g., HR, accounting, etc.), management • Developing and finalizing governing documents may take time • If project fails, it is burdensome to wind down a legal entity • Forming a new government entity requires legislative or voter approval and can be time consuming

A Note on Joint Powers Authorities

Joint powers authorities are legally created entities that allow 2 or more public agencies to jointly exercise common powers pursuant to the Joint Exercise of Powers Act.[19] The Act authorizes 2 kinds of joint powers authority (JPA) arrangements. The first allows 2 or more public agencies to contract to jointly exercise common powers. The second allows 2 or more public agencies to form a separate legal entity. This new entity has independent legal rights, including the ability to enter into contracts, hold property, and sue or be sued. Forming a separate entity can be beneficial because the debts, liabilities, and obligations of the JPA belong to that entity, not the contracting parties. While it is relatively common for local and regional government entities to enter into JPAs, it is much less common for the state to do so as the state is not bound by the same restrictions that local and regional governments are. Additionally, with very limited exception, participation within a JPA is limited to government entities and may not include nonprofit parties. Limited statutory exemptions exist within the Joint Exercise of Powers Act to allow specifically identified nonprofit hospitals to join JPAs with regional government entities to create regional hospital authorities.

Recommendation #1—Establish a State Entity with an Advisory Board or Commission

Based on our research, we believe that a state entity is the best option for hosting and administering an SWT. Notably, existing wellness funds in Oklahoma, Minnesota, and Massachusetts are all state agencies and can serve as a model for a California SWT. The decision on whether to form the SWT as a new state entity or house it within an existing state entity is primarily a political consideration; however, an SWT established in state government would have the option of using tax and/or bond revenue as a dedicated and stable primary funding source. In contrast, an SWT structured as a private nonprofit foundation would have to secure significant private funds to establish a permanent endowment to finance its activities, build up an endowment over time through smaller donations or grants, or continually fight to secure its funding. This may not be practical or realistic—whether an SWT could secure sufficient private capital to fulfill its objectives and how long that would take is unknown. Further, there are open questions as to whether a nonprofit SWT would duplicate the efforts of existing health foundations, or end up competing with other health nonprofits for limited funding. To ensure that a government-run SWT is responsive to the needs of stakeholders and fulfills its foundational goal of advancing health equity and sustainably supporting prevention with broad reach, the agency could have an advisory board or commission with members who represent priority communities or populations.

Core Organizational Components of an SWT

Regardless of whether the SWT is a nonprofit or government entity housed in an existing or new organization, its structure will be composed of 4 core organizational components: stakeholders, a governing body, an administrative body, and a wellness fund.

Stakeholders

In order to meet CAPF's goals of equitable benefit for all residents and equitable distribution of funds, and because health is determined by a number of factors—environmental, social, economic, mental, physical, and others—a broad base of stakeholders is needed to improve the overall health of communities. Primary stakeholders will include state and local government, regional organizations, and nonprofit organizations and entities whose work impacts health and that will partner with the SWT to implement preventive health policies and programs. Primary stakeholders may include county and city public health departments, accountable communities for health, health care providers and accountable care organizations, health clinics, social service providers, and nonprofit community-based organizations, among others.

Additional stakeholders may include private for-profit and nonprofit organizations that partner with the SWT to help fund SWT initiatives, participate in SWT-funded initiatives, or play an advisory role in SWT initiatives. Such additional stakeholders may include: foundations, insurers (payers), banking institutions, community development financial institutions, pension funds, business associations, and major employers.

Finally, the SWT is not only accountable to its primary stakeholders and additional stakeholders, but more importantly, is accountable to the broader populations that are the focus of the prevention health work funded by the SWT.

Governing Body

The governing body is the leadership entity responsible for setting the strategic direction for the SWT, selecting specific activities or interventions, and making decisions about how and to whom funds should be allocated. The governing body serves as the conduit between the broader community of stakeholders and the SWT. Therefore, it should be designed to accurately represent the community the SWT serves and make decisions in the best interests of the community. Further, if the SWT is run by the state, the governing body will ultimately be accountable to elected officials. The governing body responsibilities include:

Strategic Planning and Decisionmaking

The governing body is responsible for using the best available evidence and stakeholder input to develop a comprehensive strategic plan for the SWT that includes:

- developing and/or maintaining a mission statement and vision for the organization, which may be identified in authorizing legislation or the articles of incorporation;
- identifying short-term, medium-term, and long-term goals and shared metrics and targets for the SWT;

- drafting and approving governance regulations, including decisionmaking protocols as well as defined roles and responsibilities of the administrative and partner organizations;
- identifying initial priority area(s) to address desired population-level outcome(s) as well as programs, interventions, and/or policies that can lead to the desired outcome(s);
- assessing and prioritizing potential interventions based on how well they align with the overall goals of the SWT, potential for population-level impact, the extent to which the intervention reflects community needs and priorities, the feasibility of measuring outcomes, cost of implementation, and potential to demonstrate return on investment; and
- determining how and to whom available funds are allocated to implement selected interventions within defined parameters.

Fiduciary Responsibility

The governing body must provide oversight over the wellness fund and ensure appropriate and effective use of resources and funding.

Ongoing Direction, Supervision, and Assessment of SWT Activities

The governing body should meet regularly to check in about ongoing progress and new opportunities and should review and assess the results of an evaluation conducted by the administrative organization or a third party.

Representation of the Broader Population of Community Stakeholders

The governing body must provide opportunities for engagement of community stakeholders and the broader population the SWT's provider partners serve; it should also represent the needs and interests of community stakeholders and the broader population in decisionmaking processes.

Finally, regardless of whether the SWT is a nonprofit or government entity, if the SWT includes an endowed fund or if the SWT issues debt, fiduciary responsibility for investment and management of the SWT's resources will need to reside within an investment board or other structure of financial experts to manage fund investments and debt repayment. In Oklahoma, TSET has a separate board of investors, which was legislatively created and is responsible for investing annual payments from the 1998 Master Settlement Agreement.[20] In this case, the investment board shares fiduciary responsibility with the governing board; the investment board is responsible for the reasonable investment of the trust's assets, and the governing board retains responsibility for supervising the earnings from the trust as well as trust expenditures and distributions for program and administrative activities. The structure and membership of an investment board is created in the articles of incorporation or authorizing legislation.

Administrative Organization

The administrative organization is the coordinating state entity responsible for the behind-the-scenes coordination and management of SWT operations as well as implementation of the SWT's programs and program evaluation. The administrative organization must be responsive to the governing body's decisions and must have adequate staff capacity and administrative systems to fulfill its tasks of facilitating and coordinating the SWT's stakeholders and governing body, establishing a data management process for the SWT's interventions, managing internal and external communications, managing the flow of funds into and out of the wellness fund, and program management and technical assistance. Specific administrative organization responsibilities include:

Facilitation and Coordination

- Facilitating the convening of the SWT governing body
- Coordinating continuous communication and interaction among all entities involved in the SWT (e.g., scheduling and facilitating meetings, transcribing and distributing meeting notes, providing timely updates to relevant partners, etc.)
- Maintaining a historical and current roster of all participating individuals and entities and all ongoing SWT-related activities

Data Management

- Regularly assessing statewide and health conditions and statistics to gather baseline data, or partnering with an existing entity to do so
- Establishing infrastructure and processes for collecting, managing, and analyzing data related to an SWT-funded intervention's reach and impact
- Tracking intervention progress and measuring impact against predetermined targets
- Ensuring high-quality independent external evaluation of SWT efforts
- Tracking return on investment and potential cost savings that result from interventions
- Systematically collecting information about the activities, effects, influence, and impacts of programs or initiatives to inform learning, decisionmaking, and action. (The evaluation effort builds upon, but is distinct from, the performance measurement process. Performance measurement occurs in real time and assesses compliance with proposed goals. In contrast, the evaluation process may use a wide variety of methods to better understand the effectiveness and impact of the SWT's efforts.)
- Establishing a mechanism for sharing this data with stakeholders on a regular basis

Communications

- Managing external communications of the SWT to educate stakeholders on SWT-funded program successes and funding opportunities through vehicles such as regular newsletter or email updates, social media presence, other multimedia (e.g. videos, infographics), earned media, and presence at relevant community events or conferences
- Communicating with legislators and other policymakers through regular reports on the activities of the SWT to maintain its visibility, foment understanding of its impacts in communities across the state, and facilitate long-term support of policymakers for prevention investments

- Developing a suite of outreach and communications tools to share successes and progress, tell the story of SWT-funded health initiatives, and highlight partners' efforts and contributions to increase awareness and effectiveness of health initiatives and promote stakeholder partnerships

Fiscal Responsibility

- Documenting all revenues and expenditures and providing regular financial reports to the governing body and other state entities as required by law
- Managing the flow of funds into and out of the wellness fund
- Efficiently managing and administering any allocation and grant mechanisms created by the SWT

Program Management and Technical Assistance

- Managing wellness fund allocation and distribution programs, both comparative grant and formula distribution
- Providing stakeholder technical assistance and training to ensure stakeholders are able to apply for and access SWT funds

Wellness Fund

The wellness fund functions like the corpus of a philanthropic foundation or an investment fund (a pooled source of money) that has the flexibility to make investments to support improving community health and wellness, especially prevention activities, and represents a dedicated source of financing for all SWT-related activities. It will be embedded within—and managed by—the administrative organization of the SWT, which provides fiscal and compliance services for the SWT in addition to investment and/or grant distribution services. The governing body of the SWT will establish a process for determining when and to whom funds will be disbursed, within the parameters established at its creation, as well as which activities those funds will support. It must also judiciously exercise fiduciary oversight and control over the wellness fund to balance the funding needs of the administrative organization with the health interventions and investments the SWT decides to implement. Funding options for the SWT wellness fund are examined in more detail below.

The following table identifies how these organizational components were incorporated into the 3 SWTs examined, as well as their primary funding sources and areas of focus.

TABLE 3: Existing SWT Organizational Components, Funding Sources, and Areas of Focus

State program	**Oklahoma Tobacco Settlement Endowment Trust (2000–present)**	**Minnesota State Health Improvement Program (2008–present)**	**The Massachusetts Prevention and Wellness Trust (2012–2016)**
Stakeholders or recipients	All local health departments, community-based organizations, schools, and research centers through sustained direct allocations and/or competitive grants	All local health departments and tribal partners through sustained direct allocations	Nine regional partnerships of clinical providers and community agencies through competitive grants (the fund did not reach the entire state)
Governing body	Tobacco Settlement Endowment Trust Board of Directors and Board of Investors	Minnesota Department of Health executive leaders	Prevention and Wellness Advisory Board and Massachusetts Department of Health executive leaders
Administrative organization	Oklahoma Tobacco Settlement Endowment Trust	Minnesota Department of Health	Massachusetts Department of Health
Available funds	$46 million in 2016 ($11.70 per capita)	$35 million bi-annually in 2015 ($3.20 per capita/year)	$57 million over 4-year pilot ($2.10 per capita/year)
Funding source	Earnings from endowment created with annual deposit of Tobacco Master Settlement Agreement funds, now over $1 billion	Approximately 3.5% of a 2% tax on health care providers and a 1% gross health insurance premium tax for the state's Health Care Access Fund allocated to the program	One-time tax on large hospital systems and insurers
Focus	Tobacco control, obesity prevention, health research, workforce development	Tobacco control, healthy eating, physical activity	Tobacco control, pediatric asthma, hypertension, falls among older adults

Potential Funding Sources: Benefits and Drawbacks

This section will (1) discuss possible primary and complementary funding sources for an SWT, (2) identify whether particular funding sources are constrained to particular types of entities or otherwise limit the way an SWT could be governed, and (3) consider additional political, structural, and practical benefits and constraints of such funding sources.

State Taxes

A tax is any charge imposed by the state on an individual or entity, or on property including land and assets, to provide funding for goods and services that benefit the public.[21] Of all of the funding sources discussed in this report, taxes support the broadest range of public goods and services including schools, streets, highways, parks, beaches, and the "vast public health infrastructure that ensures our food is safe to eat and our water is safe to drink."[22] Enacting tax legislation in California is politically challenging—there are high vote thresholds in the state Legislature for bills that increase state taxes, and tax legislation almost always faces opposition. If successfully enacted, however, taxes are one of the most flexible instruments for funding public goods and services because there are few legal constraints on how the revenue can be used. For this reason, and as further explored below, tax legislation has significant potential to create a stable source of funding for an SWT.

This section first describes the basic types of taxes imposed in California and distinguishes taxes from fees. This section then addresses general considerations for designing and enacting *new* tax legislation, and describes how *existing* tax revenue may be earmarked for a specified purpose. Finally, this section assesses the benefits and drawbacks of state taxes as a funding source for an SWT. Our intent in this section is not to analyze or endorse any specific proposal for tax legislation to fund an SWT, but rather to outline basic tax design concepts so that CAPF has the tools to identify and assess possible options.

Tax or Fee?
The California Constitution, article XIII A, section 3, distinguishes taxes and fees. A tax is a charge *of any kind* imposed by the state to raise revenue for general public needs. There need not be a direct relationship between the person or entity that pays the tax and the relative benefit that taxpayer receives from the public goods or services supported by the tax. Further, taxes are not voluntary—a taxpayer cannot refuse to pay a tax because she does not use a particular public service. For example, a taxpayer cannot refuse to pay taxes used to fund public schools simply because she does not have school-aged children or because she sends her children to a private school.[23]

Article XIII, section 3, lists a limited number of circumstances when a charge imposed by the state does not qualify as a tax, and is instead classified as a fee. The 3 primary exceptions are user fees, such as entrance fees levied on visitors to California's state parks; regulatory fees, such as fees to cover the reasonable costs to the state of issuing and enforcing licenses and permits; and fees imposed for a benefit or privilege granted directly to the person paying the fee which do not exceed the costs to the state of conferring the benefit or privilege. If a charge exceeds the amount necessary to cover the reasonable costs of the governmental activity, or if the amount charged to each fee payer does not have a fair and reasonable relationship to the benefits that person receives from the activity, the charge is likely a tax.

In California, the distinction between taxes and fees has special significance. As a result of Proposition 26 (2010), the California Constitution requires a two-thirds vote of the Legislature to enact any change in a state statute that results in a taxpayer paying a higher tax, but only a majority vote to enact a fee. (As further discussed below in the section on tax enactment, the requirements are different for state tax legislation proposed through the citizen initiative process.) Thus, whether a charge qualifies as a tax or a fee has political, practical, and procedural implications affecting how the new charge may be created. Note that simply calling something a fee does not make it one—a court will look to the substance of the charge to determine whether it is a fee that is exempt from the supermajority vote requirement. Additionally, charges that are called fees in other states may not be legally classified as fees in California.

The key takeaway is that *any* charge imposed by the government for general public needs is a tax unless it qualifies for one of the limited number of exceptions for fees. Whether an exception applies depends primarily on who is paying the charge and the relative benefit that person receives from the services funded by the charge. These are issues with legal and political dimensions that would be addressed during the design of the legislation that creates the charge. Ultimately, the distinction between taxes and fees has little relevance in identifying potential funding sources for an SWT. The state has broad authority to impose charges to fund public needs, and whether the charge legally qualifies as a tax or fee affects only the number of votes necessary to impose the charge. For this reason, this report limits its discussion to taxes.

Types of Taxes

Various types of taxes fund public goods and services in California. These include property taxes levied by county governments; and taxes levied by the state, including corporate and personal income taxes, a general sales and use tax, excise taxes related to specific products, employment taxes, and a tax on the premiums consumers pay for most types of insurance. The primary distinction between these various types of taxes is what is being taxed—property, income, or retail transactions, for example. As of 2016, 3 taxes comprised the largest source of revenue for the state budget; they were the personal income tax (just over 50%), the sales and use tax (less than one-quarter), and the corporate income tax (less than one-tenth).[24] The insurance gross premiums tax and excise taxes on alcohol, tobacco products, and motor vehicle fuel were also significant contributors to the budget.[25]

Excise taxes on products considered to be harmful for health—such as tobacco and cannabis products—are frequently used by public health advocates to raise revenue for health-related programs and to incentivize behavioral change. Additionally, a percentage of California's statewide sales tax is allocated to counties to support local health, mental health, public safety, and social service programs.[26] These types of taxes, which may be most familiar to public health advocates, are discussed in greater detail below. There is flexibility, however, to use other types of taxes that aren't addressed in detail here to fund an SWT. For example, in 2004, voters approved Proposition 63, a citizen initiative that imposed a 1% tax rate on the portion of taxable income that exceeds $1 million and allocated the revenues from the new tax rate to a special fund to support mental health services.[27] This is just one example of how a different type of tax—the personal income tax—has been used to fund health-related programs.

Types of Taxes—Additional Terminology

Ad Valorem or Per-Unit Tax?
Taxes are frequently categorized or distinguished based on *how* the charge is calculated. An *ad valorem* tax is a tax on a good or asset based on its value, and is usually expressed as a percentage. Common examples of ad valorem taxes are property taxes and sales taxes. Conversely, a *per-unit tax* is a tax assessed at a fixed dollar amount per unit of the item purchased. For example, California imposes an excise tax on cigarettes at a fixed rate of $2.87 per each pack of 20 cigarettes.[28]

Direct or Indirect Tax?
Taxes can also be distinguished based on who bears the ultimate burden of paying the tax. A *direct tax* is one that the taxpayer pays directly to the government. Direct taxes, such as income taxes, cannot be passed on to others. In contrast, an *indirect tax* is one that can be shifted to another person or entity. For example, a business subject to an excise tax can shift the cost of the tax to consumers by raising prices.

Sales and Use Tax

The California sales and use tax is a charge on retail sales of tangible goods—things that can be seen, weighed, or touched.[29] The tax has 2 parts: (1) a sales tax imposed on retailers for the privilege of selling certain tangible goods in the state,[30] and (2) a use tax imposed on consumers when they buy certain tangible goods from retailers who do not pay California sales tax—for example, out-of-state internet retailers.[31] For simplicity, this report refers to the combined sales and use tax as the "sales tax." Unlike other states, California does not impose a sales tax on most services.[32] California also exempts a number of basic necessities from the sales tax including food purchased for home consumption, water, prescription medicines, and household utilities, among others.[33]

The sales tax is an ad valorem tax, calculated as a percentage of the dollar value of goods sold. The sales tax rate consists of 3 pieces—a statewide rate, a local rate, and an add-on rate that varies by local government—for a total rate ranging from 7.25% to just over 10% in cities and counties throughout the state.[34] Retailers typically shift the sales tax burden to consumers by adding the tax to the price they charge to customers and showing it as a separate item on sales receipts.

Excise Taxes

An excise tax is a per-unit levy on the manufacture, sale, or use of a specific service or commodity.[35] An excise tax is indirect because it can be—and generally is—passed on from businesses to consumers resulting in a higher retail price for a particular product.[36] The sales tax is typically levied on top of excise taxes.

Examples of excise taxes in California include the alcohol tax, imposed on manufacturers and distributors on a per-gallon basis, where revenue supports the state's General Fund;[37] the motor vehicle fuel tax, commonly known as the "gas tax," imposed on distributors on a per-gallon basis, with a significant portion of funds earmarked for transportation programs;[38] the cigarette tax, imposed on distributors of various tobacco products, with a certain portion of revenues earmarked for early childhood programs (California First 5) and tobacco-related prevention, research, and health care programs, among other purposes;[39] and—as of 2018—a per-ounce tax on cannabis cultivators and an additional tax on purchasers of cannabis products at a rate of 15% of the average market price of the retail sale, with revenue earmarked for specified purposes including grants to communities adversely affected by drug policies, development of cannabis DUI testing, and youth substance abuse and prevention programs.[40]

One of the primary drawbacks of using an excise tax as a funding source for an SWT is that such a tax is designed, in part, to reduce consumption of a particular product. If effective, excise taxes therefore generate a decreasing amount of revenue over time. For example, the share of total state revenue derived from tobacco taxes has steadily declined over the past several decades because of reduced consumption—falling from 1.4% in 1977–78 to 0.1% in 2012–13.[41] For purposes of funding an SWT, this problem could be addressed in part if a portion of the revenue from an excise tax were reserved to capitalize an investment account that could be managed to maximize interest income for the benefit of the SWT over time, to the extent that such an approach is consistent with state law.[42]

Sugar-Sweetened Beverages—Excise Tax or Sales Tax?

One possibility for funding an SWT is imposing a statewide tax on sugar-sweetened beverages (SSBs). Theoretically, this could be achieved either by imposing a new or additional sales tax rate on defined SSBs or by imposing a new excise tax on SSBs. Because of the exemption from the sales tax base for certain food products, however, an excise tax is the most practical option for an SSB tax in California.

More specifically, both article XIII, section 34, of the California Constitution and applicable statutes exempt most food products intended for home consumption from the sales tax.[43] The term *food products* is defined to include milk products, fruit and vegetable juices, and other beverages—except for alcoholic and carbonated beverages.[44] Although soda is subject to sales tax as a carbonated beverage, other types of non-carbonated beverages that contain added sugars are not, including flavored milk, fruit drinks and punches, sports drinks, sweetened tea, coffee drinks, flavored water, and many others. The state sales tax base could be expanded to include such non-carbonated SSBs *only if* there were a constitutional amendment to change the exemption. As further discussed in the tax enactment section below, the requirements to pass a constitutional amendment are more burdensome than they are for other types of legislation.

In contrast, there is no existing state law imposing an excise tax on any beverage other than alcoholic beverages.[45] Legislation creating a new SSB excise tax could therefore define the tax base to include both carbonated and non-carbonated sugary drinks without the need for a constitutional amendment. An SSB excise tax that includes the full range of beverages with added sugars—from soda to sports drinks—would therefore be procedurally and politically less challenging to pass. An added benefit of using an SSB excise tax to fund an SWT is that it can result in a higher retail price for beverages subject to the tax if businesses elect to pass the burden on to consumers. Conversely, a sales tax is applied as a percentage of the product price at the time of sale and is not reflected in the shelf price. For this reason, experts generally believe that an excise tax is more likely to change consumer behavior and reduce SSB consumption.[46]

What Types of Entities Can Taxes Support?

The California Constitution imposes 2 general limitations on the expenditure of public funds. If an SWT were to use a tax as a primary funding source, these constitutional limitations would affect the way the SWT could be structured and how revenue could be used.

First, article 16, section 3, of the Constitution prohibits the expenditure of public funds for the benefit of any institution that lacks sufficient controls by the executive and legislative branches of state government.[47] The purpose of the prohibition is to assure that state funds are used to further state purposes without unduly inhibiting innovative programs that serve those purposes.[48] Sufficient state controls generally exist if (1) members of the legislative or executive branches appoint a significant percentage of the individuals who serve on the governing body of the entity supported by the tax, (2) the legislation authorizing the tax specifies how the revenue will be distributed, and (3) the governing body of the tax-funded entity is subject to significant public and financial accountability standards.[49] As a practical matter, this means that if an SWT were primarily funded by tax revenue, it would have to be structured as some type of state agency or program that incorporates the features just mentioned. A key example of a state entity that satisfies this requirement is First 5 California, discussed in detail below.

Second, article 16, section 6, of the Constitution prohibits the gift of public money for the benefit of private corporations. The key question in determining whether an appropriation of public funds is a prohibited gift is whether the funds are to be used for a public or private purpose: If they are to be used for a public purpose, they are not a gift subject to the constitutional prohibition. Additionally, an expenditure of public funds that has an incidental benefit to private persons will not violate the constitutional prohibition so long as a public purpose is served by the appropriation.[50] This requirement likely would not pose a hurdle for an SWT so long as the funding administered by the SWT is used to support local health departments, accountable communities for health, or community-based organizations that work in the public interest.

Key Example—First 5 California
A key example of a state entity that may serve as a model for an SWT is the California Children and Families First program, commonly known as First 5 California. First 5 was created by the California Children and Families Act (Proposition 10), a citizen initiative approved by voters in 1998.[51]

Funding Source for First 5
Proposition 10 created First 5 as a new state program administered by the California Children and Families Commission (Commission) and county commissions, which are funded by revenue from a tobacco excise tax.[52] Specifically, Proposition 10 increased the excise tax rate on cigarette distributors by 50 cents per pack and imposed a similar tax rate increase on distributors of other tobacco products.[53] The resulting revenue from those new rates is dedicated to a special fund—the California Children and Families Trust Fund—and is continuously appropriated to fulfill the purposes identified in the Act,[54]

namely “promoting, supporting, and improving the early development of children from the prenatal stage to five years of age.”[55]

In addition to imposing the new tobacco excise tax rate, the Act states that public or private grants, gifts, or bequests of money made for the benefit of the Commission for early childhood development programs shall be deposited in the California Children and Families Trust Fund and expended for the purpose identified by the grantor or donor. The Act includes a similar provision addressing grants or donations to the county commissions.[56]

Allocation of Tax Revenue to State and County Commissions

The Act establishes a specific formula for allocating the excise tax revenue among the state and county commissions.[57] Twenty percent of the revenue is allocated to the state Commission, and is further allocated to separate accounts of the Commission for specified purposes.[58] The allocations to the separate accounts include, among others, 1% to an account for expenditures related to the administrative functions of the state commission; 5% to an account for programs relating to parental education and training; and 6% to an account to develop public communications campaigns related to cessation of tobacco, alcohol, and drug use by pregnant women and the detrimental effects of secondhand smoke on early childhood development.[59]

The remaining 80% of the excise tax revenue is allocated to counties that elect to adopt an ordinance to establish a local commission and participate in First 5.[60] A county commission is entitled to receive funding in an amount equal to the percentage of births recorded in that county in proportion to the number of births recorded in all participating counties, so long as the county satisfies various requirements.[61] The primary requirement is that the county must, following a public hearing, adopt a strategic plan reflecting state guidelines that establishes goals, describes the programs and services to be implemented, and specifies how the program outcomes will be measured and reviewed.[62] Moneys allocated to a county commission are deposited in a local Children and Families Trust Fund administered by that county, and must be expended only for the purposes authorized in the Act. [63]

Organizational Structure of First 5

As specified in the Act, the state First 5 program has an organizational structure with the following core components. There are separate requirements for the organization of county commissions that are not addressed here.[64]

Governing body: The state Commission is the governing body for First 5. The Commission is composed of 7 voting members and 2 ex officio members, including the Secretary of Health and Human Services and the Secretary of Education. Voting members must possess knowledge and expertise in areas relevant to First 5 programs, and are appointed for specified terms by the Governor (3 members including 1 county health officer), the Speaker of the Assembly (2 members), and the Senate Rules Committee (2 members).[65] The Commission is responsible for hiring an executive director and staff, developing and adopting guidelines with input from the public for an integrated statewide early childhood program, defining the results to be achieved by the program and how they will be measured, evaluating the ongoing success of the program, applying for public and private grants and donations to supplement tax revenue and further the program’s work, and allocating funds to county programs that satisfy specified prerequisites.[66]

Administrative organization: First 5 is administered by an executive director and staff that provide fiscal management of the California Children and Families Trust Fund, disburse tax revenue to county commissions, conduct audits and annual fiscal reports, provide public education and outreach, and oversee procurement and contract management among other administrative services and functions.[67] The executive director reports directly to the Commission.[68]

Advisory committees: The Commission is required to establish at least 1 advisory committee to provide technical and professional expertise to accomplish the purposes of the program.[69]

Trust fund: First 5 also includes the California Children and Families Trust Fund, the special revenue fund in the State Treasury for deposits from the 50 cent per pack excise tax rate on cigarettes, and a similar tax on other tobacco products.

Key Takeaways for an SWT

Proposition 10 and the First 5 program helpfully illustrate how many of the concepts discussed in this paper have been applied in a successful state program, and how they could be applied in legislation establishing an SWT. There are 3 key takeaways.

First, this example illustrates how legislation could authorize a special tax as a primary funding source where revenue is deposited in a wellness fund to be expended for specified purposes, such as primary prevention, and where the fund could accept private and public grants, donations, and bequests as complementary sources of funding.

Second, this example illustrates how legislation could establish a formula for allocating the special tax revenue both to a state entity for defined primary prevention programs, which could include a competitive grant program to community-based organizations, and to local public entities (either county agencies or new public entities separate from the county) that satisfy certain requirements to ensure accountability and responsible expenditure of the revenue to further the legislative purposes.

Third and finally, this example illustrates how a government-run SWT could take many different forms, including a commission that sits outside of familiar executive branch departments, like the Department of Public Health.[70] Additionally, there is flexibility to structure a government-run SWT to include both a governing body with members appointed by the executive and legislative branches, and advisory committees that could be used to achieve representation and input from priority populations or residents in key locations.

Tax Design Issues

This section identifies key considerations for designing tax legislation. The intent is to help assess options for developing a tax policy that would be both effective and workable for funding an SWT. The considerations include (1) deciding whether to impose a new tax or amend an existing tax; (2) identifying an appropriate sales tax base and rate; (3) determining how the revenue should be distributed, whether to the state's General Fund or to a special fund; and (4) policy considerations related to fairness and equity.

New or Existing Tax

The first step in designing tax legislation to fund an SWT is deciding whether to amend an existing tax to generate additional revenue, or to enact a *new* tax. Amending an existing tax to generate additional revenue would mean altering the tax base or rate—topics that are discussed in detail in the following section. This is the most typical and perhaps the simplest type of tax legislation.

Designing a new tax to fund an SWT would be significantly more complex and, as with any type of innovative and untested law, may face legal and political hurdles. Examples of this strategy include enacting a new excise tax on sugar-sweetened beverages, or enacting a new tax on health care providers, plans, or insurers.

Charges on Health Insurers or Providers—Examples from Minnesota and Massachusetts

In other states, SWT-type entities have been funded using revenue generated from charges (either taxes or fees) on health insurers or health care providers. For example, legislation passed in Minnesota in 1992 established the Health Care Access Fund to increase access to health care, contain health care costs, and improve the quality of care.[71] Revenues to the fund come primarily from (1) a 2% tax on the gross revenues of health care providers, hospitals, surgical centers, and wholesale drug distributors; and (2) a 1% tax on the gross premiums of health maintenance organizations, nonprofit health service plan corporations, and community integrated service networks.[72]

The primary purpose of the Health Care Access Fund is to finance MinnesotaCare, but other uses have been added to the Fund's activities over time. In particular, the state Legislature has appropriated money from the Fund to support the Statewide Heath Improvement Program (SHIP)—an agency housed in the State Department of Health that awards grants to local community health boards (similar to local accountable communities for health) and tribal governments for coordinating and implementing primary prevention strategies.[73] Specifically, in the 2017 fiscal year, the Legislature appropriated $41.2 million for the Department of Health, where the funds primarily supported SHIP.[74] SHIP used the funds to award grants to 41 community health boards and 10 tribal governments to support prevention activities.[75]

Massachusetts has taken a slightly different approach to financing an SWT-type entity. In 2012, the state passed legislation establishing the Prevention and Wellness Trust Fund (PWTF) within the Department of Public Health to invest $60 million in evidence-based prevention activities.[76] The $60 million in funding came from a one-time surcharge assessment on certain acute hospitals to be paid over 4 years between

2013 and 2017.[77] The Massachusetts General Court (the state Legislature) is currently considering a bill that would extend funding for the PWTF, this time through a surcharge on payments made by health insurers, including managed care organizations, to acute hospitals and ambulatory surgical centers.[78] If the bill fails, the PWTF will be left without continued funding.

Following these examples, California could pass legislation to assess a new tax on health insurance companies or health care service plans, and/or a new tax on the gross revenues of health care providers, and dedicate the resulting revenue to an SWT. The tax design issues for such a proposal would be the same as for any other tax, including identifying a tax base and rate that would be feasible given political constraints and the economic needs of the SWT.

Before pursuing such a proposal, further research would need to be done to analyze the existing legal and regulatory landscape governing taxes and fees on health insurers, plans, and providers in California, and how a new tax would fit into that framework. In particular, article XIII, section 28, of the California Constitution imposes a 2.35% tax on the gross premiums received each year by "each insurer doing business in this state" in exchange for an exemption from most other taxes, including the corporate income tax.[79] Determining which companies that provide health coverage to consumers are insurers for purposes of the gross premiums tax—whether traditional indemnity health insurers regulated by the Department of Insurance or health plans and health maintenance organizations regulated by the Department of Managed Health Care—is complex, and has been the subject of recent litigation.[80] Entities that state law defines as health care service plans, which arrange for the provision of health care services to subscribers and pay for or reimburse the cost of those services, including preferred provider organizations that offer fee-for-service plans, are specifically exempt from the gross premiums tax.[81] These and other legal requirements and constraints would have to be analyzed as a part of the process of designing a new health insurer or provider tax.

A separate issue is whether there is a way for the state to exact funds from health insurers or health plans using a contractual mechanism rather than a tax. While California does contract with insurance carriers that provide qualified health plans to participate in the Covered California health insurance exchange and that provide benefits for public employees through CalPERS, it is an unanswered legal question as to whether the state could include a contractual fee to fund an SWT purely based on the privilege of contracting with the state, or whether such fee would be classified as a tax under article XIII A, section 3, of the Constitution. The drawbacks of this approach include increased likelihood of litigation and discouraging participation in the health exchange.

Tax Base and Rate

After determining what type of tax would be most functional and politically expedient for funding an SWT, a key early step in designing tax legislation is defining the tax base and rate. The tax base is the universe of goods, assets, or types of income that are subject to a tax. The rate is the unit of measurement for imposing a tax—for example, a percentage of sales or a specific dollar amount per quantity of a particular product. The revenue generated by a tax is equal to the tax base multiplied by the tax rate.

For example, if CAPF were to consider enacting a new excise tax on sugar-sweetened beverages (SSBs) to finance an SWT, a threshold issue would be defining the tax base—*which SSBs* sold by *which types of businesses* will be subject to the tax. This would involve considerations such as whether to set a threshold for sugar content, whether to include syrups and powders, and whether to carve out exemptions for things like flavored milks or 100% fruit juices or for small businesses that sell SSBs. Such questions often have political dimensions, such as whether voters will perceive the exemptions as arbitrary and thereby erode support for the tax.[82] Alternatively, new revenue could be generated by *broadening* the tax base for an existing tax. For example, Proposition 64 recently broadened the base for the statewide sates tax by extending the tax to cannabis products, with exceptions for medicinal cannabis purchased by qualified patients or primary caregivers.[83] (Cannabis products are also subject to a separate excise tax imposed on purchasers, as noted above.)

An SWT could also be financed through legislation that increases the tax rate for an existing tax. Under that approach, key considerations would be what percentage increase would generate sufficient revenue for the SWT's purposes while still being politically practical. A key example of this strategy is Proposition 56, approved by voters in 2016, which increased the excise tax rate on cigarettes from $0.87 to $2 per pack, with similar increases for other types of tobacco products. (Proposition 56 also broadened the tax base for the excise tax by adding electronic cigarettes to the definition of *tobacco products*.) The new revenue from the $2 tax increase is dedicated to specified purposes, including enforcing tobacco laws, physician training, Medi-Cal, tobacco use prevention, and research into tobacco-related diseases.[84]

General Tax or Special Tax

Another key decision point in designing tax legislation is determining whether to propose a general tax or a special tax, which will affect how the revenue from the tax can be distributed.

For a general tax, the revenue generated is deposited in the state's General Fund and is available for appropriation by the Legislature for *any* public purpose. [85] The largest expenditures from California's General Fund are for Health and Human Services and K–12 education.[86] Indeed, since 1988, the state Constitution has mandated a "minimum guarantee" for school funding equal to approximately 40% of General Fund revenue except in years when state revenue growth is relatively weak.[87] Overall, a general tax is not a feasible option for funding an SWT. Although the Legislature could annually appropriate an amount from the General Fund equal to the revenue generated by the tax for the purpose of supporting an SWT, they would not be legally obligated to do so. Thus there would be no guarantee of a stable and dedicated funding stream for the SWT.

For a special tax, the revenue is deposited in a special fund (which may be housed within the General Fund) and the expenditure of monies in the fund is limited by law to a specified purpose or purposes. The state's broad authority to dedicate tax revenue for specified programs is constrained only by the constitutional requirement that taxpayer dollars support a public purpose rather than private financial interests.[88] Additionally, as further described in the tax enactment section below, special taxes imposed by the *state* are not subject to more stringent voting thresholds than general taxes.[89] Conversely, at the local level, taxes earmarked for a specific government program may be imposed only if approved by a two-thirds vote of the electorate, compared with a majority vote of the electorate for general taxes.[90]

Legislation authorizing a special tax generally creates the fund into which the tax revenue and all interest on those monies is deposited, and directs how the revenue must be disbursed. For example, the Adult Use of Marijuana Act (Proposition 64) established the California Cannabis Tax Fund in the State Treasury, a special trust fund consisting of revenue from all taxes imposed by the Act and earned interest on those monies. The Act specifies that revenue in the fund is continuously appropriated for designated purposes, including, among other things, $10 million to $50 million annually to the Governor's Office of Business and Economic Development to administer a community reinvestments grant program to local health departments and community-based organizations in communities disproportionately affected by past drug policies.[91]

As compared with a general tax, a special tax is a more feasible option for financing an SWT. Legislation authorizing a special tax could, for example, establish a special trust fund in the State Treasury and continuously appropriate monies in the fund to an SWT as a *backbone* state agency or program, which has authority to award grants to local health departments, accountable communities for health, or other identified community organizations to support primary prevention—an approach that parallels the First 5 example discussed above.

Finally, it is important to note that revenue from a single type of tax may be divided with portions allocated both to the General Fund and 1 or more special funds. For example, roughly half of the revenue from the sales tax is allocated to the state's General Fund. The remainder is dedicated for special purposes, which include among others a 1.0625% rate dedicated to the Local Revenue Fund 2011 for county-run public safety and health and human services programs, and a separate 0.5% rate dedicated to a different local revenue fund for county-run health and human services programs.[92] Likewise, the tobacco excise tax includes separate rates allocated to different special funds including the Children and Families Trust Fund; the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund; and the Cigarette and Tobacco Products Surtax Fund.[93] In this way, an SWT could be funded by increasing or adding a new tax rate to an existing tax and allocating the revenue from that new rate to a new special wellness fund to support the SWT's activities.

Policy Considerations—Fairness and Equity

An additional concern when considering using taxes to fund an SWT is whether the new tax policy will be fair and equitable. The fairness of a tax policy has to do with the share of a family's income that will be used to pay for the tax. A *progressive* tax is one in which higher-income families pay a larger share of their incomes in taxes. For example, California's income tax is generally progressive because it incorporates a graduated rate structure. A *proportional* or *flat* tax is one in which the share of income paid in taxes is the same at all income levels. A *regressive* tax is one in which low-income households pay a larger share of their incomes in taxes. Sales and excise taxes, such as alcohol and tobacco taxes, are generally considered to be regressive. Regressive taxes are problematic from a fairness and equity perspective because they raise money from those who have the least of it.[94]

There are several features that tax legislation could incorporate to mitigate the tax's regressive effect. First, narrowing the tax base can sometimes promote fairness and equity. For example, by excluding food and utilities from California's sales tax, the tax system protects lower-income households that spend a larger percentage of their income on necessities.[95] Second, the regressivity of a tax can be counteracted by earmarking the revenue for programs in communities that will be disproportionately affected by the tax, and by consulting communities about their priorities for how the money should be spent. Earmarking revenue in this way can also increase support for a tax that might otherwise be unpopular.[96] Finally, although a new sales tax rate or excise tax would technically be regressive, it could be imposed on a product, such as sugary drinks or tobacco, associated with chronic diseases that have a disproportionate impact on lower-income people and people of color and to whom the marketing of such products is often targeted. Increasing the price for such products has been shown to have a significant effect on reducing consumption—a tax could therefore provide progressive health benefits and result in health care cost savings for the targeted communities.[97]

Tax Enactment Process

This section describes the procedural requirements for enacting tax legislation at the state level. In California, state tax legislation can arise in 2 ways—as a legislative proposal or ballot initiative. Before addressing these processes, it is important to highlight that the requirements for enacting *state* taxes differ from the requirements for *local* taxes in 3 ways. First, at the state level it makes no difference whether legislation will impose a general or special tax for purposes of the enactment process—the requirements are the same regardless of whether the revenue will be dedicated for a specific program.[98] Second, whereas a local tax *must always* be submitted to the voters following approval by two-thirds of the local legislative body,[99] a state tax may be imposed by a vote of the legislature alone and need not be submitted to the voters unless the legislation will affect the state Constitution.[100] Third, citizens retain the power to use the initiative process to propose and approve a new *state* tax by a simple majority vote,[101] but whether citizens may circumvent the two-thirds vote requirement for *local* special taxes through the initiative process is an open legal question.[102]

Legislative Proposal

A legislative proposal is a bill introduced in the state Legislature by a senator or assembly member. The bill may propose an amendment that affects either the state Constitution or state statutes. Article III A, section 3, of the California Constitution requires that any legislative proposal for a *statutory amendment* that would result in any taxpayer paying a higher tax must be approved by a vote of at least two-thirds of the members of both the Senate and Assembly.[103] If the state tax bill proposes a *constitutional amendment*, however, it must be approved by a vote of at least two-thirds of the members of both the Senate and Assembly, *and* must be approved by a majority of voters.[104] This is true both for proposals to modify an existing tax that is imposed by a provision of the state Constitution, and proposals to create a new tax that will be codified in the Constitution.

Ballot Initiative

Alternatively, California citizens can propose new tax legislation through the ballot initiative process.[105] To be included on the ballot, an initiative proposing a *statutory amendment* (either a new tax or a modification of an existing tax that will be codified in state statute) requires a petition to be submitted to the Secretary of State with the certified signatures of 5% of the total vote for all candidates for Governor at the last gubernatorial election. An initiative proposing a *constitutional amendment* (either a new tax or a modification of an existing tax that will be codified in the state Constitution) requires a petition to be submitted to the Secretary of State with certified signatures of 8% of the total vote.[106] Once on the ballot, an initiative—including a proposal to create a new tax or raising an existing one—must be approved by a majority of voters to be enacted.[107] This is true regardless of whether the initiative proposes a constitutional or statutory amendment.

Earmarking Existing Tax Revenue
As an alternative to enacting legislation authorizing a new special tax or tax rate to finance an SWT, legislation could be passed to earmark revenue from an *existing* tax for an SWT. This could be done as part of an annual budget bill (two-thirds vote of the Legislature to pass),[108] as a standalone legislative proposal, or as a voter initiative (same requirements as above).

TABLE 4: Summary of Vote Requirements for State Tax and Fee Legislation in California

Type of legislation (either general or special tax)	Legislative proposal	Ballot initiative
Statutory amendment creating a new tax or increasing an existing tax	Two-thirds vote required in Legislature	Majority of voters
Budget bill	Two-thirds vote required in Legislature	N/A
Constitutional amendment creating a new tax, modifying an existing tax, or imposing a fee	Two-thirds vote required in legislature, and must be approved by a majority of voters	Majority of voters
Statutory amendment imposing a fee	Majority vote in Legislature	Majority of voters

Benefits and Drawbacks of Taxes as a Revenue Source for an SWT

Below are the primary benefits:

- **Stable ongoing funding:** If successfully enacted, tax legislation can establish a stable ongoing funding source and, if it is a special tax, the revenues will be protected against diversion for purposes other than those identified in the authorizing legislation.

- **Flexibility in revenue expenditure:** So long as tax revenue is being used to support a public purpose, there is significant flexibility in the distribution of funds. There are many examples of taxes being used to support grantmaking to local agencies and organizations for public health-related programming, where the funds are administered by an existing state agency or a new agency created by the tax legislation. The fewer restrictions an SWT places on funds distributed to a nonprofit charity, "the greater flexibility the charity will have in meeting its operating costs, developing new programs, and managing all of its funds in an efficient manner."[109]

- **Flexibility in tax design choices:** There is significant flexibility to design tax legislation to account for political realities and stakeholder concerns.

- **Policy co-benefits:** In addition to raising revenue, some taxes—such as excise taxes imposed on products harmful to health—have the secondary benefit of incentivizing behavioral change and reducing the incidence of chronic disease.

The following are the primary drawbacks and limitations:

- **Political challenges:** As a result of Propositions 13 and 26, any proposal by the Legislature that would result in a taxpayer paying a higher state tax is subject to a supermajority vote requirement in both houses, which can be very challenging to achieve. State taxes can also be imposed by the citizens via a ballot initiative approved by a majority of voters at a statewide election, but because of political opposition to new tax legislation and the investment necessary for a successful effort, it may be difficult to obtain the signatures and support necessary to get such an initiative on the ballot.

- **Legal and financial complexities:** Tax design can involve complex legal and economic analysis. Depending on the type of tax and design choices, it could take a significant investment of time and expert resources to develop legislation to fund an SWT using tax revenue, although for some taxes good examples exist.

- **Lack of flexibility in entity type:** Although the state may use tax revenue to make grants to private, nonprofit organizations, a nonprofit organization would not be authorized to directly manage the fund into which tax revenue is deposited. Thus, if taxes were used as the primary or direct funding source for an SWT (as opposed to a supplemental source, in the form of government grants), the SWT would have to be structured as a state agency or program.

- **Fairness and equity issues for sales and excise taxes:** Lower-income families would bear a disproportionate share of the financial burden of legislation authorizing a sales tax increase or a new excise tax. The regressivity of such a tax could be mitigated, however, by earmarking a significant portion of the tax revenue to benefit the citizens disproportionately burdened by the tax. Additionally, if such a tax were imposed on a product associated with chronic diseases that disproportionately affect lower-income citizens *and* the tax is effective at reducing consumption of that product among those citizens, then the regressivity of the tax would be mitigated in part by improved health outcomes and health care cost savings.

Tax Credits

A tax credit is a type of *tax expenditure*—essentially a tax break or subsidy. Whereas taxes generate revenue for general public needs, tax credits lower individual tax bills and thereby *reduce* funds that would otherwise go to the State Treasury to support state programs. Although tax credits do not directly generate any new revenue, they can be used to incentivize certain activities deemed to be in the public interest—such as charitable giving.[110] This section briefly explores how tax credits work and how a charitable tax credit in particular could be used to finance an SWT.

What Is a Charitable Tax Credit and How Does It Work?

A tax credit applies after a taxpayer's total income tax bill has been calculated and reduces the bill by the amount of the credit. A tax credit can be either nonrefundable or refundable. A nonrefundable credit will not reduce a taxpayer's liability below zero. Conversely, a refundable credit can result in a refund if, after applying the credit, a person's tax liability is less than zero.

Most frequently, tax credits are used to incentivize supply or demand for goods and services. For example, the federal solar tax credit spurred demand for solar energy by allowing a taxpayer to deduct 30% of the cost of installing a solar energy system from his or her federal tax bill. In other words, a solar energy system that cost $10,000 would reduce a taxpayer's total tax liability by $3,000.[111] The financial benefits of credits related to goods and services are generally captured by producers, consumers, and investors, and thus could not be effectively used to fund an SWT.

A number of states, however, have used tax credits to increase the supply of something *other* than goods and services—namely, charitable giving to state programs and organizations providing specified services. For example, Arizona's working poor tax credit provides individuals with an income tax credit for 100% of cash contributions up to $400 or $800, depending on filing status. Contributions are made to qualifying charitable organizations that provide assistance to state residents who receive Temporary Assistance for Needy Families benefits, are low income, or are chronically ill or physically disabled children.[112] If the credit exceeds a taxpayer's income tax liability, the taxpayer may carry the credit forward for no more than 5 years to offset future income tax liability.[113] In the 2009 tax year, taxpayers reported contributing $23,095,158 in cash contributions to qualified charitable organizations, of which $9,538,930 was not eligible for the tax credit because it exceeded the allowable $400 or $800 threshold. The total credits applied in 2009 (the cost to the state in lost tax revenue) was $12,889,895, with credits totaling $666,333 carried forward to future years.[114]

Similarly, California could pass legislation to establish a tax credit for contributions to an SWT structured either as a nonprofit charitable organization or a state entity. Key considerations in designing such legislation would be whether the credit should be refundable or nonrefundable, how much of a subsidy would be needed to spur charitable giving, who could claim the credit (individuals, businesses, or financial institutions), whether the legislation should limit the types of upstream prevention activities the SWT could support, and whether the tax credit should be sunsetted after certain goals are achieved.[115]

Tax Deduction versus Tax Credit

Deductions and credits are 2 different types of tax expenditures. A tax deduction—like the familiar deduction for donations to charitable organizations—is an expense that can be subtracted from a person's total income to reduce the amount that is taxable. The value of the deduction depends on the taxpayer's marginal rate: A deduction of $100 from the total income of someone who pays a 15% marginal tax rate would be worth only $15. Conversely, a tax credit reduces a person's total tax bill *after* his or her liability has already been calculated, and is not affected by the marginal rate. Accordingly, a $100 tax credit is worth $100. A tax credit is therefore a more powerful financial incentive than a deduction. Further, whereas tax deductions are more beneficial to higher-income households that are taxed at a higher rate, tax credits can benefit lower-income households.

Benefits and Drawbacks of Tax Credits as a Funding Source for an SWT

Below is the primary benefit:

- **Successful charitable tax credit programs in other states:** Charitable tax credits have been shown to generate significant revenue for nonprofit organizations and state programs.

The following are the primary drawbacks and limitations:

- **Lack of predictability and sustainability:** Charitable giving can vary considerably depending on economic conditions and whether the sector benefitting from the donation can attract donors. There is no guarantee of a stable funding stream. The risk of volatility could be mitigated by increasing the tax credit by a specified percentage per year over a defined period.[116]
- **Political challenges:** Because tax credits reduce overall state revenue and take money from existing programs, legislators may be reluctant to enact them. To address this concern, tax credit legislation could include a cap on the total amount of money available through the tax credit, a cap on the amount a taxpayer can claim, or a sunset date on the credit.

Municipal Bonds

A municipal bond is a long-term debt instrument issued by a state or local government as opposed to a corporate entity. (The word "municipal" in the name is misleading; "municipal bonds" are not limited to bonds issued by local municipalities—they include state-issued bonds.[117]) A bond, in essence, is a loan—it is a way for a state to borrow money from private investors (bondholders) in exchange for the state's promise to repay the borrowed amount with interest by a specified date.[118] Interest paid by a government bond issuer to a bond holder is generally exempt from federal and state income taxation so long as the bond proceeds are used for a public purpose.[119] Typically, municipal bonds are used to finance the purchase, construction, or repair of large capital assets such as land, infrastructure, buildings, and equipment. Bond-funded capital projects often have a direct relationship to public health—such as the construction of safe and affordable housing, parks, complete streets, clean water infrastructure, and schools. Beyond capital assets, California municipal bonds have also been used to fund grants for health-related programs—namely, stem cell research.

This section provides an overview of options for using state-issued bonds to finance an SWT. Specifically, this section describes the key characteristics and uses of the 2 most common types of state-issued bonds—general obligation and revenue bonds—and analyzes the benefits and drawbacks of each as a revenue source for an SWT. This section also briefly considers tobacco securitization bonds and assesses their potential efficacy as a financing mechanism for an SWT.

General Obligation Bonds

What Are General Obligation Bonds?

A general obligation (GO) bond is a bond that is secured by the "full faith and credit" of California. "Full faith and credit" means that the state commits to repay the principal and interest on the debt as it matures from any available General Fund revenues, and not from any particular tax or special fund.[120] Because GO bonds are secured by the "full faith and credit" of California they are typically considered the least risky type of municipal bond, and therefore carry the lowest interest rate.[121] A GO bond may be issued by the state only if authorized by specific legislation, i.e., an individual bond act.

What Types of Entities Can Use General Obligation Bond Revenue?

With limited exceptions, only government entities can issue tax-exempt municipal bonds.[122] Further, as with taxes, the California Constitution prohibits the use of bond revenue to benefit any institution that lacks sufficient control or oversight by members of the executive and legislative branches.[123] Thus, as a practical matter, an SWT funded primarily through bond revenue would have to be an entity established in state government.

With respect to the structure of the state entity, state law requires that legislation authorizing the issuance of a GO bond must create a committee, such as a finance committee, that is authorized to issue bonds; a fund into which the bond proceeds are paid; [124] and a board, such as a department, agency, or other body with authority to request the committee to issue bonds and to expend the revenue deposited in the bond fund for the purposes specified in the bond act.[125] After the committee authorizes the bonds to be issued, the State Treasurer handles the bond sale and ensures that the bonds are repaid as they mature. [126] The entities created by a general obligation bond act—the finance committee, the fund, and the governing board—are entities and programs created in state government. Accordingly, if an SWT were a general obligation bond program, it would be structured as a group of related state agencies or programs including a fund, a committee that administers the fund, and a board.

What Types of Projects or Programs Can General Obligation Bonds Support?

Legislation authorizing a GO bond must specify the purpose for which the bond proceeds may be used.[127] The proceeds from the bond sale may not be diverted or used for purposes other than those specified in the authorizing legislation.[128]

Typically, GO bonds are used to finance infrastructure projects such as roads, bridges, water facilities, levees, housing, and schools.[129] More specifically, state law provides that proceeds from the sale of GO bonds "shall be used" only to (1) construct, acquire, or maintain capital assets—tangible physical property; (2) make grants or loans if the proceeds of the grants or loans are used for the costs of construction or acquisition of capital assets or for the costs of administering the grant or loan program; (3) repay funds borrowed in anticipation of the sale of the bonds or to pay interest on the bonds themselves; (4) pay the costs of a state agency responsible for administering a bond program, such as those costs incurred by the treasurer, controller, department of finance, and public works board; and (5) pay the costs of the treasurer's office directly associated with the sale and payment of bonds, such as printing costs.[130]

Despite these limitations, there is at least 1 relatively recent example of GO bond legislation in which the proceeds from the bond were not used solely for capital financing. Specifically, in 2004, California voters approved the California Stem Cell Research and Cures Act, which authorized the issuance of $3 billion in state GO bonds to be used for stem cell research and research facilities. The Cures Act established various state entities to administer the program including (1) the California Institute for Regenerative Medicine (CIRM), which functions like a backbone organization authorized to "make grants and loans for stem cell research" using the GO bond proceeds to finance its activities;[131] (2) an independent citizen's oversight committee, which acts as a governing body overseeing CIRM's work, and is composed of members appointed by members of the executive and legislative branches; [132] and (3) the California Stem Cell Research and Cures Fund in the State Treasury into which the bond proceeds are paid, and the California Stem Cell Research and Cures Finance Committee, which is authorized to issue the bonds.[133] We did not identify the exact legal authority allowing the state to circumvent the general statutory limitations on the expenditure of bond revenue—it could be that the limitations did not apply because the legislation creating CIRM and authorizing it to use GO bonds to fund its operations and medical and scientific research was passed by constitutional amendment, rather than by statutory amendment.

To date, CIRM has committed $2.2 billion of its initial endowment and is expecting to spend down its remaining balance by 2020, meaning that it may soon have to appeal to the Legislature or voters for a renewed public investment or obtain private funding.[134] Such a campaign would likely force the agency to address public criticism related to its failure to fund any research that has resulted in a cure for chronic disease that has reached the marketing stage, its lack of transparency and accountability, and internal conflicts of interest.[135] Regardless of CIRM's substantive and structural successes or failures, the agency is a key example of how GO bond revenue can be used to establish a dedicated source of funding for an SWT.

General Obligation Bond Enactment Process

As with taxes, legislation authorizing the issuance of GO bonds may arise as either a legislative proposal or a ballot initiative. A bond act that is first proposed in the Legislature must be approved by a two-thirds vote of each house *and* by a majority of voters at a general or direct primary election to be enacted.[136] This is true regardless of whether the bond act proposes a constitutional or statutory amendment.[137] Note that this is less burdensome than the requirement for enacting *local* GO bonds—specifically, under article XVI, section 18, of the California constitution, no county, city, town, or school district may incur indebtedness without a two-thirds popular vote.

The requirements for passing a bond act initiated by voters are the same as those for tax legislation: To get on the ballot, an initiated statutory amendment must have the signatures of 5% of the total vote for all candidates for Governor at the last gubernatorial election; an initiated constitutional amendment requires signatures of 8% of the total vote.[138] Once on the ballot, the initiative must be approved by a majority of voters to be enacted.

Benefits and Drawbacks of General Obligation Bonds as a Funding Source for an SWT

Below is the primary benefit:

- **A quick way to capitalize a stable and secure fund in a known amount:** Whereas it is difficult to predict how much revenue a tax will generate in a given year, a GO bond act can quickly establish a significant fund in a known amount through 1 bond sale. Further, GO bond revenue can be used only for the specific purposes identified in the authorizing legislation and cannot be diverted for general state needs, guaranteeing a secure and stable fund. The fund created by an individual bond act can also be used for deposits from other sources, such as tax revenue.[139]

The following are the primary drawbacks and limitations:

- **Political challenges:** There is a high threshold for passing a GO bond act that is introduced as a legislative proposal—a supermajority vote requirement in the Legislature *and* approval by a majority of voters. Alternatively, a GO bond act may be passed through the citizen initiative process, but such an effort would require sufficient financial resources to be successful.

- **Lack of flexibility in the expenditure of bond revenue:** State law generally limits the expenditure of bond revenue to financing capital projects. There appear to be exceptions to this limitation, however, that would allow a bond fund to be used for grant-making activities, as in the Cures Act example.

- **Lack of flexibility in entity type:** An SWT funded primarily through bonds would have to be a state entity or program consisting of a fund, a finance committee that administers the fund, and a governing board.

- **Debt liability:** Unlike taxes, GO bonds do not generate any new revenue for the state. Rather, a GO bond is a debt that must be repaid over time from the state's general fund with interest. Bond financing thus reduces that amount of taxpayer dollars available for other state programs in the future.

Revenue Bonds

What Are Revenue Bonds?

Unlike GO bonds, revenue bonds are not backed by the full faith and credit of the state. Instead, revenue bonds are secured only by a specific source of revenue, such as the earnings from the facility or service being financed by the bond.[140] If the source of revenue is inadequate to repay the bond, the state has no obligation to use monies from the general fund to make up the shortfall.[141] Likewise, a bondholder cannot compel the state to increase taxes to generate sufficient revenue to repay the bond. Because revenue bonds are not backed by the full faith and credit of the state, investors generally perceive them as more risky and demand a higher interest rate than with GO bonds.

There are 2 primary types of revenue bonds: (1) public enterprise revenue bonds, which are secured by the revenue from the facility or infrastructure being financed by the bond (e.g., charges related to the use of a public water system, power system, sewer system, or bridge);[142] and (2) conduit revenue bonds (also called private activity bonds), which are used to provide private entities, such as hospitals, with a low-cost source of financing for new facilities that will benefit the public, and which are secured only by the credit of the private entity and not by any state funds.[143]

What Types of Entities Can Use Revenue Bonds as a Financing Mechanism?

Only state agencies can issue revenue bonds. Examples of state agencies that are common users of revenue bonds include the following:

- The **California Housing Finance Agency,** which issues home mortgage revenue bonds to finance loans that, among other things, enable low-income families to purchase homes on affordable terms.[144] The bonds are repaid by revenues generated through the loans, not taxpayer dollars.

- The **Department of Water Resources,** which issues revenue bonds to finance the State Water Project, including dams and water transportation facilities necessary to supply citizens with water, flood control, and recreational opportunities.[145] The bonds are repaid using revenues generated through the operation of the project.[146]

- The **University of California,** which issues revenue bonds to fund capital improvements.[147]

What Types of Projects or Programs Can Revenue Bonds Support?

State law does not impose any express limitations on the purposes for which revenue bonds may be used. Because revenue bonds are designed to be self-supporting through user fees or other special earmarked receipts, however, it is feasible to use them only to finance revenue-producing facilities or services. Thus, revenue bonds would be an appropriate financing mechanism for an SWT only if the SWT wishes to finance projects or services that will generate revenue through charges or user fees, such as clean water infrastructure, or make loans to private entities that can pledge their own credit for bond repayment, such as clinics located in lower-income neighborhoods. Theoretically, a revenue bond could be secured by expected savings to the state from preventive interventions—such as Medicaid cost savings—but whether such an untested and risky approach would be able to attract investors is unknown.

Revenue Bond Enactment Process—No Voter Approval Required

By simple majority vote, the Legislature may enact a bill that creates an agency with authority to issue revenue bonds or that grants an existing agency such authority—if the bill adds or amends a statute. If the bill adds or amends a constitutional provision, it must be approved by a two-thirds vote in the Legislature and by a majority of voters at the next general election.[148] Alternatively, voters may create such an agency through the initiative following the process described above for taxes and GO bonds. Once such authority is granted, the agency does not need additional voter approval to issue revenue bonds.[149] Rather, the agency may simply issue bonds in the amount it determines necessary to finance the facilities or services specified by the authorizing legislation. In the 2016 general election, voters defeated a ballot initiative that would have changed the law to require voter approval for infrastructure-related revenue bonds in the amount of $2 billion or more, adjusted for inflation.[150]

Benefits and Drawbacks of Revenue Bonds as a Funding Source for an SWT

Below is the primary benefit:

- **Low vote threshold:** There are significantly fewer political hurdles to enacting and issuing revenue bonds than with GO bonds or taxes. Once an agency with revenue bond issuing authority is created by the legislature, no further approval by voters or the legislature is required to issue individual revenue bonds.

The following is the primary drawback:

- **Limitations on types of projects that can use revenue bond financing:** Revenue bonds are by definition self-supporting, meaning that they are backed by revenue generated from the facility or service being financed—for example, user fees paid by those who use the facility or special assessments against those who benefit from the capital improvements. Because revenue bonds are repaid in this way, they cannot be used to finance services that are not revenue generating.

Tobacco Securitization Bonds

In addition to traditional GO and revenue bonds, the state has authority pursuant to legislation enacted in 2003 to issue tax-exempt bonds secured by *tobacco assets*—the state's expected future share of moneys paid under the Master Settlement Agreement (MSA), which are deposited in the Tobacco Settlement Fund.[151] The Legislature must authorize the issuance of a tobacco security bond, but no voter approval is required. The state sells its bonds through the Golden State Tobacco Securitization Corporation. As of 2009, the corporation had sold $13.2 billion in bonds, with proceeds used to help balance the state's budget and fund K–12 schools, community colleges, and infrastructure projects.[152] There are significant risks associated with tobacco securitization bonds related to, among other things, a decline in tobacco consumption above what was anticipated resulting in decreasing MSA revenue over time.[153] Further, the California Attorney General's Office has reported to CAPF that expected MSA revenue is committed to debt repayment for many years to come, meaning that tobacco securitization bonds are not a viable funding source for an SWT.

Complementary Funding Sources

This section identifies state, federal, and private funding sources that could be used to supplement tax or bond revenue to support an SWT's activities. These funding sources are grouped as complementary because they are unlikely to be sufficient on their own to support an SWT's work. However, these complementary funds could be leveraged to further an SWT's goals by pooling or braiding them with primary funding streams. Braiding funding is using multiple revenue streams to achieve a targeted objective in which each stream maintains its own identity, restrictions, and reporting requirements. Conversely, when there are no constraints that would require funding streams to be maintained and reported on separately, funding can be pooled or blended such that each revenue stream loses its distinct identity and the pooled funds can be used in an unrestricted manner.

Additional State, Federal, and Private Funding Sources

California's Greenhouse Gas Reduction Fund

Under California's cap-and-trade program, the state auctions off tradable carbon emissions permits. The auction proceeds are deposited in the Greenhouse Gas Reduction Fund.[154] The Legislature can make appropriations from the fund to further the objectives of the California Global Warming Solutions Act of 2006 (AB 32). In addition to reducing greenhouse gas emissions, the objectives include maximizing public health benefits to the state and directing investment toward the most disadvantaged communities. To date, nearly $3.4 billion has been appropriated by the Legislature and allocated to state agencies administering programs that further these objectives. There are continuing appropriations for transportation, transit, land use, affordable housing, and sustainable communities—all of which could be seen as upstream preventive health interventions.[155] Further, legislation could be passed to authorize new appropriations—such as appropriations for various programs administered by an SWT.

Social Impact Bonds (Pay-for-Success Contracts)

A social impact bond (SIB) is a private financing mechanism used to fund social programs.[156] Although the word *bond* appears in the name, an SIB is not a debt instrument issued by a government entity. Rather, an SIB is a contract between a government and a private entity to obtain social services. For this reason, SIBs are also often called pay-for-success contracts.[157]

In a typical pay-for-success contract, a private sector intermediary agrees to obtain evidence-based social services and private funding for those services in exchange for the government's promise to repay the intermediary if specified performance targets are achieved. (Alternatively, the government could contract with a service provider directly.) If the intermediary fails to achieve the performance target, the government is not obligated to reimburse the intermediary.[158]

As of September 2016, 11 states and the District of Columbia had enacted legislation authorizing state agencies to enter into SIB agreements or study the use of SIBs for a variety of purposes including early childhood education and criminal justice initiatives.[159] For example, in 2014, California enacted legislation (AB 1837) creating the Social Innovation Financing Program administered by the California Board of State and Community Corrections, authorizing the Board to award grants between $500,000 and $200 million to 3 counties to enter into pay-for-success contracts to finance programs designed to reduce recidivism.[160]

In 2015, the New Jersey Legislature approved a bill (A 2771) that would have established a pilot program to use pay-for-success contracts to pay for upstream public health interventions, but Governor Christie vetoed the bill. The proposed legislation would have authorized the state's Economic Development Authority to guarantee loans issued by private lenders to nonprofits that provide public health services.[161] More specifically, private lenders, eligible nonprofits, and public sector entities would have been authorized to enter into contracts through which the lenders agreed to pay eligible nonprofits to provide public health services, and a state agency agreed to pay the lender an amount proportionate to the public sector savings resulting from the nonprofit's work.[162]

Although New Jersey's bill was vetoed, the example demonstrates how pay-for-success contracts could be used by an SWT to finance primary prevention. For example, legislation could establish an SWT as a state agency with authority to identify evidence-based interventions addressing the social determinants of health, and to enter into contracts with private investors and service providers to finance and deliver those interventions, where the SWT repays the lender if defined performance targets are achieved. The primary drawback of this strategy is that pay-for-success contracts implemented by states to date have shown mixed successes.[163] For the funding mechanism to work, the SWT would have to identify interventions that are highly likely to be effective at achieving performance targets and result in returns for the lenders.

Medicaid Section 1115 Demonstration Waivers

Section 1115 of the Social Security Act authorizes the Secretary of Health and Human Services (HHS) to approve experimental, pilot, or demonstration projects that the Secretary determines are likely to promote Medicaid's objectives, namely improving the health and wellness of vulnerable and low-income individuals and families.[164] Demonstration projects proposed by states must be *budget neutral* to the federal government, meaning that federal Medicaid expenditures will not be more than they would be without the demonstration.[165] Projects that have been approved typically focus on new approaches to eligibility, benefits and coverage, delivery system reform, and provider payments.[166] Additionally, HHS has granted several states section 1115 waivers that allow local accountable communities for health to use Medicaid dollars to pay for upstream population health interventions beyond traditional clinical care.[167] To date, however, there is no precedent for HHS approving a section 1115 demonstration project that would channel Medicaid dollars to a *statewide* entity that distributes those dollars for local population health interventions. An additional drawback of section 1115 waivers is that they must be renewed every 5 years, and thus do not guarantee a stable ongoing funding mechanism.[168]

Hospital Community Benefit Funds

Under both federal and California state law, a nonprofit hospital must, as a condition of maintaining its tax-exempt status, (1) provide community benefits to the patient populations in its service area, and (2) conduct a community health needs assessment once every 3 years to identify its community's significant health needs and adopt an implementation strategy to identify available resources for addressing those needs.[169] Although several states have explored ways to align the goals of local accountable communities for health and nonprofit hospitals to encourage hospital investment in upstream prevention, hospital community benefits are not an optimal funding source for a statewide entity like an SWT for 2 primary reasons.

First, by law, community benefits must be directly tied to the hospital's service area.[170] Although a hospital could theoretically choose to channel its community benefit dollars through a state entity such as an SWT, the SWT would be required to redistribute those same funds back to the populations that the hospital serves in order to comply with this legal requirement, which may pose unnecessary accounting and logistical challenges. As opposed to being a conduit for funding, an SWT could instead simply issue recommendations or guidelines for hospitals to bring their community benefit plans into alignment with the SWT's goals, or could incentivize hospitals to support promising preventive health interventions by offering matching funds.

Second, neither federal nor California state law currently requires a specified minimum level of community benefit expenditure by hospitals, and although applicable law provides guidance about how the standard may be satisfied, it does not mandate that hospitals dedicate all or a portion of their community benefit dollars to any specific program or service.[171] Hospitals in California therefore have significant latitude to determine how to fulfill their obligation to provide community benefit, and typically do so by dedicating the majority of their funding to charity and low-cost patient care services rather than to community programs.[172]

Although there is certainly an opportunity for California to strengthen its community benefit requirement, there is not a legally practical option to mandate that nonprofit hospitals donate a minimum amount to an SWT. For example, several other states (Nevada, Pennsylvania, Illinois, Utah, and Texas) have adopted legislation requiring hospitals to provide a quantifiable minimum amount of community benefits, such as by requiring that a hospital provide benefits in an amount at least equivalent to what it otherwise would have been required to pay in property taxes without an exemption.[173] None of these states, however, mandates that a specified minimum amount of fundraising or grants be provided to a specific state agency or nonprofit.[174] Indeed, legislation mandating that a nonprofit hospital pay a specified amount to the state to fund a particular agency or program would likely be challenged as a tax—a levy by the state to raise revenue for a public service. In other words, it would be a special tax imposed on nonprofit hospitals as a requirement for receiving an exemption from a different set of taxes, such as the franchise and income tax. To avoid potential litigation, a more practical way to exact funding from hospitals or other health care providers would simply be to tax them directly, as discussed above, rather than attempting to modify the community benefit requirement.

Private Donations

California law allows government agencies to accept unconditional gifts of money from private donors.[175] Additionally, the state is required to credit a private donation to a specific fund or appropriation if specifically designated by the donor.[176] Such donations to state government are tax-deductible under federal law. Accordingly, if an SWT were established as a state agency or program it would have authority to leverage primary funding streams such as tax or bond revenue with private donations.

Benefits and Drawbacks of Complementary Funding Sources

Below is the primary benefit:

- **Leveraging multiple funding streams:** Relying on multiple sources of revenue increases an SWT's impact and ensures resiliency in the event that 1 funding stream is interrupted.

The following is the primary drawback:

- **Lack of stability:** Compared with taxes and bonds—the primary funding sources discussed above—complementary funding sources are less stable and reliable.
- **Restrictions on use of funds:** As explained above, there are typically restrictions on how funds received from complementary funding sources can be used. Whether they are existing state, federal, or even private funding sources, such funds can generally be utilized only for specific purposes (Greenhouse Gas Reduction Fund) or specific populations (Medicaid 115 waivers). Such restrictions have drawbacks including limiting an SWT's flexibility in allocating funding; complicating fund accounting and administration; limiting the amount of unrestricted funding available for SWT operating and general program expenses; and possibly imposing additional burdens on grantees related to monitoring and reporting on fund expenditures.[177]

TABLE 5: Summary of Benefits and Drawbacks of Primary and Complementary Funding Sources

Funding source	Benefits	Drawbacks
State tax	• Can establish stable, long-term funding • If a special tax, revenue is protected from being diverted for other state programs • There are few constraints on the types of programs or services that could be funded • There is significant flexibility to design the tax legislation to account for political realities and stakeholder concerns	• Is politically challenging to enact; tax legislation often faces tough opposition • Tax design can involve complex legal and economic analysis; it could take significant time and skill to draft the legislation • There is a lack of flexibility in entity type (SWT would have to be a state entity) • There are fairness and equity issues for sales and excise taxes (regressivity of tax could be

	• In addition to raising revenue, some taxes have the secondary benefit of incentivizing behavioral change to promote health	mitigated by earmarking revenue for lower-income communities)
Charitable tax credit	• Charitable tax credits in other states have generated significant revenue for nonprofit and state programs	• Has a lack of predictability and sustainability; charitable giving can vary considerably depending on economic conditions and whether the proposed program is popular with donors • Legislators may be reluctant to enact a tax credit because it would reduce revenue available for existing state programs
General obligation bond	• Can quickly capitalize a new state entity, project, or program	• There is a high vote threshold to pass a GO bond act (supermajority vote in the legislature and approval by a majority of voters) • Bond revenue is generally limited to capital financing, but there are apparent exceptions • There is a lack of flexibility in entity type (SWT would have to be a state entity) • A bond is a debt that must be repaid over time from the state's general fund
Revenue bond	• There are significantly fewer political hurdles to enacting and issuing revenue bonds compared with GO bonds or taxes—no voter approval is required	• Revenue bonds are self-supporting and cannot be used to finance services that will not independently raise capital to repay the bond
Complementary state, federal, and private funding	• An SWT could leverage additional state, federal, and private funding to increase its impact and ensure resiliency in the event that a primary funding source is interrupted	• Relying on private donations and public and private grants is less reliable and sustainable compared with tax revenue • There are typically restrictions on the use of complementary funding sources that may create additional burdens for the SWT and grantees

Recommendation #2—Use a Special Tax to Create a Dedicated Primary Funding Source

Although there are political hurdles to enacting tax legislation in California, a special tax in which revenue is dedicated for a government-run SWT would best fulfill the goal of establishing a reliable and sustainable long-term funding source. Such a tax could include, for example, a special excise tax on sugar-sweetened beverages, or a health care provider tax like the one used to finance

Minnesota's wellness fund. Beyond these specific examples, there are other options to increase existing tax revenue and earmark the proceeds for an SWT. Tax legislation is preferable to other types of state financing mechanisms because unlike bonds or tax credits, taxes generate new revenue for the state and do not decrease available revenue for existing state programs. Additionally, if successfully enacted, taxes are a more sustainable approach to establishing a significant public fund than relying on private grants and donations. Furthermore, tax revenue could be leveraged to increase the SWT's impact by pooling it with these complementary state and private funding sources.

Allocation of Funding

There are a wide range of local contexts that prevention initiatives and programs must be able to adapt to. It should be no surprise, then, that prevention funders, at all levels of government and within the nonprofit sector, have adopted an equally wide range of approaches for allocating their funds.[178] Some funders target their funding toward specific populations, while others may be more concerned with addressing place-based needs. In fact, there is little consensus about what the best method is to balance the SWT's 2 competing goals of using funds for the equitable benefit of all residents and equitably distributing funds among all residents.[179] As such, an SWT could use a number of different approaches in deciding how to select locations and funded activities. These approaches could be enshrined in the SWT's foundational documents or legislation, adopted by the SWT's governing body after its creation, or combined. Regardless of how these approaches are adopted, it is important that the creators of the SWT and the SWT's governing body keep the following key issues in mind:

Identify a Process for Disbursing Funds from the Wellness Fund

Wellness fund monies could be distributed to stakeholders through a variety of mechanisms, including a competitive funding process, formula-based allocations, or a hybrid approach that provides grants across a geographic region and sets aside funds for more targeted investments. There are advantages and disadvantages to each approach related to whom will be impacted, how effective the funding will be in achieving the SWT's goals, the extent to which innovation is likely to be advanced, and whether the process exacerbates inequities by favoring communities that already have the strongest existing assets and networks.[180] As a result, it is essential that an SWT include a platform for public and stakeholder input in whatever process it develops for distributing funds. This may include the creation of an advisory board or other mechanisms for public input.

TABLE 6: Pros and Cons of Formula-Based Allocations and Competitive Grants

	Pros	Cons
Formula-based allocations	• Have administrative efficiency • Are better oriented to ensuring equitable distribution (particularly among geographies and populations)	• Have less SWT oversight or review of funded work • Do not necessarily incentivize new or innovative prevention work • May be used by the legislature as an excuse to cut existing government funding streams • Individual stakeholder allocations tend to be smaller due to distribution among all stakeholders

Competitive grants	• There is more SWT oversight of funded work (through application and reporting requirements) • Can be used to promote new and innovative program and activity proposals • May lead to more thoughtful, and thus potentially more successful, project proposals • Have the potential to grant larger amounts of funding that may enable larger and more ambitious projects	• There is greater staff and resource burden on the administrative organization (including more funds being spent on overhead and grant training) • Have much greater administrative burden on eligible stakeholders • May lead to greater geographic and population inequity due to lack of stakeholder capacity • Have a greater requirement for oversight and evaluation of project activities

Regardless of the mechanism for distribution of funds, an SWT must decide what level of stakeholders it is working with. This decision centers primarily on whether it will work directly with local community organizations, which may be difficult given the total number of local jurisdictions in California, or whether it should work through existing structures at the county level. As part of this decision, an SWT should consider to what degree it wants to work through community groups—which may be committed to prevention but which may have limited reach—or local governments, which may have variable commitment to prevention.

Identify Criteria for Funding Allocation Decisions

Regardless of the method of disbursement, a number of criteria can be used to define funding priorities and determine total disbursements. Establishing clear funding criteria provides primary stakeholders with the information they need to apply for funds and shapes the type of prevention initiatives stakeholders will propose. Potential fund distribution criteria include:

- **Population** could refer to the general population, the population living below some threshold of poverty, the number of people with certain demographic or health characteristics, or people who receive specific public benefits. By defining the population, an SWT can encourage certain impacts from the funding and can identify initiatives and evaluation metrics that are best positioned to deliver results based on the population focal points.

- **Equity, opportunity, and fairness** are central criteria an SWT must balance in determining funding allocations. Focusing on priority populations can not only maximize the effectiveness of prevention investments,[181] it can also help address the uneven health burden those populations bear. An SWT should consider specific equity criteria for fund distribution to ensure more equitable outcomes. Creating an advisory board to provide input on funding decisions and engaging local voices through community participation are 2 methods for ensuring that the SWT contributes to more equitable outcomes. Further, in order to balance the SWT's goals of equitable distribution and equitable benefit, the SWT may consider creating a floor-level contribution to jurisdictions across the state that can assure minimum activities, above which statewide funding is proportional to specific populations or selected indexes of need. Additionally, distribution of resources by grantees within each jurisdiction could be required to be concentrated in areas of greatest need, although some funds for jurisdiction-wide policies and programs are also generally valuable.

- **Priority activities** are a defined set of programs or activities that are eligible to receive funds (e.g., healthy housing initiatives or Safe Routes to School programs). An SWT must balance the benefit of having a defined set of program interventions that it funds with the desire to expand the range of interventions to include innovative and new initiatives and the need to be responsive to local priorities.

Make Balanced Prevention Investments

As it may take time to see the results of population-level prevention investments, an SWT must balance the need to give prevention initiatives time to prove their effectiveness with the desire and need to show immediate return on investment. As such, an SWT should consider structuring disbursements to include a combination of short, medium, and long-term approaches that can balance the need to demonstrate immediate return on investment and seed long-term change. While it is important to build on evidence-based approaches, an SWT must also adapt to evolving health challenges in the populations it is working with. Balancing investments in evidence-based practices with innovative community initiatives and new interventions can help the SWT achieve its goals and advance prevention practice.[182]

Build Capacity

An SWT should consider creating a technical assistance package targeted toward improving skills and capacities of prospective applicants and fund recipients.[183] Training and technical assistance can help to build the capacity of potential SWT grantees to develop effective proposals. This helps to ensure an SWT reaches potential applicants that wouldn't otherwise have capacity to access SWT funds. Additionally, an SWT should provide technical support to grantees to build their organizational capacity, or strengthen their program implementation. In particular an SWT could provide backbone support to build the capacity of local accountable communities for health.

Recommendation #3—Adopt Strategies to Ensure Equitable Funding Allocation

Our research did not identify any conclusive best practices for funding allocation. The following strategies, however, may help balance horizontal and vertical equity considerations and advance the SWT's core goal of improving population health for all Californians:

- Adopt policies in the SWT's foundational documents to ensure that the SWT has statewide reach that is equitably targeted

- Ensure that the SWT's governing body or advisory board has flexibility to set funding priorities and criteria while maintaining reach and equity, and adequately represents a diverse range of stakeholder interests, including public health experts, government and nonprofit leaders, and members of priority communities who will be affected by the SWT's work

- Consider a hybrid approach to funding allocation that includes regular allocations to health departments or their designees and competitive grants to statewide nonprofits, and regional and community-based partners

- Ensure that most program resources will reach populations or locations with high resource needs

- Promote a mix of key, evidence-based interventions and testing and evaluation of innovative approaches

Conclusion

Communities and states across the country are experimenting with different models for structuring and funding prevention efforts, and there is no single template for structuring an SWT. A state considering the creation of an SWT must identify the type of organization it wishes to create, how it will fund the organization, and how it will use the organization's resources to fund prevention initiatives. The recommendations in this report do not detail specific answers to the questions above, but instead are intended to provide guidance regarding the strengths and limitations of the various options available.

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[8] *Id.*

[9] Prevention is defined comprehensively to include an array of activities that prevent, delay the onset, or reduce the seriousness of disease and its complications. Prevention is categorized as primary, secondary, and tertiary:

> PRIMARY PREVENTION aims to reduce the incidence of disease by personal and communal efforts, such as decreasing environmental risks, enhancing nutritional status, immunizing against communicable diseases, or improving water supplies. It is a core task of public health, including health promotion. . . .
>
> SECONDARY PREVENTION aims to reduce the prevalence of disease by shortening its duration. If the disease has no cure, [secondary prevention] may increase survival and quality of life; it will also increase the prevalence of the disease. [Secondary prevention] seldom prevents disease occurrence . . . . It is a set of measures available to individuals and communities for the early detection and prompt intervention to control disease and minimize disability; e.g., by the use of screening programs. It is a core task of preventive medicine. . . .
>
> TERTIARY PREVENTION [includes] measures aimed at softening the impact of long-term disease and disability by eliminating or reducing impairment, disability, and handicap; minimizing suffering; and maximizing potential years or useful life. It is mainly a task of rehabilitation.

A Dictionary of Epidemiology 224-25 (Miquel Porta ed., 6th ed. 2014), http://irea.ir/files/site1/pages/dictionary.pdf.

[10] These mission goals mirror recommended nonprofit organizational principles identified in Ruth McCambridge, *Core Principles for the Organization of Extraordinary Boards*, Nonprofit Quarterly (Sept. 21, 2000), https://nonprofitquarterly.org/2000/09/21/core-principles-for-the-organization-of-extraordinary-boards-a-simple-tool-for-board-dialogue/.

[11] Petry Ubri & Samantha Artiga, Kaiser Family Found., Disparities in Health and Health Care: Five Key Questions and Answers 2 (2016), www.kff.org/disparities-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/.

[12] Jessamy Taylor, Nat'l Health Pol'y Forum, The Fundamentals of Community Health Centers 4 (2004), https://stage.aoa.org/documents/advocacy/Fundamentals-of-CHC.pdf.

[13] Legal limitations, particularly for state entities, would need to be addressed in the entity's authorizing legislation.

[14] David M. Walker, Comptroller General of the U.S., U.S. Gov't Accountability Office, Tax-Exempt Sector: Governance, Transparency, and Oversight are Critical for Maintaining Public Trust GAO-05-561T at 12 (2005), www.gao.gov/new.items/d05561t.pdf.

[15] *See, e.g.*, Cal. Gov't Code §§ 1090-1099, 87302.6.

[16] A *charitable organization* or *charity:*

> refers generally to organizations that are exempt from taxation under [s]ection 501(c)(3) of the Internal Revenue Code. Although the word 'charity' is often used as a 'catchall' for simplicity's sake, [s]ection 501(c)(3) describes groups organized and operated for [1] or more of the following purposes: charitable, religious, educational, scientific, literary, testing for the public safety, fostering national or international amateur sports competition, or the prevention of cruelty to children or animals. In general, 501(c)(3) organizations are divided into 2 categories: public charities or private foundations. . . . Public charities are 501(c)(3) organizations that can demonstrate that a certain part of their support (usually one-third on average) comes from the general public or a unit of government; or organizations formed to raise money for a specific school, hospital, governmental unit, or publicly supported charity. Charities are permitted to charge fees for their services; in fact, many public charities rely on fees for a substantial part of their revenues. Contributions to public charities are usually tax deductible, a significant privilege not granted to most other types of organizations. Public charities are prohibited from engaging in any activities to support or oppose political candidates, but are permitted to influence legislation within legal limits.

Ctr. for Non-Profits, Thinking of Forming a Non-Profit? What to consider Before You Begin 4 (2014 ed.), www.njnonprofits.org/ThinkingOfForming.pdf; *see also Exemption Requirements-501(c)(3) Organizations*, Internal Revenue Serv., www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations (last updated Dec. 28, 2017).

[17] Private foundations:

> are 501(c)(3) organizations that distribute money to fulfill a public purpose . . . [and follow] different laws and regulations than public charities. Foundations must distribute a certain portion of their income for charitable purposes and must pay an excise tax on investment income. There are strict rules and penalties to prevent personal or financial gain by certain people, including trustees and substantial contributors. . . . [Most] contributions to private foundations are tax-deductible. Private foundations are prohibited from engaging in lobbying activities, but may contribute to charities that lobby as long as the funds are not earmarked for lobbying purposes.

Ctr. for Non-Profits, Thinking of Forming a Non-Profit? What to consider Before You Begin 4-5 (2014 ed.), www.njnonprofits.org/ThinkingOfForming.pdf; *see also Charitable Trusts*, Internal Revenue Serv., www.irs.gov/charities-non-profits/private-foundations/charitable-trusts (last updated Feb. 17, 2018).

[18] The California Endowment (TCE) is a nonprofit, statewide foundation created in 1996 to make California a healthier place for all. With more than $3 billion in assets, TCE's mission is to expand access to affordable, quality health care for underserved individuals and communities and to promote fundamental improvements in the health status of all Californians. TCE focuses on primary and secondary system–focused change and works primarily through grants to non-governmental entities. *Our Story*, The California Endowment, www.calendow.org/our-story/ (last visited Mar. 22, 2018).

[19] Cal. Gov't Code §§ 6500-6599.3.

[20] *See* Okla. Const. art. 10, § 40; Okla. Stat. tit. 62, §§ 2302-3210; *Board of Investors*, Tobacco Settlement Endowment Trust, www.tset.ok.gov/content/board-investors (last visited Mar. 22, 2018).

[21] *See* Cal. Const. art. XIII A, § 3.

[22] California Budget Project, Principles and Policy: A Guide to California's Tax System 3 (2013), http://calbudgetcenter.org/wp-content/uploads/130411_Californias_Tax_System.pdf.

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[24] California Tax Foundation, California Tax Facts: An Overview of the Golden State's Tax Structure 5 (3d ed. 2017), www.caltaxfoundation.org/reports/2017%20Tax%20Facts.pdf.

[25] *Id.*

[26] *See* Cal. Welf. & Inst. Code §§ 17600-17600.70 (establishing the Local Revenue Fund, which provides dedicated funding for health and human services programs "realigned" to counties in 1991); Cal. Gov't Code §§ 30025-30029.12 (establishing the Local Revenue Fund 2011, which provides dedicated funding for public safety, health, and human services programs that were "realigned" to counties in 2011); Cal. Rev. & Tax. Code §§ 6051.2, 6201.15 (allocating a 0.5% sales tax rate to the Local Revenue Fund, and a 1.0625% sales tax rate to the Local Revenue Fund 2011).
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[37] Cal. Rev. & Tax Code §§ 32001-32557.
[38] Cal. Rev. & Tax Code §§ 7301-8526.
[39] Cal. Rev. & Tax Code §§ 30001-30483.
[40] Cal. Rev. & Tax Code §§ 34010-34021.5.
[41] California Budget Project, Principles and Policy: A Guide to California's Tax System 9 (2013), http://calbudgetcenter.org/wp-content/uploads/130411_Californias_Tax_System.pdf.
[42] *See, e.g.*, Cal. Gov't Code § 16305 (establishing a "State Treasury System under which state moneys will be adequately protected, and at the same time will be controlled and invested in such a way as to realize the maximum return consistent with safe and prudent treasury management"); Cal. Gov't Code §§ 16470-16476 (providing that any money deposited in the State Treasury to the credit of a special fund that is not necessary for immediate use shall be transferred to the "Surplus Money Investment Fund" and invested and reinvested by the State Treasurer as a part of the "Pooled Money Investment Account," and that interest earned shall be apportioned to the General Fund and identified special funds); *Pooled Money Investment Account: Program Description*, Cal. State Treasurer, www.treasurer.ca.gov/pmia-laif/pmia/program.asp (last visited Mar. 14, 2018).
[43] Cal. Const. art. XIII, § 34; Cal. Rev. & Tax. Code § 6359.
[44] *Id*.
[45] *See* Cal. Rev. & Tax Code §§ 32001-32557 (imposing an excise tax on alcoholic beverages).
[46] *See* ChangeLab Solutions & Healthy Food America, Best Practices in Designing Local Taxes on Sugary Drinks 3 (2016), www.mayorsinnovation.org/images/uploads/pdf/6_-_Best_Practices_in_Designing_Local_Taxes_on_Sugary_Drinks.pdf.
[47] Cal. Const. art. XVI, § 3 (stating that with limited exceptions, "No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State . . . .").

[48] *See* Cal. Family Bioethics Council v. Cal. Institute for Regenerative Medicine, 55 Cal. Rptr. 3d 272, 295-96 (2007); *see also* Cal. Ass'n of Retail Tobacconists v. State of California, 135 Cal. Rptr. 2d 224, 243 ("Exclusive management and control of the state includes those elements of governance assigned to the executive and legislative branches. The executive power includes the power of appointment, removal, supervision and management. The legislative power includes the power to appropriate funds and to establish spending priorities.").

[49] *See* Cal. Family Bioethics Council, 55 Cal. Rptr. 3d at 296-99; *see also* Cal. Ass'n of Retail Tobacconists, 135 Cal. Rptr. 2d at 246 (concluding that the Act establishing First 5 was "replete with controls, including the manner of appointment of members of both the CCFC and county commissions, the specificity regarding how tax revenues must be spent, and the annual audit and reporting requirement").

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[51] *See* 1998 Cal. Legis. Serv. Prop. 10 (West) (codified as amended at Cal. Const. art. XIII A, § 7; Cal. Const. art. XIII B, § 13; Cal. Health & Safety Code §§ 130100-130158; Cal. Rev. & Tax. Code §§ 30131-30131.6).

[52] Cal. Health & Safety Code §§ 130100, 130105.

[53] Cal. Rev. & Tax. Code § 30131.2.

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[55] Cal. Health & Safety Code § 130100.

[56] Cal. Health & Safety Code § 130105(e)-(f).

[57] Cal. Health & Safety Code §§ 130100, 130105.

[58] Cal. Health & Safety Code § 130105(d)(1).

[59] *Id*.

[60] Cal. Health & Safety Code § 130105(d)(2).

[61] Cal. Health & Safety Code § 130140(d).

[62] *Id.*

[63] Cal. Health & Safety Code § 130105(d)(2)(A).

[64] *See* Cal. Health & Safety Code § 130140(a)(1) (describing the process to establish a county commission and requirements governing the composition of the commission's members); *id.* § 130140.1 (stating that a county may establish a commission that is either a legal public entity separate from the county or an agency of the county with independent authority over the strategic plan and local trust fund).

[65] Cal. Health & Safety Code §§ 130115.

[66] Cal. Health & Safety Code § 130125.

[67] *See* First 5 California Annual Report 2015–2016, www.stanprop10.org/pdf/first-5-ca-annual-report-201-2016.pdf.

[68] Cal. Health & Safety Code § 130120.

[69] Cal. Health & Safety Code § 130145.

[70] *See* Cal. Gov't Code § 11000(a) (defining "state agency" as "every state office, officer, department, division, bureau, board, and commission").

[71] Minn. Stat. § 16A.724; *see also* Minnesota Management & Budget, Health Care Access Fund—February 2017 Forecast Update, https://mn.gov/mmb/assets/feb17fcst-hcaf_tcm1059-281977.pdf.

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[118] John Chiang, California State Treasurer, California Bonds: 101—A Citizen's Guide to State Revenue Bonds 1 (2017 ed.), www.treasurer.ca.gov/publications/bonds101_revenue.pdf; *see also* Bill Lockyer, State Treasurer and Chair, California Debt Issuance Primer 1 (2005), www.treasurer.ca.gov/cdiac/debtpubs/primer.pdf; Steven Maguire, Congressional Research Serv., Tax-Exempt Bonds: A Description of State and Local Government Debt 1 (2012), www.nabl.org/portals/0/documents/2012-13313-1.pdf; 52A Cal. Jr. 3d Public Securities and Obligations § 1 (West 2017).

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[137] *See* Cal. Const. Art. XVIII, § 1.

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