Hearing Date: May 29, 2009
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ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Public Utilities Code Sections 21670, 21675, and 21676 as added or amended by Statutes 1967, Chapter 852; Statutes 1970, Chapter 1182; Statutes 1973, Chapter 844; Statutes 1980, Chapter 725; Statutes 1981, Chapter 714; Statutes 1982, Chapter 1047; Statutes 1984, Chapter 1117; Statutes 1987, Chapter 1018; Statutes 1989, Chapter 306; Statutes 1990, Chapter 563; Statutes 1991, Chapter 140; Statutes 1993, Chapter 59; Statutes 1994, Chapter 644; Statutes 2000, Chapter 506; Statutes 2002, Chapter 438; and Statutes 2002, Chapter 971

Airport Land Use Commissions/Plans II
03-TC-12

County of Santa Clara, Claimant

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Airport Land Use Commission/Plans II

03-TC-12

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

This test claim addresses Airport Land Use Commissions (ALUCs) and Airport Land Use Compatibility Plans (ALUCPs). ALUCs were created under article 3.5 of the Public Utilities Code[1] to protect the "public health, safety, and welfare by encouraging orderly expansion of airports and the adoption of land use measures that minimize exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."[2] Generally, each ALUC prepares an ALUCP focused on broadly defined noise and safety impacts. In addition, ALUCs make compatibility determinations for proposed amendments to airport master plans, general plans, specific plans, zoning ordinances and building regulations within the planning boundary established by the ALUC.

This test claim was originally pled by claimant and analyzed by staff as though the activities required to be performed by the ALUC were "the County of Santa Clara's state-mandated duties."[3] There are provisions of law and facts in the record supporting this interpretation.[4] However, claimant submitted comments on the draft staff analysis on May 12, 2009 arguing that

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[1] All further code references are to the Public Utilities Code, unless otherwise specified.

[2] Statutes 1967, chapter 852.

[3] See Exhibit A, claimant's test claim filing and the declaration of Dave Elledge, Controller-Treasurer for the County of Santa Clara, executed September 25, 2003, at San Jose, California.

[4] Counties are required to establish ALUCs or alternate bodies/processes pursuant to section 21670 and 21670.1 and are responsible for certain funding and staffing requirements pursuant to section 21671.5, which is not pled in this test claim. Additionally, claimant provided the ALUC with substantial funding during the potential reimbursement period and provides a majority of the staffing for the ALUC. Finally, the Board of Supervisors approved the ALUC's bylaws and the fee imposed by the ALUC pursuant to section 21671.5 subd. (f).

ALUCs are independent bodies not subject to the control of counties.[5] Staff agrees with claimant's assertion that the county is not the ALUC , which is supported by law[6], and therefore finds that this test claim should be denied because:

1. The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are required to be performed by the claimant, County of Santa Clara.
3. ALUCs are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5, which includes all of the activities claimed in this test claim.
4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

CONCLUSION

Staff concludes that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are imposed on the claimant, County of Santa Clara.
3. ALUCs are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5, which includes all of the activities claimed in this test claim.
4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

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[5] Exhibit H, County of Santa Clara comments on draft staff analysis, page 1.

[6] See sections 21670, 21674, which are discussed on page 12 of this staff analysis.

STAFF ANALYSIS

Claimant

City of Santa Clara

Chronology

09/26/03	County of Santa Clara filed test claim with the Commission on State Mandates ("Commission")[7]
10/07/03	Commission staff issued completeness review letter and requested comments from state agencies
10/22/03	Department of Transportation (DOT)[8] submitted comments on the test claim with the Commission
11/06/03	DOF requested an extension to November 26, 2003 for filing comments due to competing workload demands
11/12/03	The Commission granted DOF's request for an extension to file comments on test claim with the Commission to November 26, 2003 for good cause
11/26/03	DOF submitted comments on the test claim with the Commission
02/05/04	Claimant submitted a response to DOF's comments on the test claim with the Commission
04/13/09	Commission sent a request for comments on the test claim to the Governor's Office of Planning and Research
04/21/09	Commission staff issued a draft staff analysis
05/11/09	The Governor's Office of Planning and Research submitted comments on the draft staff analysis
05/12/09	DOF submitted comments on the draft staff analysis
05/12/09	County of Santa Clara submitted comments on the draft staff analysis

Background

This test claim addresses Airport Land Use Commissions (ALUCs) and Airport Land Use Compatibility Plans (ALUCPs). All further code references are to the Public Utilities Code unless otherwise specified.

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[7] Based on the filing date of September 26, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

[8] Note that in this analysis DOT refers to the California agency commonly known as CalTrans.

In 1967, the California State Legislature authorized the creation of ALUCs, to protect the "public health, safety, and welfare by encouraging orderly expansion of airports and the adoption of land use measures that minimize exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."[9] Generally, each County's ALUC prepares an ALUCP with a twenty-year planning horizon focused on broadly defined noise and safety impacts. In addition, ALUCs make compatibility determinations for proposed amendments to airport master plans, general plans, specific plans, zoning ordinances and building regulations within the planning boundary established by the ALUC. ALUCPs were originally known as "Airport Comprehensive Land Use Plans" until Statutes 2002, chapter 438 and Statutes 2004, chapter 615 renamed ALUCPs in the several code sections in which they are mentioned to provide for the use of uniform terminology in airport land use planning law and publications.[10] The acronym ALUCP will be used throughout this analysis.

Establishment of an ALUC

In 1967, the Legislature adopted Statutes 1967, chapter 852 which added Article 3.5 (sections 21670-21674) to require every county containing one or more airports for the benefit of the general public served by a regularly scheduled airline to establish an ALUC.

The original Article 3.5 included, among other provisions: section 21670 which contains findings and provides for the establishment of ALUCs including membership selection. It also contained section 21671 and 21671.5 which are not pled in this test claim. Section 21671 addresses the situation where an airport is owned by city, district or county and provides for the appointment of certain members by cities and counties; and, section 21671.5 provides for terms of office; removal of members; filling vacancies; compensation; staff assistance; prior approval for employment of personnel; and ALUC meetings.

Article 3.5 was subsequently amended by Statutes 1970, chapter 1182, which added: section 21670.1 allowing for action by designated body instead of the ALUC and requiring two members with expertise in aviation; and, section 21670.2 regarding applicability to County of Los Angeles.[11] This statute also added section 21675 and 21676 which required ALUCs to prepare an ALUCP and imposed the requirement for local land use plans to be submitted to the ALUC for a compatibility review.

These initial statutes applied to all counties having an airport served by a regularly scheduled airline and the ALUCs in those counties. The planning requirement imposed on the ALUCs applied to the entire county area, including all airports in the county, even though all airports in the county may not have been served by the scheduled airline. The counties exempted from the requirement to establish an ALUC were those without an airport served by a scheduled airline.

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[9] Statutes 1967, chapter 852.

[10] Exhibit I, Senate Floor Analysis of Assembly Bill No. (AB) 3026 and Senate Transportation Committee Analysis of Senate Bill No. (SB) 1233.

[11] Note that sections 21670 and 21670.1 do not apply to the counties of Los Angeles or San Diego. The Los Angeles Regional Planning Commission and the San Diego County Regional Airport Authority have the responsibility for preparing, reviewing and amending their respective ALUCPs. (See §§ 21670.2 and 21670.3.)

The applicability of the requirements of article 3.5 was expanded by Statutes 1984, chapter 1117 to include counties having airports having only general aviation airports.[12] Several statutes have since amended the provisions relating to membership of the ALUC.

In 1993, the Legislature made the establishment of an ALUC discretionary. In 1994, the Legislature made the establishment of an ALUC mandatory again and provided several new alternatives to forming an ALUC including designating an alternative planning entity to fulfill the duties of an ALUC or contracting out for the preparation of the ALUCP.

ALUCPs

ALUCs must prepare an ALUCP to provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the ALUC, and to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. (Section 21675.) The original ALUCP preparation was required to be completed by June 30, 1991. (Section 21674.5.) Later amendments to the statutes, however, require that the ALUCP "be reviewed as often as necessary in order to accomplish its purposes" and restrict amendments of the ALUCP to "no more than once in any calendar year." (Section 21675.)

The contents of the ALUCP must be based on a long-range master plan or airport layout plan, as determined by DOT's Division of Aeronautics and include, among other things, the area within the jurisdiction surrounding any military airport, and be consistent with the safety and noise standards in the federal Air Installation Compatible Use Zone prepared for that military airport. (Section 21675.)

Compatibility of Local Land Use Decisions with the ALUCP

Local agencies (i.e. cities, counties and special districts) are required to submit their airport master plans, general plans, specific plans, zoning ordinances and building regulations to the ALUC for a determination of consistency with the ALUCP. However, there are procedures by which local agencies can overrule an ALUCP finding of incompatibility. (Section 21676.)

The Role of the Counties

The counties were charged with the responsibility for establishing an ALUC or alternative body/process. (Sections 21670 and 21670.1.) The board of supervisors also is responsible for providing for the staffing and operational expenses of the ALUC and it controls the ALUC's budget. (Section 21671.5.) With regard to budget controls, the board of supervisors determines:

- ALUC member "compensation, *if any*" [21671.5, subdivision (b)].
- The level of staff assistance and budgeting for operating expenses [21671.5, subdivision (c)].
- whether to approve the ALUCs decision to employ any personnel as employees or independent contractors. [21671.5, subdivision (d)].

[12] A general aviation airport is an airport not served by a scheduled airline but operated for the benefit of the general public.

The Role of the Division of Aeronautics

ALUCs are required to submit a copy of the ALUCP and each amendment to the ALUCP to DOT's Division of Aeronautics. (Section 21675.) Additionally, DOT provides training and development programs to ALUC staff. (21674 5.)

Fee Authority

Under prior law, 21671.5 subdivision (f) as added by Statutes 1990, chapter 1572 provided that "[t]he [ALUC] may establish a schedule of fees for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675. . . ." However, current law authorizes the ALUC to "....establish a schedule of fees necessary to comply with this article. . . ." (21671.5, as amended by Stats. 1991, ch.140.)

Test Claim History

The Commission has adopted two prior Statements of Decision on ALUCs. These prior decisions, while relevant to the issue of jurisdiction, are not precedential or binding on the Commission's decision for this test claim.

CSM 4231, *Airport Land Use*, Statutes 1984, chapter 1117

In CSM 4231 the Commission found Chapter 1117, Statutes 1984 imposed a reimbursable state mandate on counties with only general aviation airports by requiring them to form an ALUC, and develop an ALUCP. The CSM 4231 mandate was suspended under the provisions of Government Code section 17581 from 1990 though 1993. This mandate was then eliminated by Statutes 1993, chapter 59, which made the establishment of an ALUC discretionary.

CSM 4507, *Airport Land Use Commissions/Plans*, Public Utility Code Sections 21670 and 21670.1 as amended by Statutes 1994, chapter 644, Statutes 1995, chapter 66, and, Statutes 1995, chapter 91

The Commission in CSM 4507 found that Statutes 1993, chapter 59 "caused a gap in the continuity" of the state requirement to establish an ALUC, by changing the word "shall" to "may," and therefore, Statutes 1994, chapter 644, which replaced the word "may" with "shall," imposed a new requirement on counties which had disbanded their airport land use commissions, or alternative bodies, to reestablish such commissions or bodies.[13] The Commission also found that Statutes 1994, chapter 644 provided a new alternative process that a county could choose to implement rather than forming an ALUC or designating an alternative body, and that the choice by a county to establish this alternative process instead of reestablishing a commission or alternative body was also reimbursable. However, the Commission found that the development of the ALUCP was not a new state-mandated program or activity, because those plans had long been required by section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to section 21675.1, subdivision (a).

Eligible claimants under CSM 4507 include counties, cities, cities and counties, or other appropriately designated local government entities, except as provided by Public Utilities Code section 21670.2.[14] The CSM 4507 period of reimbursement began January 1, 1995 and the

[13] Exhibit I, CSM 4507, Corrected Statement of Decision, adopted July 31, 1997.

[14] Exhibit I, CSM 4507, Parameters and Guidelines, adopted December 17, 1998, page 1.

parameters and guidelines adopted December 17, 1998 authorize reimbursement for the following activities:

A. For each eligible Claimant, the direct and indirect costs of the following activities are eligible for reimbursement on a one-time basis:

1. Selection of the Method of Compliance:

   a. Analyze the enacted legislation and alternatives.

   b. Coordinate positions of the county and affected cities within the county, providing information, and resolving issues.

2. Establishment of one of the following methods:

   METHOD 1 - Set up or restore an airport land use commission.

   a. Establish and appoint the members.

   b. Establish proxies of the members.

   METHOD 2 - Determination of a designated body, pursuant to Public Utilities Code section 21670.1, subdivisions (a) and (b).

   a. Conduct hearing(s) to designate the appropriate body.

   b. Augment the body, if with two members with expertise in aviation.

   METHOD 3 –Establishment of an alternative process, pursuant to Public Utilities Code section 21670.1, subdivision (c).

   a. Develop, adopt and implement the specified processes.

   b. Submit and obtain approval of the processes or alternatives from the Department of Transportation, Division of Aeronautics.

   METHOD 4 - Establishment of an exemption, pursuant to Public Utilities Code sections 21670 (b) or 21670.1, subdivisions (d) and (e).

   a. Determine that a commission need not be formed and meet the specified conditions.

If an eligible claimant, which has selected and established an exemption as specified under 21670 (b) or 21670.1, subdivisions (d) or (e), determines that the exemption no longer complies with the purposes of Public Utilities Code section 21670 (a), activities to select the Method of Compliance and to establish Method 1, 2 or 3 are eligible for reimbursement.

B. For each eligible claimant, per diem for Commission members of up to $100 for each day actually spent in the discharge of official duties and any actual and necessary expenses incurred in connection with the performance of duties as a member of the Commission.

The parameters and guidelines adopted December 17, 1998 also specifically state: "the airport land use planning process described in Public Utilities Code section 21675 is not reimbursable."

The CSM 4507 mandate has been suspended in each Budget Act from 2005-2006 to 2008-2009.

Claimant's Position

The claimant states that test claim CSM 4507 filed by San Bernardino County on the 1994 and 1995 amendments "did not address several points incumbent within the newly mandated establishment of airport land use commissions." Claimant maintains that these points remain "unreviewed and unconsidered by the Commission" and that this test claim "seeks to correct that oversight."[15] Specifically, because only sections 21670 and 21670.1 were pled and analyzed in CSM 4507, that test claim "did not examine the effect the creation of the mandate would have on other statutes closely associated with it that were heretofore voluntary."[16] With regard to section 21675, the claimant admits that this section pre-dates 1975 but states that it was amended several times between 1980 and 2002 and did not mention amending the comprehensive plan until the enactment of Statutes 1984, chapter 117.[17] Claimant also states that Statutes 1987, chapter 1018 first set forth the requirement in section 21675 to review ALUCPs as often as necessary. Claimant states that section 21675 was not part of the CSM 4507 test claim, though it should have been because Statutes 1993, chapter 59 made the activities under 21675 optional and Statutes 1994, chapter 644 made them mandatory again. Claimant argues that this is true because immediately prior to the enactment of 1994, chapter 644, ALUCs were not required to exist and Statutes 1994, chapter 644 establishment of an ALUC or alternate body/process, and hence the requirements of 21675, mandatory. Finally, regarding section 21676, claimant states that though it was added in 1970, there was no requirement for ALUCs to review general plans, specific plans, zoning ordinances or building regulations within 60 days before they are approved or adopted until the enactment of Statutes 1982, chapter 1041. Thus, claimant identifies the following activities which it claims are new and reimbursable:

- Review and amend comprehensive land use plans (i.e. ALUCPs).[18]
- Review local agencies' amendments of general plans and specific plans within a 60-day[19] time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.[20]
- Meetings/hearings and other resources to meet the 60-day requirement.[21]

Claimant submitted comments on the draft staff analysis on May 12, 2009 which can be summarized as follows:

- Section 21671.5 subd. (f) only gives fee authority to ALUCs, not counties. ALUCs are independent bodies not subject to the control of counties. The ALUC fee authority is

[15] Exhibit A, Test Claim, page 1.

[16] Exhibit A, Test Claim, page 3.

[17] Exhibit A, Test Claim, page 4.

[18] Ibid.

[19] Exhibit A, Test Claim, page 6.

[20] Ibid.

[21] Ibid.

permissive, not mandatory, and even if the ALUC chooses to impose fees, those fees may not be sufficient to cover the county's cost. For example, the Santa Clara County ALUC did not impose fees until 2004 and then only imposed fees to cover the estimated costs of processing referrals under 21676, not the costs of updating the ALUCP.

- County fee authority under Government Code section 66014 and county police power does not apply to mandated ALUC activities because:

  (1) Government Code section 66014 applies to recovery of costs for plans "that a local agency is required to adopt" and ALUCs, not counties, adopt ALUCPs; and,

  (2) the county's police powers are limited to the unincorporated area of the county and referrals to ALUCs pursuant to 21676 come from areas surrounding airports which include both incorporated and unincorporated areas.[22]

Department of Finance's (DOF's) Position

DOF, in its comments on the test claim, concludes that "a reimbursable State mandate has not been created by the amendments specified" in the test claim because ALUCs have the authority to charge fees to cover their costs associated with the new activities specified.[23] In support of this argument DOF cites section 21671.5 of the Public Utility Code. Additionally, DOF states that the mandated activities of including the area within the ALUC's jurisdiction which surrounds a military airport in the ALUCP and ensuring that the ALUCP is consistent with the safety and noise standards in the federal Air Installation Compatible Use Zone prepared for that military airport are not reimbursable because, based on the language of the statute (Stats. 2002, ch. 971), the mandate is contingent upon federal funding being made available through an agreement with the Governor's Office of Planning and Research (OPR).[24]

The Department of Finance submitted comments on the draft staff analysis concurring with staff recommendation to deny the test claim because ALUCs and counties have sufficient fee authority pursuant to subdivision (d) of section 17556 of the Government Code.[25]

Department of Transportation's (DOT's) Position

DOT, in its comments dated October 22, 2003, states that section 21675.1, subdivision (c) requires that all expenses and costs by the ALUC be provided by its county and reimbursement of the test claim is thus prohibited by statute.[26]

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[22] Exhibit H, Claimant comments on the draft staff analysis. Note that staff provided an extensive discussion of county fee authority in the draft staff analysis which is no longer relevant because staff recommends denying this test claim on alternate grounds. Therefore, the county fee authority issue will not be discussed further in this analysis.

[23] Exhibit D, DOF comments on the test claim, page 1.

[24] Ibid.

[25] Exhibit H, DOF comments on the draft staff analysis, page 1.

[26] Exhibit B, DOT comments on the Test Claim, October 22, 2003, page 3.

Discussion

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[27] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[28] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[29]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[30] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[31] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[32] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[33]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[34] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an

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[27] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[28] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[29] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3rd 830, 835 *(Lucia Mar)*.

[30] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,*

[31] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[32] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[33] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[34] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

"equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[35]

The analysis addresses the following issue:

Do the test claim statutes require counties to perform state-mandated activities?

There are three statutory sections pled in this test claim, 21670, 21675 and 21676. The claimant requests reimbursement for the following activities which it claims are new and reimbursable:

- Review and amend comprehensive land use plans (i.e. ALUCPs)
- Review local agencies' amendments of general plans and specific plans within a 60-day time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.
- Meetings/hearings and other resources to meet the 60-day requirement.[36]

This test claim was originally pled by claimant and analyzed by staff as though the activities required to be performed by the ALUC were "the County of Santa Clara's state mandated duties."[37] There are provisions of law and facts in the record supporting this interpretation.[38] However, claimant submitted comments on the draft staff analysis on May 12, 2009 arguing that ALUCs are independent bodies not subject to the control of counties.[39] Staff agrees with claimant's assertion that the county is not the ALUC, which is supported by law and therefore finds that this test claim should be denied because:

1. The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are required to be performed by the claimant, County of Santa Clara.
3. ALUC's are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and

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[35] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[36] Exhibit A, Test claim, page 6.

[37] Exhibit A, See claimant's test claim filing and the declaration of Dave Elledge, Controller-Treasurer for the County of Santa Clara, executed September 25, 2003, at San Jose, California.

[38] Counties are required to establish ALUCs or alternate bodies/processes pursuant to section 21670 and 21670.1 and are responsible for certain funding and staffing requirements pursuant to section 21671.5, which is not pled in this test claim. Additionally, claimant provided the ALUC with substantial funding during the potential reimbursement period and provides a majority of the staffing for the ALUC. Finally, the Board of Supervisors approved the ALUC's bylaws and the fee imposed by the ALUC pursuant to section 21671.5, subd. (f).

[39] See Exhibit H, County of Santa Clara comments on draft staff analysis, page 1.

XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5, which includes all of the activities claimed in this test claim.

4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

Section 21670 provides for the membership of the ALUC. Regarding ALUC membership, section 21670, subdivision (b) provides in pertinent part:

> Each commission shall consist of seven members to be selected as follows:
>
> (1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.
>
> (2) Two representing the county, appointed by the board of supervisors.
>
> (3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.
>
> (4) One representing the general public, appointed by the other six members of the commission.

Based on the membership of the ALUC, it is apparent that the County Board of Supervisors does not control the ALUC. Moreover, section 21674 provides the ALUC with the following powers and duties:

> The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:
>
> (a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses.
>
> (b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.
>
> (c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675.
>
> (d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.
>
> (e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.
>
> (f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article.

As is demonstrated by the plain language of sections 21670 and 21674, the county has only two seats out of seven, which is not a majority, and the ALUC has a number of

independent powers including the ability to adopt rules and regulations. Taken together, these provisions demonstrate the ALUC is an independent body which the county does not control.

1. The Commission Does Not Have Jurisdiction to Address Section 21670 as Amended by Statutes 1994, Chapter 644. With Regard to the Activity of Establishing the ALUC, or To Address Section 21675 With Regard to the Activity of Developing the Original ALUCP Because Those Issues Were The Subject of a Final Decision in CSM 4507

Public Utilities Code section 21670, subdivision (b) requires counties that have an airport served by a scheduled airline to establish an ALUC. Counties that have an airport not served by a scheduled airline, but operated for the benefit of the general public, are required to establish an ALUC, or declare that the county is exempt from creating a ALUC by adopting a resolution finding that there is no noise, public safety, or land use issues affecting any airport in the county. In the event the county determines that an ALUC is not necessary, the county is required to transmit a copy of the resolution to the Director of Transportation.

As discussed above, CSM 4507 is an approved test claim awarding reimbursement for duties imposed on counties pursuant to section 21670 and 21670.1. The Commission also found in CSM 4507 that the development of the ALUCP was not a new state-mandated program or activity, because those plans had long been required by section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to section 21675.1, subdivision (a). An administrative agency does not have jurisdiction to rehear a decision that has become final.[40] Therefore, the Commission does not have jurisdiction over section 21670 or 21670.1 as amended by Statutes 1994, chapter 644 or over section 21675 as in existence immediately before the effective date of Statutes 1994, chapter 644 (i.e. January 1, 1995) with regard to the activity of developing the ALUCP.

2. None of the Activities Claimed Under Sections 21675 or 21676 Are Required to be Performed by the Claimant, County of Santa Clara

Section 21675 provides:

> (a) *Each commission shall* formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission's airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating an airport land use compatibility plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the airport influence area. The airport land use compatibility plan shall be reviewed

[40] Exhibit I, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) *The commission shall include*, within its airport land use compatibility plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any military airport for all of the purposes specified in subdivision (a). The airport land use compatibility plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The airport influence area *shall be established by the commission* after hearing and consultation with the involved agencies.

(d) The *commission shall submit* to the Division of Aeronautics of the department one copy of the airport land use compatibility plan and each amendment to the plan.

(e) If an airport land use compatibility plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

Thus the ALUC is required by section 21675 to perform the following activities:

- Formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, including the area surrounding any military airport, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.
- The plan shall include and be based on a long-range master plan or airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years.
- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
- Establish the airport influence area after hearing and consultation with involved agencies.
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.

With respect to section 21675, claimant requests reimbursement to review and amend comprehensive land use plans (i.e. ALUCPs).[41] However, based on the plain language of section 21675, ALUCs are required to perform these activities but counties are not.

Section 21676 requires the ALUC to review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed

[41] Exhibit A, Test claim, page 6.

action. In addition, the ALUC is required to review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

With respect to section 21676, claimant requests reimbursement for the following activities:

- Review local agencies' amendments of general plans and specific plans within a 60-day time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.

Section 21676 provides:

> (a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may propose to overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the final record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.
>
> (b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the local agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the local agency governing body within 30 days of receiving the proposed

decision and findings. If the commission or the division's comments are not available within this time limit, the local agency governing body may act without them. The comments by the division or the commission are advisory to the local agency governing body. The local agency governing body shall include comments from the commission and the division in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. At least 45 days prior to the decision to overrule the commission, the public agency governing body shall provide the commission and the division a copy of the proposed decision and findings. The commission and the division may provide comments to the public agency governing body within 30 days of receiving the proposed decision and findings. If the commission or the division's comments are not available within this time limit, the public agency governing body may act without them. The comments by the division or the commission are advisory to the public agency governing body. The public agency governing body shall include comments from the commission and the division in the final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

Staff recognizes that 21676 does require local agencies to submit their general plans, specific plans, zoning ordinances and building regulations to the ALUC, but those activities have not been pled in this test claim. However, even if those activities had been pled, they would not be reimbursable because local agencies have authority to impose fees on projects within their jurisdiction which may be imposed for purposes of updating general plans and other planning documents pursuant to Government Code section 66014, and pursuant to their police power under article XI, section 7 of the California Constitution.[42] However, based on the plain meaning of section 21676, the counties are not required to perform the following activities which are the only 21676 activities pled:

- Review local agencies' amendments of general plans and specific plans within a 60-day time period.

[42] See Exhibit A, Government Code section 66014 and *Collier v. San Francisco* (2007) 151 Cal.App.4th 1326, page 1353, review denied.

- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.

Based on a plain meaning reading of section 21675 and 21676 the following activities are imposed on ALUCs, not counties:

- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
- The ALUCP must include the area within the jurisdiction of the ALUC surrounding any military airport and be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.[43]
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.
- Review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed action.
- Review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

With regard to claimants request for reimbursement for "meetings/hearings and other resources to meet the 60-day requirement," this language is not required by the statutes pled.

Staff finds that neither section 21675 or 21676 require counties to perform any of the activities pled in the test claim.

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[43] DOF argued in its comments that unless federal funding is provided, these activities are not mandated. Statutes 2002, chapter 971, which added the requirements regarding military airports, added an uncodified provision, section 8 of Senate Bill 1233 (Knight), which states with regard to amendments to the Government Code: "[a] city or county shall not be required to comply with the amendments made by this act to sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations. . ." until an agreement is entered into between the federal government and OPR to fully reimburse all claims approved by the Commission on State Mandates and the city or county undertakes its next general plan revision. However, the statute is silent regarding reimbursement for activities required by the amendments made to section 21675. Because section 21675 as amended by Statutes 2002, chapter 971 was not among the sections listed as being contingent upon federal funding, staff finds that the activities mandated by that section are not contingent upon receipt of federal funds. As a side note, the Commission has received comments from OPR which indicate that OPR was not able to reach an agreement with the federal government and therefore, cities and counties are not required to comply with the amendments to sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations.

3. ALUCs are Not Eligible Claimants Under California Constitution Article XIII B, Section 6 Because They are Not Subject to Taxing and Spending Limitations Under Articles XIII A And XIII B. And, Even if They Were, They Have Sufficient Fee Authority Pursuant to Section 21671.5 Necessary to Comply With Article 3.5 Which Includes All of the Activities Claimed in This Test Claim

As discussed above, section 21675 and 21676 require ALUC to perform the following activities:

- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
- The ALUCP must include the area within the jurisdiction of the ALUC surrounding any military airport and be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.
- Review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed action.
- Review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

However, as claimant argues, an ALUC is an independent body, separate from the county. As a separate entity, it has several powers and duties listed in section 21674. But ALUCs do not have the power to levy tax revenues to pay for their expenses. Rather, the operating costs of an ALUC are paid by the county served by the ALUC. (Section 21671.5, subd. (c).) In addition, ALUCs are authorized to charge fees for the cost of complying with Article 3.5. (Section 21671.5, subd. (f).) Thus, ALUCs are exempt from the spending limitations of article XIII B and cannot, by law, claim reimbursement under article XIII B, section 6 of the California Constitution.

Section 21671.5, subdivision (f) authorizes ALUCs to impose fees on proponents of actions, regulations or permits sufficient to cover the costs of performing all of the mandatory activities imposed by the test claim statutes. Section 21671.5, subdivision (f) provides:

> The commission may establish a schedule of fees *necessary to comply with this article*. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.[44] (Emphasis added.)

[44] Note that section 66016 requires that the fees must be adopted by ordinance or resolution, after providing notice and holding a public hearing.

The plain meaning of section 21671.5, subdivision (f) demonstrates that ALUCs have fee authority sufficient to cover the costs of performing the activities mandated by the test claim statutes.

According to the California Supreme Court: "[w]hen interpreting a statute, our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent."[45] Further, our Supreme Court has noted: "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. . ."[46] Subdivision (f) specifically authorizes the imposition of "fees necessary to comply with this article". "This article" encompasses all of Article 3.5 which includes subdivisions 21675 and 21676 as amended by the test claim statutes. The language is clear and unambiguous. Thus, 21671.5 as amended by Statutes 1991, chapter 140 provides fee authority for the mandated activities.

Legislative history supports this conclusion. Section 21671.5, subdivision (f) was amended by Statutes 1991, chapter 140 (S.B. 532) as follows:

> (f) The commission may establish a schedule of fees ~~for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675~~ <u>necessary to comply with this article</u>. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to section 66016 of the Government Code. <u>Except as provided in subdivision (g)</u>, after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan. (Deletions in strikeout and additions in underline.)

Prior to this amendment, fees imposed under section 21671.5, subdivision (f) were limited to fees "for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675."

The language "fees necessary to comply with this article" was proposed by the Assembly Committee on Local Government analysis of SB 532 which says:

> SB 1333 (Dills) Chapter 459, Statutes 1990, suspended numerous mandates, including the mandate relating to airport land use planning during 1990-91, and there were no subsequent reimbursements. Because the Legislature also provided fee authority in SB 1333 to cover costs associated with the various suspended mandates, should the existing fee authority in Airport Land Use Planning Law for <u>reviewing and processing proposals</u> be similarly revised to cover all <u>airport land use planning activities</u>?[47] (Emphasis in original.)

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[45] Exhibit I, *Freedom Newspapers, Inc v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.

[46] Exhibit I, *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

[47] Exhibit I, Assembly Committee on Local Government analysis of SB 532, as amended May 14, 1991, page 3.

Similarly, the Senate Floor Analysis states that Assembly amendments "[a]llow[] the schedule of fees adopted by an airport land use commission to be those necessary to carry out the provisions of law relating to its land use planning instead of [just for] reviewing and processing proposals."[48]

Article XIII B, section 6 requires, with exceptions not relevant to this issue, that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse the local government for the costs of the new program or higher level of service. In *County of San Diego,* the Supreme Court explained that section 6 represents a recognition that together articles XIII A and XIII B severely restrict the taxing and spending powers of local agencies.[49] The purpose of section 6 is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities *because they are subject to taxing and spending limitations under articles XIII A and XIII B.*[50]

As determined by the courts, article XIII B, section 6 does not require reimbursement when the expenses incurred by the local entity are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments.[51] A local entity cannot accept the benefits of an exemption from article XIII B's spending limit while asserting an entitlement to reimbursement under article XIII B, section 6.[52] Thus, a local agency must be subject to the tax and spend limitations of articles XIII A and XIII B to be eligible for reimbursement of costs incurred to implement a "program" under section 6.[53] Reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues.[54]

Therefore, because ALUCs are not subject to the tax and spend limitations of articles XIII A and XIII B and because they have fee authority pursuant to section 21671.5 necessary to comply with article 3.5 which includes all of the activities claimed in this test claim, they are not eligible for reimbursement of costs incurred to implement a "program" under section 6.

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[48] Exhibit I, Senate Floor Analysis (Unfinished Business), SB 532 (Bergeson), as amended June 27, 1991, page 1.

[49] *County of San Diego supra,* 15 Cal.4th at page 81.

[50] Ibid. See also, *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 980-981, 985 (*Redevelopment Agency*); and *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 280-281 (*City of El Monte*).

[51] *County of Fresno v. State of California* (1991) 53 Cal.3d 482. 486-487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

[52] *City of El Monte,* supra, at p. 282.

[53] See *Redevelopment Agency,* supra, 55 Cal.App.4th 976, 985-987.

[54] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

4. Although the County Has Claimed Increased Costs as a Result Of Duties Imposed on ALUCs, Increased Costs Alone Do Not Result in a State Mandate

Staff recognizes that claimant has provided substantial funding to the Santa Clara ALUC during the course of the potential reimbursement period. However, it is well-established that local agencies are not entitled to reimbursement for all increased costs mandated by state law, but only those resulting from a new program or higher level of service imposed on them by the state.[55] Because the test claim statutes over which the Commission has jurisdiction do not require claimant to perform any of the activities pled, staff finds that they do not impose a new program or higher level of service on counties and therefore the costs claimed by the county are not reimbursable.

CONCLUSION

Staff concludes that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507.
2. None of the activities claimed under sections 21675 or 21676 are imposed on the claimant, County of Santa Clara.
3. ALUCs are not eligible claimants under California Constitution article XIII B, section 6 because they are not subject to taxing and spending limitations under articles XIII A and XIII B, and, even if they were, they have sufficient fee authority pursuant to section 21671.5 necessary to comply with article 3.5 which includes all of the activities claimed in this test claim.
4. Although the county has claimed increased costs as a result of duties imposed on ALUCs, increased costs alone do not result in a state mandate.

Recommendation

Staff recommends the Commission adopt this staff analysis and deny this test claim.

[55] *County of Los Angeles*, supra, 110 Cal.App.4th 1176, 1189.

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Exhibit A

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COMMISSION ON STATE MANDATES

Claim No. 03-TC-12

TEST CLAIM FORM

Local Agency or School District Submitting Claim

County of Santa Clara

Contact Person

Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)

Telephone No.

(916) 485-8102
Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapter 852, Statutes of 1967; Chapter 1182, Statutes of 1970; Chapter 844, Statutes of 1973; Chapter 725, Statutes of 1980; Chapter 714, Statutes of 1981; Chapter 1047, Statutes of 1982; Chapter 1117, Statutes of 1984; Chapter 1018, Statutes of 1987; Chapter 306, Statutes of 1989; Chapter 563, Statutes of 1990; Chapter 140, Statutes of 1991; Chapter 59, Statutes of 1993; Chapter 644, Statutes of 1994; Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002; and Chapter 971, Statutes of 2002.

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Dave Elledge, Controller-Treasurer

Telephone No.

(408) 299-5200

Signature of Authorized Representative

Dave G. Elledge

Date

9/25/03

State of California
COMMISSION ON STATE MANDATES
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Dave Elledge, Controller-Treasurer

Telephone No.

(408) 299-5200

Signature of Authorized Representative

Date

9/25/03

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
The County of Santa Clara

Airport Land Use Commissions/Plans II

Chapter 852, Statutes of 1967; Chapter 1182, Statutes of 1970; Chapter 844, Statutes of 1973; Chapter 725, Statutes of 1980; Chapter 714, Statutes of 1981; Chapter 1047, Statutes of 1982; Chapter 1117, Statutes of 1984; Chapter 1018, Statutes of 1987; Chapter 306, Statutes of 1989; Chapter 563, Statutes of 1990; Chapter 140, Statutes of 1991; Chapter 59, Statutes of 1993; Chapter 644, Statutes of 1994; Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002; and Chapter 971, Statutes of 2002

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

In 1967, airport land use commissions were created through the addition of Article 3.5 of the Public Utilities Code. At the time, the establishment of such commissions by the counties was voluntary. By 1994, the law was amended to make establishment of an airport land use commission mandatory. Thus there was a new unfunded state mandate. San Bernardino County successfully pursued a test claim before this Commission on the 1994 and 1995 amendments. The test claim, however, did not address several points incumbent within the newly mandated establishment of airport land use commissions. These points remain unreviewed and unconsidered by the Commission. The instant test claim seeks to correct the oversight.

Public Utilities Code §21670 currently reads:

> (a) The Legislature hereby finds and declares that:
> (1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.
> (2) It is the purpose of this article to protect the public health, safety, and welfare by ensuring the orderly

expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there is no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and

> the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.
> (e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.
> (f) It is the intent of the Legislature to clarify that, for the purposes of this article, special districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.

This section, originally added in Chapter 852, Statutes of 1967, was amended by Chapter 644, Statutes of 1994, (and further amended by Chapter 506, Statutes of 2000) to make the establishment of airport land use commissions no longer an option but a mandate. As a result, the Airport Land Use Commissions/Plans test claim, CSM-4507, was filed and was found to be a reimbursable state mandate in 1997. Unfortunately, this test claim did not examine the effect the creation of the mandate would have on the other statutes closely associated with it that were heretofore voluntary.

Public Utilities Code §21670.1 sets forth alternatives to the establishment of an airport land use commission. Sections 21670.2 and 21670.3 address special situations in Los Angeles County and San Diego County, respectively. Section 21670.4 addresses the problems that arise concerning the establishment of airport land use commissions for intercounty airports. Section 21671 addresses the composition of the airport land use commission when the airport is owned by a city or district in another county or by another county. Sections 21671.5 and 21672 set forth the general operating rules for the airport land use commissions. Section 21673 allows an owner of a public airport to petition for the establishment of an airport land use commission. Section 21674 sets forth the commissions' powers and duties. Section 21674.5 sets forth that the Department of Transportation will provide training and other support for the airport land use commissions. Section 21674.7 provides further guidance for commissions.

Public Utilities Code §21675 currently reads:

> (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the

Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including sound proofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission shall include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding and military airport for all purposes specified in subdivision (a). The plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the plan and each amendment to the plan.

(e) If the comprehensive land use plan does not include the matter required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

Although this section was added by Chapter 1182 , Statutes of 1970, and subsequently amended by Chapter 844, Statutes of 1973, Chapter 725, Statutes of 1980, and Chapter 714, Statutes of 1981, (and later amended by Chapter 306, Statutes of 1989, Chapter 563, Statutes of 1990, Chapter 438, Statutes of 2002 and Chapter 971, Statutes of 2002) there was no mention of amending the comprehensive land use plan until the enactment of Chapter 1117, Statutes of 1984. Moreover, it was not until the enactment of Chapter 1018, Statutes of 1987, that section set forth the current requirement that comprehensive land use plans be reviewed as often as necessary and amended no more often than once a year. At the time, although a reimbursable state mandate had been found in Chapter 1117, Statutes of 1984, in October 1987 for the establishment of commissions, this section was not part of that test claim. Beginning in 1990, first by lack of funding and later by the enactment of Chapter 59, Statutes of 1993, the mandate was made optional. When the establishment of a commission, again, became mandatory in 1994, this section lost its voluntary character and should have been part of the San Bernardino County test claim.

Section 21675.1 provides for the adoption of an airport land use compatibility plan. Section 21675.2 addresses remedies that may be pursued when a commission fails to act.

Section 21676 currently reads:

> (a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified that the local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.
>
> (b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.
>
> (c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.
>
> (d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from

> the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

Although this section was added by Chapter 1182 , Statutes of 1970, (and later amended by Chapter 1018, Statutes of 1987, and Chapter 438, Statutes of 2002) there was no requirement of commission review prior to amending general plans, specific plans, adopting or approving zoning ordinances or building regulations as set forth in subdivision (b), or the 60 day time constraints set forth in subdivision (d), until the enactment of Chapter 1041, Statutes of 1982. Despite its language, the requirement remained an option as it was not necessary to have an airport land use commission in 1982. When the establishment of a commission became mandatory in 1994, this section lost its voluntary character and should have been part of the San Bernardino County test claim.

The net effect of this legislation is to cause an increase in the workload of the airport land use commissions not considered as part of the San Bernardino County test claim. The requirement that commissions review and update comprehensive land use plans and the commissions review local agencies' amendments of general plans, specific plans, adoption of or approval of zoning ordinances or building regulations within a 60 day time period necessitates the use of staff time for analysis and attending meetings/hearings and other resources to ensure the job gets done, and when applicable, with 60 days. Thus, the total costs of this program are reimbursable.

The County of Santa Clara does not have complete estimates on the cost of discharging this program, but estimates that the costs exceed $1000.00 per year.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 1041, Statutes of 1982, Chapter 1018, Statutes of 1987, and Chapter 644, Statutes of 1994, filed on September 15, 1982, September 23, 1987, and September 20, 1994, respectively, which mandated these tasks be performed by the airport land use commissions that counties were, again, mandated to establish.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Public Utilities Code §§21670, 21675, and 21676. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The County of Santa Clara does not have complete estimates on the cost of discharging this program, but estimates that the costs exceed $1000.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by the County of Santa Clara as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The sections of the law claimed involve county airport land use commissions. Only counties, as subdivisions of the state, are mandated to have such commissions. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is stated that the Legislature wishes carry out its charge to protect the public health, safety and welfare through ensuring an orderly

expansion of airports, promoting the goals and objectives of the California airport noise standards, and preventing the creation of new noise and safety problems.

In summary, these statutes mandate that local government bear the burden of the increased work load of the airport land use commissions. The County of Santa Clara believes that the airport land use commissions program as set forth above satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the test claim herein stated by the County of Santa Clara.

CONCLUSION

The enactment of Chapter 1041, Statutes of 1982, Chapter 1018, Statutes of 1987, and Chapter 644, Statutes of 1994, imposed a new state mandated program and cost on the County of Santa Clara by establishing a program whereby the newly reuired airport land use commssions had were mandated to review and update comprehensive land use plans, review local agencies' amendments of general plans, specific plans, adoption of or approval of zoning ordinances or building regulations within a 60 day time period. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1:	Chapter 852, Statutes of 1967
Exhibit 2:	Chapter 1182, Statutes of 1970
Exhibit 3:	Chapter 844, Statutes of 1973
Exhibit 4:	Chapter 725, Statutes of 1980
Exhibit 5:	Chapter 714, Statutes of 1981
Exhibit 6:	Chapter 1041, Statutes of 1982
Exhibit 7:	Chapter 1117, Statutes of 1984
Exhibit 8:	Chapter 1018, Statutes of 1987
Exhibit 9:	Chapter 306, Statutes of 1989
Exhibit 10:	Chapter 563, Statutes of 1990
Exhibit 11:	Chapter 140, Statutes of 1991
Exhibit 12:	Chapter 59, Statutes of 1993
Exhibit 13:	Chapter 644, Statutes of 1994
Exhibit 14:	Chapter 506, Statutes of 2000
Exhibit 15:	Chapter 438, Statutes of 2002
Exhibit 16:	Chapter 971, Statutes of 2002

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this _____ day of September, 2003, at San Jose, California, by:

_____

Dave Elledge, Controller-Treasurer
County of Santa Clara

DECLARATION OF DAVE ELLEDGE

I, Dave Elledge, make the following declaration under oath:

I am the Controller-Treasurer for County of Santa Clara. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the County of Santa Clara's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

> " 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this _____ day of September, 2003, at San Jose, California.

_____

Dave Elledge
Controller-Treasurer
County of Santa Clara

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 25 day of September, 2003, at San Jose, California, by:

Dave Elledge, Controller-Treasurer
County of Santa Clara

DECLARATION OF DAVE ELLEDGE

I, Dave Elledge, make the following declaration under oath:

I am the Controller-Treasurer for the County of Santa Clara. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the County of Santa Clara's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

> " 'Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 25 day of September, 2003, at San Jose, California.

David H. Elledge

Dave Elledge, Controller-Treasurer
County of Santa Clara

(2) Certification of a pilot in a stated category by the Federal Aviation Administration.

(3) Establishing requirements for pilot experience.

(4) Establishing limitations on the use of the aircraft.

(5) Any person licensed under Division 6 (commencing with Section 11401) of the Agricultural Code with respect to his operation of an aircraft for the purpose of applying pest control materials or substances by dusting, spraying or any other manner whereby such materials or substances are applied through the medium of aircraft.

CHAPTER 852

An act to add Article 3.5 (commencing with Section 21670) to Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, relating to the Airport Land Use Commission.

[Approved by Governor July 21, 1967. Filed with Secretary of State July 21, 1967.]

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

SECTION 1. Article 3.5 (commencing with Section 21670) is added to Chapter 4 of Part 1 of Division 9 of the Public Utilities Code, to read:

Article 3.5. Airport Land Use Commission

21670. There is hereby created in each county containing at least one airport operated for the benefit of the general public and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, an Airport Land Use Commission, hereinafter referred to as the "commission." Each commission shall consist of seven members to be selected as follows:

(a) Two representing the cities in the county, appointed by a selection committee comprised of the mayors of all the cities within that county; provided, however, that if there are any cities contiguous or adjacent to the qualifying airport, at least one such representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by subdivisions (b) and (c) shall each be increased by one.

(b) Two representing the county, appointed by the board of supervisors.

(c) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(d) One representing the general public, appointed by the other six members of the commission.

If, however, a majority of the selection committee and of the board of supervisors in such county make a determination that adequate provision exists for a continuing review of land use surrounding airports, such commission shall not be created.

21671. In any county where there is an airport operated for the general public, and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, which is owned by a city or district in another county or by another county, one of the representatives provided by subdivision (a) of Section 21670 shall be appointed by the mayors of the cities of the county in which the owner of that airport is located, and one of the representatives provided by subdivision (b) of Section 21670 shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

21671.5. Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body which originally appointed a member whose term has expired shall appoint his successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing him. The expiration date of the term of office of each member shall be the first Monday in May in the year in which his term is to expire. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairman of the commission shall be selected by the members thereof.

Compensation, if any or reimbursement for necessary expenses, or both, shall be determined by the board of supervisors.

Staff assistance, including the mailing of notices and the keeping of minutes, shall be provided by the county.

The commission shall meet at the call of the commission chairman or at the request of the majority of the commission members.

21672. Each commission shall adopt rules and regulations with respect to the temporary disqualification of its members from participating in the review or adoption of a proposal because of conflict of interest and with respect to appointment of substitute members in such cases.

21673. In any county when a commission has not been created by Section 21670, any owner of a public airport may initiate proceedings for the creation of a commission by presenting a request to the board of supervisors that a commission be created and showing the need therefor to their satisfaction.

21674. The commission shall have the following powers and duties, subject to the limitations upon its jurisdiction herein set forth:

(1) To study conditions and make recommendations concerning the need for height restrictions on buildings near airports;

(2) To make recommendations for the use of the land surrounding airports to assure safety of air navigation and the promotion of air commerce.

(3) To hold public hearings regarding the subject matter in subdivisions (1) and (2) and make findings of fact thereon which would be advisory only to the involved jurisdiction.

(4) To make and enforce rules and regulations for the orderly and fair conduct of such hearings.

The powers of the commission shall be advisory only and shall in no way be construed to give the commission jurisdiction over the operation of any airport or jurisdiction over any matters relating to zoning or land use authority of any city or county.

CHAPTER 853

An act to amend Section 75034 of, and to add Section 75035 to, the Government Code, relating to the Judges' Retirement Law.

[Approved by Governor July 21, 1967. Filed with Secretary of State July 21, 1967.]

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

SECTION 1. Section 75034 of the Government Code, is amended to read:

75034. Notwithstanding any other provision of this chapter, if the service of a judge, who has been elected as such by vote of the people, has been discontinued by any means other than death, resignation, recall, impeachment, or retirement pursuant to this chapter, and who withdrew his accumulated contributions prior to September 9, 1953, he may within one year after October 1, 1961, pay into the Judges' Retirement Fund a sum equal to the amount withdrawn plus interest thereon at the rate of 6 percent per annum from the date of withdrawal to the date of payment. A judge who makes such payment as in this section provided shall, upon his application therefor to the State Controller after attaining age 60, or after making said payment, whichever event last occurs, be retired, and receive a retirement allowance based upon the judicial service with which he is credited, in the same manner as other judges, except that his retirement allowance is an annual amount equal to 5 percent of the compensation payable, at the time payments of the allowance fall due, to the judge holding the office which the

(3) To hold public hearings regarding the subject matter in subdivisions (1) and (2) and make findings of fact thereon which would be advisory only to the involved jurisdiction.

(4) To make and enforce rules and regulations for the orderly and fair conduct of such hearings which shall conform as nearly as possible to the provisions applicable to hearings conducted by local agency formation commissions.

The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

SEC. 5. Section 21675 is added to the Public Utilities Code, to read:

21675. The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. This plan shall not be inconsistent with the State Master Airport Plan. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area.

The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 6. Section 21676 is added to the Public Utilities Code, to read:

21676. Each public agency having representation on the commission shall assist in the development of an area plan. All such plans must be filed with the commission for its approval. If in the determination of the commission, an action or regulation of any public agency within the boundaries of the area plan is inconsistent with the commission plan, then the commission shall hold a hearing to determine whether or not the proposed action is in the best interest of the airport and the adjacent area. If it is determined that the action would be harmful, then the public agency shall be notified and the public agency shall have another hearing to reconsider its action. The public agency proposing the action or regulation, however, may overrule the commission after such hearing by a four-fifths vote of its governing body.

Each public agency owning any airport within the boundaries of the area plan shall file any substantive change in development plans with the commission for its approval. If such plans are inconsistent with the commission plan, then the public agency shall be notified and shall have another hearing to reconsider its action. Such public agency, however, may overrule the commission by a four-fifths vote of its governing body.

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

SECTION 1. Section 10205 of the Streets and Highways Code is amended to read:

10205. The provisions of the Improvement Act of 1911 relating to contributions is incorporated in this division as if fully set out herein.

At any time either before or after the formation of the district, the legislative body may provide by ordinance that for a period specified in the ordinance, but not exceeding the term of bonds issued or to be issued, the city may contribute, from any sources of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of such revenues for the purposes set forth in such ordinance, limited to the following: the acquisition or construction of improvements, the acquisition of interests in real property and the payment of expenses incidental thereto for the use and benefit of the district. In addition, the purposes specified in the ordinance may also include the application of such revenues as a credit upon the levied assessments in the same manner as is provided in Section 10427.1. A brief statement of intention to provide such contribution of revenues shall be set forth in the resolution of intention. Such contribution shall not constitute an indebtedness or liability of the municipality. Contributions may be made from any sources of revenue not otherwise prohibited by law; provided, however, that any contributions authorized after the levy of assessment shall be from sources other than ad valorem taxes on real property.

CHAPTER 1182

An act to amend Sections 21670 and 21674 of, and to add Sections 21670.1, 21670.2, 21670.3, 21675 and 21676 to, the Public Utilities Code, relating to airport land use commissions.

[Approved by Governor September 16, 1970. Filed with Secretary of State September 16, 1970.]

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

SECTION 1. Section 21670 of the Public Utilities Code is amended to read:

21670. There is hereby created in each county subject to this article and containing at least one airport operated for the benefit of the general public and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, an airport land use commission, hereinafter referred to as the "commission." Each commission shall consist of seven members to be selected as follows:

(a) Two representing the cities in the county, appointed by a selection committee comprised of the mayors of all the

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(b) Two representing the county, appointed by the board of supervisors.

(c) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county; however, one such representative shall be appointed from an airport operated for the benefit of the general public.

(d) One representing the general public, appointed by the other six members of the commission.

Each commission shall file a certificate of formation with the Secretary of State on or prior to January 1, 1971.

SEC. 2. Section 21670.1 is added to the Public Utilities Code, to read:

21670.1. Notwithstanding any provisions of this article, if the board of supervisors and the selection committee of mayors in any county each makes a determination by a majority vote that proper land use planning can be accomplished, through the actions of an appropriately designated body, then such body shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county. The Secretary of State shall be notified of such determinations by January 1, 1971.

SEC. 3. Section 21670.2 is added to the Public Utilities Code, to read:

21670.2. Sections 21670 and 21670.1 do not apply to counties of more than 4 million population. In such counties, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on such an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal.

SEC. 4. Section 21674 of the Public Utilities Code is amended to read:

21674. The commission shall have the following powers and duties, subject to the limitations upon its jurisdiction herein set forth:

(1) To study conditions and make recommendations concerning the need for height restrictions on buildings near airports;

(2) To make recommendations for the use of the land surrounding airports to assure safety of air navigation and the promotion of air commerce.

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

SECTION 1. Section 10205 of the Streets and Highways Code is amended to read:

10205. The provisions of the Improvement Act of 1911 relating to contributions is incorporated in this division as if fully set out herein.

At any time either before or after the formation of the district, the legislative body may provide by ordinance that for a period specified in the ordinance, but not exceeding the term of bonds issued or to be issued, the city may contribute, from any sources of revenue not otherwise prohibited by law, any specified amount, portion, or percentage of such revenues for the purposes set forth in such ordinance, limited to the following: the acquisition or construction of improvements, the acquisition of interests in real property and the payment of expenses incidental thereto for the use and benefit of the district. In addition, the purposes specified in the ordinance may also include the application of such revenues as a credit upon the levied assessments in the same manner as is provided in Section 10427.1 A brief statement of intention to provide such contribution of revenues shall be set forth in the resolution of intention. Such contribution shall not constitute an indebtedness or liability of the municipality. Contributions may be made from any sources of revenue not otherwise prohibited by law; provided, however, that any contributions authorized after the levy of assessment shall be from sources other than ad valorem taxes on real property.

CHAPTER 1182

An act to amend Sections 21670 and 21674 of, and to add Sections 21670.1, 21670.2, 21670.3, 21675 and 21676 to, the Public Utilities Code, relating to airport land use commissions.

[Approved by Governor September 13, 1970. Filed with Secretary of State September 15, 1970.]

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

SECTION 1. Section 21670 of the Public Utilities Code is amended to read:

21670. There is hereby created in each county subject to this article and containing at least one airport operated for the benefit of the general public and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, an airport land use commission, hereinafter referred to as the "commission." Each commission shall consist of seven members to be selected as follows:

(a) Two representing the cities in the county, appointed by a selection committee comprised of the mayors of all the

cities within that county; provided, however, that if there are any cities contiguous or adjacent to the qualifying airport, at least one such representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by subdivisions (b) and (c) shall each be increased by one.

(b) Two representing the county, appointed by the board of supervisors.

(c) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county; however, one such representative shall be appointed from an airport operated for the benefit of the general public.

(d) One representing the general public, appointed by the other six members of the commission.

Each commission shall file a certificate of formation with the Secretary of State on or prior to January 1, 1971.

SEC. 2. Section 21670.1 is added to the Public Utilities Code, to read:

21670.1. Notwithstanding any provisions of this article, if the board of supervisors and the selection committee of mayors in any county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then such body shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county. The Secretary of State shall be notified of such determinations by January 1, 1971.

SEC. 3. Section 21670.2 is added to the Public Utilities Code, to read:

21670.2. Sections 21670 and 21670.1 do not apply to counties of more than 4 million population In such counties, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on such an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal.

SEC. 4. Section 21674 of the Public Utilities Code is amended to read:

21674. The commission shall have the following powers and duties, subject to the limitations upon its jurisdiction herein set forth:

(1) To study conditions and make recommendations concerning the need for height restrictions on buildings near airports;

(2) To make recommendations for the use of the land surrounding airports to assure safety of air navigation and the promotion of air commerce.

(3) To hold public hearings regarding the subject matter in subdivisions (1) and (2) and make findings of fact thereon which would be advisory only to the involved jurisdiction.

(4) To make and enforce rules and regulations for the orderly and fair conduct of such hearings which shall conform as nearly as possible to the provisions applicable to hearings conducted by local agency formation commissions.

The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

SEC. 5. Section 21675 is added to the Public Utilities Code, to read:

21675. The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. This plan shall not be inconsistent with the State Master Airport Plan. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area.

The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 6. Section 21676 is added to the Public Utilities Code, to read:

21676. Each public agency having representation on the commission shall assist in the development of an area plan. All such plans must be filed with the commission for its approval. If in the determination of the commission, an action or regulation of any public agency within the boundaries of the area plan is inconsistent with the commission plan, then the commission shall hold a hearing to determine whether or not the proposed action is in the best interest of the airport and the adjacent area. If it is determined that the action would be harmful, then the public agency shall be notified and the public agency shall have another hearing to reconsider its action. The public agency proposing the action or regulation, however, may overrule the commission after such hearing by a four-fifths vote of its governing body.

Each public agency owning any airport within the boundaries of the area plan shall file any substantive change in development plans with the commission for its approval. If such plans are inconsistent with the commission plan, then the public agency shall be notified and shall have another hearing to reconsider its action. Such public agency, however, may overrule the commission by a four-fifths vote of its governing body.

CHAPTER 1183

An act to amend Sections 25425, 25545.29, and 25545.36 of, and to add Section 25425.1 to, the Education Code, relating to community colleges.

[Approved by Governor September 15, 1970. Filed with Secretary of State September 15, 1970.]

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

SECTION 1. Section 25425 of the Education Code is amended to read:

25425. The governing board of a district maintaining a community college may require of pupils in attendance in grades 13 and 14, the payment of a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for the regular school year for health supervision and services, and the medical and hospitalization services, authorized by Article 1 (commencing with Section 11701) of Chapter 4 of Division 9.

All of such fees shall be deposited in the general fund of the district, and shall be expended only for the purposes for which such fees were collected.

SEC. 2. Section 25425.1 is added to the Education Code, to read:

25425.1. The governing board of a district maintaining a community college may require of pupils in attendance in grades 13 and 14 and employees of the district, the payment of a toll, in an amount not to exceed twenty dollars ($20) per semester or forty dollars ($40) per regular school year to be fixed by the board, for parking services.

Such toll shall only be required of pupils and employees using such services.

All such tolls collected shall be deposited in the general fund of the district and shall be expended only for parking services.

Tolls collected for use of parking services provided for by investment of student body funds under the authority of Section 10703.5 shall be deposited in a special fund for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities.

SEC. 3. Section 25545.29 of the Education Code is amended to read:

25545.29. Bonds shall bear interest at a rate of not to exceed 8 percent per annum, payable annually or semiannually or in part annually and in part semiannually.

SEC. 4. Section 25545.36 of the Education Code is amended to read:

25545.36. Bonds may be sold at either public or private sale. The board may fix terms and conditions for the sale or

CHAPTER 843

An act to amend Section 32664 of the Streets and Highways Code, relating to parking authorities.

[Approved by Governor September 25, 1973. Filed with Secretary of State September 25, 1973.]

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

SECTION 1. Section 32664 of the Streets and Highways Code is amended to read:

32664. At least once annually, the authority shall submit a statement of all its financial affairs, audited by independent certified public accountants, to the legislative body of the city.

CHAPTER 844

An act to amend Section 21675 of the Public Utilities Code, relating to airport land use commissions, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1973. Filed with Secretary of State September 25, 1973.]

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

SECTION 1. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. This plan shall not be inconsistent with the State Master Airport Plan. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area.

(b) The commission may include within its plan formulated pursuant to subdivision (a) the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision shall not give the commission any jurisdiction or authority over the territory or operations of any such military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved

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agencies.

SEC. 2. This act is ar
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that this act go into imme

An act to amend Section
320.5 to the Unemp
employment statistics.

[Approved by Go
Secretary

The people of the State

SECTION 1. Section 1
150. The Division of
this chapter referred to
present facts and statisti
state, including informa
demand, industrial relati
and safety, labor produc
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Industrial Relations deer
internal administration,
shall be performed by t

SEC. 2. Section 320.5
Code, to read:

320.5. The Director
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information required
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withholding tax under
Division 2 of the Reve
reports required by the
necessary to administer
or to make other estima
withholding money pay

agencies.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Because the areas surrounding federal military airports are presently not subject to the planning jurisdiction of airport land use commissions, there are many instances of unregulated construction in such areas presenting serious safety hazards both to air navigation and to the occupants of the structures. In order to commence regulation of the construction of such incompatible facilities at the soonest possible time in the interests of public safety, it is necessary that this act go into immediate effect.

CHAPTER 845

An act to amend Section 150 of the Labor Code, and to add Section 320.5 to the Unemployment Insurance Code, relating to employment statistics.

[Approved by Governor September 25, 1973. Filed with Secretary of State September 25, 1973.]

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

SECTION 1. Section 150 of the Labor Code is amended to read:

150. The Division of Labor Statistics and Research, hereafter in this chapter referred to as the division, shall collect, compile and present facts and statistics relating to the condition of labor in the state, including information as to cost of living, labor supply and demand, industrial relations, industrial disputes, industrial accidents and safety, labor productivity, sanitary and other conditions, prison labor, and such other matters in relation to labor as the Director of Industrial Relations deems desirable. Except for statistics relating to internal administration, all statistical functions of the department shall be performed by the division.

SEC. 2. Section 320.5 is added to the Unemployment Insurance Code, to read:

320.5. The Director of the Department of Human Resources Development may by authorized regulations prescribe the information required to be reported to the department by employing units under this division and employers subject to withholding tax under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, in order to make reports required by the Secretary of Labor, to provide information necessary to administer this code, to estimate unemployment rates or to make other estimates required for the purpose of dispensing or withholding money payments under the Welfare Reform Act of 1971,

CHAPTER 724

An act to add Section 1501.1 to the Health and Safety Code, relating to care facilities.

[Approved by Governor July 26, 1980. Filed with Secretary of State July 27, 1980.]

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

SECTION 1. Section 1501.1 is added to the Health and Safety Code, to read:

1501.1. (a) It is the policy of the state to facilitate the proper placement of every child in residential care facilities where such placement is in the best interests of the child. The placement agencies shall actively seek out-of-home care facilities capable of meeting the varied needs of the child. Therefore, in placing children in out-of-home care, particular attention should be given to the individual child's needs, the ability of the facility to meet those needs, the needs of other children in the facility, the licensing requirements of the facility as determined by the licensing agency, and the impact of the placement on the family reunification plan.

(b) Pursuant to the provisions of this section, children with varying designations and varying needs, except as provided by statute, shall not be precluded from being placed in the same facility provided the facility is licensed, and has a special permit if necessary, to meet the needs of each child so placed. Neither the requirement for any license nor any regulation shall restrict the implementation of the provisions of this section. Implementation of this section does not obviate the requirement for a facility to be licensed by the department.

CHAPTER 725

An act to amend Sections 1231, 1231.1, 10107, 21007, 21008.5, 21206, 21669.2, 21669.3, 21670, 21670.1, 21675, 21682.5, 21683, 21684, and 29031 of, to repeal Section 130060 of, and to repeal Article 4 (commencing with Section 130290) of Chapter 4 of Division 12 of, the Public Utilities Code, to amend Section 25 of Chapter 1243 of the Statutes of 1971, and to repeal Sections 4 and 5 of Chapter 1428 of the Statutes of 1974, relating to transportation.

[Approved by Governor July 26, 1980. Filed with Secretary of State July 27, 1980.]

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

SECTION 1. Section 1231 of the Rublic Utilities Code is amended to read:

1231. The commission shall allocate and expend any money which may be appropriated, from the State Highway Account in the State Transportation Fund or any other fund, for the purposes specified herein, to cities, counties, and cities and counties, on the basis of need as determined by the commission, to assist them in paying their shares of the cost of constructing grade-crossing protection works on city, county, and city and county streets, roads, and highways. In no event, however, shall the commission allocate or expend to any city, county, or city and county a sum exceeding one-half of its share of the cost of such work.

Funds appropriated for the purposes specified herein shall be available for allocation and expenditure without regard to fiscal years.

SEC. 2. Section 1231.1 of the Public Utilities Code is amended to read:

1231.1. In each annual proposed budget prepared by the Department of Transportation under Section 165 of the Streets and Highways Code, a sum not to exceed one million dollars ($1,000,000) shall be set aside for allocations to the Public Utilities Commission, for the purpose of paying to the railroad or street railroad corporations the share of the cost to cities, counties, and cities and counties of maintaining automatic grade-crossing protection. Payment shall be made on the basis of verified claims filed with the commission by the railroad or street railroad corporation responsible for maintenance of automatic grade-crossing protection. The specific amount of the total allocation shall be determined by the California Transportation Commission and shall constitute the amount necessary for such maintenance. In arriving at such amount, the California Transportation Commission shall consult with representatives of the Public Utilities Commission. Any amounts not expended by the Public Utilities Commission in any one fiscal year may be credited to subsequent annual allocations.

Funds appropriated for the purposes specified herein shall be available for allocation and expenditure without regard to fiscal years.

SEC. 3. Section 10107 of the Public Utilities Code is amended to read:

10107. Nothing in this article limits in any respect the jurisdiction, powers, and duties vested by law in the Public Utilities Commission or, with respect to state highways, in the Department of Transportation. In the event of any conflict of jurisdiction, that of the Public Utilities Commission or the Department of Transportation, as the case may be, shall prevail.

SEC. 4. Section 21007 of the Public Utilities Code is amended to read:

21007. Whenever the term "California Aeronautics Commission," "Division of Aeronautics," or "Department of

Aeronautics" is used in any other law, it means the Department of Transportation.

SEC. 5. Section 21008.5 of the Public Utilities Code is amended to read:

21008.5. "Commission" means the California Transportation Commission.

SEC. 6. Section 21206 of the Public Utilities Code is amended to read:

21206. The department shall prepare a statement of all estimated revenues of the Aeronautics Account in the State Transportation Fund and revenues available for local subventions from any other sources for the next succeeding fiscal year, together with a statement of proposed expenditures to be made to local agencies and the University of California during the next succeeding fiscal year, or obligations to be incurred in connection therewith.

The statement shall be included in the printed fiscal year budget submitted to the Legislature. Insofar as the matters to which it pertains, it shall constitute as submitted the budget submitted to the Department of Finance pursuant to Section 13320 of the Government Code, and, as to such matters, shall be administered by the Department of Finance as the fiscal year budget of the Department of Transportation under the provisions of this section and of Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code.

Any changes or modifications in the budget described in this section shall be approved by the Director of Finance.

In the event, during an annual period, the budgetary amount approved and allocated for any purpose exceeds the amount actually necessary therefor, with a resultant available surplus, such surplus may be allocated to any other purpose or supplemental project upon the written approval of the Director of Finance.

In administering the budget, the Director of Finance shall not limit expenditures or incurrence of obligations thereunder to quarterly, semiannual, or other periods of the fiscal year.

SEC. 7. Section 21669.2 of the Public Utilities Code is amended to read:

21669.2. In its deliberations, the department and the advisory committee shall be governed by the following guidelines:

(a) Statewide uniformity in standards of acceptable airport noise need not be required, and the maximum amount of local control and enforcement shall be permitted.

(b) Due consideration shall be given to the economic and technological feasibility of complying with the standards promulgated by the department.

SEC. 8. Section 21669.3 of the Public Utilities Code is amended to read:

21669.3. Any regulations designed to establish a noise monitoring program at an airport entering service after November 30, 1971, shall go into effect on the date the airport enters service.

SEC. 9. Section 21670 of the Public Utilities Code is amended to read:

21670. There is hereby created, in each county subject to this article and containing at least one airport operated for the benefit of the general public and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, an airport land-use commission, hereinafter referred to as the "commission." Each commission shall consist of seven members to be selected as follows:

(a) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county; provided, however, that, if there are any cities contiguous or adjacent to the qualifying airport, at least one such representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by subdivisions (b) and (c) shall each be increased by one.

(b) Two representing the county, appointed by the board of supervisors.

(c) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county; however, one such representative shall be appointed from an airport operated for the benefit of the general public.

(d) One representing the general public, appointed by the other six members of the commission.

Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

Each member shall promptly appoint a single proxy to represent him in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the member who appointed him. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

SEC. 10. Section 21670.1 of the Public Utilities Code is amended to read:

21670.1. Notwithstanding any provisions of this article, if the board of supervisors and the city selection committee of mayors in any county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then such body shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

SEC. 11. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public

airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision shall not give the commission any jurisdiction or authority over the territory or operations of any such military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 12. Section 21682.5 of the Public Utilities Code is amended to read:

21682.5. The department shall pay, from the Aeronautics Account to the Transportation Planning and Development Account in the State Transportation Fund, a sum equal to the pro rata share of the comprehensive transportation duties attributable to aviation planning and research, as determined by the Secretary of the Business and Transportation Agency.

SEC. 13. Section 21683 of the Public Utilities Code is amended to read:

21683. Any balance remaining in the Aeronautics Account, after the payments made under Section 21682, shall be used at the discretion of the commission for airport and aviation purposes, subject to the provisions of Section 21684.

Any public entity may apply to the department each year for the allocation of funds for the acquisition or development of airports. The commission may, pursuant to rules and regulations promulgated by the department, make an allocation to such public entity if it determines that the proposed acquisition or development is feasible and in accordance with the policies and standards established by the department. The department shall make recommendations to the commission on all applications. Such allocations shall be represented as subventions in the department budget in accordance with Section 21206.

No moneys paid under this section shall be expended for operation and maintenance. No payment shall be made under this section to any public entity for any airport on which general or commercial aviation activities are substantially restricted if the airport is licensed to conduct such activities by the department. The department shall determine whether or not general or commercial aviation activities are restricted.

SEC. 14. Section 21684 of the Public Utilities Code is amended to read:

21684. (a) No payment shall be made to a public entity pursuant to this article unless the public entity has established a special aviation fund in which all payments received by a public entity under this article shall be deposited for expenditure solely for airport and aviation purposes. No payment shall be made to a public entity pursuant to Section 21682 or 21683 unless the public entity deposits in its special aviation fund, for expenditures solely for airport and aviation purposes, a sum from nonstate or nonfederal funds based on a rate established annually by the commission as matching funds. The commission shall establish a rate of at least 10 percent and not exceeding 50 percent of the nonfederal funded portion; provided, such rate shall be uniform for all entities and projects within a particular year. In no event shall the sum deposited in the special aviation fund be less than 10 percent of the total eligible project costs.

Notwithstanding the provisions of this subdivision requiring matching funds, the department shall pay a sum of five thousand dollars ($5,000) annually to each city, county, airport district, or the University of California owning and operating an airport in accordance with subdivision (a) of Section 21682.

(b) No payment shall be made for any airport to the University of California pursuant to this article unless the university has established a special aviation fund in which all payments received by the university under this article shall be deposited for expenditure solely for airport and aviation purposes. No payment shall be made for any airport to the University of California pursuant to Section 21682 or 21683 unless the university deposits in its special aviation fund, for expenditure solely for airport and aviation purposes, a sum from nonstate or nonfederal funds based on the rate established annually by the commission pursuant to subdivision (a), or unless a city located within 10 miles of the airport, or the county within which the airport is located, pays to the university a sum based on the rate established by the commission pursuant to subdivision (a); provided, however, that any such sums deposited by the university or paid by such city or county may be considered jointly as meeting the requirements of this section. The payments received from a city or county pursuant to these sections are to be expended solely for the airport and for aviation purposes related to such airport. All payments received by the university shall be deposited in its special aviation fund.

(c) Payments made by the department pursuant to Section 21682 and funds provided by public entities to match these payments may be accrued for a period of not more than three years. Extension of time for accrual of these funds for major projects shall be obtained from the department.

SEC. 15. Section 29031 of the Public Utilities Code is amended to read:

29031. The district may acquire, construct, own, operate, control,

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or use rights-of-way, rail lines, bus lines, stations, platforms, switches, yards, terminals, parking lots, and any and all other facilities necessary or convenient for rapid transit service within or partly without the district, underground, upon, or above the ground and under, upon, or over public streets, highways, bridges, or other public ways or waterways, together with all physical structures necessary or convenient for the access of persons and vehicles thereto, and may acquire any interest in or rights to the use or joint use of any or all of the foregoing; provided, that installations in state freeways shall be subject to the approval of the Department of Transportation and installations in other state highways shall be subject to Article 2 (commencing with Section 670), Chapter 3, Division 1 of the Streets and Highways Code.

SEC. 16. Section 130060 of the Public Utilities Code is repealed.

SEC. 17. Article 4 (commencing with Section 130290) of Chapter 4 of Division 12 of the Public Utilities Code is repealed.

SEC. 18. Section 25 of Chapter 1243 of the Statutes of 1971 is amended to read:

Sec. 25. By enacting Section 24 of this act to repeal Chapter 20 of the Statutes of 1952, Second Extraordinary Session, it is the intent of the Legislature that loans for the acquisition of properties for state highway purposes shall be retired by the operation of Section 2108 of the Streets and Highways Code.

Furthermore, it was not the intent of the Legislature in enacting Chapter 20 of the Statutes of 1952, Second Extraordinary Session, nor is it the intent of the Legislature in repealing this chapter, to establish any limit on the amount of funds utilized for the right-of-way advanced acquisition program. The California Transportation Commission and the Department of Transportation may use any available funds, including the money specified in Section 26 of this act, for temporary investment in the right-of-way advanced acquisition program.

SEC. 19. Section 4 of Chapter 1428 of the Statutes of 1974 is repealed.

SEC. 20. Section 5 of Chapter 1428 of the Statutes of 1974 is repealed.

SEC. 21. Any section of any act enacted by the Legislature during the 1980 portion of the 1979–80 Regular Session, which takes effect on or before January 1, 1981, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether such act is enacted prior to or subsequent to this act.

of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 15. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 714

An act to amend Sections 1627, 2892, 2892.1, 2913, 4035, 4036, 4047.7, 6037, 6102, 6146, 6180.14, 6546.6, 10133.1, 10153, 10471, 12613, 12701, 12777, 12793, 14415, 17842, 19409.5, and 19464 of, to amend the heading of Article 4 (commencing with Section 9840) of Chapter 20 of Division 3 of, to amend and renumber Sections 730, 731, 4975, 7538.7, 9780, and 23428.7 of, to amend and renumber the heading of Article 6 (commencing with Section 4140), Article 7 (commencing with Section 4160), Article 8 (commencing with Section 4210), Article 10 (commencing with Section 4330), Article 11 (commencing with Section 4350), Article 12 (commencing with Section 4380), and Article 13 (commencing with Section 4410), of Chapter 9 of Division 2 of, to repeal Sections 11010.3, 11010.4, and 23958.3 of, and to repeal Article 10.5 (commencing with Section 725) of, the heading of Article 10.5 (commencing with Section 730) of Chapter 1 of, the heading of Article 5 (commencing with Section 4120) of Chapter 9 of Division 2 of, the Business and Professions Code, to amend Sections 25.8, 56.22, 224, 224a, 232.3, 798.38, 798.56, 3241, and 4555 of, to amend and renumber Sections 798.10 and 1821.23 of, and to repeal Section 4600.5 of the Civil Code, to amend Sections 86, 329, 446, 917.7, 1046, 1282.2, 1567, 1952, and 2034 of, to repeal Sections 119.6, 119.9, 120.1, 123, 123.1, 123.4, 123.5, and 123.7 of, and to repeal the heading of Article 4 (commencing with Section 121) and Article 6 (commencing with Section 123) of Chapter 5-B of Title 1 of Part 1 of, the Code of Civil Procedure, to amend Sections 16039, 16406, 22509, 23804, 23902, 23918, 24806, 35167, 39153, 39316, 41604, 48600, 48651, 49405, 49422, 49441, 49454, 52324, 54347, 54526, 54600, 54630, 54660, 56364, 69276, 72130, 76441, 84370, and 88086.5 of, to amend the heading of Article 4 (commencing with Section 19700) of Chapter 9 of Part 11 of, to amend and renumber Sections 1273 and 42649 of, to amend and renumber the heading of Part 20 (commencing with Section 32500) of, the heading of Article 3 (commencing with Section 78230), Article 4 (commencing with Section 78240), and Article 5 (commencing with Section 78271) of Chapter 2 of Part 48 of, and to repeal the heading of Article 2 (commencing with Section 78220) of Chapter 2 of Part 48 of, the Education Code, to amend Sections 3709,

11554, 23528, 27212, 29623, and 30044 of the Elections Code, to amend Sections 752, 855, 1231, 1237, 2071, 3522, 5067.5, 6407, 6408, 6450.4, 7153.9, 7153.11, 14052, 14410, 18138, 18300, 18455, 24454, 31020, 31114, and 33521 of, and to amend and renumber Section 18643 of, the Financial Code, to amend Sections 4700, 8231, 8234, 10740, and 10770 of, and to repeal Sections 8680, 8681, 8682, and 8683 of, the Fish and Game Code, to amend Sections 11512 and 68081 of, to add Division 23 (commencing with Section 70500) to, to repeal Division 23 (commencing with Section 67500) of, and to repeal the heading of Chapter 5 (commencing with Section 43801) and Chapter 20.5 (commencing with Section 47501) of Division 17 of, the Food and Agricultural Code, to amend Sections 850.8, 6901, 8574.3, 8580, 8597, 8897.1, 11011.1, 11121.9, 11370, 11550, 11554, 35012.5, 38507, 43073, 53205, 55606, 55607, 55608, 55640, 55641, 60400, 65302, 66452.5, 66770.5, 75095.1, and 91531 of, to amend and renumber Sections 24, 4540, 4541, 4542, 7540, 7541, 7542, 7543, 7544, 12032, 25211.3, 53215, 65863.5, 69894.4, 71603.2, 91560, 91561, 91562, 91563, and 91564 of, to amend and renumber the heading of Chapter 11 (commencing with Section 4540) of Division 5 of Title 1 of, and Chapter 24 (commencing with Section 7540) of Division 7 of Title 1 of, and to repeal Section 66427.4 of, the Government Code, to amend Sections 775.5, 6309.4, and 7157 of, and to amend the heading of Chapter 1 (commencing with Section 240) of Division 2 of, the Harbors and Navigation Code, to amend Sections 1250, 1285, 1343, 1732, 3703, 11361.5, 12003, 12006, 13002, 13009.5, 13053, 13054, 13055, 13100, 13104.5, 13140.5, 13821, 13991, 17922.5, 17925, 25810, 25811, 33436, 34354.5, 37850, 41809, 41813, 41957, 41958, 41959, 41960, 41961, 50902, 51351, and 51858 of, to amend the heading of Article 3.4 (commencing with Section 320) of Chapter 2 of Division 1 of the Health and Safety Code, to amend and renumber Sections 1367.8, 5472, and 11977 of, to repeal Sections 1250.2 and 51350.5 of, to repeal the heading of Article 1 (commencing with Section 446) of Part 1.95 of Division 1 of, to repeal Article 2 (commencing with Section 447) of Part 1.95 of Division 1 of, Chapter 9 (commencing with Section 50735), and Chapter 10 (commencing with Section 50775) of Part 2 of Division 31 of, the Health and Safety Code, to amend Sections 779.8, 922.4, 922.5, 1033, 1035.5, 1597, 1599, 1751, 10178, 11551, 11558, 11580.2, 11600, 11602, 11656.9, 11657, 11663, 11690, 11699, 11710, 11715, 11716, 11716.01, 11716.02, 11716.61, 11719, 11730, 11732.1, 11732.3, 11733, 11738, 11740, 11741, 11750, 11750.1, 11750.2, 11750.3, 11751.5, 11755, 11770, 11778, 11780, 11784, 11840, 11846, 11871, 12401.3, and 12973.9 of, and to amend and renumber Sections 11512.18 and 11512.21 of, the Insurance Code, to amend Sections 98.1, 1299, 3093, 3097, 3600.3, 4724, and 6305 of, and to repeal Section 7804 of, the Labor Code, to amend Sections 375, 384a, 384i, 626.11, 653k, 653o, 859, 871.5, 894, 1170.6, 1203.4a, 1413, 1551.2, 1567, 2903, 5006, 5007, 5008, 13301, and 13843 of, the Penal Code, to amend Section 732 of the Probate Code, to amend Sections 2313, 2708, 2760, 3311, 3470, 4143, 4186, 4423.1, 4431, 4438, 4446, 4476, 4551, 4554, 4555, 4582.8, 4621.2, 4656, 4656.1, 5003.7, 5019.10, 5019.53, 5093.62, 6332, 9104,

9183, 13111, 21080.5, 21083, 21087, 25210, 25213, 25502, 25964, 26004, 26563, 26703, 30302, 30339, 30340.5, 30700, and 34056 of, and to amend and renumber Sections 30168 and 30170.6 of, the Public Resources Code, to amend Sections 1901, 1902, 5503.5, 21675, 27091, 29038, 29171, 29750, 29753, 50218, and 99117 of the Public Utilities Code, to amend Sections 99, 485, 4836.5, 6486, 7396, 15556, 17153, 17203, 17206, 17253, 17482, 17631, 17637, 18082, 18211, 18816.5, 19092, 20583, 20640.6, 24431, 24497, 24563, 24662, 24949.2, 24952, 38108, 38351, 38421, 40081, and 41080 of, to amend and renumber Sections 232 and 6593 of, to repeal the heading of Chapter 6 (commencing with Section 5801) of Part 12 of Division 1 of, to repeal the heading of Article 4 (commencing with Section 14791) of Chapter 12 of Part 8 of Division 2 of, the Revenue and Taxation Code, to amend Section 31856 of the Streets and Highways Code, to amend Sections 2708.1 and 9002 of the Unemployment Insurance Code, to amend Sections 1817, 2400, 3051, 4451, 5004, 5004.5, 9400, 11511, 11515, 11704.5, 11902, 21051, 25100, 26708.5, 35780.5, and 42050 of the Vehicle Code, to amend Sections 8617, 8886, 13220, 13360, 13627, 20023, 20054, 25809, 25825.3, 26225, 31303, and 47127 of the Water Code, to amend Sections 708, 736, 1756, 1760.5, 9203, 9600, and 10653 of, to amend and renumber Section 14145 and the heading of Chapter 8.5 (commencing with Section 19810) of Part 2 of Division 10 of, to add Chapter 3 (commencing with Section 4330) to Division 4 of, to add Chapter 7.5 (commencing with Section 4740) to Division 4.5 of, to repeal Sections 4302, 4446, 18294, 18295, 18296, 18297, and 18298 of, and to repeal Chapter 7.5 (commencing with Section 4740) of Division 4.1 of, the Welfare and Institutions Code, and to amend Section 25 of Chapter 1313 of the Statutes of 1980, relating to the maintenance of the codes.

[Approved by Governor September 23, 1981. Filed with Secretary of State September 23, 1981.]

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

SECTION 1. Article 10.5 (commencing with Section 725) of Chapter 1 of Division 2 of the Business and Professions Code, as added by Chapter 373 of the Statutes of 1979, is repealed. The repeal made by this section shall not affect the existence or validity of Article 10.5 (commencing with Section 725) of Chapter 1 of Division 2 of the Business and Professions Code, as added by Chapter 348 of the Statutes of 1979.

SEC. 2. The heading of Article 10.5 (commencing with Section 730) of Chapter 1 of Division 2 of the Business and Professions Code, as added by Chapter 955 of the Statutes of 1979, is repealed.

SEC. 3. Section 730 of the Business and Professions Code is amended and renumbered to read:

726. The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer which is substantially related to the qualifications, functions, or duties of the occupation for

which a license was issued constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division, under Chapter 17 (commencing with Section 9000) of Division 3, and under Chapter 4 (commencing with Section 17800) of Part 3 of Division 7.

SEC. 4. Section 731 of the Business and Professions Code is amended and renumbered to read:

727. The provisions of subdivision (2) of Section 1103 of the Evidence Code shall apply in disciplinary proceedings brought against a licensee for acts in violation of Section 726.

SEC. 5. Section 1627 of the Business and Professions Code is amended to read:

1627. It is unlawful for any person to engage in the practice of dentistry in the state, either privately or as an employee of a governmental agency or political subdivision, unless the person has obtained a license or special permit from the board. The provisions of this act, however, do not apply to practice by personnel of the Air Force, Army, Coast Guard, or Navy or employees of the United States Public Health Service, Veterans' Administration, or Bureau of Indian Affairs when engaged in discharge of official duties.

The license of any dentist, existing at the time of the passage of this chapter, shall continue in force until it expires or is forfeited in the manner provided by this chapter.

SEC. 6. Section 2892 of the Business and Professions Code is amended to read:

2892. Licenses issued under this chapter prior to January 1, 1974, shall, unless renewed, expire on the last day of the month following the month in 1974 in which the licensee's birthday occurs and at two-year intervals thereafter on the last day of the month following the month in which the licensee's birthday occurs. Licenses issued under this chapter on or after January 1, 1974, shall, unless renewed, expire at two-year intervals on the last day of the month following the month in which the licensee's birthday occurs, beginning with the second birthday following the date on which the license was issued. To renew an unexpired license, the licensee shall, on or before each of the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

The board shall give written notice to a licensee 30 days in advance of the renewal date and, 90 days in advance of the expiration of the fourth year that a renewal fee has not been paid, shall give written notice to the licensee informing the licensee in general terms of the provisions of Section 2892.4.

SEC. 7. Section 2892.1 of the Business and Professions Code is amended to read:

2892.1. Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration on filing of application for renewal on a form prescribed by the board, and payment of the renewal fee in effect

on the date the application for renewal is filed.

If the license is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2892 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 8. Section 2913 of the Business and Professions Code is amended to read:

2913. A person other than a licensed psychologist may be employed by a licensed psychologist, by a licensed physician and surgeon who is board certified in psychiatry by the American Board of Psychiatry and Neurology, by a clinic which provides mental health services under contract pursuant to Section 5614 of the Welfare and Institutions Code, by a psychological corporation, by a licensed psychology clinic as defined in subdivision (c) of Section 1204 of the Health and Safety Code, or by a medical corporation to perform limited psychological functions provided that all of the following apply:

(a) The person is termed a "psychological assistant."

(b) The person has completed at least one fully matriculated year of graduate training in psychology from an accredited or approved university, college, or professional school. In addition, on or before January 1, 1983, that person shall maintain registration as a "psychological assistant," and to be entitled to use that title, shall have completed all requirements for a master's degree from an accreditied or approved university, college, or professional school. On and after January 1, 1980, a master's degree in (1) psychology, or (2) education with the field of specialization in psychology or counseling psychology from an accredited or approved university, college, or professional school shall be required of all new registrants as psychology assistants.

(c) The person is at all times under the immediate supervision, as defined in regulations adopted by the committee, of a licensed psychologist, or board certified psychiatrist, who shall be responsible for insuring that the extent, kind, and quality of the psychological services he or she performs are consistent with his or her training and experience and be responsible for his or her compliance with the provisions of this chapter and regulations duly adopted hereunder, including those provisions set forth in Section 2960.

(d) The licensed psychologist, board-certified psychiatrist, contract clinic, psychological corporation, or medical corporation, has registered the psychological assistant with the committee. The registration shall be renewed annually in accordance with regulations adopted by the committee.

No licensed psychologist may register, employ, or supervise more

than three psychological assistants at any given time unless specifically authorized to do so by the committee. No board-certified psychiatrist may register, employ, or supervise more than one psychological assistant at any given time. No contract clinic, psychological corporation, or medical corporation may employ more than 10 such assistants at any one time. No contract clinic may register, employ, or provide supervision for more than one psychological assistant for each designated full-time staff psychiatrist who is qualified and supervises the psychological assistants. No psychological assistant may provide psychological services to the public for a fee, monetary or otherwise, except as an employee of a licensed psychologist, licensed physician, contract clinic, psychological corporation, or medical corporation.

(e) The psychological assistant shall comply with regulations that the committee may, from time to time, duly adopt relating to the fulfillment of requirements in continuing education.

(f) No person shall practice as a psychological assistant who is found by the committee to be in violation of the provisions of Section 2960 and the rules and regulations duly adopted thereunder.

SEC. 9. Section 4035 of the Business and Professions Code is amended to read:

4035. Pharmacy is an area, place, or premises in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place, or premises described in a permit issued by the board by reference to plans filed with and approved by the board wherein narcotics or dangerous drugs or dangerous devices, as they are herein defined, are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which said narcotics or dangerous drugs or dangerous devices are furnished, sold, or dispensed at retail.

"Pharmacy" shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of drugs or dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

"Narcotics or dangerous drugs or dangerous devices" as used herein shall include, but is not limited to, all narcotics, drugs, or devices which are included within one or more of the following classifications:

(a) Drugs or devices bearing the legend, "Caution, federal law prohibits dispensing without prescription," or words of similar import.

(b) Controlled substances as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(c) Drugs or devices enumerated in Section 4211.

(d) Drugs or devices heretofore or hereafter classified as dangerous by the board pursuant to Sections 4061 and 4240.

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(e) Hypodermic syringes and needles, or other drugs or devices, the sale of which is restricted by law to a registered pharmacist.

Neither this section nor any other provision of law shall be construed as prohibiting a pharmacy from furnishing a prescription drug or device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Administrative Code.

SEC. 10. Section 4036 of the Business and Professions Code is amended to read:

4036. (a) "Prescription" means an oral order given individually for the person or persons for whom prescribed, directly from the prescriber to the furnisher, or indirectly by means of a written order, signed by the prescriber, and shall bear the name or names and address of the patient or patients, the name and quantity of the drug or device prescribed, directions for use, and the date of issue, and either rubber stamped, typed, or printed by hand or typeset the name, address, and telephone number of the prescriber, his or her license classification, and his or her federal registry number, if a controlled substance is prescribed. No person other than a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, or physician's assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, shall prescribe or write a prescription.

Nothing in the amendments made to this section at the 1969 Regular Session of the Legislature shall be construed as expanding or limiting the right which a chiropractor, while acting within the scope of his or her license, may have to prescribe a device.

The use of commonly used abbreviations shall not invalidate an otherwise valid prescription.

(b) Notwithstanding subdivision (a), a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, which contains at least the name and signature of the prescriber, the name or names and address of the patient or patients in a manner consistent with paragraph (3) of subdivision (b) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist so long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between the provisions of this subdivision and Section 11164 of the Health and Safety Code, the provisions of Section 11164 shall prevail.

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(c) Except as provided in Section 4036.1, an oral prescription shall as soon as practicable be reduced to writing by the pharmacist and shall be filled by, or under the direction of, the pharmacist. The pharmacist need not reduce to writing the address, telephone number, license classification, federal registry number of the prescriber, or the address of the patient or patients if the information is readily retrievable in the pharmacy.

SEC. 11. Section 4047.7 of the Business and Professions Code is amended to read:

4047.7. (a) The State Director of Health Services shall establish by regulation a formulary of generic drug types and drug products which the State Director of Health Services determines demonstrate clinically significant biological or therapeutic inequivalence and which, if substituted under Section 4047.6, would pose a threat to the health and safety of patients receiving prescription medication.

(b) The drug formulary established pursuant to this section shall include generic drug types and manufactured brand drug products, including, where applicable, drug products differentiated by dosage form or strength. In compiling the generic drug types and drug products for inclusion on the formulary, the State Director of Health Services may rely on drug product research, testing, information, and formularies compiled by other states, the United States Department of Health and Human Services, and any other source which the State Director of Health Services deems reliable.

(c) Regulations establishing the drug formulary shall be promulgated within 120 days of the effective date of this section. The formulary shall be added to or deleted from as the State Director of Health Services deems appropriate. Regulations shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Any person who requests that the State Director of Health Services make any inclusion, addition, or deletion, of a generic drug type or drug product to the formulary shall have the burden of proof to show cause why such inclusion, addition, or deletion, should be made by the State Director of Health Services.

(d) Upon adoption of the formulary, and upon each addition, deletion or modification to the formulary, the State Director of Health Services shall mail a copy to each pharmacist licensed by the State Board of Pharmacy and to each physician and surgeon licensed to practice in the state by the State Board of Medical Quality Assurance and each person licensed by the Board of Osteopathic Examiners. No pharmacist shall dispense a generically equivalent drug product pursuant to Section 4047.6 if the drug product and its generic drug type is included in the formulary.

SEC. 12. The heading of Article 5 (commencing with Section 4120) of Chapter 9 of Division 2 of the Business and Professions Code is repealed.

SEC. 13. The heading of Article 6 (commencing with Section 4140) of Chapter 9 of Division 2 of the Business and Professions Code

is amended and renumbered to read:

Article 5. Hypodermics

SEC. 14. The heading of Article 7 (commencing with Section 4160) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 6. Poisons

SEC. 15. The heading of Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 7. Dangerous Drugs

SEC. 16. The heading of Article 10 (commencing with Section 4330) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 8. Certificates, Information and Records

SEC. 17. The heading of Article 11 (commencing with Section 4350) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 9. Disciplinary Proceedings

SEC. 18. The heading of Article 12 (commencing with Section 4380) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 10. Prohibitions and Offenses Against the Chapter, Generally

SEC. 19. The heading of Article 13 (commencing with Section 4410) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 11. Revenue

SEC. 20. Section 4975 of the Business and Professions Code, as added by Chapter 1313 of the Statutes of 1980, is amended and renumbered to read:

4974.5. This chapter shall become operative on July 1, 1982.

SEC. 21. Section 6037 of the Business and Professions Code is amended to read:

6037. No action or decision of the board or committee of the board shall be invalid because of the participation therein by a

member or members in violation of Section 6036. However, any member who intentionally violates the provisions of subdivision (a) of Section 6036 is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding five days, or by a fine not exceeding five hundred dollars ($500), or by both, and, if the member is an attorney member of the board, a certified copy of the record of conviction shall be transmitted to the Supreme Court for disposition as provided in Sections 6101 and 6102. Upon entry of final judgment of conviction, the member's term of office on the board of governors, and duties and authority incidental thereto, shall automatically terminate. Any member who intentionally violates the provisions of subdivision (b) of Section 6036 shall be liable for a civil penalty not to exceed five hundred dollars ($500) for each violation, which shall be assessed and recovered in a civil action in a court of competent jurisdiction brought in the name of the state only by a district attorney of a county in which the member resides or maintains offices and the penalty collected shall be paid to the treasurer of that county.

SEC. 22. Section 6102 of the Business and Professions Code is amended to read:

6102. (a) Upon the receipt of the certified copy of the record of conviction, if it appears therefrom that the crime of which the attorney was convicted involved or that there is probable cause to believe that it involved moral turpitude, the Supreme Court shall suspend the attorney until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal, or has otherwise become final, and until the further order of the court. Upon good cause shown the court may set aside the suspension when it appears to be in the interest of justice to do so, with due regard being given to maintaining the integrity of and confidence in the profession.

(b) If, after adequate notice and opportunity to be heard (which hearing shall not be had until the judgment of conviction has become final or, irrespective of any subsequent order under the provisions of Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude it shall enter an order disbarring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the proceedings. In determining the extent of the discipline to be imposed in a proceeding pursuant to this article any prior discipline imposed upon the attorney may be considered.

(c) The court may refer the proceedings or any part thereof or issue therein, including the nature or extent of discipline, to the State Bar for hearing, report, and recommendation.

(d) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in

evidence.

(e) The Supreme Court shall prescribe rules for the practice and procedure in proceedings had pursuant to this section and Section 6101.

(f) The other provisions of this article providing a procedure for the disbarment or suspension of an attorney do not apply to proceedings pursuant to Sections 6101 and 6102, unless expressly made applicable.

SEC. 23. Section 6146 of the Business and Professions Code is amended to read:

6146. (a) An attorney shall not contract for or collect a contingency fee for representing any person seeking damages in connection with an action for injury or damage against a health care provider based upon such person's alleged professional negligence in excess of the following limits:

(1) Forty percent of the first fifty thousand dollars ($50,000) recovered.

(2) Thirty-three and one-third percent of the next fifty thousand dollars ($50,000) recovered.

(3) Twenty-five percent of the next one hundred thousand dollars ($100,000) recovered.

(4) Ten percent of any amount on which the recovery exceeds two hundred thousand dollars ($200,000).

The limitations shall apply regardless of whether the recovery is by settlement, arbitration, or judgment, or whether the person for whom the recovery is made is a responsible adult, an infant, or a person of unsound mind.

(b) If periodic payments are awarded to the plaintiff pursuant to Section 667.7 of the Code of Civil Procedure, the court shall place a total value on these payments based upon the projected life expectancy of the plaintiff and include this amount in computing the total award from which attorney's fees are calculated under this section.

(c) For purposes of this section:

(1) "Recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorney's office-overhead costs or charges are not deductible disbursements or costs for such purpose.

(2) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500), or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.

(3) "Professional negligence" is a negligent act or omission to act

by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that the services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

SEC. 24. Section 6180.14 of the Business and Professions Code is amended to read:

6180.14. As used in this article, "attorney" means a member or former member of the State Bar; "law practice" means (a) a law practice conducted by an individual; (b) a law practice conducted by a partnership, if Section 6180 applies to all partners; and (c) a law practice conducted by a law corporation, if Section 6180 applies to all shareholders of the corporation. This article does not apply to legal services rendered as an employee, or under a contract which does not create the relationship of lawyer and client.

SEC. 25. Section 6546.6 of the Business and Professions Code is amended to read:

6546.6. (a) Notwithstanding any other provision of this chapter, a person is qualified to receive a certificate of registration as a registered barber who complies with each of the following:

(1) Has met the requirements of subdivisions (a), (b), (c), (d), (f), and (g) of Section 6545.

(2) Has satisfactorily completed a course of training in barbering established by the Department of Corrections which complies with the requirements of this chapter pertaining to instructors and complies in all other respects with the requirements established for such courses by the board.

(3) Has satisfactorily completed any supplementary training the board prescribes as necessary to assure that his or her total training will be substantially equivalent to the training required in a barber college licensed by the board.

(b) The provisions of Section 6536 relating to notice and hearing shall be applicable to a person who applies under this section.

SEC. 26. Section 7538.7 of the Business and Professions Code, as added by Chapter 954 of the Statutes of 1980, is amended and renumbered to read:

7538.9. Each person licensed as a repossessor shall serve a consumer with a notice of seizure as soon as possible after the recovery of personal property, but in no event later than 48 hours after the repossession of personal property, which notice shall include all of the following:

(a) The name, address, and phone number of the representative of the legal owner to be contacted regarding repossession.

(b) The name, address, and phone number of the representative of the repossessor to be contacted regarding repossession.

(c) A statement printed on the notice containing the following:

"Repossessors are regulated by the Bureau of Collection and Investigative Services and are required to provide you, not later than 48 hours after the recovery of personal property, with an inventory

of personal effects or personal property recovered during repossession."

(d) A disclosure that "Damage to a vehicle during or subsequent to a repossession is the liability of the repossessor."

The notice may be given by regular mail addressed to the last known address of the consumer or by personal service at the option of the repossessor.

SEC. 27. Section 9780 of the Business and Professions Code, as added by Chapter 108 of the Statutes of 1979, is amended and renumbered to read:

9790. Any person having a noncommercial aircraft in for repairs or service has the right to request, in advance of any work done, a written estimate or may specify a maximum charge on the total cost of repairs or service to be performed. No charge shall be made for work done or parts supplied in excess of the estimated price without the oral or written consent of the customer which shall be obtained at some time after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. Nothing in this section shall be construed as requiring any person to give a written estimated price if such person does not agree to perform the requested repair.

SEC. 28. The heading of Article 4 (commencing with Section 9840) of Chapter 20 of Division 3 of the Business and Professions Code is amended to read:

Article 4. Offenses Against the Chapter

SEC. 29. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. The provisions of subdivision (d) of Section 10131, subdivision (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), Article 6 (commencing with Section 10237), and Article 7 (commencing with Section 10240) of this chapter and Section 1695.13 of the Civil Code do not apply to the following:

(a) Any person or employee thereof doing business under any law of this state, any other state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(b) Any lender making a loan guaranteed or insured by an agency of the federal government or for which a commitment to so guarantee or insure has been made by the agency.

(c) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(d) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or

bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any such business.

(e) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(f) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of his or her practice as an attorney at law, and the disbursements of such person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), provided, the fees and disbursements shall not be shared, directly or indirectly, with the person negotiating the loan or the lender.

(g) Any person licensed as a personal property broker when acting under the authority of the license.

(h) Any cemetery authority as defined by Section 7018 of the Health and Safety Code which is authorized to do business in this state or its authorized agent.

(i) Any person who makes collection of payments for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property, insofar as such activities are concerned, and (1) who is not actively engaged in the business of negotiating loans secured by real property or (2) who is not acting as a principal or agent in the sale or exchange of promissory notes secured directly or collaterally by liens on real property; provided that any of the following apply:

(1) The person has made application to the commissioner and has complied with all the provisions of Section 10133.25.

(2) The person makes the collections on 10 or less of such loans, or in amounts of forty thousand dollars ($40,000) or less in any calendar year.

(j) Any person authorized in writing by a savings and loan association to act as an agent, as defined in Section 5053 of the Financial Code, of that savings and loan association, when acting under the authority of the written authorization.

SEC. 30. Section 10153 of the Business and Professions Code is amended to read:

10153. In addition to the proof of honesty and truthfulness required of any applicant for a real estate license, the commissioner shall ascertain by written examination that the applicant, and in case of a corporation applicant for a real estate broker's license that each officer, or agent thereof through whom it proposes to act as a real estate licensee, has all of the following:

(a) An appropriate knowledge of the English language, including reading, writing, and spelling and of arithmetical computations common to real estate and business opportunity practices.

(b) An understanding of the principles of real estate and business opportunity conveyancing, the general purposes and general legal effect of agency contracts, deposit receipts, deeds, mortgages, deeds of trust, chattel mortgages, bills of sale, land contracts of sale and leases, and of the principles of business and land economics and appraisals.

(c) A general and fair understanding of the obligations between principal and agent, of the principles of real estate and business opportunity practice and the canons of business ethics pertaining thereto, of the provisions of this part, of Chapter 1 (commencing with Section 11000) of Part 2, and of the regulations of the Real Estate Commissioner as contained in Title 10 of the California Administrative Code.

SEC. 31. Section 10471 of the Business and Professions Code is amended to read:

10471. (a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under this part, under grounds of fraud, misrepresentation, deceit, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this part, and which cause of action occurred on or after July 1, 1964, the aggrieved person may, upon the judgment becoming final, file a verified application in the court in which the judgment was entered for an order directing payment out of the separate account in the Real Estate Fund for education, research, and recovery purposes of the amount of actual and direct loss in the transaction up to the sum of ten thousand dollars ($10,000) of the amount unpaid upon the judgment, provided that nothing shall be construed to obligate that separate account for more than ten thousand dollars ($10,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in the transaction.

In the case of a small claims court judgment, the aggrieved person shall file the verified application in the justice or municipal court in which the judgment was entered in favor of the aggrieved person. The court shall then make a determination as to whether the small claims court judgment was based on facts constituting grounds for recovery under this section and may enter an order directing payment of the small claims court judgment out of the separate account in the Real Estate Fund for education, research, and recovery purposes.

A copy of the verified application shall be served upon the commissioner and the judgment debtor and a certificate or affidavit of that service filed with the court.

(b) Notwithstanding subdivision (a), the liability of that portion of the separate account in the Real Estate Fund for education, research, and recovery purposes, for which the cause of action occurred on or after January 1, 1980, shall not exceed twenty thousand dollars ($20,000) per transaction, for any transaction which

is a basis for the judgment or judgments, regardless of the number of persons aggrieved or the number of parcels of real estate involved, or the number of licensees who participated in the transaction.

SEC. 32. Section 11010.3 of the Business and Professions Code, as added by Chapter 1105 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 11010.3 of the Business and Professions Code, as added by Chapter 1336 of the Statutes of 1980.

SEC. 33. Section 11010.3 of the Business and Professions Code, as added by Chapter 1152 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 11010.3 of the Business and Professions Code, as added by Chapter 1336 of the Statutes of 1980.

SEC. 34. Section 11010.4 of the Business and Professions Code, as added by Chapter 1105 of the Statutes of 1980, is repealed.

SEC. 35. Section 12613 of the Business and Professions Code is amended to read:

12613. If any provision of this chapter is less stringent or requires information different from any requirement of Section 4 of the act of Congress entitled "Fair Packaging and Labeling Act" (P.L. 89-755; 80 Stat. 1296; 15 U.S.C. 1451-1461) or of any regulation promulgated pursuant to that act, the provision is inoperative to the extent that it is less stringent or requires information different from the federal requirement, in which event the federal requirement is a part of this chapter.

SEC. 36. Section 12701 of the Business and Professions Code is amended to read:

12701. The following shall not be construed to be public weighmasters:

(a) Retailers weighing or measuring commodities for sale by them in retail stores directly to consumers. This exemption does not apply to persons, firms, or corporations weighing bulk lot commodities on vehicle or hopper scales, or selling the commodities by volume, when the purchaser is not present at the time the weight or measure determination is made.

(b) Producers of agricultural commodities or livestock, weighing commodities produced or purchased by them or by their producer neighbors, when no charge is made for the weighing, or no signed or initialed statement or memorandum is issued of the weight upon which a purchase or sale of the commodity is based. However, if the weight is to be used by a processor or conditioner as a basis of payment there is no exception to the provisions of Section 12734.

(c) Common carriers issuing waybills or bills of lading on which are recorded, for the purpose of computing transportation charges, the weights of commodities offered for transportation, including carriers of household goods when transporting shipments weighing less than 1,000 pounds.

(d) Weighers licensed under the provisions of Section 35161 of the Food and Agricultural Code when performing the duties for which

they are licensed.

(e) Employees of the department authorized to weigh agricultural products under the provisions of Chapter 8 (commencing with Section 12801) of Division 5, when performing the duties authorized thereby.

(f) Persons who measure the amount of oil, gas, or other fuels for purposes of royalty computation and payment, or other operations of fuel and oil companies and their retail outlets.

(g) Employees of newspaper publishers weighing or counting newspapers for sale to dealers or distributors.

(h) Textile maintenance establishments weighing, counting, or measuring any articles in connection with the business of such establishments.

(i) Employees of garbage and refuse disposal districts operating pursuant to Chapter 1.5 (commencing with Section 4170) of Part 2 of Division 5 of the Health and Safety Code and county sanitation districts operating pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code, which are authorized by their respective governing boards to utilize scales in determining charges for the disposal of liquid and solid wastes and employees of operators of solid waste disposal facilities, as defined in Section 66720.1 of the Government Code.

(j) Persons who purchase scrap metal or salvage materials pursuant to a nonprofit recycling program.

(k) Persons operating under a license issued pursuant to Section 11701 of the Food and Agricultural Code.

SEC. 37. Section 12777 of the Business and Professions Code is amended to read:

12777. Each license required by this chapter shall be renewed annually, on or before July 1st of each year, by application to the director accompanied by the annual license fee. To any fee not paid when due there shall be added a penalty equal to the amount of the license fee. However, in the case of a deputy weighmaster, no penalties shall be applied if a statement of nonemployment is filed. The required statement shall be filed at the time of application.

SEC. 38. Section 12793 of the Business and Professions Code is amended to read:

12793. Any person is guilty of a misdemeanor who does any of the following acts:

(a) Requests a public weighmaster at large or any person employed by him or her to weigh, measure, or count any commodity falsely or incorrectly.

(b) Requests a false or incorrect certificate of weights and measures.

(c) Possesses unfilled or unused certificates of weights and measures forms if he or she is not a public weighmaster. This subdivision does not apply to a person engaged in the business of printing certificates of weights and measures forms nor to his or her representative.

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(d) Furnishes or gives false information to a weighmaster for use in the completion of a certificate of weights and measures.

(e) Presents for payment a certificate made false by the insertion of any weight, measure, or count not determined by the issuing weighmaster.

SEC. 39. Section 14415 of the Business and Professions Code is amended to read:

14415. The filing of articles of incorporation pursuant to Section 200 of the Corporations Code, in the case of a domestic corporation, or the obtaining of a certificate of qualification pursuant to Sections 2105 and 2106 of the Corporations Code, in the case of a foreign corporation, shall establish a rebuttable presumption that the corporation has the exclusive right to use as a trade name, in the state the corporate name set forth in the articles or certificate, as well as any confusingly similar trade name, if the corporation is the first to have filed the articles or obtained the certificate containing the corporate name, and is actually engaged in a trade or business utilizing that corporate name or a confusingly similar name.

If a foreign corporation continues to have authority to transact intrastate business pursuant to Section 2102 of the Corporations Code, the foreign corporation shall be considered to have obtained its certificate of qualification pursuant to law for the purposes of this section on the date it first qualified to transact intrastate business in this state.

The rebuttable presumption created by this section affects the burden of producing evidence.

SEC. 40. Section 17842 of the Business and Professions Code is amended to read:

17842. A suspended license is subject to expiration and shall be renewed as provided in this article, but the renewal does not entitle the licensee, while it remains suspended and until it is reinstated, to engage in the activity to which the license relates, or in any other activity or conduct in violation of the order or judgment by which it was suspended.

SEC. 41. Section 19409.5 of the Business and Professions Code is amended to read:

19409.5. "Harness horse racing" is that form of horseracing in which "standardbred horses" as defined in Section 19409 are harnessed to a sulky or similar vehicle, and are raced at either the trotting or pacing gait.

SEC. 42. Section 19464 of the Business and Professions Code is amended to read:

19464. No application for a horse owner's license or for a license to conduct a race meeting shall be granted unless the applicant's liability for workers' compensation is secured in accordance with Division 4 (commencing with Section 3700) of the Labor Code. Any termination of security for that liability during the period of a license shall result in the immediate automatic suspension of the license during the period of that termination and also shall be a ground for

revocation of the license.

SEC. 43. Section 23428.7 of the Business and Professions Code, as added by Chapter 623 of the Statutes of 1979, is amended and renumbered to read:

23428.4. For the purpose of this article, "club" also means any nonprofit social club with at least 100 members, which members are mobilehome owners within a private mobilehome park and have participated as social club members with a designated clubhouse for not less than one year.

SEC. 44. Section 23958.3 of the Business and Professions Code, as added by Chapter 445 of the Statutes of 1980, is repealed.

SEC. 45. Section 25.8 of the Civil Code is amended to read:

25.8. Either parent if both parents have legal custody, or the parent or person having legal custody or the legal guardian, of a minor may authorize in writing any adult person into whose care the minor has been entrusted to consent to any X-ray examination, anesthetic, medical or surgical diagnosis or treatment and hospital care to be rendered to the minor under the general or special supervision and upon the advice of a physician and surgeon licensed under the provisions of the Medical Practice Act or to consent to an X-ray examination, anesthetic, dental or surgical diagnosis or treatment and hospital care to be rendered to the minor by a dentist licensed under the provisions of the Dental Practice Act.

SEC. 46. Section 56.22 of the Civil Code is amended to read:

56.22. The disclosure of medical information regarding a patient which is subject to subdivision (b) of Section 1798.24 shall be made only with an authorization from the individual patient which complies with the provisions of this part. However, the disclosure may be made only within the time limits specified in subdivision (b) of Section 1798.24.

SEC. 47. Section 224 of the Civil Code is amended to read:

224. A child having a presumed father under subdivision (a) of Section 7004 cannot be adopted without the consent of its parents if living; however, if one parent has been awarded custody by judicial decree, or has custody by agreement of the parents, and the other parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so, then the parent having custody alone may consent to the adoption, but only after the parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires him or her to appear at the time and place set for the appearance in court under Section 227; failure of a parent to pay for the care, support and education of the child for the period of one year or failure of a parent to communicate with the child for the period of one year is prima facie evidence that the failure was willful and without lawful excuse; nor a child with no presumed father under subdivision (a) of Section 7004 without the consent of its mother if living; except that the consent of a father or mother is not necessary in the following cases:

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2. Where the father or mother of any child has deserted the child without provision for its identification.

3. Where the father or mother of any child has relinquished the child for adoption as provided in Section 224m; or where the father or mother has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction pursuant to the law of that jurisdiction.

SEC. 48. Section 224a of the Civil Code is amended to read:

224a. The State Department of Social Services shall adopt such rules and regulations as it determines are reasonably necessary to assure that a parent or parents of Indian ancestry, seeking to relinquish a child for adoption, provide sufficient information to the licensed adoption agency or to the State Department of Social Services so that a certificate of degree of Indian blood can be obtained from the Bureau of Indian Affairs. The State Department of Social Services shall immediately request a certificate of degree of Indian blood from the Bureau of Indian Affairs upon obtaining the information. A copy of all documents pertaining to the degree of Indian blood and tribal enrollment, including a copy of the certificate of degree of Indian blood, shall become a permanent record in the adoption files and shall be housed in a central location and made available to authorized personnel from the Bureau of Indian Affairs when required to determine the adoptee's eligibility to receive services or benefits because of the adoptee's status as an Indian. This information shall be made available to the adopted person upon reaching the age of majority.

SEC. 49. Section 232.3 of the Civil Code is amended to read:

232.3. (a) Notwithstanding any other provision of law, an action to declare a child free from parental custody and control pursuant to Section 232 shall be heard not more than 45 days after filing of a petition therefor and completion of service thereon in the manner prescribed by law for service of civil process. Final determination of the matter shall be made as expeditiously as possible.

(b) In order to obtain a motion for a continuance of the hearing, written notice shall be filed within two court days of the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance. Continuances shall be granted only upon a showing of good cause. Neither a

stipulation between counsel nor the convenience of the parties is in and of itself a good cause.

A continuance shall be granted only for that period of time shown to be necessary by the evidence considered at the hearing on the motion. Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

SEC. 50. Section 798.10 of the Civil Code, as amended and renumbered by Section 7 of Chapter 502 of the Statutes of 1980, is amended and renumbered to read:

798.11. "Resident" is a tenant or other person who lawfully occupies a mobilehome.

SEC. 51. Section 798.38 of the Civil Code is amended to read:

798.38. Where the management provides both master meter and submeter service of utilities to a tenant, for each billing period the cost of the charges for the period shall be separately stated along with the opening and closing readings for his meter. The management shall post in a conspicuous place, the prevailing residential utilities rate schedule as published by the serving utility.

SEC. 52. Section 798.56 of the Civil Code is amended to read:

798.56. A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the tenant to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the tenant receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the tenant, upon the park premises, which constitutes a substantial annoyance to other tenants.

(c) Failure of the tenant to comply with a reasonable rule or regulation of the park as set forth in the rental agreement or any amendment thereto.

No act or omission of the tenant shall constitute such a failure to comply unless and until the management has given the tenant written notice of the alleged rule or regulation violation and the tenant has failed to adhere to the rule or regulation within seven days.

(d) Nonpayment of rent, utility charges, or reasonable incidental service charges, provided that the tenant shall be given a three-day written notice to pay the amount due or to vacate the tenancy. The three-day written notice shall be given to the tenant in the manner prescribed by Section 1162 of the Code of Civil Procedure. Such notice may be given at the same time as the 60 days' notice required for termination of the tenancy. Payment by the tenant prior to the expiration of the three-day notice period, or payment by the legal owner, as defined in Section 18007 of the Health and Safety Code, or registered owner, as defined in Section 18010.2 of the Health and Safety Code, if other than the tenant, on behalf of the tenant prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner or registered owner provided in subdivision

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(b) of Section 798.55, shall cure a default under this subdivision with respect to such payment. The tenant shall remain liable for all payments due up until the time the tenancy is vacated. Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner or registered owner, if other than the tenant, as provided by this subdivision, may not be exercised more than twice during the term of the tenancy.

(e) Condemnation of the park.

(f) Change of use of the park or any portion thereof, provided:

(1) The management gives the tenants at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) The management gives the tenants 12 months' or more written notice of the proposed change after the management has made initial application to the local governmental board, commission, or body requesting a change of use. However, no tenant shall be required to vacate until all required permits for a change of use have been obtained. After all required permits have been obtained and the 12-month or more period specified in the notice has elapsed, the notice specified in Section 798.55 may be given.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed tenant written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.55, 798.56, and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall only apply to notices given on or after January 1, 1980.

SEC. 53. Section 1821.23 of the Civil Code is amended and renumbered to read:

1861.23. (a) The defendant may except to the plaintiff's sureties not later than 10 days after levy of the writ of possession by filing with the court in which the action was brought a Notice of Exception to Sureties and mailing a copy of the notice to the levying officer and to the plaintiff. An affidavit stating that such copies have been mailed shall be filed with the court at the time the notice is filed.

(b) The plaintiff may except to the defendant's sureties not later than 10 days after the defendant's undertaking is filed by filing with

the court in which the action was brought a Notice of Exception to Sureties and mailing a copy of the notice to the levying officer and to the defendant at the address set out in his undertaking. An affidavit stating that such copies have been mailed shall be filed with the court at the time the notice is filed.

(c) If the plaintiff or the defendant does not except to the sureties of the other as provided in this section, he waives all objection to them.

(d) When excepted to, the sureties shall justify in the manner provided in Chapter 7 (commencing with Section 830) before the court in which the action was brought at a time specified by the excepting party.

(e) If the plaintiff's sureties, or others in their place, fail to justify at the time and place appointed or do not qualify, the court shall vacate the temporary restraining order or preliminary injunction, if any, and the writ of possession and, if levy has occurred, order the levying officer or the plaintiff to return the property to the defendant. If the plaintiff's sureties do qualify, the court shall order the levying officer to deliver the property to the plaintiff.

(f) If the defendant's sureties, or others in their place, fail to justify at the time and place appointed or do not qualify, the court shall order the levying officer to deliver the property to the plaintiff, or, if the plaintiff has previously been given possession of the property, he shall retain such possession. If the defendant's sureties do qualify, the court shall order the levying officer or the plaintiff to deliver the property to the defendant.

SEC. 54. Section 3241 of the Civil Code is amended to read:

3241. The written notice to be given to the surety or sureties as provided in Section 3240 may be given by delivery thereof personally to, or by depositing same in the mail, postage prepaid, and certified or registered, addressed in accordance with any of the following which may be applicable:

(a) If to an individual surety, at his residence or place of business, if known.

(b) If to an individual surety and his or her residence is unknown, then in care of the county clerk of the county in which the bond has been recorded.

(c) If to a corporate surety, at the office or care of the agent designated by the surety in the bond as the address to which such notice shall be sent.

(d) At the office or care of any officer of the surety in this state.

(e) At the office of or care of the statutory agent of the surety in this state.

(f) By service in the manner provided by law for the service of a summons in a civil action.

SEC. 55. Section 4555 of the Civil Code is amended to read:

4555. (a) A final judgment made pursuant to Section 4553 shall not prejudice nor bar the rights of either of the parties to institute an action to set aside the final judgment for fraud, duress, accident,

mistake, or other grounds recognized at law or in equity or to make a motion pursuant to Section 473 of the Code of Civil Procedure.

(b) The court shall set aside a final judgment made pursuant to Section 4553 regarding all matters except the status of the marriage, upon proof that the parties did not meet the requirements of Section 4550 at the time the petition was filed.

SEC. 56. Section 4600.5 of the Civil Code, as added by Chapter 204 of the Statutes of 1979, is repealed. The repeal made by this section shall not affect the existence or validity of Section 4600.5 of the Civil Code, as added by Chapter 915 of the Statutes of 1979.

SEC. 57. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) Each municipal and justice court shall have original jurisdiction of civil cases and proceedings as follows:

(1) In all cases at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to fifteen thousand dollars ($15,000) or less, except cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, except the courts shall have jurisdiction in actions to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) In actions for dissolution of partnership where the total assets of the partnership do not exceed fifteen thousand dollars ($15,000); in actions of interpleader where the amount of money or the value of the property involved does not exceed fifteen thousand dollars ($15,000).

(3) In actions to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding fifteen thousand dollars ($15,000) or property of a value not exceeding fifteen thousand dollars ($15,000), paid or delivered under, or in consideration of, the contract; in actions to revise a contract where the relief is sought in an action upon the contract if the court otherwise has jurisdiction of the action.

(4) In all proceedings in forcible entry or forcible or unlawful detainer:

(A) In actions to recover possession of real property where rent is charged, and the amount of the last rental charged is one thousand dollars ($1,000) per month or less, and the whole amount of damages claimed is fifteen thousand dollars ($15,000) or less.

(B) In all other actions to recover possession of real property where the rental value is one thousand dollars ($1,000) per month or less, and the whole amount claimed is fifteen thousand dollars ($15,000) or less.

(5) In all actions to enforce and foreclose liens on personal property where the amount of the liens is fifteen thousand dollars ($15,000) or less.

(6) In all actions to enforce and foreclose liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of Chapter 2 (commencing with

Section 3109) of Title 15 of Part 4 of Division 3 of the Civil Code where the amount of the liens is fifteen thousand dollars ($15,000) or less. However, where an action to enforce the lien is pending in a municipal or justice court, and affects property which is also affected by a similar action pending in a superior court, or where the total amount of the liens sought to be foreclosed against the same property by action or actions in a municipal or justice court aggregates an amount in excess of fifteen thousand dollars ($15,000) the municipal or justice court in which any such action, or actions, is, or are, pending, upon motion of any interested party, shall order the action or actions pending therein transferred to the proper superior court. Upon the making of the order, the same proceedings shall be taken as are provided by Section 399 with respect to the change of place of trial.

(7) In actions for declaratory relief when brought by way of cross-complaint as to a right or indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding otherwise within the jurisdiction of the municipal or justice court.

(8) To issue temporary restraining orders and preliminary injunctions, to take accounts; and to appoint receivers where necessary to preserve the property or rights of any party to an action of which the court has jurisdiction; to appoint a receiver in aid of execution as provided in subdivision 4 of Section 564; to charge the interest of a debtor partner with payment of the unsatisfied amount of any judgment rendered by the court in the manner provided in Section 15028 of the Corporations Code, or any amendment thereof, and in those cases to appoint a receiver and to make any order or perform any act mentioned or authorized in that section; in proceedings under Section 689, or any amendments thereof, to determine title to personal property seized in an action pending in, or upon execution issued by, such court.

(9) In all actions under Section 720 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding fifteen thousand dollars ($15,000) or the debt denied does not exceed fifteen thousand dollars ($15,000).

(b) Each municipal and justice court shall have jurisdiction of cases in equity as follows:

(1) In all cases to try title to personal property when the amount involved is not more than fifteen thousand dollars ($15,000).

(2) In all cases when equity is pleaded as a defensive matter in any case otherwise properly pending in a municipal or justice court.

(3) To vacate a judgment or order of such municipal or justice court obtained through extrinsic fraud, mistake, inadvertence, or excusable neglect.

(c) In any action that is otherwise within its jurisdiction, the court may impose liability whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

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(d) Changes in the jurisdictional ceilings made by amendments to this section at the 1977–78 Regular Session of the Legislature shall not constitute a basis for the transfer to another court of any case pending at the time such changes become operative.

SEC. 58. Section 119.6 of the Code of Civil Procedure is repealed.

SEC. 59. Section 119.9 of the Code of Civil Procedure is repealed.

SEC. 60. Section 120.1 of the Code of Civil Procedure is repealed.

SEC. 61. The heading of Article 4 (commencing with Section 121) of Chapter 5-B of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 62. The heading of Article 6 (commencing with Section 123) of Chapter 5-B of Title 1 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 63. Section 123 of the Code of Civil Procedure is repealed.

SEC. 64. Section 123.1 of the Code of Civil Procedure is repealed.

SEC. 65. Section 123.4 of the Code of Civil Procedure is repealed.

SEC. 66. Section 123.5 of the Code of Civil Procedure is repealed.

SEC. 67. Section 123.7 of the Code of Civil Procedure is repealed.

SEC. 68. Section 329 of the Code of Civil Procedure is amended to read:

329. The time within which an action for the foreclosure of a lien securing an assessment against real property for street improvements, the proceedings for which are prescribed by legislation of any political unit other than the state, may be commenced, shall be two years from and after the date on which the assessment, or any bond secured thereby, or the last installment of the assessment or bond, shall be due, or, as to existing rights of action not heretofore barred, one year after the effective date hereof, whichever time is later. After that time, if the lien has not been otherwise removed, the lien ceases to exist and the assessment is conclusively presumed to be paid. The official having charge of the records of the assessment shall mark it "Conclusively presumed paid," if, at the expiration of the time within which such action might be brought he has received no written notice of the pendency of the action.

SEC. 69. Section 446 of the Code of Civil Procedure is amended to read:

446. Every pleading shall be subscribed by the party or his attorney. When the state, any county thereof, city, school district, district, public agency, or public corporation, or any officer of the state, or of any county thereof, city, school district, district, public agency, or public corporation, in his or her official capacity, is plaintiff, the answer shall be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or, unless a county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county, city, school district, district, public agency, or public corporation, in his or her official capacity, is defendant. When the complaint is verified, the answer shall be verified. In all cases of a

verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his or her information or belief, and as to those matters that he or she believes it to be true; and where a pleading is verified, it shall be by the affidavit of a party, unless the parties are absent from the county where the attorney has his or her office, or from some cause unable to verify it, or the facts are within the knowledge of his or her attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he or she shall set forth in the affidavit the reasons why it is not made by one of the parties.

When a corporation is a party, the verification may be made by any officer thereof. When the state, any county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county thereof, city, school district, district, public agency, or public corporation, in his or her official capacity is plaintiff, the complaint need not be verified; and if the state, any county thereof, city, school district, district, public agency, or public corporation, or an officer of such state, county, city, school district, district, public agency, or public corporation, in his or her official capacity is defendant, its or his or her answer need not be verified.

When the verification is made by the attorney for the reason that the parties are absent from the county where he or she has his or her office, or from some other cause are unable to verify it, or when the verification is made on behalf of a corporation or public agency by any officer thereof, the attorney's or officer's affidavit shall state that he or she has read the pleading and that he or she is informed and believes the matters therein to be true and on that ground alleges that the matters stated therein are true. However, in those cases the pleadings shall not otherwise be considered as an affidavit or declaration establishing the facts therein alleged.

A person verifying a pleading need not swear to the truth or his or her belief in the truth of the matters stated therein but may, instead, assert the truth or his or her belief in the truth of those matters "under penalty of perjury."

SEC. 70. Section 917.7 of the Code of Civil Procedure is amended to read:

917.7. The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child in any civil action, in an action filed under the Juvenile Court Law, or in a special proceeding, or the provisions of a judgment or order for the temporary exclusion of a party from the family dwelling or the dwelling of the other party, as provided in Section 4359 of the Civil Code. However, the trial court may in its discretion stay execution of such provisions pending review on appeal or for such other period or periods as to it may appear appropriate. Further, in the absence of a writ or order of a reviewing court providing otherwise, the provisions of the judgment or order

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allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law for a period of 30 days from the entry of the judgment or order and are subject to any further stays ordered by the trial court, as herein provided.

SEC. 71. Section 1046 of the Code of Civil Procedure is amended to read:

1046. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligibly refers to the action or proceeding.

SEC. 72. Section 1282.2 of the Code of Civil Procedure is amended to read:

1282.2. Unless the arbitration agreement otherwise provides; or unless the parties to the arbitration otherwise provide by an agreement which is not contrary to the arbitration agreement as made or as modified by all the parties thereto:

(a) (1) The neutral arbitrator shall appoint a time and place for the hearing and cause notice thereof to be served personally or by registered or certified mail on the parties to the arbitration and on the other arbitrators not less than seven days before the hearing. Appearance at the hearing waives the right to notice.

(2) With the exception of matters arising out of collective-bargaining agreements, those described in Section 1283.05, actions involving personal injury or death, or as provided in the parties' agreement to arbitrate, in the event the aggregate amount in controversy exceeds fifty thousand dollars ($50,000) and the arbitrator is informed thereof by any party in writing by personal service, registered or certified mail, prior to designating a time and place of hearing pursuant to paragraph (1), the neutral arbitrator by the means prescribed in paragraph (1) shall appoint a time and place for hearing not less than 60 days before the hearing, and the following provisions shall apply:

(A) Either party shall within 15 days of receipt of the notice of hearing have the right to demand in writing, served personally or by registered or certified mail, that the other party provide a list of witnesses it intends to call designating which witnesses will be called as expert witnesses and a list of documents it intends to introduce at the hearing provided that the demanding party provides such lists at the time of its demand. A copy of such demand and the demanding party's lists shall be served on the arbitrator.

(B) Such lists shall be served personally or by registered or certified mail on the requesting party 15 days thereafter. Copies thereof shall be served on the arbitrator.

(C) Listed documents shall be made available for inspection and copying at reasonable times prior to the hearing.

(D) Time limits provided herein may be waived by mutual agreement of the parties if approved by the arbitrator.

(E) The failure to list a witness or a document shall not bar the testimony of an unlisted witness or the introduction of an

undesignated document at the hearing, provided that good cause for omission from the requirements of subparagraph (A) is shown, as determined by the arbitrator.

(F) The authority of the arbitrator to administer and enforce this paragraph shall be as provided in subdivisions (b) to (e), inclusive, of Section 1283.05.

(b) The neutral arbitrator may adjourn the hearing from time to time as necessary. On request of a party to the arbitration for good cause, or upon his own determination, the neutral arbitrator may postpone the hearing to a time not later than the date fixed by the agreement for making the award, or to a later date if the parties to the arbitration consent thereto.

(c) The neutral arbitrator shall preside at the hearing, shall rule on the admission and exclusion of evidence and on questions of hearing procedure and shall exercise all powers relating to the conduct of the hearing.

(d) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. On request of any party to the arbitration, the testimony of witnesses shall be given under oath.

(e) If a court has ordered a person to arbitrate a controversy, the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party ordered to arbitrate, who has been duly notified, to appear.

(f) If an arbitrator, who has been duly notified, for any reason fails to participate in the arbitration, the arbitration shall continue but only the remaining neutral arbitrator or neutral arbitrators may make the award.

(g) If a neutral arbitrator intends to base an award upon information not obtained at the hearing, he shall disclose the information to all parties to the arbitration and give the parties an opportunity to meet it.

SEC. 73. Section 1567 of the Code of Civil Procedure is amended to read:

1567. The Director of Parks and Recreation may examine any tangible personal property delivered to the Controller under this chapter for purposes of determining whether such property would be useful under the provisions of Section 512 of the Public Resources Code. If the director makes such a determination with respect to the property, the Controller may deliver the property to the director for use in carrying out the purposes of Section 512 of the Public Resources Code. Upon the termination of any such use, the director shall return the property to the Controller.

SEC. 74. Section 1952 of the Code of Civil Procedure is amended to read:

1952. The court, on its own motion, may order destroyed or otherwise disposed of any exhibit or deposition introduced in the trial of a civil action or proceeding or filed in such action or

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(a) A motion for a new trial has been granted and a memorandum to set the case for trial has not been filed or a motion to set for trial has not been made within such six months.

(b) The filing of the remittitur where the action or proceeding, after appeal, has been remanded to the trial court for a new trial and the same has not been brought to trial within such six months.

(c) The dismissal of such action or proceeding.

(d) The introduction or filing thereof where the foregoing provisions of this section make no provision for the destruction or other disposition of such exhibit or deposition and where in the discretion of the court the same should be destroyed or otherwise disposed of.

The order shall be entered in the register of actions of each case in which any such order is made.

No exhibit or deposition shall be ordered destroyed or otherwise disposed of pursuant to the provisions of this section where a party to the action or proceeding files a written notice with the court requesting the preservation of any exhibit or deposition for a stated time, but not to exceed three years. Such exhibit or deposition may be destroyed after such time unless another such notice is filed.

No exhibit or deposition shall be ordered destroyed or otherwise disposed of pursuant to the provisions of this section until 30 days after notice of such proposed action has been mailed to all attorneys of record and to all parties not having an attorney of record. Such notice is complete upon mailing of written notice by the clerk, or by the court if there is no clerk, to the attorney, or to the party if he has no attorney, at his last address shown in the file.

SEC. 75. Section 2034 of the Code of Civil Procedure is amended to read:

2034. (a) If a party or other deponent refuses or fails to answer any question propounded upon examination during the taking of a deposition, or refuses or fails to produce at a deposition any books, documents or other things under his control pursuant to a subpoena duces tecum, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. The proponent, on notice to all persons affected thereby, may move the court in which the action is pending (if the deponent is a party or otherwise subject to the jurisdiction of such court), or if the court does not have jurisdiction over the deponent, to the superior court of the county in which the deposition is taken for an order compelling an answer or if good cause is shown, the production of the book, document, or other thing. The motion may also be made,

without further notice, if the proponent notifies the refusing party or other deponent at the time of the refusal or failure that the proponent will apply to the court for an order pursuant to this subdivision of this section, at a specified time not less than 10 nor more than 30 days from the date of such refusal or failure, in which event the officer before whom the deposition is taken shall direct the refusing or failing party or other deponent to attend a session of said court at said time. Not less than five days prior to the hearing on any such motion, the proponent must lodge with the court the original transcript of the deposition. Upon the refusal or failure of a party to answer any interrogatory submitted under Section 2030, the proponent of the question may on like notice make like application for such an order. Upon the filing and service of either written objections to a request under Section 2033, or an answer deemed by the requesting party not to be in compliance with the requirements of Section 2033, the party serving the request may on like notice make like application for an order requiring answers or further answers to the request. If the motion is granted the court shall order that an answer or further answer be served within an appropriate time. Upon the refusal or failure of a party to identify documents, papers, books, accounts, letters, photographs, objects, or tangible things or to permit inspection or entry after having been served with a request under Section 2031, the party serving the request may on like notice and upon a showing of good cause make application for an order to compel compliance with the request. If the court finds that the refusal or failure or objection was without substantial justification or that the answer does not comply with the requirements of Section 2033, the court may require the refusing or failing or objecting party or deponent and the party or attorney advising the refusal or failure or objection or any of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court may require the examining party or the attorney advising the motion or both of them to pay to the refusing or failing or objecting party or witness the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

If the court orders that an answer or further answer to requests for admissions be made, and the answer or further answer is not filed and served within the period ordered by the court, each of the matters involved in the order shall be deemed admitted, subject only to relief pursuant to Section 473, as restricted by the provisions of Section 2033.

(b) (1) The court may punish as a contempt (i) the refusal of any person to obey a subpoena issued by that court to attend a deposition or to be sworn as a witness, or (ii) the refusal of any person to attend a session of court (either personally or by his attorney) after having been directed to attend in the manner provided in subdivision (a),

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(2) If any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee, or managing agent of that party or person refuses to obey an order made under subdivision (a), or if any party or an officer or managing agent of a party refuses to obey an order made under Section 2019, 2031, or 2032, the court may make any orders in regard to the refusal which are just, including, but not limited to, any of the following:

(A) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental or blood condition of the person sought to be examined, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of the physical or mental or blood condition of the person sought to be examined.

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(D) An order requiring the disobedient party or the attorney advising such disobedience to pay to the party obtaining an order under this section the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

(E) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental or blood examination.

(F) If a party fails to comply with an order under subdivision (a) of Section 2032 requiring him to produce another for examination, those orders listed in paragraph (A), (B), or (C), unless the party failing to comply shows that he is unable to produce the person for examination.

(c) If a party, after being served with a request under Section 2033 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any document or the truth of any matter of fact, he may apply to the court in the same action for an order requiring the other party to pay him or her the reasonable expenses incurred in making the proof, including reasonable attorney's fees. If the court finds that there were no good reasons for the denial and that the admissions sought were of substantial importance, the order shall be made.

(d) If a party or a person for whose immediate benefit the action or proceeding is prosecuted or defended or anyone who at the time the deposition is set is an officer, director, or managing agent of any party or person willfully fails to appear before the officer who is to take his deposition, after the party or his attorney has been served with a proper notice in accordance with the provisions of paragraph (4) of subdivision (a) of Section 2019, or if a party or an officer or managing agent of a party willfully fails to serve answers to interrogatories submitted under Section 2030, after proper service of the interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose other penalties of a lesser nature the court may deem just, and may order that party or his attorney to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney's fees.

SEC. 76. Section 1273 of the Education Code, as added by Chapter 909 of the Statutes of 1978, is amended and renumbered to read:

1274. The county superintendent of schools may establish a fund or funds for losses, and payments, including, but not limited to, property of the superintendent, any liability, and workers' compensation, in the county treasury for the purpose of covering the deductible amount under deductible types of insurance policies, losses or payments arising from self-insurance programs, or losses or payments due to noninsured perils. In the fund or funds shall be placed such sums, to be provided in the budget of the superintendent, as will create an amount which, together with investments made from the fund or funds, will be sufficient in the judgment of the superintendent to protect the superintendent from those losses or to provide for payments on the deductible amount under deductible types of insurance policies, losses or payments arising from self-insurance programs, or losses or payments due to noninsured perils. Nothing in this section shall be construed as prohibiting the superintendent from providing protection against those losses or liability for the payment of claims partly by means of the fund or funds and partly by means of insurance written by acceptable insurers as provided in Section 39601.

The fund or funds shall be considered as separate and apart from all other funds of the superintendent, and the balance therein shall not be considered as being part of the working cash of the superintendent in compiling annual budgets.

Warrants may be drawn on, or transfers made from, the fund or funds so created only to reimburse or indemnify the superintendent for losses as herein specified, and for the payment of claims, administrative costs, related services, and to provide for deductible insurance amounts and purchase of excess insurance. The warrants or transfers shall be within the purpose of the fund or funds as established by the superintendent.

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The cash placed in the fund or funds may be invested and reinvested by the county treasurer, with the advice and consent of the superintendent, in securities which are legal investments for surplus county funds in this state. The income derived from the investments, together with interest earned on uninvested funds, shall be considered revenue of and be deposited in the fund. The cost of contracts or services authorized by this section are appropriate charges against the respective fund.

The superintendent may contract for investigative, administrative, and claims adjustment services relating to claims. The contract may provide that the contracting firm may reject, settle, compromise, and approve claims against the superintendent, its officers or employees, within those limits and for those amounts as the superintendent may specify, and may provide that the contracting firm may execute and issue checks in payment of those claims, which checks shall be payable only from a trust account which may be established by the superintendent. Funds in the trust account established by the superintendent pursuant to the provisions of this section shall not exceed a sum sufficient as determined by the superintendent to provide for the settlement of claims for a 30-day period. The rejection or settlement and approval of a claim by the contracting firm in accordance with the terms of the contract shall have the same effect as would the rejection or settlement and approval of the claim by the superintendent. The contract may also provide that the contracting firm may employ legal counsel, subject to those terms and limitations as the superintendent may prescribe, to advise the contracting firm concerning the legality and advisability of rejecting, settling, compromising, and paying claims referred to the contracting firm by the superintendent, for investigation and adjustment, or to represent the superintendent in litigation concerning the claims. The compensation and expenses of the attorney for services rendered to the superintendent shall be an appropriate charge against the appropriate fund.

The contract provided for in this section may contain any other terms and conditions the superintendent may consider necessary or desirable to effectuate the superintendent's self-insured programs.

In lieu of, or in addition to, contracting for the services described in this section, the superintendent may authorize an employee or employees to perform any or all of the services and functions which the superintendent may contract for under the provisions of this section.

As used in this section, "firm" includes a person, corporation, or other legal entity.

A county superintendent of schools may participate in, or administer, insurance for one or more school or community college districts pursuant to this section, and Sections 39602 and 81602.

SEC. 77. Section 16039 of the Education Code is amended to read:

16039. Notwithstanding any other provisions of this chapter, a district which applies for an apportionment for the purchase of a site

or for the cost of the preparation of plans and specifications, which is not a part of a construction project, shall make a separate application for the site or plans and specifications in the same manner as prescribed by Section 16024.

All of the provisions of this chapter apply to that application and apportionment except that:

(a) If the Department of Education determines that within five years in the case of an application for an elementary grade level maintained by the district, or within seven years, in the case of an application for a high school grade level maintained by the district, from the date of the application for the site or for the plans and specifications, there will be sufficient enrollment in the district, based upon enrollment projection criteria adopted by the board, to show the need of such site or for the plans and specifications, it may approve the application. The board may modify a determination respecting future enrollment in connection with an application for an elementary grade level maintained by the district to utilize a period of seven years from the date of the application if it is necessary to meet the emergency conditions existing in that certain district due to a rapid increase in the enrollment of pupils, or due to the scarcity of land within the district, or both. Any application referred to the board pursuant to this section may be either approved in whole or in part, not exceeding the amount applied for, as the board may deem appropriate, pursuant to Sections 16024 and 16035, except that the board may approve additional portions of an application and make an additional apportionment or apportionments within five years of the original approval without requiring a district to issue additional bonds. No additional approval pursuant to the original application or apportionment thereunder may be made unless the board first has investigated and determined the necessity of the additional approval or apportionment, and has received a report thereon from the Department of Education. Any provision of Section 16024 inconsistent with this section does not apply to that application. As used in this section, an "elementary grade level maintained by the district" is a grade level composed of the grades and maintained by the districts specified in clause (1) of subdivision (e) of Section 16002. As used in this section a "high school grade level maintained by the district" is a grade level composed of the grades and maintained by the districts specified in clause (2) of subdivision (e) of Section 16002.

(b) Section 16007 does not apply.

(c) An application for a site pursuant to this section may include an amount for the preparation of plans and specifications for school facilities and for the development of the site, which will conform to those eligible for construction under this chapter.

(d) If the application is approved and an apportionment granted therefor the district shall repay the full amount of the apportionment and the interest thereon. The repayment of the apportionment for a site and the interest thereon, may be over a period of years, not to exceed 30 years from the first day of January of the fiscal year next

succeeding the fiscal year in which the apportionment became final. The repayment of the apportionment for plans and specifications, and the interest thereon, may be over a period of years, not to exceed 30 years from the first day of January of the second fiscal year succeeding the fiscal year in which such apportionment became final. The number of years allowed for repayment shall be determined by the board at the time it fixes interest on the apportionment. The repayment is in addition to any other repayment required under this chapter. If an apportionment is granted pursuant to this section for a site and the site is subsequently used in a construction project for which an apportionment is received under other provisions of this chapter, or if an apportionment is granted pursuant to this section for plans and specifications and the plans and specifications are subsequently used in a construction project for which an apportionment is received under other provisions of this chapter, the district shall not be required to make any further repayments for the site, or the plans and specifications, as the case may be, pursuant to this section and the unpaid balance of the apportionment and interest owing on the apportionment for the site, or the plans and specifications, as the case may be, pursuant to this section shall be added to the principal amount of the apportionment and accrued interest thereon for the construction project. The site is "subsequently used in a construction project" within the meaning of the preceding sentence, if it is used in connection with a construction project at the same grade level by any district receiving a construction apportionment therefor, as this is not intended as a change in the present law, but as a statement of the existing law. In addition, the site is "subsequently used in a construction project" within the meaning of that reference, if it is used in connection with the construction project by any district receiving a construction apportionment therefor at a different grade level, providing that in the latter instance the board in its discretion consents by resolution to the combination of the site and construction apportionments.

SEC. 78. Section 16406 of the Education Code is amended to read:

16406. The bonds authorized to be issued under this chapter shall be sold by the State Treasurer to the highest bidder for cash at public sale upon sealed bids in such parcels and numbers as the State Treasury shall be directed by the Governor, under seal thereof, but the State Treasurer shall reject any and all bids for those bonds, or for any of them, which is below the par value of the bonds so offered plus the interest thereon which accrues between the date of purchaser's payment for the bonds and the last preceding interest maturity date; and the State Treasurer may from time to time, by public announcement at the place and time fixed for the sale, continue the sale, as to the whole of the bonds offered, or any part thereof offered, at that time and place which the State Treasurer may select. Each bid shall be in writing and signed by the bidder and sealed, and shall be accompanied by the deposit of a certified check

or cashier's check for five thousand dollars ($5,000), drawn on a bank or trust company authorized to transact and transacting business in the State of California, payable to the Treasurer of the State of California, such deposit not to bear interest. The deposit of each unsuccessful bidder shall be returned to him immediately upon the nonacceptance of his or her bid, and a deposit of the successful bidder shall immediately upon the acceptance of his or her bid become and be the property of the State of California and be placed in the State Treasury to the credit of the State School Building Aid Fund, and shall be credited to the successful purchaser upon the purchase price of the bonds bid for in case the purchase price is paid in full by him or her within the time mutually agreed upon between the successful bidder and the State Treasurer. If the purchase price is not so paid, the successful bidder shall have no right in and to the bonds or by reason of the bid, or to the recovery of the deposit accompanying the bid, or to any allowance or credit by reason of that deposit unless it appears that the bonds would not be validly issued if delivered to the purchaser in the form and manner proposed. In case the purchase price is not so paid, the bonds so sold but not paid for shall be resold by the State Treasurer upon notice as provided in case of original sale.

Temporary or interim bonds, certificates, or receipts of any denomination whatever and with or without coupons attached thereto, to be signed by the State Treasurer, may be issued and delivered until the definitive bonds are executed and available for delivery. Signature of the State Treasurer may be by signature stamp.

SEC. 79. The heading of Article 4 (commencing with Section 19700) of Chapter 9 of Part 11 of the Education Code is amended to read:

Article 4. Biennial Election of Trustees

SEC. 80. Section 22509 of the Education Code is amended to read:

22509. Members who on January 1, 1976, are in state service positions according to former Section 13948 as it read on December 31, 1975, or who are employees of the Trustees of the California State University and Colleges, may elect in writing prior to July 1, 1976, not to continue as members of this system and to transfer membership to the Public Employees' Retirement System. Failure to execute and file the election which must be received in the office of this system by the close of business on June 30, 1976, shall be deemed a decision to remain as a member of this system.

SEC. 81. Section 23804 of the Education Code is amended to read:

23804. If on the date of death the member had met the following conditions:

(a) Death occurred after June 30, 1972, and

(b) Had one or more years of credited service, and

(c) If the member had a refund of accumulated retirement

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contributions, at least one year of credited service had been performed subsequent to the most recent refund of accumulated retirement contributions, and

(d) If the member had been reinstated to membership under the provisions of Section 23913, at least one year of credited service had been performed subsequent to the date of reinstatement, and

(e) If there had been a break in service of more than one year, one-half year of credited service had been performed after the end of last break, and

(f) The provisions of Sections 23800 and 23801 have been met, or

(g) Lacking the above, was a disabilitant receiving a disability allowance based upon projected salary which began to accrue after June 30, 1972; a family allowance shall be paid subject to the provisions of this chapter and Section 24203 as follows:

(1) To the surviving spouse, having financial responsibility for at least one dependent child who qualifies under Section 22112 there shall be paid an amount, in monthly installments, equal to 40 percent of the deceased's final compensation, plus 10 percent of the final compensation for each child, up to a maximum of 90 percent of the final compensation. If there are children who are not in the care of the surviving spouse, the amount of the allowance in excess of 40 percent of the final compensation shall be divided equally among all children and is payable to the trustee of the estate of such children under age 18 or their guardian if no trustee is designated or to the children age 18 and over, or

(2) If there is no surviving spouse or the surviving spouse subsequently dies or remarries and there are children who qualify under Section 22112, there shall be paid to the trustee of the estate of surviving children under 18 as designated by the member, or the guardian of the children under age 18 if no trustee is designated, or to the child if over age 18, an amount payable in monthly installments equal to 10 percent of the deceased's final compensation, up to a maximum of 50 percent of the final compensation. If there are more than five children, they shall share equally in the maximum of 50 percent, or

(3) If there is no allowance being paid under paragraph (1) or (2) the unremarried spouse age 60 or over shall receive a monthly payment equal to the amount which would have been payable to the spouse based on projected service and projected salary, had the member continued service to age 60 and at that time elected option number three. The allowance payable under this paragraph shall be increased by application of the benefit improvement factor for time which elapses between the date the member would have reached age 60 and the date the allowances commence to accrue under this paragraph. For the calculation of the benefit, it shall be considered that the member died on the June 30 following the actual date of death and the spouse reached age 60 on the June 30 prior to attainment of that age, but the allowance shall not begin to accrue until the spouse attains age 60.

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(4) If there is no surviving spouse or children entitled to allowances under paragraph (1), (2), or (3) at the time of the member's death, the dependent parent, age 60, or upon attainment of that age, shall receive an allowance based on projected service and projected earned salary equal to the amount which would have been paid if the member had retired at age 60 and elected option number three. If there are two parents who qualify under this paragraph, the total benefit will be computed on the assumption that the youngest parent is the beneficiary, and the total shall be divided equally for so long as there are two qualifying parents. Otherwise, the total amount shall be payable to the one who qualifies.

The benefits payable under paragraphs (1) and (2) because of the death of a disabilitant shall be based on projected salary.

Allowances payable under this section are in lieu of the death benefit payable under paragraph (1) of subdivision (b) of Section 23800 irrespective of the beneficiary designated to receive that benefit, except that if there are no children who qualify for an allowance under Section 22112, a spouse or the dependent parent or parents may elect, prior to the receipt of the first payment under paragraph (3) or (4), to receive the accumulated contributions in a lump sum subject to a reduction for any payments made from the account for any prior qualified persons.

SEC. 82. Section 23902 of the Education Code is amended to read:

23902. A member may apply for a disability allowance if he has five or more years of credited service and all of the following requirements are met:

(a) At least four years were credited for actual service performed in a position requiring membership in the system. Credit received because of workers' compensation payments shall be counted toward the four-year requirement.

(b) The last five years of credited service have been served in this state.

(c) At least one year was credited for service performed subsequent to the date on which the member was reinstated to membership under the provisions of Section 23913.

(d) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(e) The member has not attained age 60 years, or has unused sick leave with sufficient days to have him receive salary on account of sick leave to age 60 years.

Nothing in this section shall affect the right of a member to a disability allowance if the reason that the member has less than four years of actual service is due to an on-the-job injury or disease in a position requiring membership in the system.

SEC. 83. Section 23918 of the Education Code is amended to read:

23918. Any retirant whose last employment was in the California State University and Colleges, as a member of this system or the Public Employees' Retirement System, may serve as a member of

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the teaching staff of the California State University and Colleges and shall be subject to the employment limitations as provided by the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

SEC. 84. Section 24806 of the Education Code is amended to read:

24806. (a) A district retirement salary plan established under Sections 24800 to 24812, inclusive, in any school district or districts, in which the average daily attendance of all districts combined is in excess of 200,000, governed by the same governing board, may be discontinued by the governing board of the district or districts, with the consent of the majority of the active members of the system expressing their desires with respect to the discontinuance of the plan evidenced in such manner as the governing board may prescribe; but no discontinuance of any retirement plan shall be effective for any purpose unless provision is made for retirement allowances for active and retired employees of the district as provided in subdivisions (b), (c), (d), and (e).

(b) (1) Active and retired employees of the district or districts who otherwise would be members of the plan, other than teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System or who were so employed prior to retirement, shall be made members and beneficiaries, respectively, of the Public Employees' Retirement System according to the provisions of Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code, including transfer to the system of the accumulated contributions of the employees, together with any other assets of the plan as may be determined.

(2) With respect to persons who are members of the plan at its discontinuance, it shall be provided in the contract making the employees members of the Public Employees' Retirement System, that their respective rates of contribution thereunder shall be based on the age at the nearest birthday at July 1, 1944, or at the respective later effective dates of their membership in the plan, all instead of the age at the nearest birthday at the effective date of membership in the employees' system.

(3) Each employee of the district or districts who is included in the contract, but who during all or part of his or her employment in a status requisite for membership in the plan was not a member thereof, because of his or her election under an available option, or who failed to redeposit upon reentry into membership contributions previously withdrawn, shall have the right to elect by written document filed with the Board of Administration, Public Employees' Retirement System, at any time within 90 days after the date upon which the notice of the right to make the election is mailed by the system to the member's latest address on file in the office of the system, and prior to the date of retirement, to contribute to the system, subject to minimum payments fixed by the board of administration, and in one or more sums, or in not to exceed 60 monthly payments, an amount which, when added to his

accumulated contributions, including interest, transferred as required in paragraph (1), will make a total amount equal to the accumulated contributions, including interest, which would have been credited to him or her in the plan, if he or she had never elected not to be a member thereof, or if he or she had redeposited the withdrawn contributions upon reentry, as the case may be. The employee shall pay to the Public Employees' Retirement System interest on the unpaid balance of the amount payable to the system, beginning with the date of discontinuance of the plan at the rate of interest currently used from time to time under the system. If the employee elects to make, and makes such contributions, and pays the interest, but not otherwise, he or she shall receive credit under the employees' system, as state service, for all the service rendered while he or she was not a member of the plan, because of his or her optional exclusion, or for all service upon which the withdrawn contributions were based, and for the purpose of paragraph (2) shall be considered as a member of the plan at its discontinuance and from November 1, 1937, or later beginning date of the service. Regardless of whether the contributions are made, the employee shall receive credit for service with which he or she was credited or would have been credited if he or she had been a member, as prior service under the plan. The contributions under this paragraph shall be added to and administered in the same manner as the contributions transferred under paragraph (1).

(4) Service rendered by active employees, who are made members of the Public Employees' Retirement System, prior to the assumption by the district or districts of the function under which the service was rendered, such as, but not limited to, cafeterias and student body activities, shall be credited under the employees' system; provided, the service qualified for credit under the discontinued plan.

(5) The contract making the active employees members of the Public Employees' Retirement System, shall include the employees with respect to service rendered in a status in which they are not eligible for membership in the State Teachers' Retirement System, as provided in Section 20491 of the Government Code, and also with respect to service rendered in a status in which they are eligible for membership, but which is no longer credited under the retirement system, and the service shall be credited in the same manner applicable to service otherwise qualifying for credit.

(6) Retirement allowances being paid under the discontinued plan to retired employees of the district or districts, who are made beneficiaries of the Public Employees' Retirement System, shall be changed by action of the governing board of the districts, effective at the discontinuance of the plan, to retirement allowances calculated on the basis of service used in the calculation of the respective allowances under the plan, and average annual salary earnable during the highest three consecutive years of creditable service, calculated according to the methods used at the date of

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discontinuance, under the plan in determining salary earnable, but excluding any salary based on overtime as provided in Section 20025.2 of the Government Code, but otherwise according to the formulae under the employees' system which apply to active employees who are made members thereof. The changed allowances shall be paid to beneficiaries for time commencing on the date they are made beneficiaries of the employees' system. No allowance shall be reduced by the change.

(7) If two or more districts under the control and management of a single governing board are participants in the plan, one contract between the board of administration and the governing board may include all the districts. The governing board may apportion the total contributions required under the contract, among the districts on the basis of total salaries upon which the contributions are computed, and on the basis of other pertinent information.

(8) Paragraph (1) of this subdivision notwithstanding, the contract making active employees members of the Public Employees' Retirement System, shall include teachers and persons employed in a status requisite for membership in the State Teachers' Retirement System, with respect to service rendered in a status in which they would have been eligible for membership in the Public Employees' Retirement System, if the district or districts by which they were employed had been participating in that system under Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code. Contributions deducted from salary earned by the employees in that service, together with credited interest; and standing to the credit of the employees at the effective date of discontinuance of the plan, shall be subject to the provisions of paragraph (1), in the same manner as they would have been so subject if the employees had been employed at the date of the discontinuance, in a status which was not requisite for membership in the State Teachers' Retirement System. The employees shall be members of the Public Employees' Retirement System with the same effect, but only with respect to that service, as if they had been employed in a status which would have qualified them for membership under other paragraphs of this section. The employees shall continue in membership and shall be entitled to benefits in the same manner as if they individually were credited with at least five hundred dollars ($500) in accumulated contributions. In the computation of such members' benefits under the Public Employees' Retirement System, their compensation earnable while they are members of the State Teachers' Retirement System shall be taken into consideration.

(c) Notwithstanding any other provisions of Sections 35161, 35162, 72200, 72201, Article 1 (commencing with Section 7000) of Chapter 1, Article 1 (commencing with Section 7100) of Chapter 2 of Part 5, Article 2 (commencing with Section 10010) of Chapter 1, Chapter 4 (commencing with Section 10300) of Part 7, Article 1 (commencing with Section 12500) of Chapter 5 of Part 8, this part, Article 5

(commencing with Section 32340) of Chapter 3 of Part 19, of this division, and Part 25 (commencing with Section 44000) of Division 3 of Title 2, Chapter 1 (commencing with Section 87000), Article 3 (commencing with Section 87250) and Article 4 (commencing with Section 87270) of Chapter 2, Article 1 (commencing with Section 87400), Article 2 (commencing with Section 87600), Article 5 (commencing with Section 87700), and Article 8 (commencing with Section 87800), Chapter 4 (commencing with Section 88000), of Part 51 of Division 7 of Title 3, contributions to the discontinued district retirement plan made by teachers and other persons employed by the district or districts in a status requisite for membership in the State Teachers' Retirement System standing to their individual credit at the date of discontinuance of the district retirement plan shall be deposited forthwith in the Retirement Annuity Fund with credited interest, to be applied on the amount due from the teachers, but not to exceed the amount so due. Likewise an amount equal to the actuarial equivalent of the annuity portion of the retirement allowance to which the respective retired teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System were entitled under the plan, based on the interest rate and mortality tables used in its determination, shall be deposited in the Retirement Annuity Fund, to be applied on the amount due from the respective retired teachers, but not to exceed the amount so due. Any excess of the contributions with credited interest or the actuarial equivalents, as the case may be, over the respective amounts due under those sections, shall be paid forthwith to the respective active and retired teachers and other persons. Further amounts, if any, due under those sections after the deposits, shall be paid to the Retirement Annuity Fund by the respective active and retired teachers and other persons. If any of the teachers or other persons who is not retired, is not entitled to credit under the State Teachers' Retirement System for all or part of his or her service credited under the plan, or if any of the retired teachers or other persons is not entitled to a retirement allowance from the system, either before or after the discontinuance, the provisions of this subdivision about contributions and credited interest or about the actuarial equivalent of annuity portions of retirement allowances, as the case may be, shall not apply to him or her with respect to service which is not credited under the state system, until and unless he or she becomes entitled to credit for that service or to an allowance from the state system, based on service which was credited to him under the discontinued plan. The balance of the assets held in the various funds of the discontinued district retirement plan after the transfers, deposits and payments required by this section, or after establishment of reserves from which the transfers, deposits and payments shall be made, shall be delivered to the district or districts in which the plan is discontinued.

(d) The district or districts in which the district retirement plan

is discontinued shall pay monthly to teachers and other persons employed by the district or districts, prior to retirement, in a status requisite for membership in the State Teachers' Retirement System who were retired prior to the date of the discontinuance an amount equal to the amount by which the retirement allowance to which any of the retired teachers or other persons was entitled under the plan exceeds the increase in the teacher's or other person's retirement allowance under the State Teachers' Retirement System resulting from the discontinuance. If the amount payable to any such teacher or other person, under the sentence next preceding, is less than two dollars ($2), the district or districts may pay, in lieu of that amount, one amount which shall be actuarially equivalent to the monthly amount thereafter payable, according to the interest rate and mortality table used in the determination of the teacher's or other person's retirement allowance under the district retirement plan. The payment of the actuarially equivalent amount shall discharge fully the district's liability to the teacher or other person under this subdivision. The arrangement under which the amounts are paid by the district shall not be considered to be a local retirement system for the purposes of Chapter 1 (commencing with Section 22000) to Chapter 15 (commencing with Section 23400), inclusive, of this part, nor shall the amount be taken into account in the calculation of retirement allowances under the State Teachers' Retirement System. If any of the teachers or other persons is not entitled to a retirement allowance from the State Teachers' Retirement System, either before or after discontinuance, the district or districts shall pay monthly to him or her, an amount equal to his or her retirement allowance under the plan prior to the discontinuance. If any teacher or other person has left the service of the district or districts, and is in a status under the plan, which if continued would qualify him or her for a retirement allowance without his return to that service, but is in a status otherwise which would not qualify him or her for retirement under the state system, the district or districts shall pay monthly to the teacher or other person, beginning at the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified if the plan had not been discontinued. If any teacher or other person has credit under the plan for service which does not qualify for credit under either the State Teachers' Retirement System or Public Employees' Retirement System, the district or districts shall pay monthly to the teacher or other person, beginning on the date upon which he or she would have qualified for service retirement under the plan, an amount equal to the retirement allowance for which he or she would have qualified on the basis of that service if the plan had not been discontinued. If the individual at a later date becomes entitled to a retirement allowance from the state system, based on service which was credited to him or her under the discontinued plan, the monthly payments shall cease, and he or she shall become subject forthwith to the provisions

of subdivision (c), and the provisions of the first four sentences of this subdivision, in the same manner as he or she would have been subject, if he or she had been entitled to a retirement allowance at the date of discontinuance, but calculation of actuarial equivalents and amounts payable shall be made as of the later date.

(e) If any person who was retired prior to the discontinuance from a position requisite for membership in the State Teachers' Retirement System, under a district retirement salary plan which is discontinued pursuant to this section, elected either under the plan or under the system, but not under both, to have the retirement allowance modified according to an option under which he or she would receive a smaller allowance and provide a benefit for his beneficiary, such person shall have the right, to be exercised not later than 60 days after the discontinuance of the plan, to change his or her election under the State Teachers' Retirement System with respect to the options. Any computations of actuarial equivalent under a changed election shall be made as of the date of discontinuance of the plan, and no adjustment shall be included in the computation on account of retirement allowance payments made prior to that date.

SEC. 85. The heading of Part 20 (commencing with Section 32500) of the Education Code is amended and renumbered to read:

PART 19.5. EDUCATION IN STATE PRISONS

SEC. 86. Section 35167 of the Education Code is amended to read:

35167. Except where otherwise provided, all of the provisions of this code applicable to the government, maintenance, support, functions, and administration of elementary and high school districts are applicable to the government, maintenance, support, and administration of unified school districts.

SEC. 87. Section 39153 of the Education Code is amended to read:

39153. The Department of General Services shall make such inspection of the school buildings and of the work of construction or alteration as in its judgment is necessary or proper for the enforcement of this article and the protection of the safety of the pupils, the teachers, and the public. The school district, city, city and county, or the political subdivision within the jurisdiction of which any school building is constructed or altered shall provide for and require competent, adequate, and continuous inspection during construction or alteration by an inspector satisfactory to the architect or structural engineer and the Department of General Services. The inspector shall act under the direction of the architect or structural engineer as the board may direct, and be responsible to the governing board.

SEC. 88. Section 39316 of the Education Code is amended to read:

39316. Any bonds, notes, warrants, or other evidences of indebtedness to be issued by a nonprofit corporation to finance the construction of a building pursuant to a lease or agreement entered into pursuant to Section 39315 shall be sold pursuant to Chapter 10

(commencing with Section 5800) of Division 6 of Title 1 of the Government Code.

SEC. 89. Section 41604 of the Education Code is amended to read:

41604. "Miscellaneous funds" as used in Section 41603 means the amount the county superintendent of schools has determined and reported to the Superintendent of Public Instruction, in accordance with regulations the Superintendent of Public Instruction is hereby authorized to adopt, that the district has received and which has been deposited to the credit of the general fund of the district for a fiscal year on account of in-lieu taxes or income from bonuses or royalties. Federal forest reserve funds, potash and potassium royalties received pursuant to United States federal mineral deposits, and motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code received by a district shall not be considered miscellaneous funds as defined by this section.

SEC. 90. Section 42649 of the Education Code, as added by Chapter 533 of the Statutes of 1977, is amended and renumbered to read:

42649.5. In a county in which the board of supervisors has transferred educational functions to the county board of education pursuant to Section 1080, and a single budget has been authorized for the purposes of the county school service fund, county board of education, county committee on school district organization, and the office of the county superintendent of schools pursuant to Sections 1620 to 1625, inclusive, the duties of the county auditor specified in this article shall be performed by the county superintendent of schools.

A listing of all warrants approved and allowed by the county superintendent of schools pursuant to this section shall be forwarded to the county auditor on the same day the warrants are forwarded to the school district or the payee. The form of the warrant and the form and content of the warrant listing shall be as prescribed by the county auditor.

Notwithstanding Section 27005 of the Government Code, or any other section requiring orders for warrants or warrants to be signed by the county auditor, the county treasurer in counties subject to this section shall pay warrants which are signed by the county superintendent of schools, and the county auditor shall not be liable under his bond or otherwise for a warrant issued pursuant to this section.

This section shall apply only in those counties in which the county board of supervisors has adopted its provisions by resolution.

SEC. 91. Section 48600 of the Education Code is amended to read:

48600. The purpose of this article is to provide for the operation of 24-hour elementary schools, established pursuant to Article 27 (commencing with Section 940) of Chapter 2 of Part 1 of Division 1 of the Welfare and Institutions Code, for minors between the ages of 8 and 16 years and to provide for the attendance, maintenance, care, home supervision, guidance, observation, and education of

minors attending the schools, and to provide the minors with that vocational, homemaking, mental, moral, physical, and other training which will tend to strengthen and develop them and enable them to become good and useful citizens. The staff of every 24-hour school shall make adjustment as rapidly as possible in order that the period of time the child is away from ordinary community life may be as brief as possible. They shall place the minors in properly licensed children's institutions where they will be assured of suitable educational opportunities, and shall cooperate with child placement agencies to this end and to stimulate proper care of the minors by their parents.

For purposes of this article, the county superintendent of schools has the primary authority to provide for the education and training of minors in 24-hour schools within his or her county.

SEC. 92. Section 48651 of the Education Code is amended to read:

48651. The terms and provisions of Article 25 (commencing with Section 900) of Chapter 2 of Part 1 of Division 2 and Section 579 of the Welfare and Institutions Code shall, so far as applicable, govern and control proceedings under this article.

SEC. 93. Section 49405 of the Education Code is amended to read:

49405. The control of smallpox is under the direction of the State Department of Health Services, and no rule or regulation on the subject of vaccination shall be adopted by school or local health authorities.

SEC. 94. Section 49422 of the Education Code is amended to read:

49422. No physician, psychiatrist, oculist, dentist, dental hygienist, optometrist, otologist, podiatrist, audiologist, or nurse not employed in that capacity by the State Department of Health Services, shall be, nor shall any other person be, employed or permitted to supervise the health and physical development of pupils unless he or she holds a services credential with a specialization in health or a valid credential issued prior to the operative date of the amendment to this section enacted at the 1970 Regular Session of the Legislature.

Any psychologist employed pursuant to Section 49403, and this article shall hold a school psychologist credential, a general pupil personnel services credential authorizing service as a school psychologist, a standard designated services credential with a specialization in pupil personnel services authorizing service as a psychologist, or services credential issued by the State Board of Education or Commission for Teacher Preparation and Licensing.

The services credential with a specialization in health authorizing service as a school nurse shall not authorize teaching services unless the individual holds a baccalaureate degree, or its equivalent, and has completed a fifth year of preparation.

No physician employed by a district to perform medical services pursuant to Section 44873, shall be required to hold a credential issued by the State Board of Education or commission, provided he or she meets the requirements of Section 44873.

SEC. 95. Section 49441 of the Education Code is amended to read:

49441. The governing board of any school district shall make such rules for the mental examination, as provided in Section 49440, of the pupils in the public schools under its jurisdiction as will insure proper care of the pupils and proper secrecy in connection with any condition of impaired mental health noted by the supervisor of health or his assistant and as may tend to the correction of such condition, and any such governing board may consult and cooperate with the State Department of Mental Health in formulating such rules. The State Department of Mental Health shall cooperate to the full extent of its capacities in aiding and assisting school districts in carrying out the duties imposed by this article.

SEC. 96. Section 49454 of the Education Code is amended to read:

49454. A person employed by a school district in a position requiring certification qualifications who holds a valid special credential authorizing the teaching of lipreading or the teaching of the deaf and hard of hearing or a standard teaching credential with specialized preparation in the area of the deaf and hard of hearing or in the area of the speech and hearing handicapped or who holds a certificate of registration to serve as a school audiometrist issued by the State Department of Health Services may, subject to Section 49451, test the hearing of pupils of the district through the use of an audiometer for the purpose of detecting pupils with impaired hearing.

SEC. 97. Section 52324 of the Education Code is amended to read:

52324. Units of average daily attendance in the regional occupational centers or regional occupational programs of a county for a fiscal year are the quotient arising from dividing the total number of days of pupil's attendance in the centers, or programs, during the fiscal year by 175.

Attendance in regional occupational centers, or regional occupational programs, operated under subdivision (a) of Section 52305 shall be considered pupil's attendance under this section, but attendance in regional occupational centers, or regional occupational programs, under subdivision (b) of Section 52305 shall not be so considered.

As used in this section, "school district" includes each of those districts which are cooperating in the maintenance of the center or program, with the approval of the county superintendent of schools, pursuant to Section 52301; and units of average daily attendance of pupils residing in the school district shall be credited to the school district.

SEC. 98. Section 54347 of the Education Code is amended to read:

54347. The State Board of Education and the Superintendent of Public Instruction shall take all necessary actions and steps to ensure that all federal funds which may be made available for any of the experimental pilot programs provided for under Article 2 (commencing with Section 54340) shall be received and utilized for those purposes.

SEC. 99. Section 54526 of the Education Code is amended to read:

54526. Pilot preschool followthrough programs and projects shall be established on the basis of a geographical dispersion throughout the state which is most appropriate for purposes of this article, as determined by the State Board of Education. The programs and projects shall serve as demonstration models for other school districts in the state in the coordination of preschool, kindergarten, and elementary grade instructional programs for the benefit of disadvantaged minors.

SEC. 100. Section 54600 of the Education Code is amended to read:

54600. This article may be cited as the Educational Improvement Act of 1969.

SEC. 101. Section 54630 of the Education Code is amended to read:

54630. This article shall be known and may be cited as the School Improvement Act of 1970.

SEC. 102. Section 54660 of the Education Code is amended to read:

54660. This article shall be known and may be cited as the Elementary and Secondary School Dropout Prevention Act of 1969.

SEC. 103. Section 56364 of the Education Code is amended to read:

56364. Special classes and centers which enroll pupils with similar and more intensive educational needs shall be available. The classes and centers shall enroll the pupils when the nature or severity of the disability precludes their participation in the regular school program for a majority of a schoolday. Special classes and centers and other removal of individuals with exceptional needs from the regular education environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals and recess periods, each public agency shall ensure that each individual with exceptional needs participates in those services and activities with nonhandicapped pupils to the maximum extent appropriate to the needs of the individual with exceptional needs. Special classes and centers shall meet standards adopted by the board.

SEC. 104. Section 69276 of the Education Code is amended to read:

69276. The Director of the Office of Statewide Health Planning and Development shall adopt, amend, or repeal such regulations as are necessary to enforce the provisions of this article, which shall include criteria which training programs must meet in order to qualify for waivers of single capitation formulas or maintenance of effort requirements authorized by Section 69274. Regulations for the administration of this article shall be adopted, amended, or repealed as provided in Chapter 3.5 (commencing with Section 11340) of Part

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SEC. 105. Section 72130 of the Education Code is amended to read:

72130. The date set for special meetings shall be at least 24 hours subsequent to the completion of the call.

SEC. 106. Section 76441 of the Education Code is amended to read:

76441. The governing board of any community college district shall make any rules for the mental examination, as provided in Section 76440, of the students in the schools under its jurisdiction which will ensure proper care of the students and proper secrecy in connection with any condition of impaired mental health noted by the supervisor of health or his or her assistant and may correct that condition, and the governing board may consult and cooperate with the State Department of Mental Health in formulating such rules. The State Department of Mental Health shall cooperate to the full extent of its capacities in aiding and assisting school districts in carrying out the duties imposed by this article.

SEC. 107. The heading of Article 2 (commencing with Section 78220) of Chapter 2 of Part 48 of the Education Code is repealed.

SEC. 108. The heading of Article 3 (commencing with Section 78230) of Chapter 2 of Part 48 of the Education Code is amended and renumbered to read:

Article 2. Military Science

SEC. 109. The heading of Article 4 (commencing with Section 78240) of Chapter 2 of Part 48 of the Education Code is amended and renumbered to read:

Article 3. Work-Experience Education

SEC. 110. The heading of Article 5 (commencing with Section 78270) of Chapter 2 of Part 48 of the Education Code is amended and renumbered to read:

Article 4. Aviation

SEC. 111. Section 84370 of the Education Code is amended to read:

84370. (a) No community college district, other than one newly formed, shall, except as otherwise provided in this article, receive its full apportionment from the State School Fund unless it has maintained the regular day schools of the district for at least 175 days during the next preceding fiscal year.

(b) For the purposes of this article, the Board of Governors of the California Community Colleges shall establish standards to determine whether the districts within its jurisdiction have maintained the regular day schools of the district for at least 175 days

during the next preceding fiscal year.

(c) If a community college district fails to maintain its schools for the required 175 days, the Board of Governors shall withhold from that district's apportionment the product of 0.01143 times the district's apportionment for each additional day the district would have had to maintain its schools in order to meet the requirement prescribed by this section. This subdivision shall apply retroactively to fiscal year 1975–76 and each fiscal year thereafter.

SEC. 112. Section 88086.5 of the Education Code is amended to read:

88086.5. The provisions of Sections 88022, 88023, 88160, 88198, 88199, 88201, and 88202 are applicable to the employees of school districts which have adopted a merit system pursuant to the procedure set forth in this article.

This section is declaratory of existing law. The sections here enumerated are to be construed and applied in the same manner and with the same effect as when they were applicable to the employees of such school districts prior to the enactment of Section 88000 by Chapter 1267 of the Statutes of 1959, and in accordance with the applicable provisions of this article and the rules of the personnel commission.

SEC. 113. Section 3709 of the Elections Code is amended to read:

3709. If the initiative petition is signed by voters not less in number than 20 percent of the entire vote cast within the county for all candidates for Governor at the last gubernatorial election, and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, the board of supervisors shall either:

(a) Pass the ordinance without alteration at the regular meeting at which it is presented and within 10 days after it is presented.

(b) Immediately call a special election at which the ordinance, without alteration, shall be submitted to a vote of the voters of the county.

SEC. 114. Section 11554 of the Elections Code is amended to read:

11554. Copies of each campaign statement shall be filed as follows:

(a) Campaign statements of candidates and persons holding statewide office, of committees supporting such candidates, of state central committees of political parties, and of committees supporting or opposing statewide measures—one original and one copy with the Secretary of State, two copies with the Registrar-Recorder of Los Angeles County, and two copies with Registrar of the City and County of San Francisco.

(b) (1) Campaign statements for candidates and persons holding office of superior court judge, Member of the State Legislature, and member of the Board of Equalization—one original and one copy with the Secretary of State, and two copies with the clerk of the largest county by population which in whole or in part is included in the election district which the officeholder represents or in which

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the candidates seeks nomination or election, and two copies with the clerk of the county in which the candidate resides. No more than two copies of each such statement need be filed with the clerk of any one county.

(2) Campaign statements for committees supporting candidates and persons holding offices listed in paragraph (1)—one original and one copy with the Secretary of State, two copies with the clerk of the largest county by population which in whole or in part is included in the election district which the officeholder represents or in which the candidate or any of the candidates seek nomination or election, and two copies with the clerk of the county in which the committee is domiciled, provided that a committee not domiciled in California shall file two copies with the Registrar-Recorder of Los Angeles County instead of its county of domicile. No more than two copies of each such statement need be filed with the clerk of any one county. For purposes of this act, the domicile of a committee is the address of the committee listed on the campaign statement.

(c) Campaign statements of candidates and persons holding any elective office not mentioned above which is voted upon in more than one county, of committees supporting such candidates, and of committees supporting or opposing measures to be voted upon in more than one county but not statewide—one original and one copy with the clerk of the county having the largest population, and two copies with the clerk of each additional county wholly or partially included in the election district in which the candidate seeks nomination or election or in which the measure is voted upon.

(d) Campaign statements of candidates and persons holding office not mentioned above, or committees supporting such candidates, and of committees supporting or opposing measures to be voted upon in not more than one county—one original and one copy with the county clerk and, if the candidates or measures are to be voted upon within a single city, two copies with the clerk of that city.

(e) Campaign statements of the county central committees of political parties—one original and one copy with the Secretary of State and two copies with the county clerk.

SEC. 115. Section 23528 of the Elections Code is amended to read:

23528. At least 30 days prior to the day fixed for the general district election, the county clerk shall do all of the following:

(a) Establish a convenient number of election precincts within the affected county.

(b) Define the precinct boundaries.

(c) Designate a polling place for each precinct.

(d) Appoint for each precinct from the voters of any district within that precinct one inspector, one or more judges and one or more clerks who shall constitute a precinct board for the precinct.

(e) Notify the members of each precinct board of their appointment and the location of the precinct and polling place where they will serve.

The county clerk, in establishing precincts and defining their boundaries, shall, to the extent practicable, provide for a single polling place where a voter entitled to vote in more than one registered voter district may cast all of his ballots.

In a landowner voting district, the county clerk shall designate the polling place at which a nonresident landowner shall vote.

SEC. 116. Section 27212 of the Elections Code is amended to read:

27212. The petition shall be filed by the proponents, or by any person or persons authorized, in writing, by a proponent. All sections of the petition shall be filed at the same time.

When the petition is presented for filing, the clerk shall determine the total number of signatures affixed to the petition. If from this examination, the clerk determines that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required, the clerk shall accept the petition for filing. The petition shall be deemed as filed on that date. Any sections of the petition not so filed shall be void for all purposes. If, from the clerk's examination, the clerk determines that the number of signatures, prima facie, does not equal or exceed the minimum number of signatures required, the petition shall not be filed and the proponents shall not be permitted to file supplemental petitions. Any petition not accepted for filing shall be returned to the proponents.

SEC. 117. Section 29623 of the Elections Code is amended to read:

29623. A person shall not directly or through any other person advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that it, or any part thereof, shall be used in bribery at any election; or knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part, expended in bribery at any election.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

SEC. 118. Section 30044 of the Elections Code is amended to read:

30044. All that portion of Los Angeles County described and bounded as follows:

Beginning at the intersection of Santa Maria East Fork Road and the boundary common to the County of Los Angeles and the City of Los Angeles; northeasterly on Santa Maria East Fork Road to Mulholland Drive; generally easterly on Mulholland Drive to the south extension of Lankershim Boulevard; north on the south extension of Lankershim Boulevard and Lankershim Boulevard to the Los Angeles River; easterly on the Los Angeles River to the south Burbank city limits; northeast on the Burbank city limits to the Glendale city limits; generally north and east on the Glendale city limits to the boundary of the Angeles National Forest; east and south on the boundary of the Angeles National Forest to Pickins Canyon Wash; southwest on Pickins Canyon Wash to Foothill Boulevard; southeast on Foothill Boulevard to Vista Bonita Way; south and southwest on Vista Bonita Way to a north Glendale city limits;

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generally southeast on the Glendale city limits to the west Pasadena city limits; generally northeast, northwest, north, east, south and east to the Southern California Edison Company transmission line; easterly and southeasterly on the Southern California Edison Company transmission line to the boundary common to the County of Los Angeles and the City of Pasadena; north, east and south on the boundary common to the County of Los Angeles and the City of Pasadena to an angle point on the boundary common to the Angeles National Forest and the City of Pasadena (in the vicinity of Wilson Road); generally east on the boundary of the Angeles National Forest to a point representing the northwest corner of the City of Sierra Madre; south, west and south on the Sierra Madre boundary to a point common to the cities of Sierra Madre, Pasadena and Arcadia; generally south and east on the boundary common to the City of Arcadia and Temple City and the County of Los Angeles (the vicinity of the intersection of Double Drive and Lynrose Street); south and generally west in varying directions along the boundary of the boundary of Temple City to a point common to Cities of Temple City, Rosemead and El Monte; south and east in varying directions along the boundary common to the Cities of Rosemead and El Monte to the San Bernardino Freeway; west on the San Bernardino Freeway to Rosemead Boulevard; southeast on Rosemead Boulevard to Garvey Avenue; west on Garvey Avenue to the Rio Hondo River; generally south and southwest on the Rio Hondo River to the City of Pico Rivera and the County of Los Angeles; generally east varying directions on the Pico Rivera boundary and the Los Angeles County boundary to U.S. Route 605; generally south on U.S. Route 605 to Beverly Boulevard; southeast on Beverly Boulevard to Mesagrove Avenue; northeast, east and southeast in various directions on the boundary common to the City of Whittier and the County of Los Angeles to a point common to the City of Whittier and to the Counties Los Angeles and Orange (the vicinity of the intersection of Janison Drive and Solejar Drive); west, south and generally southwest on the boundary common to the Counties of Los Angeles and Orange to the Pacific Ocean; west, northwest, north and northwest on the Pacific Ocean to the boundary common to the County of Los Angeles and the City of Los Angeles (in the vicinity of the intersection of the Pacific Coast Highway and Coastline Drive); generally north on the boundary common to the County of Los Angeles and the City of Los Angeles to Santa Maria East Fork Road; including the Islands of San Clemente and Santa Catalina shall constitute the Fourth Equalization District.

SEC. 119. Section 752 of the Financial Code is amended to read:

752. A bank or trust company may purchase, acquire, and hold not less than 75 percent of the outstanding shares of a corporation engaged exclusively in holding real property of the character described in subdivision (a) of Section 750 for the purposes therein set forth or in holding, separately or in addition to that real property, tangible personal property necessary or convenient for the use of the

bank or trust company in the conduct of its business or for future expansion of its business. The purchase or acquisition of stock of any such corporation shall be approved by two-thirds of all the directors of such bank or trust company and be approved in writing by the superintendent.

SEC. 120. Section 855 of the Financial Code is amended to read:

855. (a) No later than 10 days, and no sooner than 60 days prior to the maturity date of any time deposit described in subdivision (g), a bank shall notify the depositor, in writing, of the maturity date.

(b) The notification shall also inform the depositor of the length of time available to the depositor for affecting the status of the deposit after the maturity date.

(c) If no interest is paid beyond the maturity date, and after such date the deposit shall be considered a demand deposit, the depositor shall be so informed.

(d) If, pursuant to an agreement, the deposit after maturity again constitutes a time deposit, the depositor shall be informed of the rate of interest and new maturity date.

(e) It is the intent of the Legislature that banks not be precluded from supplying depositors with additional written notices of the maturity date.

(f) This section does not apply to:

(1) Time deposits represented by instruments payable to bearer.

(2) Time deposits which contemplate subsequent deposits to the account having the same maturity date as the initial deposit, as to which the bank has agreed to pay the balance in the account to the depositor or to credit the balance to another account of the depositor which is not a time deposit on an annual or more frequent basis.

(3) Time deposits having a fixed-term maturity of not more than 90 days.

(g) For the purposes of this section, time deposit includes an account which consists of funds deposited to the credit of one or more natural persons or an association, organization, partnership, or corporation operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes, and does not include accounts which consist of funds deposited to the credit of an association, organization, partnership, or corporation operated for profit.

SEC. 121. Section 1231 of the Financial Code is amended to read:

1231. No loan shall be made by any commercial bank upon the securities of one or more corporations, the payment of which loan is undertaken, in whole or in part, severally, but not jointly, by two or more persons in any of the following circumstances:

(a) If the borrowers or underwriters are obligated absolutely or contingently to purchase the securities, or any of them, collateral to the loan, unless the borrowers or underwriters have paid on account of the purchase of the securities an amount in cash, or its equivalent, equal to at least 25 percent of the several amounts for which they remain obligated in completing the purchase of the securities.

(b) If the commercial bank making the loan is liable, directly or indirectly, or contingently, for the repayment of the loan or any part thereof.

(c) If its term, including any renewal thereof by agreement, express or implied, exceeds the period of one year.

(d) Or to an amount under any circumstances in excess of 25 percent of the sum of the commercial bank's shareholders' equity, capital notes, and debentures.

SEC. 122. Section 1237 of the Financial Code is amended to read:

1237. (a) Notwithstanding anything provided to the contrary in this division, the superintendent is empowered to prescribe such rules and regulations as will permit a bank, upon the security of residential property, to make loans and advance credit thereon, upon the execution by the borrower of mortgage payment instruments not authorized under the existing law, provided such instruments have prior approval of the superintendent, and the aggregate at any one time of the outstanding loans by a bank evidenced by such mortgage payment instruments, does not exceed 10 percent of the bank's assets.

(b) The rules and regulations of the superintendent shall be designed to permit limited experimentation to furnish valuable experience and information to the superintendent, the banking industry, and to the public relating to the substance of any permanent regulations or laws which may be forthcoming and to permit banks to operate selected pilot projects on a limited basis. The pilot projects and effective period of the regulations shall not exceed five years from the date of the issuance of the regulations and shall place a high priority on protection for the consumer and encouraging integration and home ownership of those persons who have previously been excluded from or failed to avail themselves of home ownership. The regulations, among other things, shall contain provisions relating to the various types of instruments for experimentation, including, but not limited to, forms of graduated payment mortgages, reverse annuity mortgages, flexible payment and flexible rate mortgages and combinations of such mortgages, with the further provision that alternative mortgage instruments shall be limited in number, simple and comprehensible, and provide adequate opportunities and protections to those persons and classes of persons who have previously not been able to participate in home ownership. The regulations shall also contain a provision requiring that full disclosure be made to potential applicants, of, among other things, the nature and effect of the alternative mortgage payment instrument, the payment due each month of the payment term, and all costs or savings attributed to the alternative mortgage instrument.

(c) A bank offering any loan authorized by this section shall also offer any borrower who qualifies for its standard mortgage loan a choice of a standard mortgage loan at current market terms. A standard mortgage loan means a standard fixed-rate, level-payment mortgage loan.

(d) A report shall be submitted by the superintendent to the Legislature annually on the 15th day of February of each year commencing the second year following the effective date of this legislation, and the report shall include the numbers and types of such mortgage instruments, and the impact of such instruments on minorities, women, young families, persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and elderly persons.

(e) This section shall remain in effect until January 1, 1984, and on such date is repealed.

SEC. 123. Section 2071 of the Financial Code is amended to read:

2071. Any agreement for the merger of two or more banks or trust companies and any certificate of ownership executed pursuant to Section 1110 of the Corporations Code pertaining to such a merger shall have the approval of the superintendent endorsed thereon before it is filed with the Secretary of State. An application for the approval shall be in a form and contain any information which the superintendent may require, and shall be accompanied by a fee of one thousand dollars ($1,000).

SEC. 124. Section 3522 of the Financial Code is amended to read:

3522. On or before the first day of February in each year, each corporation and every foreign corporation licensed by the superintendent to transact the business of such a corporation in this state, shall make a written report to the superintendent which shall contain a statement of its condition on the morning of the first day of January in that year and shall be in the form and contain the matters prescribed by the superintendent. The superintendent may, however, in his discretion, accept from a corporation, which has branches in a foreign country or countries, a report containing a statement of its condition as of a date not later than the first day of January and not earlier than the first day of November in the preceding year. Every report shall be verified by the oaths of the two principal officers in charge of the affairs of the corporation or foreign corporation at the time of the verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the corporation or foreign corporation has been transacted at the location required by this article and not elsewhere.

SEC. 125. Section 5067.5 of the Financial Code is amended to read:

5067.5. "Single-family dwelling" means a structure designed for residential use for one family or real property of the type described in subdivision (a), (b) or (c) of Section 7153.1.

SEC. 126. Section 6407 of the Financial Code is amended to read:

6407. Shares issued by any association issuing no investment certificates and which is an insured institution as defined by Title IV of the National Housing Act, are legal investments for the funds of executors, administrators, guardians, conservators of a natural person, receivers and trustees of every kind and nature, insurance

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When, by law, it is provided that the money of any pension fund, retirement plan, trust fund, or the money of any fund whose investment is governed by law may or shall be invested in securities which are legal investments for savings banks, then that law shall be deemed to authorize the investment of the money in the shares.

SEC. 127. Section 6408 of the Financial Code is amended to read:

6408. Investment certificates issued by any association are legal investments for the funds of executors, administrators, guardians, conservators of a natural person, receivers and trustees of every kind and nature, insurance companies, cemetery associations and of all public corporations, generally referred to as housing authorities, created pursuant to the Housing Authorities Law of this state.

When, by law, it is provided that the money of any pension fund, retirement plan, trust fund, or the money of any fund whose investment is governed by law may or shall be invested in securities which are legal investments for savings banks, then that law shall be deemed to authorize the investment of the money in the investment certificates.

SEC. 128. Section 6450.4 of the Financial Code is amended to read:

6450.4. No issued and outstanding stock of an association shall be sold or offered for sale to the public, nor shall subscriptions be solicited or taken for those sales, until the association or the selling stockholders have applied for and secured from the commissioner a permit authorizing the sale of the guarantee stock.

This section shall not apply to an offering involving less than 10 percent of the issued and outstanding guarantee stock of an association and less than five hundred thousand dollars ($500,000), nor to an offering made under a registration statement filed under the Securities Act of 1933.

SEC. 129. Section 7153.9 of the Financial Code is amended to read:

7153.9. (a) Notwithstanding anything provided to the contrary in this division, the commissioner is empowered to prescribe such rules and regulations as will permit an association, upon the security of residential property, to make loans and advance credit thereon, upon the execution by the borrower of mortgage payment instruments not authorized under the existing law, provided such instruments have prior approval of the commissioner, and the aggregate at any one time of the outstanding loans by an association evidenced by such mortgage payment instruments, does not exceed 10 percent of the association's assets.

(b) The rules and regulations of the commissioner shall be designed to permit limited experimentation to furnish valuable experience and information to the commissioner, the savings and loan industry, and to the public relating to the substance of any

permanent regulations or laws which may be forthcoming and to permit savings and loan associations to operate selected pilot projects on a limited basis. The pilot projects and effective period of the regulations shall not exceed four years from the date of the issuance of the regulations and shall place a high priority on the protection of the consumer and encouraging integration and home ownership for those persons who have previously been excluded from or failed to avail themselves of home ownership. The regulations, among other things, shall contain provisions relating to the various types of instruments for experimentation, including, but not limited to, forms of graduated payment mortgages, reverse annuity mortgages, flexible payment and flexible rate mortgages and combinations of such mortgages, with the further provision that alternative mortgage instruments shall be limited in number, simple and comprehensible, and provide adequate opportunities and protections to those persons and classes of persons who have previously not been able to participate in home ownership. The regulations shall also contain a provision requiring that full disclosure be made to potential applicants, of, among other things, the nature and effect of the alternative mortgage payment instrument, the payment due each month of the payment term, and all costs or savings attributed to the alternative mortgage instrument.

(c) A report shall be submitted by the commissioner to the Legislature annually on the 15th day of March of each year commencing the second year following the effective date of this legislation, and the report shall include the numbers and types of such mortgage instruments, and the impact of such instruments on minorities, women, young families, persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and elderly persons.

(d) This section shall remain in effect until January 1, 1983, and on such date is repealed.

SEC. 130. Section 7153.11 of the Financial Code is amended to read:

7153.11. (a) An association may make amortized loans upon the security of residential real property to finance the purchase and installation of material or equipment designed to promote energy conservation or the efficient use of energy in the residential real property securing the loan, if all of the following conditions are met:

(1) The residential real property securing the loan consists of not more than four dwelling units.

(2) The loan is made in connection with a concurrent loan authorized under Section 7153.

(3) The loan is in an amount not to exceed 10 percent of the loan made under the authority of Section 7153.

(b) An association may make additional advances, or additional loans, to an existing borrower in order to finance the purchase and installation of material and equipment designed to promote energy conservation or the efficient use of energy in the residential real

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property securing the loan, if all of the following conditions are met:

(1) The residential real property securing the loan consists of not more than four dwelling units.

(2) The aggregate of the additional loan or advance and the unpaid balance of the existing loan will not exceed 80 percent of the appraised value of the residential real property securing the loan immediately after the purchase and installation of the material and equipment.

SEC. 131. Section 14052 of the Financial Code is amended to read:

14052. In addition to the powers enumerated in this division, every credit union has the general powers conferred upon corporations by the Nonprofit Mutual Benefit Corporation Law of this state unless restricted by this division.

SEC. 132. Section 14410 of the Financial Code is amended to read:

14410. No member of the board of directors, supervisory committee, or credit committee shall receive any compensation for his or her services as such, but he or she may be provided with reasonable health, accident and similar insurance under such terms and conditions as specified by the commissioner in the credit union regulations, provided that insurance protection shall exclude life insurance, shall be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by virtue of carrying out the duties or responsibilities of his or her credit union position and shall cease immediately when the insured person leaves office without providing residual benefits other than from pending claims, if any. A director or committee member may be reimbursed for actual expenses incurred in the performance of his or her duties.

SEC. 133. Section 18138 of the Financial Code is amended to read:

18138. No person may acquire 10 percent or more of the capital stock of an industrial loan company or a holding company as defined in Section 18025 of this division through purchase, foreclosure pursuant to a pledge or hypothecation, or other devices without the written consent of the commissioner. However, the prior written consent of the commissioner is not required if the offer and sale of the capital stock of the holding company is exempt from the qualification requirement of Section 25130 of the Corporate Securities Law of 1968 by subdivision (a) or (b) of Section 25101 of the Corporations Code.

SEC. 134. Section 18300 of the Financial Code is amended to read:

18300. (a) As used in this article, "open-end loan" means a loan or loans made by an industrial loan company pursuant to a loan agreement which expressly states that it is made pursuant to this section and pursuant to which:

(1) The industrial loan company may permit the borrower to obtain advances of money from the industrial loan company from

time to time or the industrial loan company may advance money on behalf of the borrower from time to time as directed by the borrower.

(2) The amount of each advance and the charges and other permitted costs are debited to an account.

(3) The charges are computed from time to time on the unpaid balances of the borrower's account, excluding from the computation any unpaid charges other than permitted fees, costs and expenses.

(4) The borrower has the privilege of paying the account in full at any time or in monthly installments.

(b) Subject to the written approval of the commissioner of the industrial loan company's plan of business for making open-end loans as not being misleading or deceptive and subject to regulations the commissioner may promulgate with respect to open-end loans under Section 18347, an industrial loan company may make open-end loans pursuant to this section and may contract for and receive thereon charges as set forth in Section 18212. Such charges may be calculated on an amount not exceeding the greater of:

(1) The actual daily unpaid balances of the open-end account in the billing cycle for which the charge is made, in which case one-thirtieth of the monthly rate may be charged for each day the unpaid balance is outstanding.

(2) The average daily unpaid balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance unpaid as of the beginning of that day all advances and other debits and deducting all payments and other credits made or received as of that day.

The billing cycle shall be monthly. A billing cycle is monthly if the closing date of that cycle is the same date each month or does not vary by more than four days from the regular date.

(c) No industrial loan company shall enter into any agreement for an open-end loan that provides for a minimum payment that would result in the full repayment of principal over more than the maximum periods set forth below opposite the respective size of loans.

Principal amount of loan	Maximum period
Less than $1,500	24 months and 15 days
$1,500 but less than $2,500	36 months and 15 days
$2,500 but less than $4,000	48 months and 15 days
$4,000 but less than $6,000	60 months and 15 days
$6,000 but less than $10,000	84 months and 15 days

The minimum payment shall be determined by the amount of the initial loan advance and shall continue at that amount until a subsequent loan advance is made, at which time the minimum payment shall be determined by the amount of the unpaid balance

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of the loan after the advance and including the advance. Minimum payments after each advance shall be determined in the same manner.

(d) On open-end loans the industrial loan company may contract for and receive the fees, costs and expenses permitted on other loans, including those permitted by Sections 18215, 18218, 18290, 18294, and 18412, subject to all of the conditions and restrictions set forth in those sections with the following variations:

(1) The charge for credit life insurance shall be on a monthly basis. No credit life insurance written in connection with an open-end loan shall be cancelled by the lender because of delinquency of the borrower in the making of the minimum payments thereon unless one or more of such payments is past due for a period of 90 days or more, and the lender shall advance to the insurer the amounts required to keep the insurance in force during such period, which amounts may be debited to the borrower's account.

(e) An industrial loan company shall not make an open-end loan in excess of ten thousand dollars ($10,000) principal amount.

(f) The loan contract shall provide for payment of minimum payments complying with subdivision (c). All loans made pursuant to this section shall be repayable by equal or substantially equal monthly payments during the term of the loan.

(g) In lieu of applying the provisions of Section 18290, the provisions contained herein shall apply to open-end loans.

An industrial loan company may provide insurance on the life of one or more borrowers with the borrower's consent. The form of the insurance shall be approved by the Insurance Commissioner and shall be in an amount not in excess of the indebtedness. The amount charged to the borrower for such insurance shall not exceed the amount provided in paragraph (1) or (2) following, whichever is less:

(1) The premium rate filed with the Insurance Commissioner for the coverage provided pursuant to Article 5.9 (commencing with Section 799.1) of Chapter 1 of Part 2 of Division 1 of the Insurance Code and which has not been disapproved by the Insurance Commissioner.

(2) Fifty cents ($0.50) per year per one hundred dollars ($100) of indebtedness (and in the same proportion for longer or shorter maturities and larger or smaller amounts) or such different maximum as is fixed by the Commissioner of Insurance by a valid and effective regulation hereafter adopted.

Notwithstanding Section 18291, any such life insurance shall be in force as soon as the loan is made or coverage is agreed upon, whichever is later.

(h) The open-end loan agreement shall contain the name and address of the industrial loan company and shall disclose the nature of the security taken, if any, the method of determining the minimum payments which will be required to repay the initial

advance, and any subsequent advances on the loan, and the agreed rate of charge.

(i) At the time the open-end loan agreement is made the industrial loan company shall obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If such statement discloses a broker or other person has participated, the company shall obtain a full statement of all sums paid or payable to the broker or other person. The open-end loan agreement and the statement required by this subdivision shall be kept for a period of two years after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(j) Except in the case of an account which the industrial loan company deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the company shall deliver or cause to be delivered to the borrower, or any one thereof, for each billing cycle at the end of which there is an outstanding balance in the account or with respect to which a finance charge is imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the date and amount of any subsequent loan advance during the period, the amounts and dates of crediting to the account during the billing cycle for payments, the amount of any finance charge debited to the account during the billing cycle, the annual percentage rate of finance charged determined under Regulation Z promulgated by the Board of Governors of the Federal Reserve System under the Federal Consumer Credit Protection Act, the balance on which the finance charge was computed, the closing date of the billing cycle, the outstanding balance on that date, and the minimum monthly payment required in the absence of any additional advance. If there has been any change in the nature of the security for the loan since the next preceding advance, the statement shall contain or be accompanied by a statement of the nature of the security for the loan after such change.

(k) An industrial loan company shall not take any instrument in connection with an open-end loan in which blanks are left to be filled in after execution.

(*l*) Subdivision (a) of Section 18205, and Sections 18206, 18214, 18222, 18231, and 18235 shall not apply to open-end loans.

(m) An industrial loan company shall not make an open-end loan secured by real property in whole or in part.

(n) An industrial loan company shall not charge for, offer or provide credit disability insurance in connection with an open-end loan.

(o) This section shall not apply to loans other than open-end loans.

SEC. 135. Section 18455 of the Financial Code is amended to read:

18455. An industrial loan company shall not, directly or indirectly, make any loan to, or purchase a contract or chose in action

from, hold a lease obligation of, or purchase a lease contract from:

(a) A person who is an officer or director of the industrial loan company or of its holding or affiliated company.

(b) A person who is a holder of record or beneficiary of the shares of the industrial loan company or of any holding or affiliated company.

(c) A person in which an officer or director of the industrial loan company or of any holding or affiliated company directly or indirectly is financially interested, directly or indirectly.

(d) A person in which the holder of record or beneficiary of the shares of the industrial loan company or of any holding or affiliated company directly or indirectly is financially interested, directly or indirectly.

(e) A person who acquired such contracts directly or indirectly or through intervening assignments from a person described in subdivision (a), (b), (c), or (d).

Any officer, director or shareholder of an industrial loan company who directly or indirectly makes or procures or participates in making or procuring a loan or contract in violation of this section or knowingly approves the same is personally liable for any loss resulting to an industrial loan company from such loan or contract, in addition to any other penalties provided by law.

The prohibition contained in this section shall not apply to the purchase by an industrial loan company of a contract or chose in action from a personal property broker, provided written authorization for such purchase is obtained from the commissioner.

SEC. 136. Section 18643 of the Financial Code, as added by Chapter 984 of the Statutes of 1979, is amended and renumbered to read:

18643.1. Notwithstanding any other provision of law not within this article, with respect to precomputed loans, premium finance agencies derive authority only from this article.

SEC. 137. Section 24454 of the Financial Code is amended to read:

24454. No amount in excess of that expressly permitted by this article shall be directly or indirectly charged, contracted for, or received, by any person, and the total charges including interest, of the lender, the broker, and any other person, in the aggregate, shall not exceed the amount permitted by this article on any one loan for the negotiating, making, collecting, and enforcing of the loan.

SEC. 138. Section 31020 of the Financial Code is amended to read:

31020. The Legislature finds all of the following:

(a) That it is necessary to increase job opportunities in this state.

(b) That promoting the establishment, growth, and expansion of business firms in this state is an efficient way to increase job opportunities in this state.

(c) That it is appropriate to provide for the licensing and regulation of business and industrial development corporations

which will provide financing assistance and management assistance to business firms in this state.

(d) That the federal government, through the Small Business Administration and other federal agencies, offers programs for providing, through such intermediaries as business and industrial development corporations, financing assistance and management assistance to business firms in this state.

(e) That, in order that this state may obtain the full benefits of such programs, it is necessary that this state provide for the licensing and regulation of business and industrial development corporations.

(f) That only California corporations should be licensed to transact business as business and industrial development corporations because, compared with other types of persons, California corporations can be more effectively regulated and supervised, have greater permanency of existence, and can give better assurance of uninterrupted service.

SEC. 139. Section 31114 of the Financial Code is amended to read:

31114. Whenever any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this division or by any regulation or order issued under this division, whether or not he has filed a consent to service of process under Section 31113, and if personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the superintendent and his successor from time to time in office to be his attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against him or her, or his or her successor, executor, or administrator, which grows out of that conduct and which is brought under this division or under any regulation or order issued under this division, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in any office of the superintendent, but the service is not effective unless (a) the party making the service, who may be the superintendent, forthwith sends notice of the service and a copy of the process by registered or certified mail to the party served at his or her last known address, or takes other steps which are reasonably calculated to give actual notice, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 140. Section 33521 of the Financial Code is amended to read:

33521. (a) No licensee shall, nor shall any licensee cause or permit any of its California agents to, sell in this state any payment instrument issued by such licensee unless such payment instrument shall have first been approved as to form by the superintendent.

(b) If the superintendent finds, with respect to an application by

a licensee for approval as to form of a payment instrument to be issued by such licensee, all of the following:

(1) That the payment instrument clearly identifies the licensee as the issuer of the payment instrument.

(2) That the payment instrument is not misleading in any material respect.

(3) That the payment instrument complies with all applicable laws.

The superintendent shall approve the application and shall, after all conditions precedent to the approval of the payment instrument as to form have been fulfilled, approve the payment instrument as to form. If, after notice and a hearing, the superintendent finds otherwise, the superintendent shall deny the application.

SEC. 141. Section 4700 of the Fish and Game Code is amended to read:

4700. Fully protected mammals or parts thereof may not be taken or possessed at any time and no provision of this code or any other law shall be construed to authorize the issuance of permits or licenses to take any fully protected mammal and no such permits or licenses heretofore issued shall have any force or effect for any such purpose; except that the commission may authorize the collecting of such species for necessary scientific research. Legally imported fully protected mammals or parts thereof may be possessed under a permit issued by the department.

The following are fully protected mammals:

(a) Morro Bay kangaroo rat (Dipodomys heermanni morroensis)
(b) Bighorn sheep (Ovis canadensis)
(c) Northern elephant seal (Mirounga angustirostris)
(d) Guadalupe fur seal (Arctocephalus townsendi)
(e) Ring-tailed cat (Genus bassariscus)
(f) Pacific right whale (Eubalaena sieboldi)
(g) Salt-marsh harvest mouse (Reithrodontomys raviventris)
(h) Southern sea otter (Enhydra lutris nereis)
(i) Wolverine (Gulo luscus).

SEC. 142. Section 8231 of the Fish and Game Code is amended to read:

8231. Salmon may not be taken for commercial purposes except under a nontransferable, revocable permit issued by the department to a qualified individual otherwise authorized to engage in commercial fishing. Such permit shall be valid from date of issuance through December 31, 1981.

SEC. 143. Section 8234 of the Fish and Game Code is amended to read:

8234. A permit holder may have any person serve in his or her place and engage in commercial salmon fishing under his or her permit for one period not to exceed 15 calendar days in any one year, except that a longer period may be allowed in the event of serious illness. Prior authorization for the substitution shall be obtained from the director and shall be given only on his or her finding that the

permit holder will not be available to engage in that activity and that the substitution will not adversely affect the resource. Application for the substitution shall be made to the Department of Fish and Game, Headquarters Office, Sacramento, and contain such information as the director may require. Any denial of the substitution may be appealed to the appeals board.

SEC. 145. Section 8680 of the Fish and Game Code, as added by Chapter 886 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 8680 of the Fish and Game Code, as added by Chapter 961 of the Statutes of 1980.

SEC. 146. Section 8681 of the Fish and Game Code, as added by Chapter 886 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 8681 of the Fish and Game Code, as added by Chapter 961 of the Statutes of 1980.

SEC. 147. Section 8682 of the Fish and Game Code, as added by Chapter 886 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 8682 of the Fish and Game Code, as added by Chapter 961 of the Statutes of 1980.

SEC. 148. Section 8683 of the Fish and Game Code, as added by Chapter 886 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 8683 of the Fish and Game Code, as added by Chapter 961 of the Statutes of 1980.

SEC. 149. Section 10740 of the Fish and Game Code is amended to read:

10740. It is unlawful for any person other than a legally constituted peace officer or officer or employee of the Forest Service of the United States Department of Agriculture, the department, or of the Department of Forestry, or county fish and game wardens or their duly authorized representatives, to travel by motor boat, automobile, motorcycle, or other type of motorized vehicle, or, except for emergencies and for rescue and aerial search for rescue purposes, to land an airplane, helicopter, or similar equipment, within the boundaries of a primitive, wilderness, or wild area closed to the above modes of travel as established by a duly authorized officer of the Forest Service or the Department of Agriculture and recorded in the office of the Regional Headquarters of the Pacific-Southwest Region of the United States Forest Service, Department of Agriculture, and with the department.

SEC. 150. Section 10770 of the Fish and Game Code is amended to read:

10770. The districts described in the following sections are fish and game refuges.

SEC. 151. Section 11512 of the Food and Agricultural Code, as amended by Section 1 of Chapter 660 of the Statutes of 1979, is amended to read:

11512. Except as provided in Section 11512.5, the proceedings for all hearings pursuant to this division shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall have all of the powers which are granted in that chapter.

This section shall remain in effect only until January 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends such date.

SEC. 152. The heading of Chapter 5 (commencing with Section 43801) of Division 17 of the Food and Agricultural Code is repealed.

SEC. 153. The heading of Chapter 20.5 (commencing with Section 47501) of Division 17 of the Food and Agricultural Code is repealed.

SEC. 154. Division 23 (commencing with Section 67500) of the Food and Agricultural Code is repealed.

SEC. 155. Section 68081 of the Food and Agricultural Code is amended to read:

68081. The powers and duties of the commission, subject to Sections 68052 and 68053, shall include, but are not limited to, all of the following:

(a) To adopt, and from time to time, alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders for carrying out the provisions of this chapter, including appeals from any bylaw, rule, regulation, or order of the commission.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to, or in connection with or deemed reasonably necessary for, proper or advisable effectuation of the purposes of this chapter.

(c) To appoint its own officers, including a chairman, one or more vice chairmen, and such other officers as it deems necessary. The officers shall have the powers and duties delegated to them by the commission.

(d) To employ, with the concurrence of the director, a manager to serve, at the pleasure of the commission and the director, as president and chief executive officer of the commission and other personnel, including legal counsel, as necessary to carry out the provisions of this chapter. The commission may retain a management firm or any staff from any board, commission, or committee of the state to perform the functions prescribed by this subdivision under the control of the commission.

(e) To fix the compensation for all employees of the commission.

(f) To appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out the provisions of this chapter.

(g) To establish offices and incur expense, and to enter into any and all contracts and agreements, and to create such liabilities and borrow such funds in advance of receipt of assessments as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance

of its duties.

(h) To keep accurate books, records and accounts of all of its dealings, which books, records and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. The audit shall be made a part of an annual report to all producers and handlers of kiwifruit, copies of which shall also be submitted to the Legislature and the Department of Food and Agriculture. In addition, the director may, as he determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission. The Department of Finance may audit books, records, and accounts of the commission at any time.

(i) To promote the sale of kiwifruit by advertising and other promotional means, including cost-sharing advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for kiwifruit and to educate and instruct the public with respect to kiwifruit and the uses and time to use the several varieties and the healthful properties and nutritional value of kiwifruit.

(j) To educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling kiwifruit; to arrange for the performance of dealer service work providing display and other promotional materials; to make market surveys and analyses; to present facts to, and negotiate with, state, federal, and foreign agencies on matters which affect the marketing of kiwifruit.

(k) To make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and such other contracts or agreements as the commission may deem necessary for the promotion of the sale of kiwifruit.

(*l*) To conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from such research or elsewhere respecting cultural and production practices, marketing, and distribution of kiwifruit. In connection with such research, the commission shall have the power to accept contributions of, or to match, private, state, or federal funds that may be available for such purposes, and to employ or make contributions of funds to other persons or state or federal agencies conducting such research.

(m) To publish and distribute, without charge, a bulletin or other communication for dissemination of information relating to the kiwifruit industry to producers and handlers.

(n) To establish an assessment rate to defray operating costs of the commission.

(o) To establish an annual budget according to acceptable accounting practices. The budget shall be concurred in by the director prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(p) To submit a statement of contemplated annual activities authorized under this chapter, including advertising, promotion,

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SEC. 156. Division 23 (commencing with Section 70500) is added to the Food and Agricultural Code, to read:

DIVISION 23. CALIFORNIA DESERT NATIVE PLANTS

CHAPTER 1. GENERAL PROVISIONS

70500. This division shall be known and may be cited as the California Desert Native Plants Act.

70501. It is the intent of the Legislature, in this division, to protect California desert native plants from unlawful harvesting on both public and privately owned lands. It is also the intent of the Legislature to provide the people of this state with the information necessary to legally harvest native plants so as to ultimately transplant those plants with the greatest possible chance of survival. It is the further intent of the Legislature to encourage public participation in implementing the safeguards established by this division and in evaluating the effectiveness and desirability of the safeguards.

70502. The provisions of this division shall be applicable only within the boundaries of the Counties of Imperial, Inyo, Kern, Los Angeles, Mono, Riverside, San Bernardino, and San Diego. The director may thereafter revise the boundaries of the areas of the state which shall be subject to this division after a public hearing required to be held pursuant to Section 70633 and upon receipt of a resolution approving the change of boundaries by the board of supervisors of the affected county.

70503. Persons engaged in the production, storage, sale, delivery, or transportation of nursery stock pursuant to Part 3 (commencing with Section 6701) of Division 4 shall not be required to obtain a permit pursuant to this division unless those activities involve the harvesting of native plants growing in a wild, uncultivated state.

70504. Persons engaged in the production, storage, sale, delivery, or transportation of nursery stock pursuant to Part 3 (commencing with Section 6701) of Division 4 shall not receive any harvested native plants, unless each plant has securely and properly attached thereto a valid native plant tag and seal.

70505. Persons engaged in the sale of nursery stock pursuant to Part 3 (commencing with Section 6701) of Division 4 shall maintain records of their receipts or purchases for sale or resale of any native plant. The records shall include the name and address of the person selling or delivering the plants and shall be subject to inspection by the commissioner or the director.

CHAPTER 2. DEFINITIONS

70600. Unless the context otherwise requires, the definitions of this chapter govern the construction of this division.

70601. "Landowner" includes the public agency administering any public lands within the areas subject to this division.

70602. "Harvest" means to remove or cut and remove from the place where grown.

70603. "Harvester" means a person who harvests a native plant.

70604. "Director" means the Director of Food and Agriculture.

70605. "Department" means the Department of Food and Agriculture.

70606. "Tag" means a paper or cloth label that can be attached to a native plant or a commercial load by means of a string and a seal, which tag specifies among other things a serial number, type of plant, fee required, location of origin, date of removal, witnessing authority, applicant, destination, and proposed use, including, but not limited to, commercial processing or landscaping.

70607. "Seal" means a metal, tamperproof clamp used to permanently affix the tag to a native plant.

70608. "Resale" means native plants harvested, possessed, or transported with the intent to sell the plants for the ultimate purpose of landscaping or decoration or both.

70609. "Resale load" means native plants harvested, possessed, or transported for resale purposes.

70610. "Native plant" means any tree, shrub, bulb, or plant or part thereof, except its fruit, named in this division as being subject to this division or added by the director pursuant to Section 70633, which is growing wild. "Native plant" includes any part of any tree of the following species, whether living or dead:

(a) Olneya tesota (desert ironwood).

(b) All species of the genus Prosopis (mesquites).

(c) All species of the genus Cercidium (palos verdes).

70611. "Commercial harvesting" means harvesting native plants for an ultimate use other than as landscaping or decorative material and with the plants' tops or branches, or both, boughs, or limbs removed.

70612. "Permit" means an application form to harvest native plants that has been filled out by the applicant and approved and officially endorsed by the agricultural commissioner or sheriff of the county wherein the native plants covered by the application are located.

70613. "Wood receipt" means a receipt that is to accompany one or more cords of wood harvested under the provisions of this division. The wood receipt shall contain information which specifies, among other things, a serial number, species of wood, fee required, location of origin, date of removal, witnessing authority, applicant, destination, and proposed use, including, but not limited to, commercial processing landscaping.

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CHAPTER 3. REGULATED NATIVE PLANTS

70630. The botanical names of the plants referred to in this chapter shall, in all cases, govern in the interpretation of this division.

70631. The following native plants may not be harvested except for scientific or educational purposes under a permit issued by the commissioner of the county in which the native plants are growing: all species of Burseraceae family (elephant tree), Carnegiea gigantea (sahuaro cactus), Castela emoryi (crucifixion thorn), Dudleya saxosa (Panamint dudleya), Pinus longaeva (bristlecone pine), and Washingtonia filifera (fan palm).

70632. The following native plants may be harvested under a permit issued by the agricultural commissioner or the sheriff of the county in which the native plants are growing: all species of the family Agavaceae (century plants, nolinas, yuccas), all species of the family Cactaceae (cacti), except the species Carnegiea gigantea (sahuaro cactus), all species of the family Fouquieriaceae (ocotillo, candlewood), all species of the genus Prosopis (mesquites), all species of the genus Cercidium (palos verdes), and the following species: Acacia greggii (catclaw), Atriplex hymenelytra (desert-holly), Dalea spinosa (smoke tree), Olneya tesota (desert ironwood), or any part thereof, except the fruit. For purposes of this division, Olneya tesota (desert ironwood) includes both dead and live desert ironwood.

The commissioner may establish limits on the quantity of desert ironwood which may be taken under any permit and on the number of permits for the taking of desert ironwood which may be issued. The county agricultural commissioner may adopt such rules and regulations as may be necessary for the protection of the ironwood resource.

Notwithstanding the foregoing provisions of this section, the director may add desert ironwood to, or remove it from, the jurisdiction of this division pursuant to Section 70633.

70633. After consultation with the Secretary of the Resources Agency and after a public hearing, the director may add to, or remove from, the jurisdiction of this division a native plant. A public hearing on native plants shall be held at least once every 24 months in a county subject to this division and in a location that is convenient to a large segment of the public.

In deciding whether to call a public hearing, the director may consider a request from a public or private group, including concerned citizens, and the director shall convene such a hearing when requested by resolution of any county board of supervisors. The director may consider at such a hearing which plants are in need of protection and whether the boundaries of the area to be protected should be changed pursuant to Section 70502.

70634. Any native plant that is declared to be a rare, endangered, or threatened species by federal or state law or regulations, including, but not limited to, the Fish and Game Code, is exempt

from the provisions of this division.

CHAPTER 4. ENFORCEMENT POWERS AND ADMINISTRATIVE RESPONSIBILITIES

70650. (a) The commissioner or the sheriff of a county subject to this division shall issue, in accordance with this division, permits, wood receipts, tags, and seals for a fee as prescribed by the board of supervisors of the county where the native plants are located. The fee shall not be less than one dollar ($1) per plant for all native plants, except Yucca brevifolia (Joshua tree), and not less than two dollars ($2) per plant for each Yucca brevifolia (Joshua tree), except that in the case of trees, live or dead, mesquite, palo verde, or ironwood species of trees cut or removed for wood, as provided in Section 70652, the fee shall not be less than one dollar ($1) per cord, or in the case of Yucca Schidigera used for commercial harvesting the fee shall not be less than three dollars ($3) per ton. The fees shall cover the cost of issuing a permit and may cover other related costs including but not limited to, administration, enforcement, and research costs. The permit shall specify, among other things, the species of native plants which may be harvested, the area from which plants may be harvested, and the manner in which plants may be harvested. No person, except as provided in this division, shall harvest, transport, offer for sale, or have in his or her possession any native plant unless at the time of harvesting he or she has a valid permit or valid wood receipt therefor on his or her person, and he or she attaches the required tags and seals to the native plants, and unless he or she exhibits the permit, wood receipt, and tags and seals upon request for inspection by any duly authorized agent of the county agricultural commissioner or any peace officer as provided in this division. No wood receipt or tag and seal is valid unless it is issued with a valid permit and the permit bears the tag number or wood receipt number on its face.

(b) Native plants which have been tagged and sealed, as provided in this section, may be transported under a California nursery stock certificate or a shipping permit.

70651. (a) Each permit authorizing the harvesting, transporting, or possessing of native plants, except trees cut or removed for wood as provided in Section 70652, shall be accompanied by a sufficient number of tags and seals. The permittee or his or her agent shall attach tags and seals to the native plants at the time of harvesting and before transporting in such manner as prescribed by the commissioner of the county in which the native plants are located. After any native plant has been legally harvested and tagged or sealed as provided in this division, it shall be unlawful to remove the tag or seal until the plant has been transplanted into its ultimate site for landscaping or decoration. The tag or seal may be removed from the plant only by the commissioner or the ultimate owner of the plant, who shall retain the tag or seal as proof of ownership.

(b) No permit or tag or seal is transferable by the permittee or his agent, nor shall it be used by anyone except that person to whom the permit or tag or seal was issued, and no refunds shall be made for the purchase thereof.

(c) Every permittee shall be responsible for the acts of any other person or persons acting under any authority, express or implied, of the permittee.

70652. (a) Each permit authorizing the harvesting, transporting, or possessing of live or dead mesquite, palo verde, or ironwood species of trees which are harvested for wood, shall be accompanied by a wood receipt. Any required wood receipt shall be in the possession of the person harvesting, transporting, or possessing the wood.

(b) No permit or wood receipt is transferable by the permittee or his agent, nor shall it be used by anyone other than the person to whom the permit or wood receipt was issued or his or her agent or employee, except that the wood receipt shall be transferred by the permittee or his or her agent or employee to the purchaser of the wood covered by the receipt as proof of ownership.

70653. Any person in possession of a valid permit for the removal of dead plants or wood issued by the United States Forest Service, the National Park Service, or the Bureau of Land Management, or any person in compliance with appropriate federal regulations and policies allowing the removal of dead plants or wood from lands administered by the Bureau of Land Management, shall not be required to obtain a permit pursuant to this division for the removal or possession of those dead plants or wood.

70654. The director may make necessary rules and regulations not in conflict with this division for the enforcement of its provisions.

70655. The director or any of his duly authorized agents, any commissioner, or any peace officer is authorized and directed to enter in or upon any premises or other place, train, vehicle, or other means of transportation within or entering the state, which is suspected of containing or having present therein or thereon native plants in violation of this division, in order to examine permits and wood receipts and observe tags and seals.

70656. When any power or authority is given by any provision of this division to any person, it may be exercised by any deputy, inspector, or agent duly authorized by that person. Any person in whom the enforcement of any provision of this division is vested has the power of a peace officer as to that enforcement, which shall include state or federal agencies with which cooperative agreements have been made by the department to enforce any provision of this division.

70657. Any county may adopt ordinances not in conflict with this division for the preservation of native plants specified in Sections 70631 and 70632.

CHAPTER 5. HARVESTING OF NATIVE PLANTS

70660. (a) Except as provided in this division, it is unlawful for any person to destroy, dig up, mutilate, or harvest any living native plant, or the living or dead parts of any native plant, except its fruit, without obtaining written permission from the landowner and a permit and any required wood receipts or tags and seals.

(b) It shall be unlawful for any person to falsify any paper or document issued to give permission for any person to harvest a native plant specified in Section 70632, or to fail to comply with all conditions or stipulations of the permit.

70681. The commissioner of the county wherein the plants are located may issue a permit to a scientific or educational institution to harvest a definite number of plants listed in Section 70631 for scientific or educational purposes, if permission is obtained from the landowner on whose property the plants are located.

70682. Permits issued for the removal of native plants shall be valid only for a stated period of time to allow the permittee to remove the specific amount of plants or wood stated in the permit, or the period of time stated by the landowner as part of the landowner's permission, whichever is shorter, but in no case for more than one year.

It is the intent of the Legislature that each permit or wood receipt shall be valid for the least period of time possible in which to accomplish the authorized purpose.

70683. No person shall knowingly make any false statement on any application for permits, wood receipts, or tags and seals. The application shall contain the following information:

(a) The name, address, and telephone number of the applicant.

(b) The amount and species of native plants to be transported.

(c) The name of the county from which the native plants are to be removed.

(d) A description sufficient to identify the real property from which the native plants are to be removed, and such other information or documents as the issuing agency may require to identify the general boundaries of the property.

(e) The name, address, and telephone number of each landowner from whose property the native plants are to be removed.

(f) The applicant's timber operator permit number, if the harvesting of the native plants is subject to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code).

(g) The proposed date or dates of the transportation.

(h) The location of the office of the peace officer who will validate the tag or tags.

(i) The destination of the native plants.

(j) The ultimate use of the native plants, such as for use as landscaping or decorative material, or for use as a raw material in the manufacture or processing of a product.

(k) Make, model, and license number of the transportation vehicle.

(*l*) Such other information as may be required by the agency issuing the permit.

Every applicant shall, at the time of making the application, show his or her proof of ownership of the native plants. The application forms, tags, seals, and wood receipts shall be produced by the Department of Justice, and distributed to the sheriff and the agricultural commissioner of each county subject to Section 70502.

70684. Any permit issued pursuant to Section 70680, 70681, 70682 or 70683 shall expire when the tags and seals issued therewith have been attached to the plants covered by the permit and such plants are no longer in the possession of the permittee.

70685. The director or agricultural commissioner may establish specific cutting, harvesting, and plant care criteria which shall include the most favorable and practical horticultural methods and seasons to assure the survivability of the plants and to assure compliance with existing local, state, and federal regulations.

70686. No provision of this division shall prevent any of the following:

(a) The clearing of land for agricultural purposes, fire control measures, or required mining assessment work pursuant to federal or state mining laws.

(b) The holding of a recreational event sanctioned by the Bureau of Land Management.

(c) The clearing or removal of native plants from a canal, lateral ditch, survey line, building site, or road or other right-of-way by the landowner or his or her agent, if the native plants are not to be transported from the land or offered for sale and if the commissioner is given at least 10 days' notice of any such activity.

The provisions of this division are not applicable to a public agency or to a publicly or privately owned public utility when acting in the performance of its obligation to provide service to the public. This section does not prevent the landowner or his agent from complying with any other federal, state, or local laws or regulations.

The commissioner may exempt the use of dead and down wood for camping or branding fires from the requirements of this division.

70687. Except as provided in Section 70631, no provision of this division prohibits any person from harvesting or possessing, for purposes other than resale, five or fewer native plants or from cutting, removing, harvesting, transporting, or possessing, for purposes other than resale, any dead mesquite or palo verde in amounts less than one cord, from land owned by the person, or from land leased by the person when the landowner's written permission to harvest has been obtained and is exhibited, or from land not owned by the person when the person exhibits written permission to harvest from the landowner. The written permission shall not be valid unless it includes a description of the land satisfying the requirements of Section 70683 and the address and telephone

number of the landowner.

Persons harvesting five or fewer native plants, for purposes other than resale, and persons cutting, removing, harvesting, transporting, or possessing any dead mesquite or palo verde, for purposes other than resale, in amounts less than one cord shall not be required to obtain and exhibit any permits, tags and seals, or wood receipts.

Persons possessing six or more harvested native plants shall obtain and exhibit a tag and seal for the sixth native plant and for each additional native plant in his possession.

70688. Each county may enact ordinances not inconsistent with this division to control commercial harvesting in that county.

70689. The issuing agency shall collect fees for the issuance of permits, tags and seals and wood receipts under this division, except from a landowner moving native plants from one of his or her properties to another, if the plants are not to be offered for sale.

70690. Any harvested native plant listed in Section 70631 or 70632, or added by the director pursuant to Section 70633, which is not exempt from the permit requirements of this division pursuant to Section 70687, found without a tag and seal securely and properly affixed thereto or for which the owner does not exhibit a tag and seal, or any mesquite or palo verde wood in the amount of one cord or more found in the possession of a person without a wood receipt, may be confiscated as evidence of a violation.

CHAPTER 6. SHIPMENT OF PLANTS

70700. No person or common carrier shall transport, or receive or possess for transportation, any native plant or any wood, or part thereof, except its fruit or manufactured wood articles, that requires a permit, wood receipt, or tag and seal, unless the person offering the plant for shipment furnishes to the person or common carrier a valid permit therefor, and any required wood receipts, and has securely and properly attached thereto any required tag and seal. If for transportation outside of the state, the plant shall also bear a certificate of inspection by the department.

70701. All native plant species or varieties subject to this division, when not grown in California and imported into this state, shall be declared at a California agricultural inspection station or an office of the department, and proceed to destination under quarantine orders issued by agents of the department employed at the station or office. Any person transporting any plant species or varieties subject to this division from outside the state into California shall have in his or her possession a valid bill of sale for those native plants, and such permits and tags as may be required by the state of origin, and shall produce the bill of sale as well as any permits and tags for inspection by any duly authorized person as described in this division or any peace officer of the State of California as a requirement for entry into the state of the native plants.

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CHAPTER 7. ENFORCEMENT

70720. A peace officer may, in the enforcement of this division, make arrests without warrant for a violation of this division which he or she may witness, and may confiscate native plants, or parts thereof when unlawfully harvested, transported, possessed, sold, or otherwise obtained in violation of this division.

70721. A person violating any provision of this division is guilty of a misdemeanor punishable by a fine of not less than three hundred dollars ($300), nor more than one thousand dollars ($1,000), for each violation or by imprisonment in the county jail not to exceed one year, or both, and each violation constitutes a separate offense.

70722. Upon conviction of a violation of this division, all permits issued to the person convicted shall be revoked and the permittee shall be required to surrender any unused tags and seals or wood receipts to the issuing agency and no new or additional permits shall be issued to the permittee for a period of one year from the date of conviction.

70723. A second conviction may be considered as a misdemeanor or a felony. If a misdemeanor, it shall be punishable by a fine of not less than three hundred dollars ($300), nor more than one thousand dollars ($1,000), for each violation or by imprisonment in the county jail not to exceed one year, or both, and each violation constitutes a separate offense. If a felony, it shall be punishable by a fine of not less than one thousand dollars ($1,000), nor more than five thousand dollars ($5,000), for each violation or by imprisonment in the state prison not to exceed five years, or both, and each violation constitutes a separate offense.

Upon the second conviction, all permits issued to the person convicted shall be revoked and the permittee shall be required to surrender any unused tags and seals or wood receipts to the issuing agency and no new or additional permits shall be issued to the permittee at any time in the future from the date of conviction.

70724. The issuing agency may revoke any permit, tags, or seals issued for the purpose of harvesting for ultimate replanting if the permittee willfully fails to comply with all conditions or stipulations of the permit.

CHAPTER 8. FINANCIAL PROVISIONS

70740. All fees or moneys collected under this division shall be paid into the general fund of the county in which the permits, tags and seals, and wood receipts were issued.

SEC. 157. Section 24 of the Government Code, as added by Chapter 1208 of the Statutes of 1980, is amended and renumbered to read:

25. (a) For purposes of this code, "assessed value" means 25 percent of full value to, and including, the 1980–81 fiscal year, and 100 percent of full value for the 1981–82 fiscal year and fiscal years

thereafter; and, tax rates shall be expressed in dollars, or fractions thereof, on each one hundred dollars ($100) of assessed value to, and including, the 1980–81 fiscal year and as a percentage of full value for the 1981–82 fiscal year and fiscal years thereafter.

(b) Whenever this code requires comparison of assessed values, tax rates, or property tax revenues for different years, the assessment ratios and tax rates shall be adjusted as necessary so that the comparisons are made on the same basis, and the same amount of tax revenues would be produced, or the same relative value of an exemption or subvention will be realized regardless of the method of expressing tax rates or the assessment ratio utilized.

(c) For purposes of expressing tax rates on the same basis, a tax rate based on a 25 percent assessment ratio and expressed in dollars, or fractions thereof, for each one hundred dollars ($100) of assessed value may be multiplied by a conversion factor of twenty-five hundredths of 1 percent to determine a rate comparable to a rate expressed as a percentage of full value; and, a rate expressed as a percentage of full value may be multiplied by a factor of 400 to determine a rate comparable to a rate expressed in dollars, or fractions thereof, for each one hundred dollars ($100) of assessed value and based on a 25 percent assessment ratio.

SEC. 158. Section 850.8 of the Government Code is amended to read:

850.8. Any member of an organized fire department, fire protection district, or other firefighting unit of either the state or any political subdivision, any employee of the Department of Forestry, or any other public employee when acting in the scope of his or her employment, may transport or arrange for the transportation of any person injured by a fire, or by a fire protection operation, to a physician and surgeon or hospital if the injured person does not object to the transportation.

Neither a public entity nor a public employee is liable for any injury sustained by the injured person as a result of or in connection with that transportation or for any medical, ambulance or hospital bills incurred by or in behalf of the injured person or for any other damages, but a public employee is liable for injury proximately caused by his willful misconduct in transporting the injured person or arranging for the transportation.

SEC. 159. The heading of Chapter 11 (commencing with Section 4540) of Division 5 of Title 1 of the Government Code is amended and renumbered to read:

CHAPTER 12. CHILD CARE FACILITIES FOR STATE EMPLOYEES

SEC. 160. Section 4540 of the Government Code is amended and renumbered to read:

4560. The Legislature finds and declares that there is a substantial need to provide adequate child care facilities for state employees.

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building which can accommodate 700 or more state employees, or when additions, alterations, or repairs are made to existing state-owned office buildings which can accommodate 700 or more state employees, and the additions, alterations, or repairs both change and affect the use of 25 percent of the net square feet area of the building and include the addition to, alteration of, or repair of the first floor, adequate space shall be designated within the building to meet the child care needs of those employees, if a review of those employees slated to occupy the new or renovated building shows sufficient need for child care services for 30 or more children. The review shall be conducted by the Department of General Services and the Governor's Advisory Committee on Child Development Programs established pursuant to Section 8254 of the Education Code. The Director of the Department of General Services may secure space in any adequate facility for the same purposes only in the event that all other physical requirements controlling the development of such child care facilities within the office building shall not be utilized, provided that funds for the off-site facilities are made available.

It is the intent of the Legislature that existing state office buildings, at the discretion of the Director of General Services, may be retrofitted to accommodate a child care facility. State funds required for the retrofitting will be subject to regular budgetary procedures and approvals.

Space designed within a state-owned office building for the child care facility shall comply with the prevailing local and state safety and building codes for child care facilities.

The indoor area shall not exceed 2,100 square feet, nor be less than that required to accommodate 30 children, excluding space for bathrooms, kitchen facilities, storage areas, and teacher offices. Outdoor play area space shall correspond with the indoor play area as set forth in Title 22 of the California Administrative Code.

Utilization of the space shall be subject to terms and conditions as set forth by the Director of General Services. The terms shall include payment of rent, proof of financial responsibility, and maintenance of space. The space shall be made available to the employees who wish to establish child care facilities at a rate to be established by the Director of the Department of General Services that is consistent with rental rates charged to state agencies occupying comparable state-owned space. Rent for non-state-owned space will be based upon the actual cost to the state.

The employee-occupants shall be notified in writing by the department or departments occupying the building, of the availability of space to be used for a child care facility no earlier than 60 days prior to the projected date of occupancy of a new building or space provided as the result of additions, alterations, or repairs to an existing state-owned building, and such additions, alterations, or repairs that both change and affect the use of 25 percent of the net square feet area of the building and include the addition to,

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alteration of, or repair of the first floor. If, within 30 days after full occupancy of a new office building or 30 days after the completion of additions, alterations, or repairs to an existing state-owned office building, the employee-occupants so desiring have not filed an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care center, deposited two months' rent in a commercial or savings account, and entered into a contract with the Department of General Services, the space may be used for any other purpose, as long as no permanent alteration of the space occurs. Other purposes may include, but are not limited to, conference rooms, storage areas, or offices. The space for child care shall be held for the employee-occupants' nonprofit corporation only as long as they pay the monthly rent and meet the terms set forth in the contract. Payment of rent shall commence 30 days after full occupancy of a new office building or 30 days after completion of additions, alterations, or repairs, as specified in this section.

If at a later date, the employee-occupants so desiring (a) file an application with the Secretary of State as a nonprofit corporation for the purpose of organizing a child care facility, (b) deposit two month's rent in a commercial or savings account, and (c) notify the Director of the Department of General Services of those actions, then the space shall be reconverted for child care purposes within 180 days of such notice.

Only children of whom at least one parent or guardian is a state employee may be served in the child care facility.

When a child care center has been operative for five years, the Director of the Department of General Services shall assess the child care needs of the state employees using the center and the office space needs of the building within which the center is located. If the assessment demonstrates a greater need for office space than for child care, the Director of the Department of General Services may close the child care center. Ninety days' written notice shall be given to the director or head teacher of the center of the closure.

This section shall not be construed to apply to those buildings which provide care or 24-hour residential care for patients, inmates, or wards of the state, such as state hospitals and correctional facilities.

SEC. 161. Section 4541 of the Government Code is amended and renumbered to read:

4561. Child care facilities for the employees of the California State University and Colleges and the University of California shall be incorporated into the campus master plans and constructed subject to the provision of state funding appropriations by the Legislature. Determination of the need for, eligibility for use, and utilization of those facilities, shall be subject to terms and conditions of the trustees and the regents.

For the purposes of this chapter, only this section shall apply to the California State University and Colleges system and the University of California.

SEC. 162. Section 4542 of the Government Code is amended and

renumbered to read:

4562. This chapter shall not apply to the design of new state office buildings, additions, alterations, or repairs of existing state-owned office buildings, where the Public Works Board has approved, prior to the effective date of this chapter, the commencement of the working drawing phase of the new state office building.

SEC. 163. Section 6901 of the Government Code is amended to read:

6901. Notwithstanding any other provision of the law, every state agency owning common stock shall, when returning proxies to a corporation, vote each proxy that is returned to the corporation. Nothing in this section shall prohibit a state agency owning common stock from abstaining on a corporate or shareholder proposal and notifying the corporation in writing of the state agency's desire to abstain on a corporate or shareholder proposal.

As used in this section "state agency" includes the state, the University of California, and any office, department, division, bureau, board, commission, agency, or pension or retirement system thereof.

SEC. 164. The heading of Chapter 24 (commencing with Section 7540) of Division 7 of Title 1 of the Government Code is amended and renumbered to read:

CHAPTER 25. FEDERAL FUNDING

SEC. 165. Section 7540 of the Government code is amended and renumbered to read:

7560. It is the intent of the Legislature to assure receipt of federal funding by the State of California. It is also the intent of the Legislature to assure that if lack of interagency agreement or lack of coordination between state agencies jeopardizes state receipt of federal funds, including, but not limited to, funds available for services to handicapped children, an expeditious process shall exist for resolving such interagency matters.

SEC. 166. Section 7541 of the Government Code is amended and renumbered to read:

7561. It is further the intent of the Legislature that there shall be a single line of responsibility with regard to the education of all handicapped children as required by Public Law 94-142. The Superintendent of Public Instruction shall be responsible for supervising education and related services for handicapped children specifically required pursuant to the federal requirements under the Education for All Handicapped Children Act of 1975, Public Law 94-142. Nothing in this chapter shall be construed to relieve another state agency from an otherwise valid obligation to provide or pay for services to a handicapped child. Furthermore, nothing in this chapter shall be interpreted so as to allow the Superintendent of Public Instruction to prescribe health care services.

SEC. 167. Section 7542 of the Government Code is amended and

renumbered to read:

7562. If any state agency applies for federal funds to meet a mandatory responsibility under federal or state law and such application is not approved, the state agency shall submit to the Department of Finance, the Office of Planning and Research and the Joint Legislative Budget Committee within 15 calendar days of its receipt of notification of the lack of approval of its application all of the following:

(a) An identification of the federal program for which the application was not approved and the federal administering agency.

(b) An estimate of the amount of funds affected by the lack of approval of the state agency application.

(c) An indication of the reason or reasons the application was not approved.

(d) A description of any issues pertaining to responsibilities or actions of other state or local agencies which have affected the lack of approval.

SEC. 168. Section 7543 of the Government Code is amended and renumbered to read:

7563. The Joint Legislative Budget Committee shall submit to each member of the appropriate legislative policy committees and to each member of the legislative fiscal committees, within 10 calendar days of receipt of notification of a lack of approval of an application for federal funds reported to it pursuant to Section 7542, a summary of the information specified in subdivisions (a) through (d) of Section 7542.

SEC. 169. Section 7544 of the Government Code is amended and renumbered to read:

7564. Any state agency which has not received federal agency approval of an application for funds as described in Section 7542 shall submit to the Department of Finance, the Office of Planning and Research and the Joint Legislative Budget Committee within 30 calendar days of receipt of notification of such lack of approval a plan that includes, but is not limited to, any of the following:

(a) Fostering expeditious receipt of the affected federal funds.

(b) Resolving any disagreement or lack of coordination among state agencies or among local agencies which has interfered with federal agency approval of the application for federal funds.

SEC. 170. Section 8574.3 of the Government Code is amended to read:

8574.3. State agencies granted authority to implement a plan adopted under this article may use volunteer workers. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation under this section shall be made from the account specified in Section 8574.4.

SEC. 171. Section 8580 of the Government Code is amended to read:

8580. The Emergency Council shall establish by rule and regulation various classes of disaster service workers and the scope of the duties of each class. The Emergency Council shall also adopt rules and regulations prescribing the manner in which disaster service workers of each class are to be registered. All of the rules and regulations shall be designed to facilitate the payment of workers' compensation.

SEC. 172. Section 8597 of the Government Code is amended to read:

8597. Whenever a state of emergency is proclaimed to exist within any region or area, or whenever a state of war emergency exists, the following classes of state employees who are within the region or area proclaimed or who may be assigned to duty therein shall be peace officers and shall have the full powers and duties of those officers for all purposes as provided by Section 830.1 of the Penal Code, and shall perform such duties and exercise any powers which are appropriate or which may be directed by their superior officers:

(a) All members of the California Highway Patrol.

(b) All deputies of the Department of Fish and Game who have been appointed to enforce the provisions of the Fish and Game Code pursuant to Section 851 of that code.

(c) The Director of Forestry and the classes of the Department of Forestry who are designated by the Director of Forestry as having the powers of peace officers pursuant to Section 4156 of the Public Resources Code.

(d) All members of the California State Police Division.

(e) Peace officers who are state employees within the provisions of Section 830.5 of the Penal Code.

SEC. 173. Section 8897.1 of the Government Code is amended to read:

8897.1. To implement the foregoing responsibilities, the commission may do any of the following:

(a) Review state budgets and review grant proposals, other than those grant proposals submitted by institutions of postsecondary education to the federal government, for earthquake related activities and to advise the Governor and Legislature thereon.

(b) Review legislative proposals, related to earthquake safety to advise the Governor and Legislature concerning the proposals, and to propose needed legislation.

(c) Recommend the addition, deletion, or changing of state agency standards when, in the commission's view, the existing situation creates undue hazards or when new developments would promote earthquake hazard mitigation, and conduct public hearings as deemed necessary on the subjects.

(d) In the conduct of any hearing, investigation, inquiry, or study which is ordered or undertaken in any part of the state, administer oaths and issue subpoenas for the attendance of witnesses and the production of papers, records, reports, books, maps, accounts,

documents, and testimony.

(e) In addition, the commission may perform any of the functions contained in subdivisions (a) to (d), inclusive, in relation to other disasters, as defined in subdivision (c) of Section 8897, in connection with issues or items reported or discussed with the Office of Emergency Services at any commission meeting.

SEC. 174. Section 11011.1 of the Government Code is amended to read:

11011.1. (a) Land that has been declared surplus by the Legislature, pursuant to Section 11011, and is not needed by any state agency shall be offered to local governmental agencies. Except as authorized in subdivisions (b), (c), (d), and (e), transfers of surplus land to local governmental agencies pursuant to this section shall be at fair market value.

(b) Where the land is to be used for park and recreation purposes and operated for those purposes by local agencies at no expense to the state, the Director of General Services with the approval of the State Public Works Board may, notwithstanding any provision in Section 11011, transfer the land to local governmental agencies at less than the fair market value of the land, if the transfer is in the public interest, under the following conditions:

(1) The local public agency has submitted a general development plan for the property which conforms to the agency's general plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Title 7, and which general development plan has been approved by the Director of Parks and Recreation.

(2) The land shall be developed according to plan within a time period determined by the state but not to exceed 10 years. The deed or other instrument of transfer shall provide that the land shall revert to the state if the land is not developed within the time period so determined by the state.

(3) The deed or other instrument of transfer shall provide that the land would revert to the state if the use changed to a use not consistent with parks and recreation purposes during the period of 25 years following the sale.

(c) Where the land is to be used for open-space purposes, as defined herein, and operated by local agencies at no expense to the state, the Director of General Services with the approval of the State Public Works Board may transfer the land to local governmental agencies at fair market value of the land or at any lesser value of the land under any of the following conditions:

(1) The local public agency has submitted a plan for the use of the property which conforms to the agency's general plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Title 7, and which plan has been approved by the Director of Parks and Recreation.

(2) The land shall be used according to plan within a time period determined by the state but not to exceed 10 years.

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(4) For the purpose of this subdivision, "open-space purpose" means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) Where the land is suitable to be used for the purpose of providing housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, the Director of General Services, with the approval of the State Public Works Board, may offer the land to local agencies within whose jurisdiction the land is located. Provided, however, if the state has held title to the land for seven years or less and the land is not used for the purposes for which it was acquired, and the land is declared surplus land and is not needed by any other state agency pursuant to the provisions of Section 11011, the state, prior to offering the land to local agencies, shall extend to the individual from whom the land was acquired an offer to purchase the land at current fair market value. The offer shall extend for 60 days and if not exercised within such period shall be irrevocably terminated. The land may be transferred to local agencies at a reasonable cost which will enable the provision of housing for persons and families of low or moderate income. The cost may be less than fair market value. The Department of Housing and Community Development shall recommend to the Department of General Services a cost which will enable the provision of housing for persons and families of low or moderate income. All transfers of land pursuant to this subdivision shall be subject to the following conditions:

(1) The local agency has made all of the following findings:

(A) There is a need for the housing in the community.

(B) The land is suitable for development of the housing.

(2) The local agency develops a plan for the housing in accordance with criteria established by the Department of Housing and Community Development, which shall include, but not be limited to, criteria respecting the financial condition of the developer, if the housing is to be developed by a private sponsor, and the cost of the project. The plan shall be approved by the Department of Housing and Community Development.

(3) After transfer of the property from the state to the local agency, the property shall be developed as housing for persons and families of low or moderate income. The local agency may lease or sell the property to any nonprofit corporation, housing corporation, limited dividend housing corporation, or private developer if the local agency determines a private entity is best suited to develop housing for persons and families of low or moderate income. In authorizing the private development, the local agency shall impose reasonable terms and conditions as will further the purposes of this subdivision, which shall include, but not be limited to, continued use of the property for housing for persc218nd families of low or

moderate income for not less than 40 nor more than 55 years. A lessee or purchaser of land pursuant to this subdivision shall agree to limitations on profit in the operation of the property which will benefit the public and assure that the housing provided thereon is within the means of persons and families of low or moderate income. The agreement shall be binding upon successors in interest of the original lessee or purchaser and shall inure to the benefit of, and be enforceable by, the state.

(4) The local agency shall assure that the land will be used for the purpose of providing low- or moderate-income housing and shall not permit the use of the dwelling accommodations of the project for any other purpose for not less than 40 nor more than 55 years, except as provided in this section.

In the event a local agency does not comply with the land use requirements prescribed in this section, as determined by the Department of General Services, the Department of General Services may require that the local agency pay the state the difference between the actual price paid by the local agency for the property and the fair market value of the property, at the time of the department's determination of noncompliance, plus 6 percent interest on that amount for the period of time the land has been held by the local agency.

If the local agency, with the approval of the Department of General Services, and in consultation with the Department of Housing and Community Development, determines that there is no longer a need for low- or moderate-income housing within the jurisdiction of the local agency and another valid public purpose could be achieved by utilizing the land in an alternative manner, the local agency shall not be required to make any payment to the state for the difference between purchase price and fair market value or interest charges for the period of time the land has been held by the local agency.

(5) Failure to comply with the provisions of this section shall not invalidate the transfer, sale, or conveyance of the real property to a bona fide purchaser or encumbrancer for value.

(6) The project shall be commenced within 24 months of the original transfer to the local agency. However, the Department of General Services, in consultation with the Department of Housing and Community Development, may for justifiable cause extend the time for commencement of development for an additional 36 months. The aggregate time for commencing development shall not exceed 60 months. The deed or other instrument of conveyance shall specify that, if development has not commenced within that time, the land shall revert to the Department of General Services for disposal pursuant to this section or as otherwise authorized by law.

(7) As used in this subdivision, "local agency" means and includes any county, city, city and county, redevelopment agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, or housing authority organized

pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, public district or other political subdivision of the state and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income and also includes two or more of those agencies acting jointly pursuant to Part 1 (commencing with Section 6500) of Division 7 of this code.

(8) Up to 40 percent of the housing developed on land purchased at below market value pursuant to this subdivision may be housing which is not regulated as to price, rent, or eligibility of occupants only if the purchaser of the land demonstrates that the proceeds from the sale or rental of such housing, in an amount equal to the difference between the fair market value and the actual price paid for the land, is used to reduce prices or rents on other housing units which are made available exclusively to persons and families of low and moderate income.

(e) Where the land is suitable to be used for the purpose of providing housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and provided no local agency has acquired or is in the process of acquiring the land pursuant to subdivision (d), the Director of General Services, with the approval of the State Public Works Board, may lease or sell the land to a housing sponsor. The land may be sold or leased at a reasonable cost which may be less than fair market value. The Department of Housing and Community Development shall recommend to the Director of General Services a cost which will enable the provision of housing for persons and families of low or moderate income. All transfers of land pursuant to this subdivision shall be subject to all of the following conditions:

(1) The housing sponsor has submitted a plan for the development of such housing pursuant to criteria established by the Department of Housing and Community Development. The criteria shall include, but need not be limited to, standards with respect to the cost of the housing development and the proportion of the housing development to be occupied by persons and families of low and moderate income. Insofar as is practical, the plan shall provide for a mix of housing for all income groups.

(2) The housing development shall normally be developed or be under development within 24 months from the time of transfer or lease of the land to the housing sponsor. However, the Department of General Services, in consultation with the Department of Housing and Community Development, may, upon finding justifiable cause, extend the time for commencement of development for an additional period of 36 months. The aggregate of all extensions for commencement of development shall not exceed 60 months. The deed or other instrument of conveyance shall specify that if development has not commenced within such time, the land shall revert to the Department of General Services for disposal pursuant to this section or as otherwise authorized by law.

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(3) Transfer of title to the land or lease of the land to a housing sponsor shall be conditioned upon continued use of the property as housing for persons and families of low and moderate income for not less than 40 nor more than 55 years. In accordance with regulations which shall be adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act, the Director of General Services shall require that any housing sponsor purchasing or leasing land pursuant to this subdivision enter into an agreement which (A) provides for limitations on profit in the operation of such property which benefit the public and which assure that the housing is affordable to persons and families of low and moderate income, and (B) does not permit the use of the property for purposes other than the provision of housing for persons and families of low and moderate income except as provided in this subdivision. Upon recordation of the agreement in the office of county recorder in the county in which the real property subject to the agreement is located, the agreement shall be binding for a period of not less than 40 nor more than 55 years upon successors in interest to the original housing sponsor and shall inure to the benefit of, and be enforceable by, the state.

For the purposes of this subdivision, "housing sponsor" means a nonprofit corporation incorporated pursuant to Part 1 (commencing with Section 9000) of Division 2 of Title 1 of the Corporations Code; a cooperative housing corporation which is a stock cooperative, as defined by Section 11003.2 of the Business and Professions Code; a limited-dividend housing corporation; or a private housing developer who agrees to the conditions set forth in this subdivision.

(4) Up to 40 percent of the housing developed on land purchased at below market value pursuant to this subdivision may be housing which is not regulated as to price, rent, or eligibility of occupants only if the purchaser of the land demonstrates that the proceeds from the sale or rental of such housing, in an amount equal to the difference between the fair market value and the actual price paid for the land, is used to reduce prices or rents on other housing units which are made available exclusively to persons and families of low and moderate income.

(f) The Department of Housing and Community Development, in consultation with the Department of General Services and the Office of Planning and Research, shall make a report to the Legislature on or before January 1, 1981, with respect to effectiveness of the program and shall recommend any necessary legislative changes to the provisions of subdivision (d).

(g) Where the land is to be used for public purposes other than specifically set forth in this section, is to be operated by the local agency at no expense to the state, and the use and enjoyment of the public purpose contemplated will be of broad public benefit, and not a benefit basically of local interest enjoyed and used primarily by the residents of the area of tax jurisdiction of the local agency, the Director of General Services, with the approval of the State Public

Works Board, may transfer the land to local governmental agencies at a sales price not less than 50 percent of fair market value. The transfer shall provide that if the land is not used for the contemplated purpose during the period of 25 years following the sale, the land shall revert to the state. The Director of General Services may provide additional terms and conditions which he or she determines to be in the best interest of the state.

(h) If there is more than one appropriate use and more than one offer for the use of a parcel of surplus land, the Department of General Services, in consultation with the Department of Housing and Community Development, the Department of Parks and Recreation, and the Office of Planning and Research, shall determine the most appropriate use for the parcel and the Department of General Services shall offer the land accordingly.

(i) Land that has been declared surplus by the Legislature, pursuant to Section 11011, is not needed by any state agency, is suitable for development for housing purposes, and is not in the process of being acquired pursuant to other provisions of this section, may upon the request of the Department of Housing and Community Development be retained by the Director of General Services for a period not exceeding five years, during which the Director of General Services shall continue to offer the lands for housing pursuant to subdivision (d).

(j) Transfer of state surplus lands under subdivision (d) shall be at a cost which will enable provision of economically feasible housing for persons and families of low or moderate income.

SEC. 175. Section 11121.9 of the Government Code is amended to read:

11121.9. A copy of this article shall be provided to each member of any state agency upon his or her appointment to membership or assumption of office.

SEC. 176. Section 11370 of the Government Code is amended to read:

11370. Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act.

SEC. 177. Section 11550 of the Government Code is amended to read:

11550. An annual salary of thirty-five thousand dollars ($35,000) shall be paid to each of the following:

(a) Director of Finance.
(b) Secretary of Business and Transportation Agency.
(c) Secretary of Resources Agency.
(d) Secretary of Health and Welfare Agency.
(e) Secretary of State and Consumer Services Agency.
(f) Director of Industrial Relations.
(g) Commissioner, California Highway Patrol.

SEC. 178. Section 11554 of the Government Code is amended to

read:

11554. An annual salary of twenty-seven thousand five hundred dollars ($27,500) shall be paid to each of the following:

(a) Director of Conservation.
(b) Director of Fish and Game.
(c) Director of Parks and Recreation.
(d) Director of Rehabilitation.
(e) Director of Veterans Affairs.
(f) Director of Consumer Affairs.
(g) Members of the Unemployment Insurance Appeals Board.
(h) State Architect.
(i) Director of Forestry.
(j) Director of Fair Employment and Housing.

SEC. 179. Section 12032 of the Government Code is amended and renumbered to read:

12023. The Governor shall annually issue a report to the public on the expenditures for support of his or her office on December 31. The report shall include, but not be limited to, a listing of total expenditures for the Governor in the following categories:

(a) Travel and living expense reimbursement.
(b) Automotive and charter or lease airplane expenses.
(c) Rent.
(d) Telephone.
(e) Postage.
(f) Printing.
(g) Office supplies.

SEC. 180. Section 25211.3 of the Government Code, as added by Chapter 31 of the Statutes of 1977, is amended and renumbered to read:

25211.33. The Revenue Bond Law of 1941 provided for in Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 is applicable to county service areas for the purpose of providing funds for the acquisition, construction, improving or financing of any public improvement authorized by this chapter which is not inconsistent with the provisions of Section 54310. The board may also issue revenue bonds under the Revenue Bond Law of 1941 on behalf of any improvement area created pursuant to this article and any election for the issuance of the revenue bonds shall be limited to the area of the improvement area. If revenue bonds are so issued on behalf of an improvement area:

(a) No proceeds of the revenue bonds shall be used to finance public improvements to provide service outside the area of the improvement area; and

(b) Only revenues which are derived from rates or charges for the providing of service within the area of the improvement area shall be pledged to or used to pay the revenue bonds.

SEC. 181. Section 35012.5 of the Government Code is amended to read:

35012.5. (a) Notwithstanding the provisions of Section 35033,

unincorporated territory consisting of property abutting on a street, highway, or road, and the street, highway, or road, to the extent that it abuts that property, together with the road strip may be annexed to a city pursuant to this part under the following conditions:

(1) The annexation may be made only if the property to be annexed is within the sphere of influence of the annexing city, as adopted by the local agency formation commission, and lies within an unincorporated area wholly surrounded by the annexing city or the annexing city and the county line or the annexing city and the Pacific Ocean or the annexing city and a boundary of another city.

(2) The property to be annexed shall not be annexed if the distance between the boundary of the annexing city and the point closest to the annexing city at which the road strip connects with the abutting property, as measured by the road strip, is more than one-half mile.

(b) Subsequent annexations to the road strip and abutting territory shall not be made unless both of the following conditions are met:

(1) The distance between the point at which the original road strip abuts the boundary of the annexing city and the point closest to the city at which the road strip connects with the abutting property to be annexed, as measured by the road strip, is one-half mile or less.

(2) The annexation is contiguous to the road strip.

(c) As used in this section:

(1) "Road strip" means the street, highway, or road which connects the territory of the property to be annexed to the annexing city.

(2) "Property to be annexed" means the property abutting on a street, highway, or road and the street, highway, or road to the extent it abuts the property.

(d) The provisions of this section shall apply only to the City of Cupertino.

SEC. 182. Section 38507 of the Government Code is amended to read:

38507. The legislative body may employ any legal or other assistants that it deems necessary to sell the land for the best advantage of the city, and may fix and pay their compensation.

SEC. 183. Section 43073 of the Government Code is amended to read:

43073. (a) The legislative body of any city which is encompassed entirely within the territory of a special district may elect to pay the district an amount equal to the amount the district would derive from its share of property tax allocations applicable to all property within the incorporated limits of the city.

(b) If a legislative body makes an election pursuant to subdivision (a), the county auditor shall reallocate property taxes due to the special district within the incorporated limits of the city to the city.

The county auditor shall report to the State Controller the amount

of property taxes reallocated to a city pursuant to this subdivision, as well as the total amount of property taxes allocated to the city pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. No reallocation made pursuant to this subdivision shall affect any allocations of property tax revenues to the city or special district in subsequent fiscal years pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(c) If a city legislative body makes an election pursuant to subdivision (a), and upon apportionment of taxes by the county, the reallocated amounts shall be paid by the city or transferred by the county auditor to the district.

(d) If the legislative body of a city makes an election pursuant to subdivision (a), the legislative body shall notify the county auditor by no later than the first day of September of the fiscal year in which the election becomes effective.

(e) For purposes of this section, "special district" means any special district where the county board of supervisors act as, or has appointed, the governing body of the districts providing fire or library services to one or more cities or any county library service established under Chapter 2 (commencing with Section 27151) of Division 20 of the Education Code provided for one or more cities, if all property within the city is taxed to support the service.

(f) This section does not apply in any case in which a city is making the payments described in this section to a district on the effective date of this section.

(g) If any additional costs are incurred by a county as a result of an election under this act by a city, the county may collect the costs from the city.

(h) This section applies only to cities which are in counties which have a population of 6,000,000 or more.

SEC. 184. Section 53205 of the Government Code is amended to read:

53205. From funds under its jurisdiction, the legislative body may authorize payment of all, or such portion as it may elect, of the premiums, dues, or other charges for health and welfare benefits of officers, employees, retired employees, former elective members specified in subdivision (b) of Section 53201, and retired members of the legislative body subject to its jurisdiction.

Those expenditures are charges against the funds. If the employer pays any portion of the premiums, dues, or other charges for the health and welfare benefits, any dividends paid or premiums refunded or other rebates or refunds under any of those health and welfare benefits up to the aggregate expenditures of the employer for the benefits are the employer's property. The excess, if any, shall be applied by the employer for the benefit of the employees or their dependents generally.

SEC. 185. Section 53215 of the Government Code, as added by Chapter 835 of the Statutes of 1979, is amended and renumbered to

read:

53214.5. A county or city and county which pays the salaries, either in whole or in part, of judges of the superior and municipal courts and the officers and attachés of those courts may allow the judges, officers, and attachés to participate in any deferred compensation plan established pursuant to this article. Any county or city and county is hereby authorized to enter into a written agreement with the judges, officers, and attachés providing for deferral of a portion of their wages. The judges, officers, and attachés may authorize deductions to be made from their wages for the purpose of participating in the deferred compensation plan.

SEC. 186. Section 55606 of the Government Code is amended to read:

55606. The board of supervisors may contract with the state, through the Department of Forestry, for the performance by the Director of Forestry, his deputies, and assistants of functions for the prevention or suppression of fires within the county.

SEC. 187. Section 55607 of the Government Code is amended to read:

55607. The Department of Forestry may contract with the county for the performance by the county firewarden, his deputies, and assistants of functions for the prevention or suppression of fires within the county.

SEC. 188. Section 55608 of the Government Code is amended to read:

55608. When a contract has been made, the Director of Forestry or the county firewarden may exercise the same powers and duties within the county for the prevention and suppression of fires which by state or local law is conferred upon those officers.

SEC. 189. Section 55640 of the Government Code is amended to read:

55640. The board of supervisors of a county may provide rescue and resuscitator services throughout the county, and to this end the board may contract with the state, through the Department of Forestry, for the providing of those rescue and resuscitator services within the county by the Director of Forestry, his deputies, and assistants, including volunteer firefighters.

SEC. 190. Section 55641 of the Government Code is amended to read:

55641. When a contract has been made, the Director of Forestry may exercise the same powers and duties within the county for the providing of rescue and resuscitator services which by state or local law are conferred upon officers of the county.

SEC. 191. Section 60400 of the Government Code is amended to read:

60400. As used in this chapter, "district" means any of the following:

(a) Any flood control district, including any special district having flood control powers under whatever name those powers are

designated, and any improvement district therein established for those flood control purposes, which district is authorized under its principal act to levy, or to have levied on its behalf, an ad valorem assessment or ad valorem tax within the district or any zone, subzone, drainage area, maintenance area, or improvement district thereof.

(b) Any maintenance area formed pursuant to Chapter 4.5 (commencing with Section 12878) of Part 6 of Division 6 of the Water Code.

(c) The Collinsville Levee District formed pursuant to Chapter 310 of the Statutes of 1905, and Levee District No. 1 of Sutter County formed pursuant to Chapter 349 of the Statutes of 1873–74. For the purposes of this chapter, "board of supervisors" includes the trustees of the Collinsville Levee District.

As used in this chapter, "board of supervisors" includes the governing body of any district not governed by a board of supervisors. Any such governing body may act by resolution where a board of supervisors is required to act by ordinance.

SEC. 192. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include all of the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall also identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled, or

conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover any of the following:

(1) The reclamation of land and waters.

(2) Flood control.

(3) Prevention and control of the pollution of streams and other waters.

(4) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(5) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(6) Protection of watersheds.

(7) The location, quantity, and quality of the rock, sand, and gravel resources.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A seismic safety element consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking, to ground failures, or to effects of seismically induced waves such as tsunamis and seiches.

The seismic safety element shall also include an appraisal of mudslides, landslides, and slope stability as necessary geologic hazards that must be considered simultaneously with other hazards such as possible surface ruptures from faulting, ground shaking, ground failure, and seismically induced waves.

To the extent that a county's seismic safety element is sufficiently detailed containing appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's seismic safety element that pertains to the city planning area within the county's jurisdiction, in satisfaction of this subdivision.

In adopting a county seismic safety element, a city shall follow all requirements regarding the content and adoption of general plan elements as set forth in this article and Article 6 (commencing with Section 65350).

Each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of the seismic safety element and any technical studies used for developing the seismic safety element.

(g) A noise element, which shall recognize guidelines adopted by the Office of Noise Control pursuant to Section 46050.1 of the Health and Safety Code, and which quantifies the community noise environment in terms of noise exposure contours for both near- and long-term levels of growth and traffic activity. The noise exposure information shall become a guideline for use in development of the land use element to achieve noise compatible land use and also to provide baseline levels and noise source identification for local noise ordinance enforcement.

The sources of environmental noise considered in this analysis shall include, but are not limited to, all of the following:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

The noise exposure information shall be presented in terms of noise contours expressed in community noise equivalent level (CNEL) or day-night average level (L_{dn}). CNEL means the average equivalent A-weighted sound level during a 24-hour day, obtained after addition of five decibels to sound levels in the evening from 7 p.m. to 10 p.m. and after addition of 10 decibels to sound levels in the night before 7 a.m. and after 10 p.m. L_{dn} means the average equivalent A-weighted sound level during a 24-hour day, obtained after addition of 10 decibels to sound levels in the night before 7 a.m. and after 10 p.m.

The contours shall be shown in minimum increments of 5db and shall continue down to 60db. For areas deemed noise sensitive, including, but not limited to, areas containing schools, hospitals, rest homes, long-term medical or mental care facilities, or any other land-use areas deemed noise sensitive by the local jurisdiction, the noise exposure shall be determined by monitoring.

A part of the noise element shall also include the preparation of a community noise exposure inventory, current and projected, which identifies the number of persons exposed to various levels of noise throughout the community.

The noise element shall also recommend mitigating measures and possible solutions to existing and foreseeable noise problems.

The state, local, or private agency responsible for the construction, maintenance, or operation of those transportation, industrial, or other commercial facilities specified in paragraph (2) shall provide to the local agency producing the general plan, specific data relating to current and projected levels of activity and a detailed methodology for the development of noise contours given this supplied data, or they shall provide noise contours as specified in the foregoing statements.

The local agency preparing the general plan shall specify the manner in which the noise element will be integrated into the city or county's zoning plan and tied to the land use and circulation elements and to the local noise ordinance. The noise element, once adopted, shall also become the guideline for determining compliance

with the state's noise insulation standards, as contained in Section 1092 of Title 25 of the California Administrative Code.

(h) A scenic highway element for the development, establishment, and protection of scenic highways pursuant to the provisions of Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.

(i) A safety element for the protection of the community from fires and geologic hazards including features necessary for that protection as evacuation routes, peak load water supply requirements, minimum road widths, clearances around structures, and geologic hazard mapping in areas of known geologic hazards.

The elements of the general plan may, at the discretion of the county or city, be combined if the county or city complies with all requirements regarding the content and adoption of general plan elements of this article and Article 6 (commencing with Section 65350).

The requirements of this section shall apply to charter cities.

SEC. 193. Section 65863.5 of the Government Code, as added by Chapter 947 of the Statutes of 1979, is amended and renumbered to read:

65863.6. In carrying out the provisions of this chapter, each county and city shall consider the effect of ordinances adopted pursuant to this chapter on the housing needs of the region in which the local jurisdiction is situated and balance these needs against the public service needs of its residents and available fiscal and environmental resources. Any ordinance adopted pursuant to this chapter which, by its terms, limits the number of housing units which may be constructed on an annual basis shall contain findings as to the public health, safety, and welfare of the city or county to be promoted by the adoption of the ordinance which justify reducing the housing opportunities of the region.

SEC. 194. Section 66427.4 of the Government Code, as added by Chapter 879 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Section 66427.4 of the Government Code, as added by Chapter 1065 of the Statutes of 1980.

SEC. 195. Section 66452.5 of the Government Code is amended to read:

66452.5. (a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 15 days after the action of the advisory agency from which the appeal is being taken.

Upon the filing of an appeal, the appeal board or legislative body

shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) The subdivider, any tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed with the clerk of the legislative body within 15 days after the action of the appeal board from which the appeal is being taken.

Upon the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal. The decision shall comply with the provisions of Sections 66473, 66473.5, and 66474, and shall include any findings required by those sections.

(c) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b). If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and local ordinances, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it is the duty of the clerk of the legislative body to certify the approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify the approval.

(d) Where a local ordinance so provides, any interested person adversely affected by a decision of the advisory agency or appeal board may file a complaint with the governing body concerning any decision of the advisory agency or appeal board. The complaint shall be filed with the clerk of the governing body within 15 days after the action of the advisory agency or appeal board which is the subject of the complaint. Upon the filing of the complaint, the governing body may set the matter for hearing. The hearing shall be held within 30 days after the filing of the complaint. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

Upon conclusion of the hearing the governing body shall, within seven days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. It may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal board and may make any findings which are not inconsistent with the provisions of this chapter or local ordinances adopted pursuant to this chapter.

(e) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider for expenses incurred under this section.

SEC. 196. Section 66770.5 of the Government Code is amended to read:

66770.5. (a) The State Solid Waste Management Board shall adopt, not later than January 1, 1981, performance standards as an alternative to state minimum standards requiring periodic cover.

(b) In order to protect the public health and the environment, the performance standards, referred to in subdivision (a), shall, at a minimum, address the control of vectors, odor, fire, litter, and moisture infiltration at solid waste disposal sites.

(c) The local enforcement agency may elect to apply either the state minimum standard requiring periodic cover or the performance standards, described in subdivision (b), to solid waste disposal sites within its jurisdiction. Not later than 30 days prior to implementation of either performance standards or state minimum standards requiring periodic cover, the local enforcement agency shall notify the board of the election.

(d) If the board fails to adopt the performance standards by January 1, 1981, the daily coverage requirements for the active face of a disposal site may, at the discretion of the local enforcement agency, be determined solely by the local enforcement agency. For any determination of daily coverage requirements for the active face of a disposal site made pursuant to this section which are less stringent than those standards established by the State Solid Waste Management Board pursuant to Sections 66770 and 66771, the local enforcement agency shall make a finding that the daily coverage requirements are adequate to effectively prevent propagation or attraction of flies, rodents, or other vectors, to control landfill fires and litter, and to prevent the creation of nuisances.

(e) No collection vehicle shall be required to travel on the active face of a disposal site.

(f) This section does not prohibit the State Solid Waste Management Board from taking any enforcement action for which

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it is granted authority under Title 7.3 (commencing with Section 66700).

(g) This section shall remain in effect only until January 1, 1983, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1983, deletes or extends such date.

SEC. 197. Section 69894.4 of the Government Code, as amended by Chapter 746 of the Statutes of 1980, is amended and renumbered to read:

69894.6. Notwithstanding the provisions of Section 69894.1, in the County of Los Angeles a majority of the judges of the superior court may appoint 263 court reporters, each of whom shall receive a salary equivalent to the schedule designation 59J in the salary ordinance of the county. Court reporters shall serve at the pleasure of the court and may at any time be removed by the court in its discretion.

Reduction of the schedule applicable to court reporters by reason of the adoption of this salary plan or subsequent reclassification of positions for organizational purposes shall not result in a lower salary rate to incumbent court reporters. The court may regulate by rule the status of employees so affected.

SEC. 198. Section 71603.2 of the Government Code, as added by Chapter 444 of the Statutes of 1980, is amended and renumbered to read:

71603.3. Notwithstanding the provisions of Sections 71602 and 71603, the board of supervisors of a county of the 34th class or of the 43rd class may by ordinance abolish the office of constable and, instead, require that the duties of constable be performed by the sheriff.

SEC. 199. Section 75095.1 of the Government Code is amended to read:

75095.1. Notwithstanding the provisions of Section 75095 any person who is a judge or a retired judge on January 1, 1974, may elect to come within the provisions of this article on or before April 1, 1974. Any person so electing who was previously eligible to come within this article and did not do so, shall pay all of the contributions he would have made pursuant to Section 75097 had he been covered by this article as soon as eligible therefor.

SEC. 200. Section 91531 of the Government Code is amended to read:

91531. (a) Upon certification to an authority of the approval, the secretary or an assistant secretary of the authority shall transmit to the state office the fee required by the state office and information required by the state office which is provided by a company in the approved application.

(b) The state office shall review the information and shall, by express findings on the basis of the information, determine compliance with the following criteria:

(1) Public benefits, determined in accordance with the policy stated in Section 91502.1, from the use of the facilities likely will substantially exceed any public detriment from issuance of bonds in

the maximum principal amount proposed in the application.

(2) Neither the completion of the project nor the operation of the facility will have the proximate effect of relocation of any substantial operations of the company from one area of the state to another or in the abandonment of any substantial operations of the company within other areas of the state, or, if the completion or operation will have either of the effects, then the completion or operation is reasonably necessary to prevent the relocation of any substantial operations of the company from an area within the state to an area outside the state.

(3) The proposed issuance of bonds qualifies for issuance under the provisions of Article 5 (commencing with Section 91570).

(c) Written notification of the determinations of the state office shall be given the authority.

(d) Upon failure of the state office to make determinations as to compliance with the criteria within 60 days of the receipt of the information, unless the time is extended by written consent of the authority, the state office shall lose jurisdiction to make the determinations, and the authority shall determine compliance with the criteria.

(e) Determinations of the state office or of an authority as provided in Section 91530 and this section shall be final and conclusive.

(f) The authority shall not issue bonds for the project until this section has been complied with.

SEC. 201. Section 91560 of the Government Code is amended and renumbered to read:

91570. (a) The commission established by Article 3 (commencing with Section 91550) shall review each issue of bonds and shall determine whether the issue is qualified for issuance under the provisions of this article.

(b) No bonds shall be delivered by an authority in return for the purchase price unless the bond issue has been qualified under this article and no notification of the suspension or revocation of that qualification has been received by the authority which has not been vacated or modified so that the bonds qualify for issuance.

SEC. 202. Section 91561 of the Government Code is amended and renumbered to read:

91571. (a) All issues of bonds may be qualified for issuance under this section.

(b) The commission may refuse to qualify an issue unless it finds that the proposed issuance is fair, just, and equitable to a purchaser of the bonds, and that the bonds proposed to be issued and the methods to be used by an authority in issuing them are not such as, in its opinion, will work a fraud upon the purchaser thereof.

(c) The commission may impose as a condition of qualification conditions imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, or any other condition, if the commission finds that without the condition the

issuance will be unfair, unjust, or inequitable to a purchaser of the bonds. The commission may in its discretion modify or remove any of the conditions when, in its opinion, they are no longer necessary or appropriate.

(d) The commission may refuse to qualify an issue of bonds proposed to be issued in exchange for one or more outstanding bonds, or bonds and claims, or partly in the exchange and partly for cash or property, unless it approves the terms and conditions of the issuance and exchange and the fairness of the terms and conditions, and may hold a hearing upon the fairness of the terms and conditions, at which all persons to whom it is proposed to issue bonds or to deliver any other consideration in the exchange have the right to appear.

(e) The commission may refuse to qualify an issue unless it finds that the bonds issued in connection with the project by the authority will be adequately secured and the revenues and other funds applicable to the payments of the bonds are, or upon the acquisition, construction, or improvement of the project which the bonds finance, will be sufficient to pay the principal of and the interest on the bonds.

SEC. 203. Section 91562 of the Government Code is amended and renumbered to read:

91572. (a) Prior to the delivery by an authority of any bonds of an issue in return for the purchase price, the commission may summarily suspend any qualification of the issue pending final determination of any proceeding under this section. Upon the taking of that action, the commission shall promptly notify each person specified in subdivision (b) of the action and of the reasons therefor and that upon the receipt of a written request of the authority the matter will be set for hearing to commence within 20 business days after that receipt unless the authority consents to a later date. If no hearing is requested within 35 business days of notification to the authority of the taking of that action, and none is ordered by the commission, the commission may summarily revoke the qualification, pending which the suspension shall remain in effect. If a hearing is requested or ordered, the commission, after notice and hearing in accordance with subdivision (b), may modify or vacate the suspension or extend it until final determination.

(b) The authority, the company, and the underwriter and the proposed purchaser, if any, shall be notified of the taking of action pursuant to subdivision (a) and of the opportunity of the authority for a hearing thereon before the commission.

(c) Prior to the delivery by an authority of any bonds of an issue in return for the purchase price, the commission may revoke any qualification if it finds that the proposed issuance is not fair, just, or equitable to a purchaser of the bonds, or that the bonds proposed to be issued or the method to be used by an authority in issuing them will tend to work a fraud upon the purchaser thereof.

(d) The commission may vacate or modify a suspension or

revocation of qualification if it finds that the reasons for the suspension or revocation do not or no longer exist or that the reasons which do exist are not those which support a conclusion that the proposed issuance is not fair, just, or equitable to a purchaser of the bonds, or that the bonds proposed to be issued or the method to be used by an authority in issuing them will tend to work a fraud upon the purchaser thereof.

SEC. 204. Section 91563 of the Government Code is amended and renumbered to read:

91573. (a) The aggregate amount of bonds qualified pursuant to this title shall not exceed two hundred million dollars ($200,000,000).

(b) Each authority shall file with the commission reports at those times which are required by the commission, setting forth the bonds of an issue qualified by the commission or exempt from qualification or not required to be so qualified.

(c) The commission shall determine when the limitation of subdivision (a) has been reached and shall notify all authorities that no further bonds shall be qualified pursuant to this title.

SEC. 205. Section 91564 of the Government Code is amended and renumbered to read:

91574. (a) Neither (1) the fact that an application for qualification has been filed nor (2) the fact that an issue of bonds has been qualified constitutes a finding by the commission that any document filed in connection with the qualification is true, complete, or not misleading. Neither that fact nor the fact that an exemption is available means that the commission has passed in any way upon the merits or qualifications of, or recommended or given approval to any issue of bonds except as provided in subdivision (d) of Section 91561.

(b) It is unlawful to make or cause to be made to any purchaser any representation inconsistent with subdivision (a).

(c) Every notification of qualification issued by the commission shall recite that the qualification is permissive only, and does not constitute a recommendation or endorsement of the bonds so qualified.

SEC. 206. The heading of Chapter 1 (commencing with Section 240) of Division 2 of the Harbors and Navigation Code is amended to read:

CHAPTER 1. SCOPE OF DIVISION

SEC. 207. Section 775.5 of the Harbors and Navigation Code is amended to read:

775.5. As used in this chapter, unless the context clearly requires a different meaning, the following definitions shall govern the construction of this chapter:

(a) "Department" means the Department of Boating and Waterways.

(b) "Marine terminal" means any private or public shoreside

installation, including marinas and ocean terminals, providing mooring, docking, berthing, and other facilities for the use of vessels, including vessels engaged in interstate and foreign commerce, except that, for the purposes of this chapter, "marine terminal" does not include boat launching ramps or facilities for the temporary mooring of vessels for less than one day or dockage adjacent to and serving private residences in areas where pumpout facilities are available or any other facilities which may be designated by the State Water Resources Control Board with the advice and consent of the department.

(c) "Marine sanitation device" means any equipment on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat the sewage.

(d) "Promulgation date" means the date upon which the initial standards and regulations for marine sanitation devices are promulgated by an appropriate federal agency in accordance with the provisions of Section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C., Section 1251 et seq.).

(e) "Sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

(f) "Vessel" means every watercraft or other contrivance used or capable of being used as a means of transportation on the waters of the state, excepting foreign and domestic vessels engaged in interstate or foreign commerce upon the waters of the state.

(g) "State board" means the State Water Resources Control Board.

(h) "Regional board" means a California regional water quality control board.

(i) "Waters of this state" shall mean all waters of the state except waters beyond three nautical miles of any shore of the state.

SEC. 208. Section 6309.4 of the Harbors and Navigation Code is amended to read:

6309.4. Every person who violates any of the provisions of a district ordinance adopted pursuant to Sections 6309 and 6309.2 is guilty of an infraction and shall be subject to a fine not to exceed fifty dollars ($50).

SEC. 209. Section 7157 of the Harbors and Navigation Code is amended to read:

7157. All construction authorized to be done under this part exceeding in cost the sum of two thousand five hundred dollars ($2,500) shall be awarded upon competitive bidding. Notice of the proposed letting of such a contract shall be published as provided in Section 6066 of the Government Code in a newspaper of general circulation in the district or, if there is none, of general circulation in the county, the first publication to be at least two weeks prior to the opening of bids. The notice inviting bids shall set a date for the opening of bids. The contract shall be awarded to the lowest responsible bidder. In its discretion, the board may reject any bids

presented and readvertise. If two or more bids are the same and the lowest, the board may accept the one it chooses. If no bids are received, the board may have the work done directly by purchasing the materials and hiring the labor.

If all bids are rejected, the board may adopt a resolution, by four-fifths vote, declaring that the work can be performed more economically by hiring day labor, or the materials or supplies furnished at a lower price in the open market and may have the work done in the manner stated in the resolution in order to take advantage of this lower cost.

If there is a present or anticipated great public calamity, such as an extraordinary fire, flood, storm, enemy attack, or other disaster the board may by four-fifths vote adopt a resolution declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property and expend any sum required in the emergency without submitting the expenditure to the bidding procedure set forth.

The board may negotiate with the Government of the United States or any department or agency thereof, the state or any department or agency thereof, any county, city and county, city, district or other public corporation for the purpose of assisting the district in the performance of any of the work authorized by this part and, without advertising for bids, may cause the district to contribute to the United States or any of the foregoing public bodies all or any portion of the estimated cost of any work authorized by this part which is to be done by or under contract with the United States or any of the foregoing public bodies.

SEC. 210. The heading of Article 3.4 (commencing with Section 320) of Chapter 2 of Division 1 of the Health and Safety Code is amended to read:

Article 3.4. Child Health and Disability Prevention Program

SEC. 211. The heading of Article 1 (commencing with Section 446) of Part 1.95 of Division 1 of the Health and Safety Code is repealed.

SEC. 212. Article 2 (commencing with Section 447) of Part 1.95 of Division 1 of the Health and Safety Code is repealed.

SEC. 213. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having

a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides the following basic services: inpatient care to ambulatory or semiambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Small intermediate care facility/developmentally disabled habilitative" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "General acute care/rehabilitation hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, laboratory, radiology, pharmacy, dietary, occupational therapy, physical therapy, rehabilitation, audiology, speech pathology; surgical and anesthesia services are provided through a contract with another facility having such services.

(h) "Psychiatric health facility" means a health facility which provides 24-hour inpatient care for mentally disordered, incompetent, or other persons described in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code. The care shall include, but not be

limited to, the following basic services: psychiatry, clinical psychology, psychiatric nursing, social work, rehabilitation, drug administration, and appropriate food services for those persons whose physical health needs can be met in an affiliated hospital or in outpatient settings.

It is the intent of the Legislature that the psychiatric health facility shall provide a distinct type of service to psychiatric patients in a non-hospital setting. The State Department of Mental Health shall require regular utilization reviews of admission and discharge criteria and lengths of stays in order to assure that such patients are moved to less restrictive levels of care as soon as appropriate.

SEC. 214. Section 1250.2 of the Health and Safety Code is repealed.

SEC. 215. Section 1285 of the Health and Safety Code is amended to read:

1285. (a) No patient shall be detained in a health facility solely for the nonpayment of a bill.

(b) For the purposes of this section, "detained" means the intentional confinement of a patient in a health facility without authorization of the patient or any other person who may be authorized to provide consent to care on behalf of the patient.

(c) Any person who is detained in a health facility solely for the nonpayment of a bill has a cause of action against the health facility for the detention, which may be brought by that person or that person's parent, guardian, conservator, or other legal representative.

The cause of action may be brought against the health facility, proprietor, lessee or their agents, or against any person, corporation, association, or directors thereof. Any person who has been detained in a health facility, solely for the nonpayment of a bill, who has brought an action for the detention, may recover general and punitive damages, court costs, and reasonable attorney's fees actually incurred and any other relief which the court in its discretion may allow.

(d) Violation of subdivision (a) is a misdemeanor punishable as prescribed in Section 1290.

SEC. 216. Section 1343 of the Health and Safety Code is amended to read:

1343. (a) The commissioner may by the adoption of any rules deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of this chapter any class of persons or plan contracts if the commissioner finds such action to be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of those persons or plan contracts is not essential to the purposes of this chapter.

(b) The commissioner, upon request of the State Director of Health Services, may exempt from the provisions of this chapter any pilot program contracting with the State Department of Health

Services pursuant to Article 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code. The exemption may be subject to those conditions the commissioner deems appropriate.

(c) This chapter does not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through the entity-owned or contracting health facilities and providers, in which case the provisions of this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A nonprofit corporation formed under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

SEC. 217. Section 1367.8 of the Health and Safety Code, as added by Chapter 776 of the Statutes of 1980, is amended and renumbered to read:

1367.9. No health care service plan contract which covers hospital, medical, or surgical expenses shall be issued, amended, delivered, or renewed in this state on or after January 1, 1981, if it contains any exclusion, reduction, or other limitations, as to coverage, deductibles, or coinsurance or copayment provisions applicable solely to conditions attributable to diethylstilbestrol or exposure to diethylstilbestrol.

Any provision in any contract issued, amended, delivered, or renewed in this state on or after January 1, 1981, which is in conflict with this section shall be of no force or effect.

SEC. 218. Section 1732 of the Health and Safety Code is amended to read:

1732. Upon filing of the application for a license provided for in, and upon full compliance with, the provisions of this chapter and the rules and regulations promulgated under this chapter by the state department, the state department shall issue to the applicant the license applied for. However, any hospital, as defined in Section 1401, which is licensed under the provisions of Chapter 2.3 (commencing with Section 1400) is not required to obtain a license. In order for a hospital to establish, conduct, or maintain a home health agency, it shall comply with all the provisions of this chapter and be approved by the state department. The approval shall be deemed to be licensure and shall not extend past midnight on the 31st day of December of each calendar year. The fee set forth in Section 1729 shall be paid before approval is granted. Approval may be denied or withdrawn by the state department on the same grounds as provided for denial, suspension, or revocation of a home health agency license. The state department may take the same action against any

approved hospital home health agency as it may against any licensed home health agency under this chapter.

SEC. 220. Section 3703 of the Health and Safety Code is amended to read:

3703. (a) The state department and all health officers of counties, cities, and health districts shall enforce the provisions of this chapter.

(b) Pursuant to their enforcement of this chapter, those officers shall also enforce the provisions of Section 2441 of the Labor Code. This section shall not be construed to abridge or limit in any manner the jurisdiction of the Division of Occupational Safety and Health of the Department of Industrial Relations pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

SEC. 221. Section 5472 of the Health and Safety Code, as amended by Chapter 862 of the Statutes of 1953, is amended and renumbered to read:

5472.5. The rates may be collected with the rates for any other utility service furnished by a department or agency of that entity over which the legislative body thereof does not exercise control, or with a publicly or privately owned public utility, with the written consent and agreement of that department or agency or public utility owner, which agreement shall establish the terms and conditions upon which the collections shall be made. The agreement, in the discretion of the department or agency or public utility owner making the collections, also may provide that those rates shall be itemized, billed upon the same bill, and collected as one item, together with, and not separately from, the other utility service charge.

SEC. 222. Section 11361.5 of the Health and Safety Code is amended to read:

11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency or local public agency pertaining to the arrest or conviction of any person for a violation of subdivision (b) or (c) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of

Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form shall be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars ($10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was

convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application. Each state or local agency receiving a notice from the Department of Justice shall destroy records of the agency, if any, pertaining to the arrest or conviction specified in the notice, in the manner prescribed by subdivision (c). The application form and the notices from the department to the agencies specified in this subdivision shall be destroyed by the department or agency, as the case may be, at the time the other records of the arrest or conviction are destroyed.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

(e) Costs incurred by local agencies in complying with the provisions of subdivision (c) shall be reimbursed as provided in Section 2231 of the Revenue and Taxation Code.

SEC. 223. Section 11977 of the Health and Safety Code, as added by Chapter 935 of the Statutes of 1978, is amended and renumbered to read:

11978. (a) Except as otherwise provided in this subdivision or in subdivision (b), records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of any narcotic and drug abuse program shall be confidential and shall be disclosed only for the purposes and under the circumstances expressly authorized by this section. The content of any record referred to in this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, or:

(1) To licensed medical personnel to the extent necessary to meet a bona fide medical emergency.

(2) To qualified personnel for the purpose of conducting scientific

research, management audits, or program evaluation, but such personnel shall not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(3) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services program. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(b) The provisions of subdivision (a) shall not apply to the records of any person involuntarily committed to any narcotic or drug abuse program conducted by the State Department of Corrections.

SEC. 224. Section 12003 of the Health and Safety Code is amended to read:

12003. "Chief" means the Director of Forestry and his or her authorized representatives, the chief of a fire department or fire protection agency maintained by a city, county, or city and county, or fire protection district and his authorized representatives, or the authorized representative of the United States Forest Service. In any area of the state in which there exists no organized fire protection agency responsible for the protection of the area, "chief," for the purpose of this part only, shall mean the county sheriff and his authorized representatives.

On any property that is owned by the state the "chief," for the purpose of this part, shall be the official of the fire protection agency responsible for the suppression of fires in the area. On any state property where there is no fire protection agency responsible for the suppression of fires, the "chief," for the purpose of this part, shall be the State Fire Marshal.

Upon request of the Director of Forestry, the chief of a fire department or fire protection agency, or upon request of the county sheriff the governing body of the area under the jurisdiction of the requesting chief or sheriff may designate any person as "chief" for the purposes of this part.

SEC. 225. Section 12006 of the Health and Safety Code is amended to read:

12006. The provisions of this part and the regulations adopted by the State Fire Marshal pursuant to this part do not apply when the use, handling, possession, storage and transportation is subject to the requirements of the Division of Occupational Safety and Health, Department of Industrial Relations, except as the provisions of this part and the regulations adopted by the State Fire Marshal may extend beyond the scope or authority of the Division of Occupational Safety and Health, Department of Industrial Relations.

SEC. 226. Section 13002 of the Health and Safety Code is

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13002. (a) Every person is guilty of a misdemeanor who throws or discharges any lighted or nonlighted cigarette, cigar, match, or any flaming or glowing substances, or any substance or thing which may cause a fire upon any highway, including any portion of the right-of-way thereof, sidewalk or upon any public or private property. No portion of this subdivision shall be construed to restrict a private owner in the use of his or her own private property, except that the placing, depositing, or dumping of the waste matter on the property shall not create a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or fire district, or the Department of Forestry in which case the provisions of this section shall apply.

(b) Every person convicted of a violation of this section shall be punished by a mandatory fine of not less than ten dollars ($10) nor more than five hundred dollars ($500) upon a first conviction, by a mandatory fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) upon a second conviction, and by a mandatory fine of not less than fifty dollars ($50) nor more than five hundred dollars ($500) upon a third or subsequent conviction.

The court may, in addition to the fine imposed upon a second or subsequent conviction, require as a condition of probation, in addition to any other condition, that any person convicted of a violation of this section pick up litter at a time and place within the jurisdiction of the court for not less than four hours upon a second conviction and for not less than eight hours upon a third or subsequent conviction.

SEC. 227. Section 13009.5 of the Health and Safety Code is amended to read:

13009.5. Where the Department of Forestry utilizes inmate labor for fighting fires, the charge for their use, for the purpose of Section 13009, shall be set by the Director of Forestry. In determining the charges, he or she may consider, in addition to costs incurred by the department, the per capita cost to the state of maintaining the inmates.

SEC. 228. Section 13053 of the Health and Safety Code is amended to read:

13053. Whenever a fire occurs in any county or within the boundaries of any national forest which is of such proportions that it can not be adequately handled by the forestry department or fire warden of the county or the facilities of the Department of Forestry or of the United States Forest Service, the personnel, equipment, and fire fighting facilities of any county may be authorized by the state forest ranger within the county or the county forester or fire warden of the county to assist in its extinguishment and control.

SEC. 229. Section 13054 of the Health and Safety Code is amended to read:

13054. Where the personnel, equipment, and facilities of any county are utilized in the extinguishment or control of any fire

outside its boundaries, the county furnishing its personnel, equipment, and facilities shall be reimbursed by the county in which the fire occurs in an amount in accordance with a predetermined schedule of repayments agreed upon by the boards of supervisors of the counties, or between the board of supervisors of the county and the Department of Forestry or the United States Forest Service, as the case may be.

SEC. 230. Section 13055 of the Health and Safety Code is amended to read:

13055. Any public agency authorized to engage in fire protection activities, including but not limited to a fire protection district, city, city and county, or county fire department, the Department of Forestry, and the United States Forest Service, may use fire to abate a fire hazard.

SEC. 231. Section 13100 of the Health and Safety Code is amended to read:

13100. There is in the state government, in the State and Consumer Services Agency, the office of the State Fire Marshal.

SEC. 232. Section 13104.5 of the Health and Safety Code is amended to read:

13104.5. Except on property which has been deeded to the State for taxes, the State Fire Marshal may abate fire hazards existing on property owned, controlled, or held in trust by the State, in areas not under the jurisdiction of the Director of Forestry, upon the request of the legislative body of the city, county, or city and county within which the property is situated. The cost of the abatement shall be paid out of any money in the State Treasury appropriated for that purpose.

SEC. 233. Section 13140.5 of the Health and Safety Code is amended to read:

13140.5. The board shall be composed of the following voting members: the State Fire Marshal, the Director of Forestry, the Supervisor of the California Fire Service Training Program, the Chief of the Fire and Rescue Division, Office of Emergency Services, a representative of the insurance industry, four fire chiefs, four fire service labor representatives, one representative from city government, and one representative from county government.

The following members shall be appointed by the Governor: a representative of the insurance industry, four fire chiefs, four fire service labor representatives, one representative from city government, and one representative from county government. Each member appointed shall be a resident of this state. Three of the fire chiefs appointed to the board shall be selected from a list of names recommended by the Board of Directors of the California Fire Chiefs' Association, Inc. and one fire chief shall be selected from a list of names submitted by the California Metropolitan Fire Chiefs. The four fire service labor representatives shall be selected from a list of names recommended by employee organizations representing fire service employees with organization memberships exceeding

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12,000, but not more than one fire service labor representative shall be selected from among persons recommended by any one of the employee organizations, unless each organization is represented on the membership of the board. The city government representative shall be selected from elected or appointed city chief administrative officers. The county government representative shall be selected from elected or appointed county chief administrative officers. The appointed members, except those first appointed, shall be appointed for a term of four years. Of the members first appointed seven shall be appointed for a term of two years and four shall be appointed for a term of four years. Any member chosen by the Governor to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member he or she is to succeed.

SEC. 234. Section 13821 of the Health and Safety Code is amended to read:

13821. Any incorporated or unincorporated territory, or any combination thereof, which does not include any timbered, brush, or grass-covered lands declared to be the responsibility of the state for fire protection by Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except as provided in this section, may be organized as a district pursuant to this part.

Upon the adoption of a resolution or upon receipt of a petition for the formation of or the annexation to a district, if the proposed formation or annexation contains an area declared by Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code to be the fire protection responsibility of the state, the board of supervisors, in the case of formation, or the district board, in the case of annexation, shall file with the Director of Forestry a notice of the proposal including a map and legal land subdivision description of the proposed district or annexation. Upon formation of or annexation to a district, including those lands, the fire protection responsibility for timbered, brush and grass lands shall remain that of the state. The district shall have the fire protection responsibility for structures in the area. Commercial forest lands which are timbered lands declared to be the responsibility of the state for fire protection by Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code shall not, however, be included within a district, except in counties of the 18th class, as specified by Section 28039 of the Government Code.

This section applies to districts formed after September 14, 1961, and to annexations to districts in existence on such date.

SEC. 235. Section 13991 of the Health and Safety Code is amended to read:

13991. The district board may on its own motion, or upon the filing of a petition with the district board signed by 51 percent of the taxpayers, or the owners of 51 percent of the property, in each case within the territory proposed to be formed into a zone or to be

annexed to, or detached from, a zone, based on assessed valuation, in a specific area, the district board shall, by resolution, initiate proceedings for the creation of a special fire protection zone in the district or for the annexation of territory to, or the detachment of territory from, an established special fire protection zone in the district, for any one or more of the following purposes:

(a) Paying for the installation of capital improvements such as fire mains, fireplugs, or any other similar improvement, which is of sole benefit to the territory in a zone.

(b) Paying for water and related costs or specific charges to the district which are of sole benefit to the territory in a zone.

(c) Purchase of equipment or employment of personnel over and above the equipment and personnel which the district can afford to furnish to a zone out of its general district tax.

(d) Payment by the taxpayers of a zone which has been annexed to a city of the costs of fire protection services provided by the Department of Forestry, pursuant to contract with the city, for grass-, brush-, and forest-covered lands in that zone.

SEC. 236. Section 17922.5 of the Health and Safety Code is amended to read:

17922.5. Any state or local agency which issues building permits shall require, as a condition of issuing any building permit where the working conditions of the construction would require an employer to obtain a permit from the Division of Occupational Safety and Health pursuant to Chapter 6 (commencing with Section 6500) of Part 1 of Division 5 of the Labor Code, that proof be submitted showing that the employer has received such a permit from the Division of Occupational Safety and Health.

SEC. 237. Section 17925 of the Health and Safety Code is amended to read:

17925. Except as provided in Section 17922.6, any person, firm, corporation, or governmental agency that opposes the application of any applicable building standard published in the State Building Standards Code or any other rule or regulation adopted by the commission within a particular local area may request a hearing before the local appeals board regarding the matter. If the local appeals board determines after the hearing that because of local conditions or factors it is not reasonable for the building standard, rule, or regulation to be applied in the local area, the building standard, rule, or regulation shall have no application within that local area. A copy of the determination of the local appeals board, together with a report of the local conditions upon which the determination is based, shall be filed with the department pursuant to Section 17958.7.

SEC. 238. Section 25810 of the Health and Safety Code is amended to read:

25810. The department is designated as the agency responsible for the issuance of licenses. In carrying out its duties under this section, the department shall enter into an agreement with the

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Division of Occupational Safety and Health and may enter into agreements with other state and local agencies to conduct technical evaluations of license applications prior to issuance of licenses. The agreements shall also include provisions for conducting inspections in accordance with Section 25820.

SEC. 239. Section 25811 of the Health and Safety Code is amended to read:

25811. The department shall, for the protection of public health and safety do all of the following:

(a) Develop programs for evaluation of hazards associated with use of sources of ionizing radiation.

(b) Develop programs, with due regard for compatibility with federal programs, for licensing and regulation of byproduct, source, and special nuclear materials, and other radioactive materials.

(c) Except as provided in Section 18930, adopt and promulgate rules and regulations relating to control of other sources of ionizing radiation.

(d) Issue any rules and regulations which may be necessary in connection with proceedings under Article 4 (commencing with Section 25815).

(e) Collect and disseminate information relating to control of sources of ionizing radiation, including all of the following:

(1) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

(2) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon.

(3) Disseminate information regarding the evaluation of hazards associated with the use of sources of ionizing radiation.

Nothing in this chapter shall be construed as precluding the Division of Occupational Safety and Health from adopting and enforcing rules and regulations relating to matters within its jurisdiction consistent with, in furtherance of, and designed to implement the provisions of this chapter and the rules and regulations adopted thereunder.

SEC. 240. Section 33436 of the Health and Safety Code is amended to read:

33436. Express provisions shall be included in all deeds, leases and contracts which the agency proposes to enter into with respect to the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any land in a redevelopment project in substantially the following form:

(a) In deeds the following language shall appear—"The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry

in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases the following language shall appear—"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

(c) In contracts entered into by the agency relating to the sale, transfer, or leasing of land or any interest therein acquired by the agency within any survey area or redevelopment project the foregoing provisions in substantially the forms set forth shall be included and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

SEC. 241. Section 34354.5 of the Health and Safety Code is amended to read:

34354.5. Notwithstanding Section 34354 or any other provision of law, the rate of interest on any indebtedness or obligation of a housing authority which is payable to the federal government or any agency or instrumentality thereof or on any indebtedness or obligation of a housing authority which is guaranteed by the federal government or any instrumentality thereof may be at a rate higher than the limitation established in Section 34354, or any other law, if the rate is the rate established by the federal government or any instrumentality thereof. Any such indebtedness or obligation shall be in any form and denomination, have any maturity and be subject to any conditions which may be prescribed by the federal government or agency or instrumentality thereof.

SEC. 242. Section 37850 of the Health and Safety Code is amended to read:

37850. "Area housing plan" means a plan meeting the legal requirements for a local housing element, required by Section 65302 of the Government Code, and which is adopted by an area housing

council.

SEC. 243. Section 41809 of the Health and Safety Code is amended to read:

41809. Notwithstanding Sections 41508 and 41800, open outdoor fires may be used to dispose of Russian thistle (Salsola kali) when authorized by a chief of a fire department of fire protection agency of a city, county, or fire protection district, the Director of Forestry or his duly authorized representative, or a county agricultural commissioner, or an air pollution control officer.

SEC. 244. Section 41813 of the Health and Safety Code is amended to read:

41813. Notwithstanding any other provision of this division, in the San Bernardino County Air Pollution Control District, Group 2 solid waste, as defined in Section 2521 of Title 23 of the California Administrative Code, for a period not to exceed six months from the effective date of this section, may be disposed of by means of an air curtain destructor. The authority provided by this section applies only to an existing solid waste disposal site in the upper desert area which receives less than 50 tons of solid waste for disposal per day. The use of the air curtain destructor shall be monitored by the San Bernardino County Air Pollution Control District and the state board. Within nine months after the effective date of this section, the district shall file a report with the County of San Bernardino and the state board regarding the extent to which the air curtain destructor meets the emission rules, regulations, and orders of the district and the state board.

At the end of the six-month experimental period, the air curtain destructor may continue to be used if the state board makes a finding that the public health and safety will not be adversely affected by continued use. The state board, in cooperation with San Bernardino County, shall establish a list of toxic materials that will be removed from the solid waste prior to use of the air curtain destructor.

There shall be no liability on the part of the state board for any injury occurring as a result of the use of the air curtain destructor under the provisions of this section.

SEC. 245. Section 41957 of the Health and Safety Code is amended to read:

41957. The Division of Occupational Safety and Health of the Department of Industrial Relations is the only agency responsible for determining whether any gasoline vapor control system, or component thereof, creates a safety hazard other than a fire hazard.

If the division determines that a system, or component thereof, creates a safety hazard other than a fire hazard, that system or component may not be used until the division has certified that the system or component, as the case may be, does not create that hazard.

The division, in consultation with the state board, shall adopt the necessary rules and regulations for the certification if the certification is required.

SEC. 246. Section 41958 of the Health and Safety Code is amended to read:

41958. To the maximum extent practicable, the rules and regulations adopted pursuant to Sections 41956 and 41957 shall allow flexibility in the design of gasoline vapor control systems and their components. The rules and regulations shall set forth the performance standards as to safety and measurement accuracy and the minimum procedures to be followed in testing the system or component for compliance with the performance standards.

The State Fire Marshal, the Division of Occupational Safety and Health, and the Division of Measurement Standards shall certify any system or component which complies with their adopted rules and regulations. Any one of the state agencies may certify a system or component on the basis of results of tests performed by any entity retained by the manufacturer of the system or component or by the state agency. The requirements for the certification of a system or component shall not require that it be tested, approved, or listed by any private entity.

SEC. 247. Section 41959 of the Health and Safety Code is amended to read:

41959. Certification testing of gasoline vapor control systems and their components by the state board, the State Fire Marshal, the Division of Measurement Standards, and the Division of Occupational Safety and Health may be conducted simultaneously.

SEC. 248. Section 41960 of the Health and Safety Code is amended to read:

41960. Certification of a gasoline vapor recovery system for safety and measurement accuracy by the State Fire Marshal and the Division of Measurement Standards and, if necessary, by the Division of Occupational Safety and Health shall permit its installation wherever required in the state, if the system is also certified by the state board.

Except as otherwise provided in subdivision (f) of Section 41954, no local or regional authority shall prohibit the installation of a certified system without obtaining concurrence from the state agency responsible for the aspects of the system which the local or regional authority disapproves.

SEC. 249. Section 41961 of the Health and Safety Code is amended to read:

41961. The State Fire Marshal, the Division of Measurement Standards, and the Division of Occupational Safety and Health may charge a reasonable fee for certification of a gasoline vapor control system or a component thereof, not to exceed their respective estimated costs therefor. Payment of the fee may be made a condition of certification.

SEC. 253. Chapter 9 (commencing with Section 50735) of Part 2 of Division 31 of the Health and Safety Code, as added by Chapter 1042 of the Statutes of 1979, is repealed. The repeal made by this section shall not affect the existence or validity of Chapter 9

(commencing with Section 50735) of Part 2 of Division 31 of the Health and Safety Code, as added by Chapter 1043 of the Statutes of 1979.

SEC. 254. Chapter 10 (commencing with Section 50775) of Part 2 of Division 31 of the Health and Safety Code, as added by Chapter 1042 of the Statutes of 1979, is repealed. The repeal made by this section shall not affect the existence or validity of Chapter 10 (commencing with Section 50775) of Part 2 of Division 31 of the Health and Safety Code, as added by Chapter 1043 of the Statutes of 1979.

SEC. 255. Section 50902 of the Health and Safety Code is amended to read:

50902. Appointed members of the board shall be able persons broadly reflective of the economic, cultural, and social diversity of the state, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in order to achieve that diversity. The Governor shall select four of his or her six appointees from among the following categories: (1) an elected official of a city or county engaged in the planning or implementation of a housing, housing-assistance, or housing rehabilitation program; (2) a person experienced in residential real estate in the savings and loan, mortgage banking, or commercial banking industry; (3) a person experienced as a builder of residential housing; (4) a person experienced in organized labor in the residential construction industry; (5) a person experienced in the management of rental or cooperative housing occupied by lower income households; (6) a person experienced in manufactured housing finance and development; and (7) a person representing the public. Not more than one person from each category may serve on the board at any one time, except that two members may be appointed to represent the general public. The Governor shall also appoint two members who are residents of rental or cooperative housing financed by the agency or who are persons experienced in counseling, assisting, or representing tenants; provided, that only one appointment may be made during the term of any member appointed by the Senate Rules Committee prior to January 1, 1981. At least one of the members appointed by the Governor shall be a resident of a rural or nonmetropolitan area. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a person representing the general public. The terms of the members initially appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly shall be as follows:

(a) An elected official of a city or county engaged in the planning or implementation of a housing, housing-assistance, or housing rehabilitation program—two years appointed by the Governor.

(b) Member experienced in residential real estate in the savings and loan mortgage banking or commercial banking industry—four years appointed by the Governor.

(c) Member who is experienced as a builder of residential

housing—six years appointed by the Governor.

(d) Member experienced in organized labor in the residential construction industry—two years appointed by the Governor.

(e) Member experienced in the management of rental or cooperative housing occupied by lower income households—four years appointed by the Governor.

(f) Member experienced in manufactured housing finance and development—two years appointed by the Governor.

(g) Members appointed by the Governor who are residents of rental or cooperative housing financed by the agency or are experienced in counseling, assisting, or representing tenants—six years and two years, respectively.

(h) Member appointed by the Speaker of the Assembly who represents the general public—four years.

(i) Member appointed by the Senate Rules Committee who represents the general public—six years.

The term of any member of the board appointed to serve subsequent to the expiration of an initial term shall be six years. Any person appointed to fill a vacancy on the board shall serve only for the remainder of the unexpired term. Members of the board shall, subject to continued qualification, be eligible for reappointment. If a member of the board ceases to meet the qualifications specified in this section, the membership of that person on the board shall be terminated.

SEC. 256. Section 51350.5 of the Health of Safety Code, as added by Chapter 1042 of the Statutes of 1979, is repealed. The repeal made by this section shall not affect the existence or validity of Section 51350.5 of the Health and Safety Code as added by Chapter 1043 of the Statutes of 1979.

SEC. 257. Section 51351 of the Health and Safety Code is amended to read:

51351. Notwithstanding any other provisions of this part, only the following types of housing developments and other residential structures are eligible for mortgage loans made with the proceeds of bonds:

(a) Housing developments and other residential structures financed with bonds of the agency guaranteed under Section 802 of Title VIII of the Federal Housing and Community Development Act of 1974.

(b) Housing developments and other residential structures financed with bonds of the agency that are guaranteed, or the time payment of principal and interest of which is insured, by an agency of the state or by a private insuring entity authorized to engage in that business.

(c) Housing developments and other residential structures, the mortgage loans on which presently are or are expected to be insured under a program utilizing federal coinsurance as authorized under Section 244 of Title III of the Federal Housing and Community Development Act of 1974 (P.L. 93-383).

(d) Housing developments and other residential structures, the bonds or mortgage loans on which are presently or are expected to be insured or guaranteed in whole or in part by an agency of the state, including the California Housing Finance Agency, a political subdivision of the state, or by a private insuring entity authorized to engage in that business, or by any combination thereof, in percentages determined by the agency.

(e) Housing developments and other residential structures, the mortgage loans on which are presently or are expected to be insured in whole or in part by the Federal Housing Administration or guaranteed in whole or in part by the United States Veterans Administration or by the Farmers Home Administration of the United States Department of Agriculture in percentages determined by the agency.

(f) Housing developments and other residential structures financed by a loan made by the agency to a qualified mortgage lender, if both of the following conditions are met:

(1) The loan to the qualified mortgage lender is a general obligation of the mortgage lender.

(2) The qualified mortgage lender is a member of, or a subsidiary of a member of, the Federal Deposit Insurance Corporation or of the Federal Savings and Loan Insurance Corporation.

(g) Housing developments and other residential structures financed by tax-exempt bonds for which a bond reserve fund is created which at least equals either the average annual debt service or the maximum annual interest on the bonds issued.

SEC. 258. Section 51858 of the Health and Safety Code is amended to read:

51858. The agency may initiate programs of coinsurance or reinsurance with, and may procure reinsurance from, any local agency or agency of the United States or private mortgage insurer in order to accomplish more effectively the purpose of this part. The agency may coinsure loans made or originated by approved lending institutions which are otherwise insurable under the provisions of this part.

SEC. 260. Section 779.8 of the Insurance Code is amended to read:

779.8. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

SEC. 261. Section 922.4 of the Insurance Code is amended to read:

922.4. Credit in accounting and financial statements on account of reinsurance ceded to a nonadmitted reinsurer other than an alien reinsurer shall be allowed only:

(a) Where it is demonstrated by the ceding insurer to the satisfaction of the commissioner that such reinsurer maintains the

standards and meets the financial requirements applicable to an admitted insurer, or

(b) To the extent of deposits by, or funds withheld from, such reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is a member of the Federal Reserve System if withdrawals from the trust cannot be made without the consent of the ceding insurer. With respect to credit life insurance and credit disability insurance, such deposits or funds shall be deposited in a bank located in California, notwithstanding the fact that the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims and unearned premium obligations to be made by a foreign reinsurer in connection with its liability under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit shall be issued under arrangements satisfactory to the commissioner as constituting security to the ceding insurer substantially equal to that of a deposit under subdivision (b), and that it shall be issued by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner.

As used in this section, the terms "deposits" and "funds" include securities authorized as general investments by Article 3 (commencing with Section 1170) of Chapter 2, but not to exceed current market value.

SEC. 262. Section 922.5 of the Insurance Code is amended to read:

922.5. Credit in accounting and financial statement permitted by this code on account of reinsurance ceded to an alien reinsurer other than one which complies with Article 2 (commencing with Section 1580) of Chapter 4 and includes in the statements required by that article all reserves and liabilities arising out of such reinsurance shall be allowed only:

(a) To the extent of the amount of deposits by, and funds withheld from, such alien reinsurer pursuant to express provision therefor in the reinsurance contract as security for the payment of the obligations thereunder if the deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is a member of the Federal Reserve System, if withdrawals from the trust cannot be made without the consent of the ceding insurer, or

(b) Where such alien reinsurer maintains sufficient assets in the United States for the protection of policyholders in the United States and operates its business in such manner as to satisfy the

commissioner that it maintains standard and financial condition reasonably comparable to those required of admitted insurers and that it is able to pay losses in the United States.

(c) To the extent that the amount of a clean and irrevocable letter of credit issued for a term of one year conforming to the requirements set forth below, is a substitute for advances for claims and unearned premium obligations to be made by an alien reinsurer in connection with its liability under a specific reinsurance agreement. The requirements are that such a clean and irrevocable letter of credit shall be issued under arrangements satisfactory to the commissioner as constituting security to the ceding insurer substantially equal to that of a deposit under subdivision (a), and that it shall be issued by a banking institution which is a member of the Federal Reserve System and of financial standing satisfactory to the commissioner.

SEC. 263. Section 1033 of the Insurance Code is amended to read:

1033. (a) Claims allowed in a proceeding under this article shall be given preference in the following order:

(1). Expense of administration.

(2) Unpaid charges due under the provisions of Section 736.

(3) Taxes due to the State of California.

(4) Claims having preference by the laws of the United States and by laws of this state.

(5) All claims of the California Insurance Guarantee Association and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims of policyholders of an insolvent insurer that are not covered claims.

Claims excluded by paragraphs (3) (except claims for refund of unearned premiums), (4), (5), (7), and (8) of subdivision (c) of Section 1063.1 and subdivisions (g) and (h) of Section 1063.2 shall be excluded from this priority.

(6) All other claims.

(b) Upon the issuance of an order appointing a conservator or liquidator for any person under the provisions of either Section 1011 or 1016 or both such sections, the lien of taxes due to the State of California imposed by Article 4 (commencing with Section 12491) of Chapter 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall become subordinate to the reasonable administrative expenses of the proceeding under the order.

SEC. 264. Section 1035.5 of the Insurance Code is amended to read:

1035.5. Notwithstanding the provisions of Article 14 (commencing with Section 1010), with regard only to those insurers subject to this article:

(a) Within 120 days of the issuance of an order directing the winding up and liquidation of the business of an insolvent insurer under Section 1016, the commissioner shall make application to the court for approval of a proposal to disburse the insurer's assets, from

time to time as such assets become available, to the California Insurance Guarantee Association and to any entity or person performing a similar function in another state.

(b) The proposal shall at least include the following provisions for:

(1) Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors (to the extent of the value of the security held) and claims falling within the priorities established in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 1033.

(2) Disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available.

(3) Equitable allocation of disbursements to each of the associations entitled thereto.

(4) The securing by the commissioner from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the commissioner such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1033 in accordance with the priorities. No bond shall be required of any association.

(5) A full report to be made by the association to the commissioner accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on the assets, and any other matter as the court may direct.

(c) The commissioner's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made by the associations for which such associations could assert a claim against the commissioner, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets. The reserves of the insolvent insurer on the date of the order of liquidation shall be used for purposes of determining the pro rata allocation of funds among eligible associations.

(d) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the commissioner's proposal complies with paragraphs (1) and (4) of subdivision (b).

SEC. 265. Section 1597 of the Insurance Code is amended to read:

1597. In respect of the appointment or substitution of a trustee in another state in which an admitted alien insurer is authorized to

transact insurance, in respect of withdrawal of trusteed assets held in the other state (except withdrawals as provided in Section 1596), and in respect of the amendment of such deed of trust not affecting the interests or security of the beneficiaries thereof, written approval under any provision in the deed of trust which requires such written approval by the official of such other state, supervising insurance therein, shall be deemed compliance with any applicable approval requirements of Sections 1595 and 1596. Where an alien insurer organized under the laws of the Dominion of Canada or of any province thereof maintains trusteed assets in another state and under the deed of trust written approval is required by an official supervising insurance in any state in which such insurer is authorized to transact insurance and in which it heretofore maintained and hereafter continues to maintain a general state deposit at least equal in amount to the deposit required by Section 1582, written approval by such official in respect of the appointment or substitution of a trustee thereunder, in respect of withdrawal of such trusteed assets (except withdrawals as provided in Section 1596), and in respect of the amendment of such deed of trust not affecting the interests or security of the beneficiaries thereof, shall also be deemed compliance with any applicable approval requirements of Sections 1595 and 1596. The alien insurer shall furnish proof of approvals authorized by this section to and notify the commissioner in writing of such appointment or substitution, of the nature and extent of such withdrawal, and of the text of such amendment.

SEC. 266. Section 1599 of the Insurance Code is amended to read:

1599. The commissioner shall require the payment of ten dollars ($10) in lawful money of the United States, in advance, as a fee for filing each certificate of a trustee required to be filed by Section 1592.

SEC. 267. Section 1751 of the Insurance Code is amended to read:

1751. The commissioner shall require in advance a fee for filing the following documents:

(a) Application for registration of change in membership of a copartnership licensed as:

(1) Insurance agent, twenty-four dollars ($24).

(2) Insurance broker, thirty-five dollars ($35).

(3) Life agent, resident, twenty-four dollars ($24).

(4) Life agent, nonresident, twenty-eight dollars ($28).

(b) Application for endorsement removing from any life agent's, insurance agent's or insurance broker's license issued to an organization the name of any natural person named thereon, five dollars ($5).

(c) First amendment to an application, five dollars ($5); a second and each subsequent amendment to an application, ten dollars ($10).

(d) Original application to be given the qualifying examination for a license of a fire and casualty licensee, seventeen dollars and fifty cents ($17.50) for each person to be examined.

(e) Original application to be given the qualifying examination for a license of a life licensee, or a license as a variable contract agent,

seventeen dollars and fifty cents ($17.50) for each person to be examined.

(f) Application for reexamination for any of the licenses mentioned in this section, seventeen dollars and fifty cents ($17.50) for each person to be reexamined.

(g) Application which includes a request for a certificate of convenience pursuant to Article 8 (commencing with Section 1685), twelve dollars and fifty cents ($12.50) in addition to, and not in lieu of, fees otherwise required.

(h) Application or request for approval of true or fictitious name pursuant to Section 1724.5 twenty dollars ($20), except that there shall be no fee when such name is contained in an original application.

(i) "A ratification of appointments of agents" whereby the surviving insurer in a merger or consolidation assumes responsibility for all agents then lawfully appointed for one of the constituent insurers and makes each its agent, sixty-five dollars ($65).

(j) An application or request for approval of:

(1) A training course pursuant to Section 1691, except when filed by a degree-conferring college or university, a public educational institution, or by a private nonprofit educational institution, sixty-five dollars ($65).

(2) An arrangement whereby an insurer may qualify certificate of convenience holders pursuant to Section 1691 by means of an approved course given on the insurer's behalf by a school or organization other than itself, thirty-five dollars ($35).

(k) A bond, pursuant to Article 5 (commencing with Section 1662) or Section 1760.5 or 1765, except when such bond constitutes part of an original application filing, ten dollars ($10).

(*l*) An application or request for a copy of, or a duplicate license, issued pursuant to Chapter 5 (commencing with Section 1621), 6 (commencing with Section 1760), 7 (commencing with Section 1800), or 8 (commencing with Section 1831) or Sections 12280 and 12280.2, ten dollars ($10).

(m) An application or request for clearance and cancellation notice of a current licensee of record, ten dollars ($10).

(n) An amended action notice pursuant to subdivision (e) of Section 1704, two dollars and fifty cents ($2.50).

SEC. 268. Section 10178 of the Insurance Code is amended to read:

10178. No insurer, union trust fund which administers health, medical, or surgical insurance, or employer which has an insurance company administering its health services program, shall deny, for the reason that the insured incurred no expense, a claim for hospital, medical or surgical services rendered by a nongovernmental charitable research hospital which makes no charge for its services in the absence of insurance. No expense-incurred, group hospital, medical or surgical policy issued, delivered, amended or renewed after the effective date of this section or union trust fund which

administers health, medical, or surgical insurance, or employer which has an insurance company administering its health services program, shall except, limit or reduce benefits for services rendered by a nongovernmental charitable research hospital because it does not charge for its services in the absence of insurance. No expense-incurred individual hospital, medical or surgical policy issued, delivered, or amended after the effective date of this section or union trust fund which administers health, medical, or surgical insurance, or employer which has an insurance company administering its health services program, shall except, limit, or reduce benefits for services rendered by a nongovernmental charitable research hospital because it does not charge for its services in the absence of insurance.

As used in this section, charitable research hospital means a hospital that meets all the following criteria:

(1) Is internationally recognized as devoting itself primarily to medical research.

(2) Expends not less than 10 percent of its operating budget in each fiscal year exclusively on medical research activities which are not directly related to the provision of services to patients.

(3) Derives not less than one-third of its gross revenues in each fiscal year from contributions, donations, grants, gifts, or other gratuitous forms from individuals, groups, persons, or entities unrelated to the hospital. Contributions, donations, grants, gifts or other gratuitous sources of revenue received as compensation for medical services provided patients shall not be considered for purposes of this subdivision.

(4) Accepts patients without regard to the patient's ability to pay for medical services.

(5) Not less than two-thirds of the patients admitted have a primary diagnosis or suspected disease or condition directly related to the specific area or areas in which the hospital conducts research. Patients admitted because of an emergent life-threatening condition who could not be safely transported to another hospital shall not be considered as patients for purposes of this section.

SEC. 269. Section 11512.18 of the Insurance Code, as added by Chapter 352 of the Statutes of 1980, is amended and renumbered to read:

11512.19. No plan issuing, providing, or administering an individual or group nonprofit hospital service plan entered into, amended, or issued on or after January 1, 1981, shall refuse to cover, or refuse to continue to cover, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles applied to actual experience, or, if insufficient actual experience is available, then to sound underwriting practices.

This section shall not apply to a health maintenance organization

qualified pursuant to Title XIII of the federal Public Health Service Act if such organization gives public notice 30 days in advance, in a newspaper of general circulation published in the area served by the health maintenance organization, of its open enrollment period required by such act.

SEC. 270. Section 11512.18 of the Insurance Code, as added by Chapter 776 of the Statutes of 1980, is amended and renumbered to read:

11512.195. No hospital service contract or nonprofit hospital service plan that covers hospital, medical, or surgical expenses on a group or individual basis shall be issued, amended, delivered, or renewed in this state on or after January 1, 1981, if it contains any exclusion, reduction, or other limitation as to coverage, deductibles, or coinsurance provisions applicable solely to conditions attributable to diethylstilbestrol or exposure to diethylstilbestrol.

All contracts or plans subject to this section and issued, amended, delivered, or renewed in this state on or after January 1, 1981, shall be construed to be in compliance with this section, and any provision in any such contract which is in conflict with this section shall be of no force or effect.

SEC. 271. Section 11512.21 of the Insurance Code, as added by Chapter 90 of the Statutes of 1980, is amended and renumbered to read:

11512.22. No nonprofit hospital service plan shall deny a claim under a group contract for hospital, medical, surgical, dental, or optometric services for the sole reason that the individual served was confined in a city or county jail as a prisoner, or was a juvenile detained in any facility, if that individual is otherwise entitled to benefits under the group contract and incurs expense for the services so provided during confinement. This provision shall apply to any nonprofit hospital service plan entered into or renewed on or after July 1, 1980, whether or not the plan or group contract contains any provision terminating benefits under the plan upon an individual's confinement in a city or county jail or juvenile detention facility.

SEC. 272. Section 11551 of the Insurance Code is amended to read:

11551. As used in this article, the term "compensation" means workers' compensation insurance.

SEC. 273. Section 11558 of the Insurance Code is amended to read:

11558. The minimum reserve requirements prescribed by the commissioner in regulations promulgated pursuant to Section 923.5 for outstanding losses and loss expenses for each of the most recent three years for coverages included in the lines of business described in the annual statement as workers' compensation, liability other than automobile bodily injury, and automobile liability bodily injury shall be not less than the following:

(a) For workers' compensation, 65 percent of earned premiums during each year less the amount already paid for losses and expenses

incidental thereto incurred during each such year.

(b) For liability other than automobile bodily injury, and for automobile liability bodily injury, 60 percent of earned premiums during each year less the amount already paid for losses and expenses incidental thereto incurred during each such year.

The commissioner may prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

SEC. 274. Section 11580.2 of the Insurance Code is amended to read:

11580.2. (a) (1) No policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle, except for policies which provide insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless the policy contains, or has added to it by endorsement, a provision with coverage limits at least equal to the limits specified in subdivision (m) and in no case less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code insuring the insured, his or her heirs or his or her legal representative for all sums within such limits which he, she, or they, as the case may be, shall be legally entitled to recover as damages for bodily injury or wrongful death from the owner or operator of an uninsured motor vehicle. The insurer and any named insured, prior to or subsequent to the issuance or renewal of a policy, may, by agreement in writing, in the form specified in paragraph (2), delete the provision covering damage caused by an uninsured motor vehicle completely; or, with respect to a natural person or persons designated by name when operating a motor vehicle, agree to provide such coverage in an amount less than that required by subdivision (m) but not less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code. Any such agreements by any named insured or agreement for the amount of coverage shall be binding upon every insured to whom such policy or endorsement provisions apply while such policy is in force, and shall continue to be so binding with respect to any continuation, renewal, or replacement of such policy by the named insured, or with respect to reinstatement of such policy within 30 days of any lapse thereof. A policy shall be excluded from the application of this section if the only coverage with respect to the use of any motor vehicle is limited to the contingent liability arising out of the use of nonowned motor vehicles.

(2) The agreement specified in paragraph (1) shall be in the following form:

"The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership,

maintenance, or use of a motor vehicle. Such section also permits the insurer and the applicant to delete such coverage completely or with respect to one or more natural persons designated by name when operating a motor vehicle or agree to provide such coverage in an amount less than that required by subdivision (m) of Section 11580.2 of the Insurance Code, but not less than the financial responsibility requirements. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, which such person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to him or her from the owner or operator of an uninsured motor vehicle not owned or operated by the insured."

Such agreement may contain additional statements not in derogation of or conflict with the foregoing. The execution of such agreement shall relieve the insurer of liability under this section while such agreement remains in effect.

(b) As used in subdivision (a), "bodily injury" includes sickness or disease, including death, resulting therefrom; "named insured" means only the individual or organization named in the declarations of the policy of motor vehicle bodily injury liability insurance referred to in subdivision (a); as used in subdivision (a), "insured" means the named insured and the spouse of the named insured and, while residents of the same household, relatives of either while occupants of a motor vehicle or otherwise, heirs and any other person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; "insured motor vehicle" means the motor vehicle described in the underlying insurance policy of which the uninsured motorist endorsement or coverage is a part, a temporary substitute automobile for which liability coverage is provided in the policy or a newly acquired automobile for which liability coverage is provided in the policy if the motor vehicle is used by the named insured or with his or her permission or consent, express or implied, and any other automobile not owned by the named insured or any resident of the same household while being operated by the named insured or his or her spouse if a resident of the same household, but "insured motor vehicle" shall not include any automobile while used as a public or livery conveyance. As used in this section, "uninsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is such applicable insurance or bond but the company writing the same denies coverage thereunder or refuses to admit coverage thereunder except conditionally or with reservation, or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the

accident with respect to the owner or operator thereof, or the owner or operator thereof be unknown, provided that, with respect to an "uninsured motor vehicle" whose owner or operator is unknown:

(1) The bodily injury has arisen out of physical contact of such automobile with the insured or with an automobile which the insured is occupying.

(2) The insured or someone on his or her behalf shall have reported the accident within 24 hours to the police department of the city where the accident occurred or, if the accident occurred in unincorporated territory then either the sheriff of the county where the accident occurred or the local headquarters of the California Highway Patrol, and have filed with the insurer within 30 days thereafter a statement under oath that the insured or his or her legal representative has or the insured's heirs have a cause of action arising out of such accident for damages against a person or persons whose identity is unascertainable and set forth facts in support thereof. As used in this section, the term "uninsured motor vehicle" shall not include an automobile owned by the named insured or any resident of the same household or self-insured within the meaning of the Safety Responsibility Law of the state in which the motor vehicle is registered or which is owned by the United States of America, Canada, a state or political subdivision of any such government or an agency of any of the foregoing, or a land motor vehicle or trailer operated on rails or crawler treads or while located for use as a residence or premises and not as a vehicle, or a farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

As used in this section, "uninsured motor vehicle" also means an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. An insurer's solvency protection shall be applicable only to accidents occurring during a policy period in which its insured's motor vehicle coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one year of such accident. In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment, shall to the extent thereof, be entitled to any proceeds which may be recoverable from the assets of the insolvent insurer through any settlement or judgment of such person against the insolvent insurer.

(c) The insurance coverage provided for in this section does not apply either as primary or as excess coverage to:

(1) To property damage sustained by the insured.

(2) To bodily injury of the insured while in or upon or while entering into or alighting from an automobile other than the described automobile if the owner thereof has insurance similar to that provided in this section.

(3) To bodily injury of the insured with respect to which the

insured or his or her representative shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person who may be legally liable therefor.

(4) In any instance where it would inure directly or indirectly to the benefit of any workers' compensation carrier or to any person qualified as a self-insurer under any workers' compensation law, or directly to the benefit of the United States, or any state or any political subdivision thereof.

(5) To establish proof of financial responsibility as provided in subdivisions (a), (b), and (c) of Section 16054 of the Vehicle Code.

(6) To bodily injury of the insured while occupying a motor vehicle owned by an insured, unless the occupied vehicle is an insured motor vehicle.

(7) To bodily injury of the insured when struck by a vehicle owned by an insured.

(d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may provide that if the insured has insurance available to him or her under more than one uninsured motorist coverage provision, any damages shall not be deemed to exceed the higher of the applicable limits of the respective coverages, and such damages shall be prorated between the applicable coverages as the limits of each coverage bears to the total of such limits.

(e) The policy or endorsement added thereto may provide that if the insured has valid and collectible automobile medical payment insurance available to him or her, the damages which he or she shall be entitled to recover from the owner or operator of an uninsured motor vehicle shall be reduced for purposes of uninsured motorist coverage by the amounts paid or due to be paid under such automobile medical payment insurance. This subdivision shall become operative on January 1, 1971.

(f) The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration. The arbitration shall be conducted by a single neutral arbitrator. An award or a judgment confirming an award shall not be conclusive on any party in any action or proceeding between (i) the insured, his or her insurer, his or her legal representative, or his or her heirs and (ii) the uninsured motorist to recover damages arising out of the accident upon which the award is based. If the insured has or may have rights to benefits, other than nonoccupational disability benefits, under any workers' compensation law, the arbitrator shall not proceed with the arbitration until the insured's physical condition is stationary and ratable. In those cases in which the insured claims a permanent disability, such claims shall, unless good cause be shown, be adjudicated by award or settled by compromise and release before the arbitration may proceed. Any demand or petition for arbitration

shall contain a declaration, under penalty of perjury, stating whether (i) the insured has a workers' compensation claim; (ii) such claim has proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in that claim; and (iii) if not, what reasons amounting to good cause are grounds for the arbitration to proceed immediately. The provisions of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall be applicable to such determinations, and all rights, remedies, obligations, liabilities and procedures set forth in the article shall be available to both the insured and the insurer at any time after the accident, both before and after the commencement of arbitration, if any, with the following limitations:

(1) Whenever in the article, reference is made to the court in which the action is pending, or provision is made for application to the court or obtaining leave of court or approval by the court, the court which shall have jurisdiction for the purposes of this section shall be the superior court of the State of California, in and for any county which is a proper county for the filing of a suit for bodily injury arising out of the accident, against the uninsured motorist, or any county specified in the policy or an endorsement added thereto as a proper county for arbitration or action thereon.

(2) Any proper court to which application is first made by either the insured or the insurer under the provisions of the article for any discovery or other relief or remedy, shall thereafter be the only court to which either of the parties shall make any applications under the article with respect to the same accident, subject, however, to the right of the court to grant a change of venue after a hearing upon notice, upon any of the grounds upon which change of venue might be granted in an action filed in the superior court.

(3) A deposition pursuant to the provisions of Section 2016 of the Code of Civil Procedure may be taken without leave of court, except that leave of court, granted with or without notice and for good cause shown, must be obtained if the notice of the taking of the deposition is served by either party within 20 days after the accident.

(4) The provisions of paragraph (4) of subdivision (a) of Section 2019 of the Code of Civil Procedure shall not be applicable to discovery under this section.

(5) For the purposes of discovery under this section, the insured and the insurer shall each be deemed to be "a party to the record of any civil action or proceedings," where that phrase is used in paragraph (2) of subdivision (b) of Section 2019 of the Code of Civil Procedure.

(6) Interrogatories under the provisions of Section 2030 of the Code of Civil Procedure and requests for admission under Section 2033 of the Code of Civil Procedure may be served by either the insured or the insurer upon the other at any time more than 20 days after the accident without leave of court.

(7) Nothing in this section shall be construed to limit the rights of

any party to discovery in any action pending or which may hereafter be pending in any court.

(g) The insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom such claim was paid against any person causing such injury or death to the extent that payment was made. Such action may be brought within three years from the date that payment was made hereunder.

(h) An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver of rights to which he or she may be entitled under any other insurance coverage applicable; nor shall payment under this section to such insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident. Any loss payable under the terms of the uninsured motorist endorsement or coverage to or for any person may be reduced:

(1) By the amount paid and the present value of all amounts payable to him or her, his or her executor, administrator, heirs, or legal representative under any workers' compensation law, exclusive of nonoccupational disability benefits.

(2) By the amount the insured is entitled to recover from any other person insured under the underlying liability insurance policy of which the uninsured motorist endorsement or coverage is a part.

(i) No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless within one year from the date of the accident one of the following occurs:

(1) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction.

(2) Agreement as to the amount due under the policy has been concluded.

(3) The insured has formally instituted arbitration proceedings.

(j) Notwithstanding the provisions of subdivisions (b) and (i), in the event the accident occurs in any other state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to the provisions of this section may be maintained within three months of the insolvency of the tortfeasor's insurer, but in no event later than the pertinent period of limitation of the jurisdiction in which the accident occurred.

(k) Notwithstanding the provisions of subdivision (i), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and such claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to such injury or death. Failure of the insurer to provide such written notice shall operate to toll any applicable statute of limitation or other time limitation for

a period of 30 days from the date such written notice is actually given.

(*l*) As used in subdivision (b), "public or livery conveyance," or terms of similar import, shall not include the operation or use of a motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation as defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to policies of insurance issued, amended, or renewed on or after January 1, 1976.

(m) Coverage provided under an uninsured motorist endorsement or coverage shall be offered with coverage limits equal to the limits of liability for bodily injury in the underlying policy of insurance, but shall not be required to be offered with limits in excess of the following amounts:

(1) A limit of thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident.

(2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident.

SEC. 275. Section 11600 of the Insurance Code is amended to read:

11600. An incorporated insurer issuing policies of liability, workers' compensation, or common carrier liability insurance, shall be governed by the paid-in capital and surplus requirements of Sections 700.01 to 700.05, inclusive.

SEC. 276. Section 11602 of the Insurance Code is amended to read:

11602. Any such insurer which on July 26, 1919, was authorized by its charter to transact liability insurance may transact workers' compensation and common carrier liability insurance as though expressly permitted by its charter to do so.

SEC. 277. Section 11656.9 of the Insurance Code is amended to read:

11656.9. To encourage and facilitate the participation of agencies, entities or institutions, public or private, in economic opportunity programs authorized under Public Law 88-452, insurers may insure the workers' compensation liability to enrollees of sponsoring agencies pursuant to Chapter 9 (commencing with Section 4201) of Part 1 of Division 4 of the Labor Code under a master policy, subject to the approval of the Insurance Commissioner.

SEC. 278. Section 11657 of the Insurance Code is amended to read:

11657. Subject to the provisions of Sections 11658, 11659, and 11660, limited workers' compensation policies may be issued insuring either the whole or any part of the liability of any employer for compensation. Subject to those provisions, any such policy may restrict or limit such insurance in any manner whatsoever.

SEC. 279. Section 11663 of the Insurance Code is amended to read:

11663. As between insurers of general and special employers, one which insures the liability of the general employer is liable for the entire cost of compensation payable on account of injury occurring in the course of and arising out of general and special employments unless the special employer had the employee on his or her payroll at the time of injury, in which case the insurer of the special employer is solely liable. For the purposes of this section, a self-insured or lawfully uninsured employer is deemed and treated as an insurer of his or her workers' compensation liability.

SEC. 280. Section 11690 of the Insurance Code is amended to read:

11690. Except in the case of the State Compensation Insurance Fund or as provided by Section 11715, every insurer desiring admission for workers' compensation insurance shall, as a prerequisite to such admission, maintain on file in the office of the commissioner a bond in favor of the commissioner as trustee for the beneficiaries of awards of compensation against the insurer, or against any other insurer upon a policy reinsured by the insurer, to the extent of such reinsurance.

SEC. 281. Section 11699 of the Insurance Code is amended to read:

11699. The bond shall be in an amount:

(a) Not less than the sum of the following amounts computed, less credits and deductions allowable with respect to reinsurance in admitted insurers, as of the close of the last preceding December 31st in respect to workers' compensation insurance written subject to the workers' compensation laws of this state:

(1) The aggregate of the present values at 4 percent interest, of the determined and estimated future payments upon compensation claims not included in paragraph (2), including in such claims both benefits and loss expenses.

(2) The aggregate of the amounts computed as follows: For each of the preceding three years take 65 percent of the earned compensation premiums for that year and deduct all loss and loss expense payments made upon claims incurred in the corresponding year from such 65 percent; except that the amount for each such year shall not be less than the present value at 4 percent interest of the determined and the estimated unpaid claims incurred in each such year, including both benefits and loss expenses.

(b) Not less than one hundred thousand dollars ($100,000).

(c) If the aggregate amount computed under subdivision (a) exceeds fifty thousand dollars ($50,000), not more than double such aggregate amount.

SEC. 282. Section 11710 of the Insurance Code is amended to read:

11710. The liability of the sureties, under and to the limit and amount of the bonds required by this article, shall be the entire liability of the principals named therein for the payment of awards of compensation rendered or to be rendered against the principals

under workers' compensation laws. Such surety's liability shall exist without regard to the time when the injury, upon which an award is based, occurs but shall not include any other liability of the insurer. A payment made under any such bond by such a surety shall not be applied otherwise than in satisfaction of such awards.

SEC. 284. Section 11715 of the Insurance Code is amended to read:

11715. (a) Any workers' compensation insurer may, in lieu of and for the same purpose as the bond required by Section 11690, and upon payment of the fee prescribed in this article, deposit with the commissioner cash or approved interest-bearing securities or approved preferred stocks readily convertible into cash, or investment certificates or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation. Such deposit shall be made from time to time as demanded by the commissioner and may be made with the commissioner, State Treasurer, or a bank or trust company pursuant to the approval of the commissioner under such rules and regulations as he or she shall promulgate. Such deposit shall be maintained at an amount not less than twenty-five thousand dollars ($25,000), nor less than the reserves required of such insurer to be maintained under any of the provisions of Article 1 (commencing with Section 11550) of Chapter 1, relating to loss reserves on workers' compensation business of the insurer in this state, nor less than the sum of the amounts specified in subdivision (a) of Section 11699.

(b) Any workers' compensation insurer electing to bring itself within the provisions of subdivision (a) by submitting securities, stock, investment certificates, or share deposits registered in a depositor's name, shall execute and deliver in duplicate to the commissioner a power of attorney in favor of the commissioner for the purposes specified in Section 11690, supported by a resolution of the depositor's board of directors. Such power of attorney and directors' resolution shall be on forms approved by the commissioner, shall provide that the power of attorney cannot be revoked or withdrawn without the consent of the commissioner, and shall be acknowledged as required by law.

SEC. 285. Section 11716 of the Insurance Code is amended to read:

11716. Such deposit shall be security for the payment of the insurer's obligations on workers' compensation insurance transacted in this state in the same manner as is provided in this article for the use of the bond. Such deposit shall not be withdrawn except upon the written order of the commissioner to use the proceeds thereof in payment of workers' compensation claims, but shall be forthwith payable by the State Treasurer or such bank or trust company approved by the commissioner to the commissioner upon such order. No deposit so placed with a bank or trust company shall be subject to any lien or claim asserted by it or be subject to any disposition or

claim other than as is permitted by the commissioner. Irrespective of any other provisions of this code, the deposit shall be physically retained by the State Treasurer or such bank or trust company approved by the commissioner and only released in accordance with the provisions of this article.

SEC. 286. Section 11716.01 of the Insurance Code is amended to read:

11716.01. If the commissioner has been named conservator or liquidator of such insurer pursuant to Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 and has determined that the insurer shall not continue to carry on its business as a workers' compensation insurer, the obligations of the surety on the bond and the proceeds of the deposit shall be used by the commissioner to pay or procure the payment of such obligations as set forth in this article. The obligations of the bond and the proceeds of the deposit shall in such event inure to the commissioner as a trust to be held separate and apart from all other assets of the insurer held by the commissioner. They shall be used only for the purposes set forth and in accordance with the procedures established in this article and shall only be subject to the orders of the court in which the conservation or liquidation proceedings are pending to the extent provided in this article.

SEC. 287. Section 11716.02 of the Insurance Code is amended to read:

11716.02. Where the commissioner is authorized to proceed under Section 11716.01 he or she may do either of the following:

(a) Subject to Sections 11716.6 to 11716.63, enter into reinsurance and assumption agreements with one or more admitted solvent workers' compensation insurers by the terms of which liability for all such obligations is reinsured and assumed by such insurer.

(b) Discharge such obligations himself or herself from the proceeds of such bond or deposit.

SEC. 288. Section 11716.61 of the Insurance Code is amended to read:

11716.61. (a) The reimbursement provision referred to in subdivision (c) of Section 11716.6 shall, in the event of a deposit, provide for the transfer of the securities in the deposit to the deposits of the reinsurers. Thereafter, except as provided in subdivision (b), the deposit of the reinsuring and assuming insurers shall be security for the payment of all of such obligations assumed by such agreement as well as such obligations on workers' compensation insurance transacted in this state by the reinsurer, provided, however, that in determining the amount which shall remain on deposit as security for such obligations which are reinsured and assumed the method prescribed by paragraph (1) of subdivision (a) of Section 11699 shall be used without any limitation as to time. In providing for the transfer of the securities the agreement may provide for their direct transfer to the deposit account of the reinsurers, or, if the securities deposited are in such denominations or units as to make the

equitable transfer to more than one reinsurer impossible, it may provide either for a formula under which such transfers may be made and differences in value reconciled by payments or credits among the reinsurers or for the sale of such securities by the commissioner and the reinvestment of the proceeds in other securities in amounts which can be so equitably transferred.

(b) If the obligations of one or more reinsurers are secured by a bond rather than by a deposit the agreement shall provide that any transfer shall be to a separate deposit to be maintained by such insurer in which event such separate deposit shall only be held as security for the obligations reinsured and assumed under the contract and not as security for such obligations on other workers' compensation insurance transacted in this state. The amount which shall remain in such separate deposit shall be determined as set forth in subdivision (a).

(c) The agreement shall provide that if it appears that the market value of the securities on deposit will exceed the obligations assumed by the reinsurers the commissioner may withhold the transfer of a portion of the deposit and may after a two-year period enter into a final settlement with the reinsurers with respect thereto at which time any excess in such deposit shall be transferred to the general assets of the insurer in liquidation or conservation.

SEC. 289. Section 11719 of the Insurance Code is amended to read:

11719. The commissioner may revoke the certificate of authority to transact workers' compensation insurance in this state of any insurer failing to comply with the requirements of this article.

SEC. 290. Section 11730 of the Insurance Code is amended to read:

11730. "Merit rating," as used in this article, means "schedule rating," in which the rate is varied according to physical conditions, and also means "experience rating," in which the California workers' compensation insurance experience of the particular insured is used as a factor in raising or lowering his rate.

Unless a different meaning is manifest, " workers' compensation insurance," as used in this article, also means employer's liability insurance incidental to and written in connection with workers' compensation insurance.

SEC. 291. Section 11732.1 of the Insurance Code is amended to read:

11732.1. The commissioner may, pursuant to all grants of authority contained in this article with respect to workers' compensation insurance and subject to all limitations therein, approve or issue as adequate for all admitted workers' compensation insurers a classification of risks and premium rates relating to employer's liability insurance incidental to and written in connection with workers' compensation insurance. Such classification and rates may be included in those for workers' compensation insurance or separate therefrom, and if issued or approved by the commissioner

shall be binding upon insurers to the same extent as are the classifications and rates issued or approved for workers' compensation insurance.

SEC. 292. Section 11732.3 of the Insurance Code is amended to read:

11732.3. No classification of risks and premium rates or system of merit rating shall permit a determination or modification of the premium or premium rate of a particular insured by reason of the combination of his or her California workers' compensation insurance premium or experience with his or her premiums or experience arising out of workers' compensation insurance written under the laws of any other jurisdiction.

SEC. 293. Section 11733 of the Insurance Code is amended to read:

11733. The commissioner shall not approve or issue any rating system or classification of risks and premium rates dealing with workers' compensation insurance covering mining or mining property unless such system or classification provides for separation of risks and rates as to types of mining employments having different hazards or loss experience in accordance with the hazard or loss experience involved. Such system or classification shall provide for separation at least of rates for office, surface and subsurface employment.

SEC. 294. Section 11738 of the Insurance Code is amended to read:

11738. Nothing in this article shall affect the right of any insurer to issue compensation participating policies. A refund by reason of a participating provision in a compensation policy shall not be made to policyholders by any insurer except from surplus accumulated from premiums on workers' compensation policies issued pursuant to laws of this state governing workers' compensation insurance.

SEC. 295. Section 11740 of the Insurance Code is amended to read:

11740. The commissioner may require every insurer issuing workers' compensation insurance under the law of this state to file with its annual statement a sworn report of its loss experience, in the detail and form as the commissioner prescribes.

SEC. 296. Section 11741 of the Insurance Code is amended to read:

11741. The commissioner may, after hearing, suspend or revoke any insurer's certificate of authority to write liability, workers' compensation and common carrier liability insurance for violating any of the provisions of this article.

SEC. 298. Section 11750 of the Insurance Code is amended to read:

11750. The purpose of this article is to promote the public welfare by regulating concert of action between insurers in collecting and tabulating rating information and other data that may be helpful in the making of adequate minimum rates for workers' compensation

insurance and for employers liability insurance incidental thereto and written in connection therewith for all admitted insurers and in submitting them to the commissioner for issuance or approval; to authorize and regulate the existence and cooperation of qualified rating organizations to one of which each workers' compensation insurer shall belong; to authorize and regulate cooperation between insurers, rating organizations and advisory organizations in rate making and other related matters to the end that the purposes of this chapter may be complied with and carried into effect.

SEC. 299. Section 11750.1 of the Insurance Code is amended to read:

11750.1. As used in this article, unless a different meaning is manifest, the term:

(a) "Insurer" means every insurer authorized to transact workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith in this state, including the State Compensation Insurance Fund;

(b) "Rating organization" means any organization which has as its primary object or purpose the collecting of rating information, the making of rates, rating plans and rating systems for workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith and presenting them to the commissioner for issuance or approval;

(c) "Insurance" means workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith;

(d) "Willful" or "willfully" in relation to an act or omission which constitutes a violation of this article means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(e) "Advisory organization" means every person, group or organization, other than an insurer, whether located within or without this state, which prepares policy forms or underwriting rules incidental to or in connection with workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith or which collects and furnishes to admitted insurers or rating organizations rating experience, loss or expense statistics or other statistical information and data relating to workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith and acts in an advisory capacity to such insurers or rating organizations as distinguished from a ratemaking capacity. No duly authorized attorney at law acting in the usual course of his profession shall be deemed to be an advisory organization.

SEC. 300. Section 11750.2 of the Insurance Code is amended to read:

11750.2. The provisions of this article shall apply to all workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith in this state,

except reinsurance.

SEC. 301. Section 11750.3 of the Insurance Code is amended to read:

11750.3. A rating organization may be organized pursuant to this article and maintained in this state for the following purposes:

(a) To provide reliable statistics and rating information in respect to workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith.

(b) To collect and tabulate information and statistics for the purpose of developing minimum adequate premium rates to be submitted to the commissioner for issuance or approval.

(c) To formulate rules and regulations in connection with issued or approved rates and the administration of classifications and rating systems and to present same to the commissioner for approval.

(d) To inspect risks for classification or rate purposes and to furnish to the insurer and upon request of the employer and after notice to the insurer, to furnish to the employer full information concerning the rates applicable to the employer's insurance.

(e) To examine policies, daily reports, endorsements or other evidences of insurance for the purpose of ascertaining whether they comply with the provisions of law and to make reasonable rules governing their submission.

(f) Within one year after expiration of any workers' compensation insurance policy, to initiate test audits of insured employer's payrolls and insurer's audits of such payrolls to check the accuracy and reliability thereof, and to examine all records relative thereto and premises of insured employers so that the classifications of such employers and the charging of premium at not less than the applicable approved minimum premium rates applied to such payroll segregated in accordance with the applicable approved Manual of Rules, Classifications and Basic Rates for Workmen's Compensation Insurance can be assured.

(g) To exchange information and experience data with rating organizations, advisory organizations, and insurers in this and other states, in respect to ratemaking.

(h) To become a member or subscriber of any lawfully authorized ratemaking or advisory organization whenever membership in such organization is necessary or helpful to the rating organization.

(i) To perform all acts necessary, incidental or convenient to carry out the foregoing purposes or the provisions of this chapter relating to rating organizations.

SEC. 302. Section 11751.5 of the Insurance Code is amended to read:

11751.5. The commissioner, after notice and hearing, may promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter in the recording and reporting by insurers of their loss and expense experience in order that the experiences of all insurers may be made available in such form and detail as may be necessary to aid the

commissioner in administering the provisions of Article 2 (commencing with Section 11730). The commissioner may designate any rating organization licensed under this article as his or her statistical agent to gather and compile such experience statistics and all licensed rating organizations shall report the experience of their members to such designated rating organization. Subject to reasonable rules approved by the commissioner, such designated rating organization shall make such experience statistics, when compiled, available to all licensed rating organizations and may make a reasonable charge to other rating organizations for the expense incurred by it in combining, tabulating and compiling the experience of all workers' compensation insurers.

SEC. 303. Section 11755 of the Insurance Code is amended to read:

11755. No person, insurer, rating or advisory organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, which will affect the rates, rating systems or premiums for workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith.

In the event of the refusal by any insured employer to permit an audit or an examination provided for in subdivision (f) of Section 11750.3, the commissioner shall, upon the verified petition of the rating organization concerned, take such action as the commissioner may be authorized to take pursuant to and subject to the provisions of this code and of the Government Code.

SEC. 304. Section 11770 of the Insurance Code is amended to read:

11770. The State Compensation Insurance Fund is continued in existence, to be administered by its board of directors for the purpose of transacting workers' compensation insurance, and insurance against the expense of defending any suit for serious and willful misconduct, against an employer or his agent, and insurance to employees and other persons of the compensation fixed by the workers' compensation laws for employees and their dependents. Any appropriation made therefrom or thereto before the effective date of this code shall continue to be available for the purposes for which it was made.

The board of directors of the State Compensation Insurance Fund is composed of the Director of Industrial Relations, who is chairman thereof, and four members who shall be appointed by the Governor. The term of office of the members of the board, other than that of the director, shall be four years and they shall hold office until the appointment and qualification of their successors. The terms of the first four members so appointed shall expire as follows: one on January 15, 1946; one each on January 15, 1947, January 15, 1948, and January 15, 1949. Each member shall receive his actual and necessary traveling expenses incurred in the performance of his duty as a member and, except the Director of Industrial Relations, twenty-five

dollars ($25) for each day of his actual attendance at meetings of the board. In order to qualify for membership on the board, each member other than the director shall have been a policyholder or the employee of a policyholder in the State Compensation Insurance Fund for one year prior to his appointment, and must continue in such status during the period of his membership.

SEC. 305. Section 11778 of the Insurance Code is amended to read:

11778. The fund may transact workers' compensation insurance required or authorized by law of this state to the same extent as any other insurer.

SEC. 306. Section 11780 of the Insurance Code is amended to read:

11780. The fund may also insure an employer against his or her liability for damages under the laws of the State of California arising out of bodily injury to or death of the employer's employees occurring within the State of California if the fund also issues workers' compensation insurance to the employer as to his or her employees.

SEC. 307. Section 11784 of the Insurance Code is amended to read:

11784. In conducting the business and affairs of the fund, the manager of the fund may:

(a) Enter into contracts of workers' compensation insurance.

(b) Sell annuities covering compensation benefits.

(c) Decline to insure any risk in which the minimum requirements of the industrial accident prevention authorities with regard to construction, equipment and operation are not complied with, or which is beyond the safe carrying of the fund. Otherwise he or she shall not refuse to insure any workers' compensation risk under state law, tendered with the premium therefor.

(d) Reinsure any risk or any part thereof.

(e) Cause to be inspected and audited the payrolls of employers applying to the fund for insurance.

(f) Make rules for the settlement of claims against the fund and determine to whom and through whom the payments of compensation are to be made.

(g) Contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from the fund.

SEC. 308. Section 11840 of the Insurance Code is amended to read:

11840. The insurance contracts or policies of the State Compensation Insurance Fund may be either limited or unlimited. The insurance contracts or policies may be issued for like periods as are allowed by law to other workers' compensation insurers or, in the form of stamps or tickets or otherwise, for one month, for any number of months less than one year, for one day, for any number of days less than one month or during the performance of any

particular work, job or contract. The rates charged shall be proportionately greater for a shorter than for a longer period and a minimum premium charge shall be fixed in accordance with a reasonable rate for insuring one person for one day.

SEC. 309. Section 11846 of the Insurance Code is amended to read:

11846. The policies may likewise be sold to self-employing persons and to casual employees. The insureds, for the purpose of the insurance, shall be deemed to be employees within the meaning of the workers' compensation laws.

SEC. 310. Section 11871 of the Insurance Code is amended to read:

11871. The State Compensation Insurance Fund may enter into a master agreement with the Department of General Services to render services in the adjustment and disposition of claims for workers' compensation to any state agencies, including any officer, department, division, bureau, commission, board or authority, not insured with the fund.

Such master agreement shall provide for rendition of such services at a uniform rate to all agencies, except that the rate for the California Highway Patrol may be fixed independently of the uniform rate.

The fund may, in accordance with the agreement, adjust and dispose of claims for workers' compensation made by an officer or employee of any state agency not insured with the fund.

The fund may make all expenditures, including payment to claimants for medical care or for adjustment or settlement of claims, necessary to the adjustment and final disposition of claims. The agreement shall provide that the state agency whose officer or employee is a claimant shall reimburse the fund for the expenditures and for the actual cost of services rendered.

The fund may in its own name, or in the name of the state agency for which the services are performed, do any and all things necessary to recover on behalf of the state agency for which it renders service any and all amounts which an employer might recover from third persons under Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code, or which an insurer might recover pursuant to Section 11662 including the right to commence and prosecute actions, to file, pursuant to Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code, liens for whatever sums would be recoverable by suit against a third person, to intervene in other court proceedings, and to compromise claims and actions before or after commencement of suit or after entry of judgment when in the opinion of the fund full collection cannot be enforced.

SEC. 311. Section 12401.3 of the Insurance Code is amended to read:

12401.3. The following standards shall apply to the making and use of rates pertaining to all the business of title insurance to which

the provisions of this article are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held excessive unless (1) the rate is unreasonably high for the insurance or other services provided, and (2) a reasonable degree of competition does not exist in the particular phase of the business of title insurance to which the rate is applicable.

No rate shall be held to be inadequate unless (1) the rate is unreasonably low for the insurance or other services provided and (2) the continued use of the rate endangers the solvency of the person or entity using it, or unless (3) the rate is unreasonably low for the insurance or other services provided and the use of the rate by the person or entity using it has, or if continued will have, the effect of destroying competition or creating a monopoly. However, no rate or rate classification shall be held to be inadequate for the reason that a rate within a rating classification is less than the cost of the risk and expense elements assigned to smaller insurances within that classification, and the excess of the costs may be charged against larger insurances within the classification without rendering the rate or rate classification unfairly discriminatory.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to a reasonable margin for profit and contingencies, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state.

(c) The systems of expense provisions included in the rates for use by any title insurer, underwritten title company, or controlled escrow company may differ from those of other title insurers, underwritten title companies, or controlled escrow companies to reflect the operating methods of the person or entity with respect to any kind of insurance, or other service, or with respect to any combination thereof.

(d) For the establishment of rates, risks, and services in the business of title insurance may be grouped by classifications into the various types of title policies or services offered. The classifications may be further divided to produce rates for individual risks or services within a classification. Those classifications or further divisions thereof may be established based upon any one or more of the following: (1) the size of a transaction and its effect upon the continuing solvency of the person or entity using the rate in question if a loss should occur; (2) expense elements, including the management time that would ordinarily be expended in a typical transaction of a particular size; (3) the geographic location of a transaction, including variations in risk and expense elements attributable thereto; (4) the individual experience of the person or entity using the rate in question; and (5) any other reasonable considerations. Those classifications or further divisions thereof shall apply to all risks and services in the business of title insurance under

the same or under substantially the same circumstances or conditions.

SEC. 312. Section 12973.9 of the Insurance Code is amended to read:

12973.9. Whenever by the provisions of this code a form of policy or certificate and any endorsement, rider, application, amendment, fill-in material, classification of rates, certificate or premium to be used therewith, is required to be filed with, submitted to, or approved by the commissioner, fees as provided for by this section shall be paid to the commissioner to cover the expenses of processing and indexing the same and maintaining copies of the same.

The required fee shall be prescribed by the commissioner for each type document submitted, depending on its nature and the kind of processing required. The commissioner may prescribe different fees for different types of documents, and in the case of documents submitted for approval or authorization of use, shall prescribe a fee only for the final approval or authorization for use, if any. The commissioner shall determine the fee, or fees, by estimating in advance the commissioner's total costs of performing these services for all types of documents for a specified period of time, estimating the total number of documents of various kinds which will be submitted for processing during such time and equitably distributing the total cost on a per document basis. The commissioner shall, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to establish the standard or standards by which the commissioner shall determine the original fee schedule or any amended fee schedule. Any rule or regulation shall be promulgated in accordance with the procedure provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be effective 90 days after adoption by the commissioner, except the first fee schedule adopted by the commissioner under such regulation may be retroactive to the effective date of this section.

All fees received by the commissioner under this section shall be remitted to the credit of the Insurance Fund pursuant to the provisions of Section 12975.7.

Without in any manner affecting the applicability of this section to any other provisions of this code, it is expressly provided herein that the provisions of this section apply to the forms required to be filed, submitted, or approved under the following sections of this code: 779.8, 795.5, 1320, 9080.1, 10205, 10225, 10270, 10270.1, 10270.5, 10270.57, 10270.9, 10270.93, 10290, 10292, 10506, 11027, 11029, 11066, 11069, 11513, 11522, 11658, 12250, and 12640.18.

SEC. 313. Section 98.1 of the Labor Code is amended to read:

98.1. (a) Within 15 days after the hearing is concluded, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. The order, decision, or award shall include a summary of the hearing and the reasons for the decision. Upon filing of the order, decision, or award, the Labor Commissioner shall

serve a copy of the decision personally or by certified mail on the parties. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the appropriate municipal or superior court, in accordance with the appropriate rules of jurisdiction.

(b) For the purpose of this section, an award shall include any sums found owing, damages proved, and any penalties awarded pursuant to the provisions of this code.

(c) All awards granted pursuant to a hearing under this chapter shall accrue interest on all due and unpaid sums at the same rate as judgments in civil actions, except that no interest shall accrue on those sums during the course of a court appeal. The interest will run from the date of notice of the award or decision.

SEC. 314. Section 1299 of the Labor Code is amended to read:

1299. Every person, or agent or officer thereof, employing, either directly or indirectly through third persons, minors shall keep on file all permits and certificates, either to work or to employ, issued under the provisions of this article or of Part 27 (commencing with Section 48000) of the Education Code. The files shall be open at all times to the inspection of the school attendance and probation officers, the State Board of Education, and the officers of the Division of Labor Standards Enforcement.

SEC. 315. Section 3093 of the Labor Code is amended to read:

3093. (a) This section applies only when voluntarily requested by the parties to a collective bargaining agreement or by an employer, his or her association, or a union, or its representative where there is no collective bargaining agreement.

(b) Nothing in this section may be construed in any way so as to compel, regulate, interfere with, or duplicate the provisions of any established training programs which are operated under the terms of any collective bargaining agreements or unilaterally by any employer or bona fide labor union.

(c) Services contemplated under this section may be provided only when voluntarily requested and shall be denied when it is found that existing prevailing conditions in the area and industry would in any way be lowered or adversely affected.

(d) The California Apprenticeship Council in cooperation with the Department of Education, the Employment Development Department, and the Board of Governors of the California Community Colleges may foster and promote on-the-job training programs other than apprenticeship as follows: (1) programs for journeymen in the apprenticeable occupations to keep them abreast of current techniques, methods, and materials and opportunities for advancement in their industries; (2) programs in other than apprenticeable occupations for workers entering the labor market for the first time or workers entering new occupations by reason of having been displaced from former occupations by reason of

economic, industrial, technological scientific changes, or developments; (3) the programs shall be in accord with and agreed to by the parties to any applicable collective bargaining agreements and where appropriate will include joint employer-employee cooperation in the programs.

(e) The Division of Apprenticeship Standards when requested may foster and promote voluntary on-the-job training programs in accordance with this section, and assist employers, employees and other interested persons and agencies in the development and carrying out of the programs. The Division of Apprenticeship Standards shall cooperate in these functions with the Department of Education, the Employment Development Department, and the Board of Governors of the California Community Colleges and other governmental agencies. The Division of Apprenticeship Standards may cooperate with the Department of Corrections and the Department of the Youth Authority in the development of training programs for inmates and releasees of correctional institutions.

(f) The programs, where appropriate, may include related and supplemental classroom instruction offered and administered by state and local boards responsible for vocational education.

(g) The activities and services of the Division of Apprenticeship Standards in training programs under this section shall be performed without curtailing or in any way interfering with the division's activities and services in apprenticeship.

(h) The Division of Apprenticeship Standards may contract with, and receive reimbursements from, appropriate federal, state, and other governmental agencies.

(i) The vocational education activities and services of the Department of Education, the Board of Governors of the California Community Colleges, and local public school districts shall not be abridged or abrogated through implementation of this section.

(j) "On-the-job training" as used in this section refers exclusively to training confined to the needs of a specific occupation and conducted at the jobsite for employed workers.

(k) "Journeyman," as used in this section, means a person who has either (1) completed an accredited apprenticeship in his craft, or (2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the apprenticeship standards for the craft which has workers classified as journeymen in an apprenticeable occupation.

(*l*) Nothing in this section shall be construed to require prior approval, ratification, or reference of any training program to the Division of Apprenticeship Standards or the Department of Industrial Relations.

SEC. 316. Section 3097 of the Labor Code is amended to read:

3097. The Department of Industrial Relations, Division of Apprenticeship Standards, shall provide services to the Employment Development Department, as requested by and contracted for, with that department. Those federal funds which are available to the

Department of Industrial Relations, Division of Apprenticeship Standards, for the purpose of developing and maintaining apprenticeship and on-the-job training programs for eligible persons described in Section 10500 of the Unemployment Insurance Code, shall be directed to the support of the Employment Development Department clients.

The Division of Apprenticeship Standards shall continue in the Department of Industrial Relations but shall exert maximum effort to persuade sponsors of its registered, nonfederally funded, voluntary apprenticeship and on-the-job training programs to accept to the maximum possible extent the eligible persons as described in Section 10500 of the Unemployment Insurance Code.

The Employment Development Department may request, within the limitations of the funds available to it for this purpose, assignment of at least one Division of Apprenticeship Standards consultant to each area designated by the Director of Employment Development. Such apprenticeship consultant services, when funded and requested, shall be provided to the area offices of the Employment Development Department.

SEC. 317. Section 3600.3 of the Labor Code is amended to read:

3600.3. (a) For the purposes of Section 3600, an off-duty peace officer, as defined in subdivision (b), who is performing, within the jurisdiction of his or her employing agency, a service he or she would, in the course of his or her employment, have been required to perform if he or she were on duty, is performing a service growing out of and incidental to his or her employment and is acting within the course of his or her employment if, as a condition of his or her employment, he or she is required to be on call within the jurisdiction during off-duty hours.

(b) As used in subdivision (a), "peace officer" means those employees of the Department of Forestry named as peace officers for purposes of subdivision (c) of Section 830.3 of the Penal Code.

(c) This section does not apply to any off-duty peace officer while he or she is engaged, either as an employee or as an independent contractor, in any capacity other than as a peace officer.

SEC. 318. Section 4724 of the Labor Code is amended to read:

4724. The person or persons to whom the special death benefit is payable pursuant to Section 4722 shall file a claim therefor with the State Board of Control, which shall be processed pursuant to the provisions of Chapter 3 (commencing with Section 900) of Part 2 of Division 3.6 of Title 1 of the Government Code.

SEC. 319. Section 6305 of the Labor Code is amended to read:

6305. (a) "Occupational safety and health standards and orders" means standards and orders adopted by the standards board pursuant to Chapter 6 (commencing with Section 140) of Division 1 and general orders heretofore adopted by the Industrial Safety Board or the Industrial Accident Commission.

(b) "Special order" means any order written by the chief or the chief's authorized representative to correct an unsafe condition,

device, or place of employment which poses a threat to the health or safety of an employee and which cannot be made safe under existing standards or orders of the standards board. These orders shall have the same effect as any other standard or order of the standards board, but shall apply only to the employment or place of employment described in the written order of the chief's authorized representative.

SEC. 320. Section 7804 of the Labor Code is repealed.

SEC. 321. Section 375 of the Penal Code is amended to read:

375. (a) It shall be unlawful to throw, drop, pour, deposit, release, discharge or expose, or to attempt to throw, drop, pour, deposit, release, discharge or expose in, upon or about any theater, restaurant, place of business, place of amusement or any place of public assemblage, any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive to any of the senses.

(b) It shall be unlawful to manufacture or prepare, or to possess any liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive, to any of the senses with intent to throw, drop, pour, deposit, release, discharge or expose the same in, upon or about any theater, restaurant, place of business, place of amusement, or any other place of public assemblage.

(c) Any person violating any of the provisions hereof shall be punished by imprisonment in the county jail for not less than three months and not more than one year, or by a fine of not less than five hundred dollars ($500) and not more than two thousand dollars ($2,000), or by both such fine and imprisonment.

(d) Any person who, in violating any of the provisions of subdivision (a), willfully employs or uses any liquid, gaseous or solid substance which may produce serious illness or permanent injury through being vaporized or otherwise dispersed in the air or who, in violating any of the provisions of subdivision (a), willfully employs or uses any tear gas, mustard gas or any of the combinations or compounds thereof, or willfully employs or uses acid or explosives, shall be guilty of a felony and shall be punished by imprisonment in the state prison.

SEC. 322. Section 384a of the Penal Code is amended to read:

384a. Every person who within the State of California willfully or negligently cuts, destroys, mutilates, or removes any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or portion of any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, growing upon state or county highway rights-of-way, or who removes leaf mold thereon; provided, however, that the provisions of this section shall not be construed to apply to any employee of the state or of any political subdivision thereof engaged in work upon any state, county, or public road or highway while performing work under the supervision of the state or of any political subdivision thereof, and

every person who willfully or negligently cuts, destroys, mutilates, or removes any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or portions of any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, growing upon public land or upon land not his or her own, or leaf mold on the surface of public land, or upon land not his or her own, without a written permit from the owner of the land signed by the owner or the owner's authorized agent, and every person who knowingly sells, offers, or exposes for sale, or transports for sale, any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or portion of any tree or shrub, or fern or herb or bulb or cactus or flower, or huckleberry or redwood greens, or leaf mold, so cut or removed from state or county highway rights-of-way, or removed from public land or from land not owned by the person who cut or removed the same without the written permit from the owner of the land, signed by the owner or the owner's authorized agent, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment in a county jail for not more than six months or by both fine and imprisonment.

The written permit required under this section shall be signed by the landowner, or the landowner's authorized agent, and acknowledged before a notary public, or other person authorized by law to take acknowledgments. The permit shall contain the number and species of trees and amount of shrubs or ferns or herbs or bulbs or cacti or flowers, or huckleberry or redwood greens, or portions of any tree or shrub and shall contain the legal description of the real property as usually found in deeds and conveyances of the land on which cutting or removal, or both, shall take place. One copy of the permit shall be filed in the office of the sheriff of the county in which the land described in the permit is located. The permit shall be filed prior to commencement of cutting of the trees or shrub or fern or herb or bulb or cactus or flower or huckleberry or redwood green or portions of any tree or shrub authorized by the permit. The permit required by this section need not be notarized or filed with the office of the sheriff of the county where trees are to be removed when five or less trees or five or less pounds of shrubs or boughs are to be cut or removed.

Any county or state firewarden, or personnel of the Department of Forestry as designated by the Director of Forestry; and personnel of the United States Forest Service as designated by the Regional Forester, Region 5, of the United States Forest Service, or any peace officer of the State of California, may enforce the provisions hereof and may confiscate any and all such shrubs, trees, ferns or herbs or bulbs or cacti or flowers, or huckleberry or redwood greens or leaf mold, or parts thereof unlawfully cut or removed or knowingly sold, offered, or exposed or transported for sale as provided in this section.

The provisions of this section do not apply to any tree or shrub, or fern or herb or bulb or cactus or flower, or greens declared by law

to be a public nuisance.

The provisions of this section do not apply to the necessary cutting or trimming of any trees, shrubs, or ferns or herbs or bulbs or cacti or flowers, or greens if done for the purpose of protecting or maintaining an electric powerline, telephone line, or other property of a public utility.

The provisions of this section do not apply to persons engaged in logging operations, or in suppressing fires.

The provisions of this section do not apply to any act regulated by the provisions of Division 23 (commencing with Section 70500) of the Food and Agricultural Code.

SEC. 323. Section 384i of the Penal Code is amended to read:

384i. (a) Sections 384a to 384f, inclusive, shall not apply to maintenance and construction activities of public agencies and their employees.

(b) Sections 384b to 384f, inclusive, shall not apply to native desert plants described in subdivision (b) of Section 384b, that have been propagated and cultivated by human beings and which are being transported under Section 6922 or 6923 of the Food and Agricultural Code, pursuant to a valid nursery stock certificate.

SEC. 324. Section 626.11 of the Penal Code is amended to read:

626.11. (a) Any evidence seized by a teacher, official, employee, or governing board member of any state university, state college, or community college, or by any person acting under his direction or with his consent in violation of standards relating to rights under the Fourth Amendment to the United States Constitution or under Section 13 of Article I of the State Constitution to be free from unreasonable searches and seizures, or in violation of state or federal constitutional rights to privacy, or any of them, is inadmissible in administrative disciplinary proceedings.

(b) Any provision in an agreement between a student and an educational institution specified in subdivision (a) relating to the leasing, renting, or use of a room of any student dormitory owned or operated by the institution by which the student waives a constitutional right under the Fourth Amendment to the United States Constitution or under Section 13 of Article I of the State Constitution, or under state or federal constitutional provision guaranteeing a right to privacy, or any of them, is contrary to public policy and void.

(c) Any evidence seized by a person specified in subdivision (a) after a nonconsensual entry not in violation of subdivision (a) into a dormitory room, which evidence is not directly related to the purpose for which such entry was initially made, is not admissible in administrative disciplinary proceedings.

SEC. 325. Section 653k of the Penal Code is amended to read:

653k. Every person who carries upon his person, and every person who sells, offers for sale, exposes for sale, loans, transfers, or gives to any other person a switch-blade knife having a blade over two inches in length is guilty of a misdemeanor.

For the purposes of this section a "switch-blade knife" is a knife having the appearance of a pocketknife, and shall include a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches long and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by the weight of the blade or by any type of mechanism whatsoever.

SEC. 326. Section 653o of the Penal Code is amended to read:

653o. (a) It is unlawful to import into this state for commercial purposes, to possess with intent to sell, or to sell within the state, the dead body, or any part or product thereof, of any alligator, crocodile, polar bear, leopard, ocelot, tiger, cheetah, jaguar, sable antelope, wolf (Canis lupus), zebra, whale, cobra, python, sea turtle, colobus monkey, kangaroo, vicuna, sea otter, free-roaming feral horse, dolphin or porpoise (Delphinidae), Spanish lynx, or elephant.

Any person who violates any provision of this section is guilty of a misdemeanor and shall be subject to a fine of not less than one thousand dollars ($1,000) and not to exceed five thousand dollars ($5,000) or imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, for each violation.

(b) The prohibitions against importation for commercial purposes, possession with intent to sell, and sale of the species listed in this section are severable. A finding of the invalidity of any one or more prohibitions shall not affect the validity of any remaining prohibitions.

SEC. 327. Section 859 of the Penal Code is amended to read:

859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which such complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that such representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the

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judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor. Upon the first court appearance of counsel, or upon a determination by a magistrate that the defendant can represent himself or herself, the prosecuting attorney shall, within two calendar days, deliver to, or make accessible for inspection and copying by, the defendant or counsel, copies of police, arrest and crime reports. Portions of such reports containing privileged information need not be disclosed if the defendant or counsel has been notified that privileged information has not been disclosed. If the charges against the defendant are dismissed prior to the time the above-mentioned documents are delivered or made accessible, the prosecuting attorney need not deliver or make accessible such documents unless otherwise so compelled by law.

SEC. 328. Section 871.5 of the Penal Code is amended to read:

871.5. If an action, or a portion thereof, is dismissed by a magistrate pursuant to Section 859b, 861, 871, or 1385, the prosecutor may make a motion, with notice to the defendant and magistrate, in the superior court within 10 days after the dismissal to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate, on the ground that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the people, they shall be prohibited from refiling the action, or the portion thereof, which was dismissed.

If, within 10 days after the magistrate has dismissed the action or a portion thereof, the prosecuting attorney files a written request for a transcript of the proceedings with the clerk of the magistrate, the reporter shall immediately transcribe his or her shorthand notes pursuant to Section 869 and file with the clerk of the superior court an original plus one copy, and as many copies as there are defendants (other than a fictitious defendant). The reporter shall be entitled to compensation in accordance with the provisions of Section 869. The clerk of the superior court shall deliver a copy of the transcript to the prosecuting attorney immmediately upon its receipt and shall deliver a copy of the transcript to each defendant (other than a

fictitious defendant) upon his or her demand without cost.

When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings within 10 days after the superior court has entered an order directing the reinstatement of the complaint, or a portion thereof, or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

Pursuant to paragraph (9) of subdivision (a) of Section 1238 the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. The review may only be sought in the event the defendant is held to answer pursuant to Section 872.

Nothing contained herein shall preclude a magistrate, upon the resumption of proceedings, from considering a motion made pursuant to Section 1318.

SEC. 329. Section 894 of the Penal Code is amended to read:

894. Sections 200, 201a, and 202.5 of the Code of Civil Procedure specify the exemptions and the excuses which relieve a person from liability to serve as a grand juror.

SEC. 330. Section 1170.6 of the Penal Code is amended to read:

1170.6. The Judicial Council shall continually study and review the statutory sentences and the operation of existing criminal penalties and shall report to the Governor and to the appropriate policy committees of the Legislature its analysis regarding this subject matter and as to all proposed legislation affecting felony sentences. The review and analysis shall take into consideration all of the following:

(a) The nature of the offense with the degree of danger the offense presents to society.

(b) The penalty of the offense as compared to penalties for offenses that are in their nature more serious.

(c) The penalty of the offense as compared to penalties for the same offense in other jurisdictions.

(d) The penalty of the offense as compared to recommendations for sentencing suggested by national commissions and other learned bodies.

SEC. 331. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not

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guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted, except as provided in Section 13555 of the Vehicle Code. The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of such defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

This subdivision applies to convictions which occurred before as well as those occurring after, the effective date of this section.

(b) Subdivision (a) does not apply to any misdemeanor falling within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

SEC. 332. Section 1413 of the Penal Code is amended to read:

1413. (a) The clerk or person having charge of the property section for any police department in any incorporated city or town, or for any sheriff's department in any county, shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and shall attach a number to each article, and make a corresponding entry thereof. He may engrave or imbed an identification number in property described in Section 537e for the purposes thereof.

(b) The clerk or person in charge of the property section may, upon satisfactory proof of the ownership of property held pursuant to Section 1407, and upon presentation of proper personal identification, deliver it to the owner. Such delivery shall be without prejudice to the state or to the person from whom custody of the property was taken or to any other person who may have a claim against the property. Prior to such delivery such clerk or person in charge of the property section shall make and retain a complete photographic record of such property. The person to whom property is delivered shall sign, under penalty of perjury, a declaration of ownership, which shall be retained by the clerk or person in charge of the property section. This subdivision shall not apply to any property subject to forfeiture under any provision of law. This subdivision shall not apply unless the clerk or person in charge of the property section has served upon the person from whom custody of the property was taken a notice of a claim of ownership and a copy of the satisfactory proof of ownership tendered and has allowed such person reasonable opportunity to be heard as to why the property should not be delivered to the person claiming ownership.

If the person upon whom a notice of claim and proof of ownership

has been served does not respond asserting a claim to the property within 15 days from the date of receipt of the service, the property may be disposed of in a manner not inconsistent with the provisions of this section.

(c) The magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, or the court before which a trial is had for stealing or embezzling it, shall upon application by the person from whom custody of the property was taken, review the determination of the clerk or person in charge of the property section, and may order the property taken into the custody of the court upon a finding that the person to whom the property was delivered is not entitled thereto. Such court shall make its determination in the same manner as a determination is made when the matter is before the court pursuant to Sections 1408 to 1410, inclusive.

(d) The clerk or person in charge of the property section is not liable in damages for any official action performed hereunder in good faith.

SEC. 333. Section 1551.2 of the Penal Code is amended to read:

1551.2. Proceedings for the commitment of a person charged under Sections 1551 and 1551.1 shall be similar to those provided in this code for the commitment of a person charged with a public offense in this state except that an exemplified copy of an indictment found, an information, a verified complaint, or other judicial proceedings against that person in the state in which he or she is charged or alleged to have committed the offense may be received as evidence before the magistrate.

SEC. 334. Section 1567 of the Penal Code is amended to read:

1567. When it is necessary to have a person imprisoned in the state prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made. The order shall be signed by the judge or magistrate and sealed with the seal of the court, if any. The order shall be to the following effect:

County of _____ (as the case may be).

The people of the State of California to the warden of _____ (or sheriff of _____, as the case may be):

An order having been made this day by me, that A. B. be produced in this court as witness in the case of _____, you are commanded to deliver him or her into the custody of _____.

Dated this _____ day of _____, 19____.

SEC. 335. Section 2903 of the Penal Code is amended to read:

2903. (a) In any case in which a woman offender can be sentenced to imprisonment in the county jail, or be required to serve a term of imprisonment therein as a condition of probation, or has already been so sentenced or imprisoned, the court which tried the offender may, with the consent of the offender and on application of

the sheriff or on its own motion, with the consent of the offender, commit the offender to the sheriff with directions for placement in the California Institution for Women in lieu of placement in the county jail if the court finds that the local detention facilities are inadequate for the rehabilitation of the offenders and if the court concludes that the offender will benefit from that treatment and care as is available at that institution and the county has entered into a contract with the state under subdivision (b). The offenders may be received by the Director of Corrections and imprisoned in the California Institution for Women in accordance with the commitment of the court by which tried. The prisoners so confined shall be subject in all respects to discipline, diagnosis, and treatment as though committed under the laws of this state concerning felony prisoners.

(b) The Director of Corrections may enter into contracts, with the approval of the Director of General Services, with any county in this state, upon request of the board of supervisors thereof, wherein the Department of Corrections agrees to furnish diagnosis and treatment services and detention for selected women county prisoners. The county shall reimburse the state for the cost of the services, the cost to be determined by the Director of Finance. In any contract entered into pursuant to this subdivision, the county shall agree to pay that amount which is reasonably necessary for payment of an allowance to each released or paroled prisoner for transportation to the prisoner's county of residence or county where employment is available, and may agree to provide suitable clothing and a cash gratuity to the prisoners in the event that they are discharged from that institution because of parole or completion of the term for which they were sentenced. Each county auditor shall include in his state settlement report rendered to the Controller in the months of January and June the amounts due under any contract authorized by this section, and the county treasurer, at the time of settlement with the state in those months, shall pay to the State Treasurer upon order of the Controller, the amounts found to be due.

(c) The Department of Corrections shall accept the women county prisoners if it believes that they can be materially benefited by the confinement, care, treatment and employment and if adequate facilities to provide the care are available. None of those persons shall be transported to any facility under the jurisdiction of the Department of Corrections until the director has notified the referring court that the person may be transported to the California Institution for Women and the time at which she can be received.

(d) The sheriff of the county in which an order is made placing a woman county prisoner pursuant to this section, or any other peace officer designated by the court, shall execute the order placing the person in the institution or returning her therefrom to the court. The expenses of the peace officer incurred in executing the order is a charge upon the county in which the court is situated.

(e) The Director of Corrections may return to the committing

authority any woman prisoner transferred pursuant to this section when that person is guilty of any violation of rules and regulations of the California Institution for Women or the Department of Corrections.

(f) No woman prisoner placed in the California Institution for Women pursuant to this section shall thereafter be deemed to have been guilty of a felony solely by virtue of such placement, and she shall have the same rights to parole and to time off for good behavior as she would have had if she had been confined in the county jail.

SEC. 336. Section 5006 of the Penal Code is amended to read:

5006. All moneys now held for the benefit of prisoners including that known as the Inmate Canteen Fund of the California Institution for Men, and the Inmate Welfare Fund of the California Institution for Women, and the Trust Contingent Fund of the State Prison at Folsom, and the S.P.L. Commissary, Canteen Account, Hobby Association, Camp Account, Library Fund, News Agency of the State Prison at San Quentin, the Prisoners' Fund, and the Prisoners' Employment Fund, shall be deposited in the Inmate Welfare Fund of the Department of Corrections, in the State Treasury, which fund is hereby created. The money in the fund shall be used for the benefit, education, and welfare of inmates of prisons and institutions under the jurisdiction of the Department of Corrections, including but not limited to the establishment, maintenance, employment of personnel for, and purchase of items for sale to inmates at canteens maintained at the state institutions, and for the establishment, maintenance, employment of personnel and necessary expenses in connection with the operation of the hobby shops at institutions under the jurisdiction of the Department of Corrections.

There shall be deposited in the Inmate Welfare Fund all net proceeds from the operation of canteens and hobby shops and any moneys which may be assigned to the state prison by prisoners for deposit in the fund. The moneys in the fund shall constitute a trust held by the Director of Corrections for the benefit and welfare as herein defined of all of the inmates of institutions and prisons under the jurisdiction of the Department of Corrections.

The Department of Finance shall conduct a biennial audit of the Inmate Welfare Fund to include an audit report which shall summarize expenditures from the fund by major categories. At the end of each intervening fiscal year, a statement of operations shall be prepared which shall contain the same information as would be provided in the biennial audit. At least one copy of any statement of operations or audit report shall be placed in each library maintained by the Department of Corrections and shall be available there to any inmate.

SEC. 337. Section 5007 of the Penal Code is amended to read:

5007. The Director of Corrections may invest any money in the Inmate Welfare Fund that in his opinion is not necessary for immediate use, with the approval of the Department of Finance, and interest earned and other increment derived from investments

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made pursuant to this section shall be paid into the Inmate Welfare Fund of the Department of Corrections.

SEC. 338. Section 5008 of the Penal Code is amended to read:

5008. The Director of Corrections shall deposit any funds of inmates in his possession in trust with the Treasurer pursuant to Section 16305.3 of the Government Code, except that the Director of Corrections, when specifically authorized on a separate written form by the inmate and subject to the approval of the Department of Finance, may deposit such funds in interest-bearing bank accounts or invest or reinvest such funds in any of the securities which are described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code and for the purposes of deposit or investment only may mingle the funds of any inmate with the funds of other inmates. The director shall deposit the interest or increment accruing on such funds in the Inmate Welfare Fund. Any interest or increment accruing on the funds of a parolee shall be deposited in his or her account.

SEC. 339. Section 13301 of the Penal Code is amended to read:

13301. As used in this article:

(a) "Record" means the master local summary criminal history information as defined in subdivision (a) of Section 13300, or a copy thereof.

(b) "A person authorized by law to receive a record" means any person or public agency authorized by a court, statute, or decisional law to receive a record.

SEC. 340. Section 13843 of the Penal Code is amended to read:

13843. (a) Allocation and award of funds made available under this chapter shall be made upon application to the Office of Criminal Justice Planning. All applications shall be reviewed and evaluated by the crime resistance task force in accordance with its established criteria, policy, and procedures. Applications deemed appropriate for funding consideration and those deemed not appropriate for funding will be transmitted, with explanatory comments, to the Executive Director of the Office of Criminal Justice Planning.

(b) The Executive Director of the Office of Criminal Justice Planning is authorized to allocate and award funds to communities developing citizen involvement and crime resistance programs in compliance with the policies and criteria developed by the California Crime Resistance Task Force as set forth in Sections 13844 and 13845. Applications receiving funding under this section shall be selected from among those deemed appropriate for funding by the crime resistance task force. Comprehensive crime prevention programs for the elderly as set forth in paragraph (1) of subdivision (a) of Section 13844 shall, in the aggregate, be included among program activities in local assistance grants receiving not less than 50 percent of funds available under this chapter.

(c) No single award of funds under this chapter shall exceed a maximum of one hundred twenty-five thousand dollars ($125,000) for a 12-month grant period. It is intended that at least eight local

project awards will be supported with funds made available under this chapter.

(d) Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Community Crime Resistance Program, be made available to support crime resistance programs in local law enforcement agencies.

(e) Within 90 days following the effective date of this chapter and in consultation with the California Crime Resistance Task Force, the executive director shall prepare and issue written program and administrative guidelines and procedures for the California Community Crime Resistance Program, consistent with this chapter. In addition to all other formal requirements that may apply to the enactment of such guidelines and procedures, a complete and final draft of them shall be submitted no later than 60 days following the effective date of this chapter to the Chairpersons of the Criminal Justice Committee of the Assembly and the Judiciary Committee of the Senate of the California Legislature.

(f) Annually, commencing November 1, 1978, the executive director shall prepare a report to the Legislature describing in detail the operation of the program and results obtained from the California Community Crime Resistance Program.

SEC. 341. Section 732 of the Probate Code is amended to read:

732. (a) Pursuant to subdivision (b), an attachment lien may be converted into a judgment lien upon property of the estate subject to the attachment lien in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, after entry of judgment in the action in which the property was attached and prior to the expiration of the attachment lien, the levying officer shall serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien upon the person holding property pursuant to the attachment or shall record or file an abstract of the judgment and a notice that the attachment lien has become a judgment lien in any office where the writ and notice of attachment are recorded or filed. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer. The judgment lien has the same priority as the attachment lien.

(c) After the death of the decedent, any one or more members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied upon pursuant to the attachment if the right to the exemption exists at the time the exemption is claimed. The executor or administrator of the decedent's estate may claim the exemption on behalf of such

member or members of the decedent's family. The claim of exemption may be made at any time prior to the time the abstract and notice has been served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

SEC. 342. Section 2313 of the Public Resources Code is amended to read:

2313. Within 90 days after the posting of his or her notice of location upon a lode mining claim, placer claim, tunnel right or location, or millsite claim or location, the locator shall record, in the office of the county recorder of the county in which the claim is situated, a true copy of the notice together with a statement by the locator of the markings of the boundaries as required by this chapter and the character of the markings, which statement also shall include the section or sections, township, range, and meridian of the United States survey within which all, or any part, of the claim is located.

Any person who willfully makes a false statement with respect to any mining claim on the posted location notice or on the recorded notice, or accompanying statement, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one hundred dollars ($100) or by imprisonment in the county jail not exceeding six months, or by both that fine and imprisonment.

SEC. 343. Section 2708 of the Public Resources Code is amended to read:

2708. Any city or county that has adopted an ordinance requiring the installation of accelerographs in structures shall be exempted from Section 2705, if both of the following have occurred:

(a) A minimum of one structure has been instrumented with three accelerographs installed in accordance with the ordinance prior to January 20, 1972.

(b) A written request has been sent to the State Geologist by the governing body of the city or county that it be exempted.

SEC. 344. Section 2760 of the Public Resources Code is amended to read:

2760. The board shall not adopt or revise the state policy, unless a public hearing is first held respecting its adoption or revision. At least 30 days prior to the hearing, the board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

SEC. 345. Section 3311 of the Public Resources Code is amended to read:

3311. In those suits, a restraining order shall not be issued ex parte, and a temporary or permanent injunction issued in the proceedings shall not be refused or dissolved or stayed pending appeal upon the giving of any bond or undertaking or otherwise, but otherwise the procedure, including the procedure on appeal, shall be conformable with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

In the proceedings, the findings of the supervisor, unless set aside, or except to the extent modified, by the director, shall constitute prima facie evidence of the unreasonable wastage of gas therein found to be occurring or threatened.

SEC. 346. Section 3470 of the Public Resources Code is amended to read:

3470. (a) All rules and regulations of the board shall be adopted, amended, and repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board shall adopt rules in accordance with subdivision (a) governing contents of, and fees for, applications for registrations under this article and procedures for review of applications and for approval, renewal, denial, and revocation of registrations. These rules shall provide for joint registrations for persons requiring more than one authorization under this article or other provisions administered by the board. The board shall also adopt rules prescribing provision of receipts, the keeping of records, and the filing of reports by registrants.

(c) The board shall register an applicant if it determines that the proposed means for collection, transport, transfer, storage, recycling, use, or disposal is operationally safe, environmentally sound, and consistent with this article and shall impose terms in connection with the registration requiring the registration holder to install or effect controls, processes, or practices necessary to insure continuous compliance with existing laws and regulations. A registration shall be valid until revoked.

(d) The board shall coordinate activities and functions with all other state agencies, including, but not limited to, the State Department of Health Services, the Department of Water Resources, and the State Water Resources Control Board, in order to avoid duplication in reporting and information gathering.

(e) The board shall prepare and submit an annual report to the Legislature, based in part on information submitted in accordance with Sections 3467, 3468, and 3469, summarizing information on used oil collection and recycling and registrations, analyzing the effectiveness of the provisions of this article in implementing the policies prescribed in Section 3463, and making recommendations for necessary changes in the provisions or their administration.

SEC. 347. Section 4143 of the Public Resources Code is amended to read:

4143. The Legislature hereby finds and declares that the maintenance of the economic well-being of the state and the public health and safety require that the state, through the department, obtain full utilization of all equipment, personnel, and buildings under the jurisdiction of the Director of Forestry. In order to obtain these benefits, the director, in accordance with policy determined by the board, may provide personnel for and operate such fire stations, statewide, as he deems necessary to provide the best possible fire

protection. Personnel or equipment shall not be assigned to any location or assigned pursuant to Section 4144 if the assignment would not meet policy and standards established by the board. The standards shall be designed to assure that the striking force and efficiency of the department in its primary mission of wildland fire protection will not be reduced or impaired. The policy and standards shall be designed to assure that the department will not need any additional funds to operate its programs.

The normal assignment of fire resources of the department to southern California during periods of critical fire weather conditions or during major wildland fires shall not be impaired and shall receive priority over agreements made with specified counties pursuant to Section 4144.

SEC. 348. Section 4186 of the Public Resources Code is amended to read:

4186. All money which is received by this state pursuant to the Clarke-McNary Act and which is regularly allotted by the federal government according to an annual formula shall be paid into the General Fund. Any supplemental money received from the federal government pursuant to the Clarke-McNary Act for use by the department for specially designated projects shall be authorized by the Director of Finance for augmentation of the subitem captioned "Reimbursements" of the principal item of appropriation from the General Fund for the support of the department contained in the Budget Act for the fiscal year during which the supplemental money is received. However, the Director of Finance may not authorize the augmentation sooner than 30 days after notification in writing of the necessity therefor to the chairman of the committee in each house which considers appropriations and to the Chairman of the Joint Legislative Budget Committee or sooner than any lesser time which the chairman of that committee, or his designee, may in each instance determine.

SEC. 349. Section 4423.1 of the Public Resources Code is amended to read:

4423.1. Burning under permit or other uses of open fire by any person on public or private lands, except within incorporated cities, may be suspended or otherwise prohibited by proclamation. Any of the following public officers may issue a proclamation, which shall be applicable within their respective jurisdictions:

(a) The director.

(b) Any county fire warden with the approval of the director.

(c) The federal officers directing activities within California of the United States Bureau of Land Management, the National Park Service, and the United States Forest Service.

The proclamation may be issued when in the judgment of the issuing public official the menace of destruction by fire to life, improved property, or natural resources is, or is forecast to become, extreme due to critical fire weather, fire suppression forces being heavily committed to control fires already burning, acute dryness of

the vegetation, or other factors that may cause the rapid spread of fire. A proclamation shall be effective on issuance or at a time specified therein and remain in effect until an order of termination is issued. The proclamation shall declare the conditions that necessitate its issuance, designate the geographic area to which it applies, require that all or specified uses of open fire or burning under permit be suspended until the conditions necessitating the proclamation abate, and identify the public official issuing the proclamation. The proclamation shall be immediately released to the news media serving the area affected. Upon termination of a proclamation, the public shall be given immediate notice thereof through the news media serving the area affected thereby.

The proclamation may be issued without complying with provisions of Chapters 3.5 (commencing with Section 11340) and 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 350. Section 4431 of the Public Resources Code is amended to read:

4431. During any time of the year when burning permits are required in an area pursuant to this article, no person shall use or operate or cause to be operated in the area any portable saw, auger, drill, tamper, or other portable tool powered by a gasoline-fueled internal combustion engine on or near any forest-covered land, brush-covered land, or grass-covered land, within 25 feet of any flammable material, without providing and maintaining at the immediate locations of use or operation of the saw or tool, for firefighting purposes one serviceable round point shovel, with an overall length of not less than 46 inches, or one serviceable fire extinguisher. The Director of Forestry shall by administrative regulation specify the type and size of fire extinguisher necessary to provide at least minimum assurance of controlling fire caused by use of portable power tools under various climatic and fuel conditions.

The required fire tools shall at no time be farther from the point of operation of the powersaw or tool than 25 feet with unrestricted access for the operator from the point of operation.

SEC. 351. Section 4438 of the Public Resources Code is amended to read:

4438. Waste flammable material incident to the processing of forest products may be disposed of by means of fire in an enclosed device effective in preventing the spread of sparks or fire, situated in an area cleared of grass, grain, brush, slash, litter, and snags for a distance of 100 feet surrounding the device or by landfill or other methods which meet applicable state and local fire safety and air and water quality standards. The disposal shall be done in compliance with regulations established by the director, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or the purpose of eliminating the potential of fire or other safety hazards resulting from spontaneous combustion or other ignition sources.

A burning permit shall be obtained for the use of the device pursuant to Section 4423 and all other provisions of law.

SEC. 352. Section 4446 of the Public Resources Code is amended to read:

4446. Every person shall exercise reasonable care in the disposal of flammable material so that the material does not cause the inception of or spread of uncontrolled fire. A person shall not burn any flammable material in any incinerator within any state responsibility area, within any area receiving fire protection by the director by contract, or upon federal lands administered by the United States Department of Agriculture or Department of the Interior, unless all of the following minimum requirements are complied with:

(a) The area within 10 feet of the exterior of the incinerator is maintained free and clear of all flammable material and vegetation.

(b) A screen constructed of a nonflammable material, with no greater than ¼-inch mesh, or metal doors, close or cover each opening in the exterior of an incinerator to prevent the escape of flames, sparks, ashes, or other burning material which might cause an uncontrolled fire.

(c) A permit is obtained prior to burning for the use of the incinerator pursuant to Section 4423 and all other applicable provisions of law.

This section does not apply to the disposal of flammable material incident to the processing of forest products.

SEC. 353. Section 4476 of the Public Resources Code is amended to read:

4476. Any contract which is entered into pursuant to this article shall do all of the following:

(a) Vest in the director the final authority to determine the time during which wildland fuel and structural fire hazards may be burned to minimize the risk of escape of a fire set in a prescribed burning operation and to facilitate maintenance of air quality.

(b) Clearly state the obligation of each party to the contract to provide, maintain, and repair equipment and indicate the number of each type of equipment to be provided and the duration of its availability.

(c) Designate an officer of the department as the fire boss with final authority to approve and amend the plan and formula applicable to the prescribed burning operation, to determine that the site has been prepared and the crew and equipment are ready to commence the operation, and to supervise the work assignments of departmental employees and all persons furnished by the person contracting with the department until the prescribed burning is completed and all fire is declared to be out.

(d) Provide that any personnel furnished by the person contracting with the department to assist in any aspect of site preparation or prescribed burning shall be agents of the person contracting with the department for all purposes of worker

compensation. However, any volunteer recruited or used by the department to suppress a wildland fire originating or spreading from a prescribed burning operation is an employee of the department for all purposes of worker compensation.

(e) Specify the value assigned to the materials, services, or equipment furnished by the person contracting with the department in lieu of payment of all or part of that person's share of the actual costs.

(f) Specify the director's estimate of total actual costs and the share of the costs of each party to the contract. The person contracting with the department shall, prior to the commencement of any work by the department, place on deposit, in an interest-bearing escrow or trust account with a California-licensed financial institution, an amount equal to the depositor's estimated share of the actual costs, less the value of materials, services, or equipment specified pursuant to subdivision (e). The deposit shall be subject to an escrow or trust instruction that final disbursement of the principal amount on deposit may only be made upon the signatures of both the depositor and the director or by court order; however, interest earned on that account shall accrue to the depositor and may be separately disbursed from the principal amount upon request of the depositor. Upon completion of the contract, the director shall determine the actual costs incurred by the state in the performance of the contract, excluding any costs to the department for suppressing any wildland fire originating or spreading from the prescribed burning operation. The costs shall be certified by the director and approved by the depositor, then submitted to the trustee for disbursement. Funds on deposit in excess of the depositor's share of actual costs shall be returned by the trustee to the depositor. If the amount of the depositor's share of actual costs is more than the amount on deposit, the director shall submit an itemized statement showing the balance due, and the person contracting with the department shall, within 90 days of the submittal of the statement, make payment to the director of the balance due.

(g) Provide that the department shall purchase a third party liability policy of insurance which provides coverage against loss resulting from a wildland fire sustained by any person or public agency, including the federal government. The amount of the policy shall be determined by the director. The policy shall name the person contracting with the department and the department as joint policy holders. The policy premium shall be included as an actual cost incurred by the state in the performance of the contract. A certificate of insurance covering each policy shall be attached to and become a part of the contract.

SEC. 354. Section 4551 of the Public Resources Code is amended to read:

4551. The board shall adopt district forest practice rules and regulations for each district in accordance with the policies set forth

in Article 1 (commencing with Section 4511) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, and wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries.

SEC. 355. Section 4554 of the Public Resources Code is amended to read:

4554. Except for emergency regulations or orders of repeal adopted pursuant to Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, the board shall not adopt or revise rules, regulations, or resource conservation standards unless a public hearing is first held respecting their adoption or revision. At least 30 days prior to the hearing, the board shall give notice of the hearing by publication pursuant to Section 6061 of the Government Code.

SEC. 356. Section 4555 of the Public Resources Code is amended to read:

4555. If the director determines that a substantial question exists concerning whether the intent of this chapter is currently provided for by the rules and regulations of the board, and that approval of a timber harvesting plan which has been filed could result in immediate, significant, and long-term harm to the natural resources of the state, the director may withhold decision on a timber harvesting plan. However, within five days of that action, the director shall notify the board of that action. Within 30 days of the receipt of the notice, the board shall, after a public hearing, make a determination as to whether or not the intent of this chapter has been provided for in the rules and regulations of the board. The determination shall be conclusive.

If the board finds that the intent of this chapter has not been provided for in the rules and regulations, the board shall act to amend the rules by emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall act upon the plan within five days of the board's action. Emergency regulations adopted pursuant to this section shall be effective for no more than 120 days. The regulations may be made permanent if the board acts to adopt or revise its rules and regulations pursuant to procedures established in this article for the adoption of other than emergency regulations.

SEC. 357. Section 4582.8 of the Public Resources Code is amended to read:

4582.8. (a) Within 10 days after a timber harvesting plan is deemed in conformance under Section 4582.7, or within 10 days after receipt of a notice of timber operations pursuant to subdivision (b), the director shall transmit copies thereof to the State Board of Equalization and the assessor of the county in which the timber subject to the harvesting plan or notice is located.

Within 10 days after receipt of a copy of the timber harvesting plan or notice, the county assessor shall assign the appropriate tax rate area designations to the plan or notice and transmit copies thereof to the timber owner listed in the timber harvesting plan or notice and to the State Board of Equalization.

(b) Within 10 days of harvesting timber on land not subject to a timber harvesting plan, including public lands of a federal agency, each timber owner or operator shall notify the county assessor of the location of the harvest and the assessor shall assign the appropriate tax rate area designations and shall transmit copies thereof to the timber operator, if the land from which the timber is to be harvested is public land of a federal agency, or to the timber owner, if the land is timberland, as defined in Section 51100 of the Government Code, and to the State Board of Equalization.

SEC. 358. Section 4621.2 of the Public Resources Code is amended to read:

4621.2. (a) If the timberlands which are to be devoted to uses other than the growing of timber are zoned as timberland preserve zones under Section 51112 or 51113 of the Government Code, the application shall specify the proposed alternate use and shall include any information which the board determines to be necessary to evaluate the proposed alternate use. The board shall approve the application for conversion only if the board makes all of the following written findings:

(1) The conversion would be in the public interest.

(2) The conversion would not have a substantial and unmitigated adverse effect upon the continued timber-growing use or open-space use of other land zoned as timberland preserve and situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(3) The soils, slopes, and watershed conditions would be suitable for the uses proposed if the conversion were approved.

(b) The existence of an opportunity for an alternative use of the land is not alone sufficient reason for conditionally approving an application for conversion. Conversion shall be considered only if there is no proximate and suitable land which is not zoned timberland preserve for the alternate use not permitted within a timberland preserve zone.

(c) The uneconomic character of the existing use is not sufficient reason for the conditional approval of conversion. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable timber-growing use to which the land may be put.

(d) The board shall establish and publish a rate schedule of fees to be paid by the landowner for the cost of processing the application and recording the necessary documentation.

(e) If the board delegates its responsibilities under this section to the director pursuant to Section 4627, the director shall make the written findings required by subdivision (a). If the director denies

a conversion, the applicant may request a hearing before the board within 15 days of the denial. The hearing shall be scheduled within 60 days from the filing of the appeal.

SEC. 359. Section 4656 of the Public Resources Code is amended to read:

4656. This chapter does not interfere with the reasonable use of state forests for hunting, fishing, recreation and camping, except as otherwise provided by law.

The use of state forest lands for grazing and mining purposes shall be permitted pursuant to regulations established by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The use and development of water facilities for irrigation and power shall be permitted as provided by law.

SEC. 360. Section 4656.1 of the Public Resources Code is amended to read:

4656.1. The board may establish rules and regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the preservation, protection, and use of state forests and for the promotion and protection of public health and safety within state forests.

SEC. 361. Section 5003.7 of the Public Resources Code is amended to read:

5003.7. (a) For due, owing, and unpaid charges or fees for water, sewage, gas, electricity, garbage, or other utility services furnished by the Department of Parks and Recreation or the Department of General Services to real property, the department shall have a lien on that real property upon filing a notice of lien with the county recorder.

(b) The notice of lien shall contain all of the following:

(1) A description of the subject real property.

(2) The total amount of the lien.

(3) The type of service furnished.

(4) The period during which service was furnished, the amount owing for the period of service, and the date upon which the amount became due.

(5) A verified statement that notice of the delinquent charges or fees was mailed, postage prepaid, to the owner of record, to any other known owner, and to the person in possession of the subject real property at their last known address at least 30 days prior to the filing of the notice of lien with the county recorder.

(c) The lien shall not extend to delinquent charges or fees incurred more than four years prior to the filing of the notice of lien. The lien shall, except as provided in subdivision (e), continue in effect for four years after the filing of the notice of lien, unless sooner extinguished by payment, satisfaction, or merger in judgment of foreclosure.

(d) Within four years after the notice of lien is filed of record, an

action to foreclose the lien may, notwithstanding any other provision of law, be brought in the name of the people in any court having jurisdiction to hear and dispose of actions to foreclose mechanics' liens for like amounts. If the action is commenced in a court of competent jurisdiction in Sacramento County, the court is the proper court for trial, without regard to the residence of the defendants.

(e) Upon recording of lis pendens, the notice of lien shall continue in effect until the recording of the abstract of judgment thereon, unless the lien be otherwise extinguished, but not in any event in excess of 10 years from the date of recording of the notice of lien. The lien of abstract shall take priority from the date of recordation of the notice of lien.

(f) The Director of Parks and Recreation or the Director of General Services, as the case may be, or the Attorney General may execute and file those notices, releases, and satisfaction, as may be necessary or convenient in carrying out this section.

SEC. 362. Section 5019.10 of the Public Resources Code is amended to read:

5019.10. The Department of Parks and Recreation may enter into contracts with persons, firms, or corporations to construct, maintain, and operate concessions within the state park areas for the safety and convenience of the general public in the use and enjoyment of the state park system. The approval of the Director of General Services is not required, notwithstanding Section 11005.2 of the Government Code or other provisions of law, unless the contract authorizes occupancy of the state park system for a period of more than one year.

SEC. 363. Section 5019.53 of the Public Resources Code is amended to read:

5019.53. State parks consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archaeological, ecological, geological, or other such values. The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of such ecological regions of California as the Sierra Nevada, northeast volcanic, great valley, coastal strip, Klamath-Siskiyou Mountains, southwest mountains and valleys, redwoods, foothills and low coastal mountains, and desert and desert mountains.

Each state park shall be managed as a composite whole in order to restore, protect, and maintain its native environmental complexes to the extent compatible with the primary purpose for which the park was established.

Improvements undertaken within state parks shall be for the purpose of making the areas available for public enjoyment and education in a manner consistent with the preservation of natural, scenic, cultural, and ecological values for present and future generations. Improvements may be undertaken to provide for

recreational activities including, but not limited to, camping, picknicking, sightseeing, nature study, hiking, and horseback riding, so long as such improvements involve no major modification of lands, forests, or waters. Improvements which do not directly enhance the public's enjoyment of the natural, scenic, cultural, or ecological values of the resource, which are attractions in themselves, or which are otherwise available to the public within a reasonable distance outside the park, shall not be undertaken within state parks.

State parks may be established in either the terrestrial or underwater environments of the state.

SEC. 364. Section 5093.62 of the Public Resources Code is amended to read:

5093.62. Nothing in this chapter shall affect the jurisdiction or responsibility of the state with regard to fish and wildlife. Hunting and fishing may be permitted on lands and waters administered as parts of the system under applicable state or federal laws and regulations.

SEC. 365. Section 6332 of the Public Resources Code is amended to read:

6332. The commission shall:

(a) Adopt and enforce such rules and regulations as may be necessary or convenient to carry out the purposes of this article in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, in accordance with the following requirements:

(1) All data such as survey notes and factual and historical materials which have been obtained by investigation and survey and considered in connection with the establishment of each ungranted tideland parcel boundary shall be perpetuated, filed, indexed, and made available in the office of the commission for public inspection and use upon request.

(2) Surveys of ungranted tideland boundary lines made by the state, or made under contract with the state, or adopted by the state, shall sufficiently tie the surveyed boundary lines to record monuments disclosed by the public records in the office of the county recorder of the county in which the land so surveyed is located to the extent that adjoining property owners and officials of the local agency and others may determine the relation of the surveyed boundary lines to record title boundaries without additional survey.

(3) United States Coast and Geodetic Survey data shall be used in areas where available to establish boundary lines which are required under the title circumstances to be established in accordance with federal law. In areas where tideland boundary lines are required to be established under title circumstances which require the application of California law, available United States Coast and Geodetic Survey data shall be used but corrected as required. Consideration shall be given in each survey to any seiche condition which may exist in the surveyed area.

(4) Consideration shall be given to the effect of any prior accretion and erosion in each surveyed area. Consideration shall also be given to the confirmation of title boundaries of lands claimed to be in private or public ownership, which lands support improvements of long standing authorized by governmental action.

(5) Boundary lines so established and surveyed shall take into consideration any statutes of limitations applicable to the validity of patents, and the finality of boundary line agreements and boundary and exchange agreements adopted prior to, or on or after, January 1, 1976, and whether entered into pursuant to Section 6307 or 6357, or any other statutes of this state, or otherwise.

(6) When establishing and surveying the line of ordinary high water, the then existing location of that line shall be used unless there is clear and convincing evidence that that location is not the last natural position of the line according to applicable federal or state laws.

(b) Contract with all agencies, public and private, as the commission may deem necessary for the rendition and affording of services and facilities to the commission pursuant to this article and for all other purposes related thereto.

(c) Do all other acts necessary to carry out the requirements and purposes of this article within the limit of its authority conferred by law, including this article.

SEC. 366. Section 9104 of the Public Resources Code is amended to read:

9104. The members of the commission shall receive no compensation for their services as members, but each shall be allowed reasonable and necessary expenses incurred in attendance at meetings of the commission or when otherwise engaged in the work of the commission at its direction.

SEC. 367. Section 9183 of the Public Resources Code is amended to read:

9183. The petition shall be signed and validated by either of the following:

(a) Not less than 100 landowners or a majority if there are less than 200 landowners in the proposed area.

(b) If a majority of the total landowners owning a majority of the private lands within the proposed district sign the petition and if, at the hearing as provided in Article 4 (commencing with Section 9211), the board of supervisors finds it is in the public interest and welfare to form such a district, it may, by an order entered on its minutes, declare that to be its finding, and may further declare and order that the territory within the boundaries fixed by the board shall be organized as a district and declared duly formed without an election. The order shall name the district and appoint the first board of five directors; the board of directors shall then proceed to organize and shall be governed by all the rest of the provisions of this division.

SEC. 368. Section 13111 of the Public Resources Code is amended to read:

13111. The provisions of the Elections Code relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections so far as they may be applicable shall govern all district elections except:

(a) To the extent that the provisions of the Elections Code pertaining to the conduct of local elections are inconsistent with the provisions of that code pertaining to general elections, the provisions pertaining to local elections shall control.

(b) Inconsistent provisions of this division shall control over any provisions of the Elections Code.

SEC. 369. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d), to be submitted in support of any of the activities listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) The provisions of this section shall apply only to regulatory programs or portions thereof which involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) and Section 21167.

(d) In order to qualify for certification pursuant to this section, a regulatory program shall require utilization of an interdisciplinary approach which will ensure the integrated use of the natural and social sciences in decisionmaking and shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program shall:

(A) Include protection of the environment among its principal purposes.

(B) Contain authority for the administering agency to promulgate rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency shall:

(A) Require that an activity will not be approved or adopted as proposed, if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. The notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the office of the Resources Agency. Each list shall remain posted for a period of 30 days.

(F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person with sufficient time to review and comment on filing.

(3) The plan or other written documentation required by the regulatory program shall:

(A) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact.

(B) Be available for a reasonable time for review and comment by other public agencies and the general public.

(e) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets the qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the Secretary of the Resources Agency shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under such regulatory program, including the nature of specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity.

If the Secretary of the Resources Agency determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for that determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program which could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity. The secretary shall have 30 days after receipt of the proposed change to notify the state agency, board, or commission whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section, on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced no later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) Any action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section, on the basis that the regulatory program does not comply with this section, shall be commenced within 30 days after certification by the secretary.

In any action brought under this subdivision, the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the Secretary of the Resources Agency. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner shall be considered a state agency.

SEC. 370. Section 21083 of the Public Resources Code is amended to read:

21083. The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment." The criteria shall require a finding that a project may have a "significant effect on the

environment" if any of the following conditions exist:

(a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(b) The possible effects of a project are individually limited but cumulatively considerable. As used in this subdivision, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

The guidelines shall also include procedures for determining the lead agency pursuant to Section 21165.

The guidelines shall also include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that it should be submitted to appropriate state agencies for review and comment prior to completion of an environmental impact report or negative declaration thereon.

The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

SEC. 371. Section 21087 of the Public Resources Code is amended to read:

21087. The Office of Planning and Research shall periodically review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. Changes or amendments to the guidelines shall be adopted by the secretary in conformance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 372. Section 25210 of the Public Resources Code is amended to read:

25210. The commission may hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers and duties prescribed by this division and, for those purposes, has the same powers as are conferred upon heads of departments of the state by Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 373. Section 25213 of the Public Resources Code is amended to read:

25213. The commission shall adopt rules and regulations, as

necessary, to carry out the provisions of this division in conformity with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall make available to any person upon request copies of proposed regulations, together with summaries of reasons supporting their adoption.

SEC. 374. Section 25502 of the Public Resources Code is amended to read:

25502. Each person proposing to construct a thermal powerplant or electric transmission line on a site shall submit to the commission a notice of intention to file an application for the certification of the site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standards of the commission and forecasts adopted pursuant to Sections 25216.3 and 25309. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration in an application for certification without further proceedings required for a notice under this chapter.

SEC. 375. Section 25964 of the Public Resources Code is amended to read:

25964. After 24 months after an intermittent ignition device has been certified by the commission, no person shall sell or offer for sale in this state any new gas appliances, as defined in Section 25950, without obtaining the proper seal of certification from the commission, unless the commission otherwise permits such action. Beginning 24 months after an intermittent ignition device has been certified by the commission, no city or county, city and county, or state agency shall issue a permit for any building to be equipped with any new gas appliance, as defined in Section 25950, unless such building permit shows that the gas appliance complies with this chapter. However, any new gas appliance which does not comply with this chapter may be installed if the appliance was purchased pursuant to a contract executed prior to June 17, 1978, and if the building permit was approved prior to July 8, 1978.

SEC. 376. Section 26004 of the Public Resources Code is amended to read:

26004. There is in the state government the California Alternative Energy Source Financing Authority. The authority constitutes a public instrumentality and the exercise by the authority of powers conferred by this division is the performance of an essential public function.

The authority shall consist of five members: the Director of Finance, the Chairman of the State Energy Resources Conservation and Development Commission, the President of the Public Utilities

Commission, the Controller, and the Treasurer who shall serve as the chairman of the authority.

The Director of Finance, the Chairman of the State Energy Resources Conservation and Development Commission, and the President of the Public Utilities Commission may each designate a deputy or clerk in his agency to act for him and represent him at all meetings of the authority.

The first meeting of the authority shall be convened by the Treasurer.

SEC. 377. Section 26563 of the Public Resources Code is amended to read:

26563. The notice shall set forth the time, date, and place of the hearing, briefly describe the purpose thereof, and indicate where the plan of control may be reviewed or duplicated, at a cost not to exceed the cost of duplication. The notice shall also set forth the address where objections to the proposed formation may be mailed or otherwise delivered up to and including the time of the hearing.

SEC. 378. Section 26703 of the Public Resources Code is amended to read:

26703. To carry out the provisions of this division, the Office of Appropriate Technology activities shall do all of the following:

(a) Investigate and evaluate the capital outlay projects proposed by the Governor and enacted by the Legislature, and ensure that they include all feasible resource and energy conserving features which are cost effective, as determined by life cycle cost analysis.

(b) Provide technical assistance and advice to the Legislature and all state agencies concerning the status of developing technologies and the opportunities for use by the state.

(c) Inform and assist citizens and local governments to use or adopt innovative and energy conserving technologies which will save money through lowered capital and operating costs.

(d) Coordinate its efforts with other state agencies, local governments, and private businesses in order to prevent duplication of research and program activities.

(e) Deliver to the Legislature an annual summary of the accomplishments of the office.

SEC. 379. Section 30168 of the Public Resources Code, as added by Chapter 170 of the Statutes of 1980, is amended and renumbered to read:

30169. (a) The Legislature hereby finds and declares that a dispute exists as to the proper location of the inland boundary of the coastal zone in the area commonly known as Aliso Viejo and that, after extensive review of the history of this boundary segment, the criteria utilized to establish the boundary in 1976, and the relevant topographical information, it is possible to reach differing conclusions of equal validity regarding the proper location of the coastal zone boundary. The Legislature further finds that it is not possible to determine objectively which ridgeline feature in the Aliso Viejo area most closely approximates the boundary criteria utilized

by the Legislature in 1976, and that it is in the best public interest to resolve the current boundary dispute in order to avoid further delay in the completion of the local coastal program for Orange County. The Legislature further finds that a timely resolution of this boundary dispute can best be accomplished by adjusting the coastal zone boundary in the manner set forth in this section and within the general framework of Section 30103 and consistent with the need to protect the coastal resources of the Aliso Viejo area and to carry out the requirements of Section 30213.

(b) In the Aliso Creek area of Orange County approximately 286 acres are added and approximately 1,020 acres are excluded as specifically shown on maps 28A and 28B dated April 15, 1980, and filed on April 22, 1980, with the office of the Secretary of State and which are on file in the office of the commission. The maps are hereby adopted by reference. The changes made in the inland boundary of the coastal zone by this section are in addition to any changes made by any map referred to in Section 30150, except to the extent that the changes made by this section affect a segment of the boundary previously changed by the map, in which case the changes made by this section shall supersede any of those previous changes.

(c) The executive director of the commission may adjust the precise location of the inland boundary of the coastal zone not more than 100 yards in either a seaward or landward direction in order to conform the precise boundary location to the specific limits of development adjacent to the coastal zone boundary as shown on maps 28A and 28B. However, in any subdivided area, the executive director may adjust the precise location of the inland boundary of the coastal zone not more than 100 feet in a landward direction in order to include any development of the first row of lots immediately adjacent to the boundary as shown on those maps, where the executive director determines that the adjustment is necessary to ensure that adequate controls will be applied to the development in order to minimize any potential adverse effects on the coastal zone resources. The executive director shall prepare a detailed map showing any of the changes and shall file a copy of the map with the county clerk.

(d) Prior to the adoption and approval of a drainage control plan by the County of Orange for the Aliso Viejo Planned Community (as designated by Amendment No. L. U. 79-1 to the Land Use Element of the Orange County General Plan), the county shall consult with the executive director of the commission to ensure that any drainage control facilities located outside the coastal zone are adequate to provide for no increase in peak runoff, by virtue of the development of the Aliso Viejo Planned Community, which would result in adverse impacts on coastal zone resources.

(e) On or before January 31, 1981, the commission shall, after public hearing and in consultation with the County of Orange, certify or reject a local coastal program segment prepared and submitted by the county on or before August 1, 1980, for the

following parcel in the Aliso Creek area: land owned by the Aliso Viejo Company, a California corporation, as of April 22, 1980, within the coastal zone as amended by this section. The local coastal program required by this subdivision shall, for all purposes of this division, constitute a certified local coastal program segment for that parcel in the County of Orange. The segment of the county's local coastal program for the parcel may be amended pursuant to this division relating to the amendment of local coastal programs. If the commission neither certifies nor rejects the submitted local coastal program within the time limit specified in this subdivision, the land added to the coastal zone by this section shall no longer be subject to this division. It is the intent of the Legislature in enacting this subdivision, that a procedure to expedite the preparation and adoption of a local coastal program for that land be established so that the public and the affected property owner know as soon as possible what uses are permissible.

(f) The commission, through its executive director, shall enter into a binding and enforceable agreement with Aliso Viejo Company, and the agreement shall be recorded as a covenant to run with the land with no prior liens other than tax and assessment liens restricting the Aliso Viejo Planned Community. The agreement shall provide for all of the following:

(1) The Aliso Viejo Company shall provide at least 1,000 units of for-sale housing to moderate-income persons at prices affordable to a range of households earning from 81 to 120 percent of the median income for Orange County as adjusted for family size pursuant to the commission's housing guidelines on affordable housing dated January 22, 1980, and July 16, 1979, and any additional provisions as agreed to between the commission and the Aliso Viejo Company as referred to in this subdivision.

For purposes of this subdivision, median income constitutes the figure most recently established by the Department of Housing and Urban Development at the time the public report for the units, or any portion thereof, is issued by the Department of Real Estate. The affordable units required by this subdivision shall be priced equally over the moderate-income range and shall reflect a reasonable mix as to size and number of bedrooms.

(2) The 1,000 units provided pursuant to this subdivision shall be sold subject to controls on resale substantially as provided in the commission's housing guidelines on affordable housing, dated January 22, 1980, and July 16, 1979, and any additional provisions as agreed to between the commission and the Aliso Viejo Company as referred to in this subdivision. On or before entering the agreement provided for herein, the Aliso Viejo Company shall enter into an agreement, approved by the executive director of the commission, with the Orange County Housing Authority or any other appropriate housing agency acceptable to the executive director of the commission to provide for the administration of the resale controls including the qualification of purchasers.

(3) The 1,000 units provided pursuant to this subdivision may be dispersed throughout the Aliso Viejo Planned Community, and shall be completed and offered for sale prior to, or simultaneously with, other units in the overall project, so that at any time at least 7½ percent of the units constructed shall be resale-controlled until the 1,000 units are completed.

(4) The Department of Housing and Community Development and the County of Orange shall be third party beneficiaries to the agreement provided in this subdivision and shall have the power to enforce any and all provisions of the agreement.

(5) This agreement may only be amended upon the determination of the Aliso Viejo Company or its successors or assigns, the commission, the Department of Housing and Community Development, and the County of Orange that the change is necessary in order to prevent adverse effects on the supply of low- and moderate-income housing opportunities and to improve the methods of providing the housing at continually affordable prices.

The Legislature hereby finds and declares that, because the Aliso Viejo Company, in addition to the 1,000 units of controlled housing provided in this subdivision, will provide for 2,000 units of subsidized affordable housing for low income persons and 2,000 affordable housing units for moderate income persons pursuant to the company's housing program, the purposes of Section 30213 will be met by enactment of this subdivision. The Legislature further finds and declares that the general provisions of this subdivision are specifically described and set forth in letters by Aliso Viejo Company and the executive director of the commission published in the Journals of the Senate and the Assembly of the 1979–80 Regular Session, and it is the intent of the Legislature that the commission and Aliso Viejo Company conform the agreement provided in this subdivision to the specific provisions described in the letters.

(g) Notwithstanding any other provision of law, the application of this division by the commission to the development or use of any infrastructure necessary and appropriate to serve development within the portions of the Aliso Viejo Planned Community located inland of the coastal zone as amended by this section, shall be strictly limited to addressing direct impacts on coastal zone resources and shall be carried out in a manner that assures that the infrastructure will be provided. Furthermore, the commission shall amend without conditions its prior permit No. A-61-76 to provide for its release of sewer outfall flow limitations necessary and appropriate to serve the Aliso Viejo Planned Community located inland of the coastal zone as amended by this subdivision. For purposes of this subdivision, "infrastructure" means those facilities and improvements necessary and appropriate to develop, construct, and serve urban communities, including but not limited to, streets, roads, and highways; transportation systems and facilities; schools; parks; water and sewage systems and facilities; electric, gas, and communications systems and facilities; and drainage and flood control systems and

facilities. Notwithstanding this subdivision, the commission may limit, or reasonably condition, the use of the transit corridor in Aliso Creek Valley to transit uses, uses approved by the commission that will serve the Aliso Greenbelt Project prepared by the State Coastal Conservancy, the provision of access to and from the sewage treatment works in Aliso Creek Valley, emergency uses, and drainage and flood control systems and facilities and other services approved pursuant to this subdivision.

(h) This section shall become operative only when the commission and Aliso Viejo Company have entered into the binding and enforceable agreement provided for in this section, and the agreement has been duly recorded with the county recorder of Orange County.

SEC. 380. Section 30170.6 of the Public Resources Code, as added by Chapter 1103 of the Statutes of 1980, is amended and renumbered to read:

30170.7. Notwithstanding Section 17 of Chapter 1330 of the Statutes of 1976, as amended by Section 29 of Chapter 1331 of the Statutes of 1976, any map dated September 12, 1979, and filed on September 14, 1979, with the office of the Secretary of State, or any provision of Section 30170, the inland boundary of the coastal zone in that portion of the County of San Diego known as Green Valley is generally described by a line commencing on the existing coastal zone boundary at a point on the westerly right-of-way of El Camino Real that is 1,000 feet southeasterly of the mean high tide line of Batiquitos Lagoon; westerly for 3,000 feet along a line 1,000 feet southerly from the mean high tide line of Batiquitos Lagoon; southerly for 6,500 feet along a line 3,000 feet westerly of El Camino Real; and easterly to a point in the vicinity of the intersection of El Camino Real and Olivenhain Road on the existing coastal zone boundary.

This section shall not become operative if, within six months following submission to the regional commission, the commission approves, or approves with conditions, pursuant to Section 30512 that portion of the County of San Diego's land use plan of its proposed local coastal program that applies to the land area described in this section.

SEC. 381. Section 30302 of the Public Resources Code is amended to read:

30302. The six regional commissions shall be constituted as follows:

(a) The North Coast Regional Commission for Del Norte, Humboldt, and Mendocino Counties shall consist of the following members:

(1) One supervisor and one city councilperson from each county.

(2) Six representatives of the public.

(b) The North Central Coast Regional Commission for Sonoma, Marin, and San Francisco Counties shall consist of the following members:

(1) One supervisor and one city councilperson from Sonoma County and Marin County.

(2) Two supervisors of the City and County of San Francisco.

(3) One delegate of the Association of Bay Area Governments.

(4) Seven representatives of the public.

(c) The Central Coast Regional Commission for San Mateo, Santa Cruz, and Monterey Counties shall consist of the following members:

(1) One supervisor and one city councilperson from each county.

(2) One delegate of the Association of Bay Area Governments.

(3) One delegate of the Association of Monterey Bay Area Governments.

(4) Eight representatives of the public.

(d) The South Central Coast Regional Commission for San Luis Obispo, Santa Barbara, and Ventura Counties shall consist of the following members:

(1) One supervisor and one city councilperson from each county.

(2) Six representatives of the public.

(e) The South Coast Regional Commission of Los Angeles and Orange Counties shall consist of the following members:

(1) One supervisor from each county.

(2) One city councilperson from the City of Los Angeles nominated by majority vote of the city council and appointed by the president of the city council.

(3) One city councilperson from Los Angeles County from a city other than Los Angeles.

(4) One city councilperson from Orange County.

(5) One delegate of the Southern California Association of Governments.

(6) Six representatives of the public.

(f) The San Diego Coast Regional Commission for San Diego County, shall consist of the following members:

(1) Two supervisors from San Diego County and two city councilpersons from San Diego County, at least one of whom shall be from a city which lies, in whole or in part, within the coastal zone.

(2) One city councilperson from the City of San Diego, selected by the city council of that city.

(3) One member of the San Diego Comprehensive Planning Organization.

(4) Six representatives of the public.

SEC. 382. Section 30339 of the Public Resources Code is amended to read:

30339. The commission and each regional commission shall:

(a) Ensure full and adequate participation by all interested groups and the public at large in the commission's and each regional commission's work program.

(b) Ensure that timely and complete notice of commission and regional commission meetings and public hearings is disseminated to all interested groups and the public at large.

(c) Advise all interested groups and the public at large as to

effective ways of participating in commission and regional commission proceedings.

(d) Recommend to any local government preparing or implementing a local coastal program and to any state agency that is carrying out duties or responsibilities pursuant to this division, additional measures to assure open consideration and more effective public participation in its programs or activities.

SEC. 383. Section 30340.5 of the Public Resources Code is amended to read:

30340.5. (a) It is the policy of the state that no less than 50 percent of funds received by the state from the federal government pursuant to the Federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451, et seq.), shall be used for the preparation, review, approval, certification, and implementation of local coastal programs.

(b) Any local government subject to this division may claim reimbursement of costs incurred as a direct result of the operation of or any requirement promulgated pursuant to this division. Notwithstanding any other provision of law, claims for reimbursement of mandated costs directly attributable to the operation of this division shall only be submitted, reviewed, and approved in the manner set forth in this section.

(c) Claims pursuant to this section shall be submitted to the executive director of the commission no later than August 31. The executive director shall review the claims in accordance with the provisions of this section and shall submit all the claims to the Controller within 60 days after receipt of a claim but in no event later than October 31.

(d) All claims submitted pursuant to this section shall be filed on forms approved and prepared by the commission in consultation with the Controller. The forms shall specify the information needed to enable the executive director of the commission and the Controller to make the determinations required by subdivision (e). The forms shall clearly set forth information requirements for the evaluation of the following categories of costs:

(1) Costs for work relating to the preparation, review, and approval of local coastal programs or any portion thereof.

(2) Costs for work which is not covered by paragraph (1).

The claim forms required by this section shall provide for claims of actual costs incurred during the fiscal year preceding submittal and for the costs the claimant local government estimates will be incurred during the then current fiscal year.

(e) The executive director shall review and evaluate each claim submitted pursuant to this section and shall determine whether:

(1) The costs claimed are not paid for or reimbursed from any other source of state or federal funding.

(2) The costs are for work which is the direct result of and is mandated by the operation of this division or by the commission or whether the work is optional.

(3) With respect to costs specified in paragraph (1) of subdivision (d), the work done or to be done is reasonable and necessary for the preparation and approval of a local coastal program pursuant to a local coastal program work program approved by the commission, or for work which is not part of an approved work program if the work can be shown to be necessary for the completion of a certifiable local coastal program or if new information or other circumstances cause the commission to require that the work be carried out.

(f) The executive director of the commission shall submit to the Controller, on behalf of each claimant local government, all claims submitted pursuant to this section together with his or her recommendation whether the Controller should allow or deny, in whole or in part, the claim. The executive director's recommendation shall be based on his or her determinations made pursuant to subdivision (e). If the executive director fails to make a recommendation by the time claims are required to be submitted to the Controller as provided in subdivision (c), the executive director is deemed to have recommended approval of the claim.

(g) Section 2231 of the Revenue and Taxation Code shall apply to claims filed pursuant to this section. However, where a conflict between Section 2231 of the Revenue and Taxation Code and this section occurs, the conflict shall be resolved in a manner that best carries out the purposes of this section. The Controller shall apply the criteria of subdivision (e) in determining whether to allow or deny, in whole or in part, any claim and shall consider the recommendations of the executive director of the commission.

SEC. 384. Section 30700 of the Public Resources Code is amended to read:

30700. For purposes of this division, notwithstanding any other provisions of this division except as specifically stated in this chapter, this chapter shall govern those portions of the Ports of Hueneme, Long Beach, Los Angeles, and San Diego Unified Port District located within the coastal zone, but excluding any wetland, estuary, or existing recreation area indicated in Part IV of the coastal plan.

SEC. 385. Section 34056 of the Public Resources Code is amended to read:

34056. (a) After completing the evaluation, review, and classification of an application, the State Coastal Conservancy shall forward the application to the California Coastal Commission for a determination as to its consistency with the approved land use plan of the applicable local coastal program.

(b) Applications which are determined by the Executive Director of the California Coastal Commission to be consistent with the approved land use plan of the applicable local coastal program shall be returned to the State Coastal Conservancy for the purpose of disbursing grants consistent with priorities and criteria developed pursuant to Section 34054. No grant may be disbursed until the land use plan of a local coastal program has been approved.

SEC. 386. Section 1901 of the Public Utilities Code is amended to

read:

1901. Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the executive director or an assistant executive director under the official seal of the commission to be true copies of the originals, shall be evidence in like manner as the originals.

SEC. 387. Section 1902 of the Public Utilities Code is amended to read:

1902. Every order, authorization, or certificate issued or approved by the commission under the following provisions of this part shall be in writing and entered on the records of the commission:

(a) Sections 764 to 767, inclusive.

(b) Sections 816 to 829, inclusive.

(c) Sections 851 to 853, inclusive.

(d) Sections 1001 to 1010, inclusive.

(e) Sections 1201 to 1220, inclusive.

Any order, authorization, or certificate, or a copy thereof, or a copy of the record thereof, certified by a commissioner or by the executive director or the assistant executive director under the official seal of the commission to be a true copy of the original, may be recorded in the office of the recorder of any county, or city and county, in which is located the principal place of business of any public utility affected thereby, or in which is situated any property of any such public utility, and that record is public notice. A certificate under the seal of the commission that any order, authorization, or certificate has not been modified, stayed, suspended, or revoked may also be recorded in the same offices in the same manner and with like effect.

SEC. 388. Section 5503.5 of the Public Utilities Code is amended to read:

5503.5. Notwithstanding the provisions of Section 5503, the commission shall require less accident insurance than that required of commercial air operators pursuant to Section 5503, of persons who fulfill all the following requirements:

(a) That conduct nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25-mile radius of that airport.

(b) Engage in passenger-carrying airlift sponsored by a charitable organization, and for which the passengers make a donation to the organization.

(c) The flight is conducted from a public airport adequate for the aircraft used, or from another airport that has been approved for the operation by a Federal Aviation Administration inspector.

(d) Each pilot in command has logged at least 200 hours of flight time within the previous four years.

(e) No acrobatic or formation flights are conducted.

(f) Each aircraft used is certificated in the standard category and complies with the 100-hour inspection requirement of Title 14, Code of Federal Regulations, Section 91.169.

(g) The flight is made under visual flying rules during the day.

SEC. 389. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 390. Section 27091 of the Public Utilities Code is amended to read:

27091. From and after the date of annexation the board shall levy upon all of the property in the territory annexed any taxes, tolls, or charges which are necessary to provide funds for the payment of the indebtedness assumed by the territory or otherwise necessary to comply with the terms and conditions of the annexation, all in addition to the general district taxes authorized elsewhere in this division to be levied and collected.

SEC. 391. Section 29038 of the Public Utilities Code is amended to read:

29038. The rates and charges for service furnished pursuant to this part shall be fixed by a two-thirds vote of the board and shall be reasonable. Insofar as practicable, the rates shall be fixed so as to result in revenue which will be sufficient to do all of the following:

(a) Pay the operating expenses of the district.

(b) Provide for repairs, maintenance, and depreciation of works owned or operated by the district.

(c) Provide for the purchase, lease, or acquisition of rolling stock, including provisions for interest, sinking funds, reserve funds, or other funds required for the payment of any obligations incurred by the district for the acquisition of rolling stock.

(d) After making any current allocation of funds required for the foregoing purposes and by the terms of any indebtedness incurred under Articles 6 (commencing with Section 29240) and 7 (commencing with Section 29250) of Chapter 8, provide funds for

any purpose the board deems necessary and desirable to carry out the purposes of this part.

SEC. 392. Section 29171 of the Public Utilities Code is amended to read:

29171. Coupon bonds may be issued in denominations of one thousand dollars ($1,000), or multiples thereof, as the district may determine. Coupon bonds of different denominations shall be exchangeable for coupon bonds of other denominations or for registered bonds on terms and conditions as the district may determine, including provisions for the authentication of any bonds issued upon the exchange by the registration agent or other agents appointed by the district for that purpose.

SEC. 393. Section 29750 of the Public Utilities Code is amended to read:

29750. If district bonds for the acquisition or construction of rapid transit facilities have not been voted by the electors within five years of the creation of the district, the board of directors may call an election for the purpose of submitting to the voters of the district the question of whether the district will be dissolved. Upon the filing with the secretary of the district of a petition signed by voters within the district equal in number to at least 25 percent of the total vote cast in the district for all candidates for Governor at the last preceding general election at which a Governor was elected, asking that the question of dissolution of the district be submitted to the voters of the district, the board shall call an election for that purpose.

SEC. 394. Section 29753 of the Public Utilities Code is amended to read:

29753. The ballots for the election shall contain substantially the instructions required to be printed on ballots for use at general state and county elections and in addition the following:

Shall the San Francisco Bay Area Rapid Transit District be dissolved?	YES	
	NO	

SEC. 395. Section 50218 of the Public Utilities Code is amended to read:

50218. The district's taxes so levied shall be collected at the same time and in the same manner as county taxes. When collected the net amount, ascertained as provided in this article, shall be paid to the treasurer of the district, under the general requirements and penalties provided by law for the settlement of other taxes.

SEC. 396. Section 99117 of the Public Utilities Code is amended to read:

99117. All accrued interest and premiums received on the sale of bonds shall be placed in the fund to be used for the payment of principal of and interest on the bonds and the remainder of the proceeds of the bonds shall be placed in the treasury to the credit of

the proper benefit fund and applied exclusively to the purposes for which the debt was incurred. However, when those purposes have been accomplished any moneys remaining in the benefit fund shall be (a) transferred to the fund to be used for the payment of principal of and interest on the bonds, or (b) placed in a fund to be used for the purchase of outstanding bonds of the benefit district from time to time in the open market at those prices and in the manner, either at public or private sale or otherwise, as the legislative body or board of supervisors may determine. Bonds so purchased shall be canceled immediately.

SEC. 397. Section 99 of the Revenue and Taxation Code is amended to read:

99. (a) For the purposes of the computations required by this chapter:

(1) In the case of a jurisdictional change, other than a city incorporation or a formation of a district as defined in Section 2215, the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 97, or the annual tax increment determined pursuant to Section 98, for local agencies whose service area or service responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).

(2) In the case of a city incorporation or a formation of a district as defined in Section 2215, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 54790.3 of the Government Code to the newly formed city or district and shall make the adjustment as determined by Section 54790.3 of the Government Code in the allocation of property tax revenue determined pursuant to Section 96 or 97 for each local agency whose service area or service responsibilities would be altered by the incorporation or formation.

(b) Upon the filing of an application or a resolution pursuant to the Municipal Organization Act (Part 2 (commencing with Section 35000) of Division 2 of Title 4 of the Government Code) or the District Reorganization Act of 1965 (Part 1 (commencing with Section 56000) of Division 1 of Title 6 of the Government Code), but prior to the issuance of a certificate of filing, the executive officer shall give notice of the filing to the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. The notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change.

(1) (A) The county assessor shall provide to the county auditor, within 30 days of the notice of filing, a report which identifies the assessed valuations for the territory subject to the jurisdictional change and the tax rate area or areas in which the territory exists.

(B) The auditor shall estimate the amount of property tax revenue generated within the territory which is the subject of the jurisdictional change during the current fiscal year.

(2) The auditor shall estimate what proportion of the property tax revenue determined pursuant to paragraph (1) is attributable to

each local agency pursuant to Section 96 or 97, and Section 98, notwithstanding the provisions of Section 98.6.

(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local agency whose service area or service responsibility will be altered by the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) which is subject to a negotiated exchange.

(4) Upon receipt of the estimates pursuant to paragraph (3) the local agencies shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. Such negotiation period shall not exceed 30 days.

The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years.

During any negotiation period, all revenue from the annual tax increment which has not yet been distributed to the local agencies for the fiscal year or years in which negotiations take place shall be impounded. The auditor shall determine the amount of revenue, attributable to the annual tax increment, to be impounded based on the estimate made pursuant to paragraph (2).

(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues.

(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 54791 of the Government Code until such local agencies included in the property tax revenue exchange negotiation, within the 30-day negotiation period, present resolutions adopted by each county and city whereby each such county and city agrees to accept the exchange of property tax revenues.

(7) In the event that the commission modifies the proposal or its resolution of determination, any local agency whose service area or service responsibility would be altered by the proposed jurisdictional change may request, and the executive officer shall grant, 15 days for the affected agencies, pursuant to paragraph (4), to renegotiate an exchange of property tax revenues. Notwithstanding the time period specified in paragraph (4), if the resolutions required pursuant to paragraph (6) are not presented to the executive officer within the 15-day period, all proceedings of the jurisdictional change shall automatically be terminated.

(8) No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the

executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a).

(c) Whenever a jurisdictional change is not required to be reviewed and approved by a local agency formation commission, the local agencies whose service area or service responsibilities would be altered by the proposed change, shall give notice to the State Board of Equalization and the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. The notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change and request the auditor and assessor to make the determinations required pursuant to paragraphs (1) and (2) of subdivision (b). Upon notification by the auditor of the amount of, and allocation factors with respect to, property tax subject to exchange, the local agencies, pursuant to the provisions of paragraphs (4), (5), and (6) of subdivision (b), shall determine the amount of property tax revenues to be exchanged between and among such local agencies. Notwithstanding any other provision of law, no jurisdictional change shall become effective until each county and city included in the negotiations agrees, by resolution, to accept the negotiated exchange of property tax revenues. The exchange may be limited to an exchange of property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years. Upon the adoption of the resolutions required pursuant to this section, the adopting agencies shall notify the auditor who shall make the appropriate adjustments as provided in subdivision (a).

(d) With respect to adjustments in the allocation of property taxes pursuant to this section, a county and any local agency or agencies within the county may develop and adopt a master property tax transfer agreement. The agreement may be revised from time to time by the parties subject to the agreement.

(e) Except as otherwise provided in subdivision (f), for the purpose of determining the amount of property tax to be allocated in 1979–80 and thereafter for those local agencies which were affected by a jurisdictional change which was filed with the State Board of Equalization after January 1, 1978, but on or before January 1, 1979, the auditor shall impound all revenue from the annual tax increment attributable to the tax rate area or areas within the territory subject to the jurisdictional change for such affected local agencies, until such local agencies determine by resolution the amount of property tax revenues to be exchanged between and among such affected agencies and notify the auditor of the determination.

(f) For the purpose of determining the amount of property tax to

ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Public Utilities Code Sections 21670, 21675, and 21676 as added or amended by Statutes 1967, Chapter 852; Statutes 1970, Chapter 1182; Statutes 1973, Chapter 844; Statutes 1980, Chapter 725; Statutes 1981, Chapter 714; Statutes 1982, Chapter 1047; Statutes 1984, Chapter 1117; Statutes 1987, Chapter 1018; Statutes 1989, Chapter 306; Statutes 1990, Chapter 563; Statutes 1991, Chapter 140; Statutes 1993, Chapter 59; Statutes 1994, Chapter 644; Statutes 2000, Chapter 506; Statutes 2002, Chapter 438; and Statutes 2002, Chapter 971

Airport Land Use Commissions/Plans II
03-TC-12

County of Santa Clara, Claimant

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be allocated in 1979–80 and thereafter, for a city incorporation which was filed pursuant to Sections 54900 to 54904 after January 1, 1978, but on or before January 1, 1979, the amount of property tax revenue considered to have been received by such jurisdiction for the 1978–79 fiscal year shall be equal to two-thirds of the amount of property tax revenue projected in the final local agency formation commission staff report pertaining to such incorporation multiplied by the proportion that the total amount of property tax revenue received by all jurisdictions within the county for the 1978–79 fiscal year bears to the total amount of property tax revenue received by all jurisdictions within the county for the 1977–78 fiscal year. Except, however, in the event that the final commission report did not specify the amount of property tax revenue projected for such incorporation, the commission shall by October 10, determine pursuant to Section 54790.3 of the Government Code, the amount of property tax to be transferred to the city.

The provisions of this subdivision shall also apply to the allocation of property taxes for the 1980–81 fiscal year and thereafter for incorporations approved by the voters in June 1979.

(g) For the purpose of the computations made pursuant to this section, in the case of a district formation which was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1978, but before January 1, 1979, the amount of property tax to be allocated to the district for the 1979–80 fiscal year and each fiscal year thereafter shall be determined pursuant to Section 54790.3 of the Government Code.

(h) For the purposes of the computations required by this chapter, in the case of a jurisdictional change, other than a change requiring an adjustment by the auditor pursuant to subdivision (a), the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 97, or the annual tax increment determined pursuant to Section 98, for each local school district, community college district, or county superintendent of schools whose service area or service responsibility would be altered by such jurisdictional change, as determined as follows:

(1) The governing body of each such district, county superintendent of schools, or county whose service areas or service responsibilities would be altered by the change shall determine the amount of property tax revenues to be exchanged between and among such affected jurisdictions. The determination shall be adopted by each affected jurisdiction by resolution. For the purpose of negotiation, the county auditor shall furnish the parties and the county board of education with an estimate of the property tax revenue subject to negotiation.

(2) In the event that affected jurisdictions are unable to agree, within 60 days after the effective date of the jurisdictional change, and if all the jurisdictions are wholly within one county, the county board of education shall, by resolution, determine the amount of property tax revenue to be exchanged. If the jurisdictions are in

more than one county, the State Board of Education shall, by resolution, within 60 days after the effective date of the jurisdictional change, determine the amount of property tax to be exchanged.

(3) Upon adoption of any resolution pursuant to this subdivision, the adopting jurisdictions or State Board of Education shall notify the county auditor who shall make the appropriate adjustments as provided in subdivision (a).

(i) For purposes of subdivision (h), the annexation by a community college district of territory within a county not previously served by a community college district is an alteration of service area. The community college district and the county shall negotiate the amount, if any, of property tax revenues to be exchanged. In the negotiations, there shall be taken into consideration the amount of revenue received from the timber yield tax and forest reserve receipts by the community college district in the area not previously served. In no event shall the property tax revenue to be exchanged exceed the amount of property tax revenue collected prior to such annexation for the purposes of paying tuition expenses of residents enrolled in the community college district, adjusted each year by the percentage change in population and the percentage change in cost of living, or per capita personal income, whichever is lower, less the amount of revenue received by the community college district in the annexed area from the timber yield tax and forest reserve receipts.

SEC. 398. Section 232 of the Revenue and Taxation Code, as added by Chapter 14 of the Statutes of 1974, is amended and renumbered to read:

234. Seed potatoes of a grower, which are personal property, held on the lien date for subsequent planting in field form and planted during the assessment year by the grower shall be exempt from taxation. This section does not apply to plant nurseries.

SEC. 399. Section 485 of the Revenue and Taxation Code is amended to read:

485. If, after written request by the assessor, any person fails to comply with any provision of law for furnishing information required by Section 480, the assessor, based upon information in his possession, shall estimate the value of the property and, based upon this estimate, promptly assess the property.

SEC. 400. Section 4836.5 of the Revenue and Taxation Code is amended to read:

4836.5. In the event any correction authorized under this article has the effect of increasing the assessment, the board of supervisors shall apply a tax rate to such increase at whatever tax rate was in existence in the year in which the error was made and shall apply the assessment ratio that was in existence in the year in which the error was made. All increased amounts of taxes shall be entered on the roll prepared or being prepared for the current assessment year and shall thereafter be treated and collected like other taxes on the roll; provided, however, that if the correction affects taxes on the secured

roll for any year and subsequent to the entry of the original assessment but prior to the date of the correction the real property on which the taxes constitute a lien has been transferred or conveyed to a bona fide purchaser for value or becomes subject to a bona fide encumbrance for value, the increased amount of taxes shall not create, impose or constitute a lien on the real property and shall be entered on the unsecured roll in the name of the assessee at the time the error was made and shall thereafter be treated and collected like other taxes on the roll.

The entry on the unsecured roll shall be followed with "Correction to account or Parcel Number _____ for the 19__-19__ assessment year pursuant to Section(s) _____ of the Revenue and Taxation Code." The foregoing entry may be made on a document separate from the roll if reference is made on the roll to the document wherein the entry is made.

SEC. 401. The heading of Chapter 6 (commencing with Section 5801) of Part 12 of Division 1 of the Revenue and Taxation Code, as added by Chapter 1759 of the Statutes of 1971, is repealed. The repeal made by this section shall not affect the existence or validity of the heading of Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code, as added by Chapter 285 of the Statutes of 1980.

SEC. 402. Section 6486 of the Revenue and Taxation Code is amended to read:

6486. The board shall give to the retailer or person storing, using, or consuming tangible personal property written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer or person storing, using, or consuming tangible personal property at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering it to the person to be served and service is complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

SEC. 403. Section 6593 of the Revenue and Taxation Code, as added by Chapter 1194 of the Statutes of 1980, is amended and renumbered to read:

6594. Notwithstanding any other provision of this part, no interest or penalties shall be assessed against any person for failure to make payments of any taxes on leases of personal property to the United States government while the board is enjoined from collecting such taxes by order of the United States District Court for the Central District of California in the case of United States of

America v. California State Board of Equalization, No. CV 79-03359-R, provided that payment of any applicable taxes is made within 60 days after the board is no longer enjoined from collecting such taxes.

SEC. 404. Section 7396 of the Revenue and Taxation Code is amended to read:

7396. All money received in payment of the tax imposed by this chapter shall be deposited in the State Treasury to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund, and after the payment of any refunds authorized by this part, the balance remaining shall be transferred to the Aeronautics Account in the State Transportation Fund for allocation pursuant to Section 8352.3.

SEC. 405. The heading of Article 4 (commencing with Section 14791) of Chapter 12 of Part 8 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 406. Section 15556 of the Revenue and Taxation Code is amended to read:

15556. In determining the value of any estate or interest in property to the beneficial enjoyment or possession of which there is a donee presently entitled, no allowance is made on account of any contingent incumbrance on the estate or interest, nor on account of any contingency upon the happening of which the estate or interest, or some part of it, might be abridged, defeated, or diminished.

SEC. 407. Section 17153 of the Revenue and Taxation Code is amended to read:

17153. Gross income does not include wages, fees, or salary of an employee of a foreign country (including a consular or other officer, or a nondiplomatic representative) received as compensation for official services to that country if all of the following conditions are met:

(a) The employee is not a citizen of the United States.

(b) The services are of a character similar to those performed by employees of the United States in foreign countries.

(c) The foreign country and political subdivisions thereof do not tax the wages, fees, or salaries of employees of the United States performing similar services in that country.

SEC. 408. Section 17203 of the Revenue and Taxation Code is amended to read:

17203. (a) There shall be allowed as a deduction all interest paid or accrued within the taxable year on indebtedness. However, no deduction shall be allowed to the extent that it is connected with income not taxable under this part. The proper apportionment and allocation of the deduction with respect to taxable and nontaxable income shall be determined under rules and regulations prescribed by the Franchise Tax Board.

(b) (1) If personal property or educational services are purchased under a contract—

(A) Which provides that payment of part or all of the purchase price is to be made in installments; and

(B) In which carrying charges are separately stated but the interest charge cannot be ascertained;

then the payments made during the taxable year under the contract shall be treated for purposes of this section as if they included interest equal to 6 percent of the average unpaid balance under the contract during the taxable year. For purposes of the preceding sentence, the average unpaid balance is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12.

For purposes of this paragraph, the term "educational services" means any service (including lodging) which is purchased from an educational institution (as defined in subdivision (c) of Section 17150) and which is provided for a student of such institution.

(2) In the case of any contract to which paragraph (1) applies, the amount treated as interest for any taxable year shall not exceed the aggregate carrying charges which are properly attributable to such taxable year.

(c) The amendments made in subdivision (b) shall apply to payments made during taxable years beginning after December 31, 1963.

(d) (1) The amount of investment interest (as defined in subparagraph (D) of paragraph (3)) otherwise allowable as a deduction under this part shall be limited, in the following order, to—

(A) Ten thousand dollars ($10,000) (five thousand dollars ($5,000), in the case of a separate return by a married individual), plus

(B) The amount of the net investment income (as defined in subparagraph (A) of paragraph (3)), plus the amount (if any) by which the deductions allowable under this section (determined without regard to this subdivision) and Section 17202, paragraphs (1) and (2) of subdivision (a) of Section 17204 or Section 17252 attributable to property of the taxpayer subject to a net lease exceeds the rental income produced by such property for the taxable year.

In the case of a trust, the ten thousand dollars ($10,000) amount specified in subparagraph (A) shall be zero.

(2) The amount of disallowed investment interest for any taxable year shall be treated as investment interest paid or accrued in the succeeding taxable year.

(3) For purposes of this subdivision—

(A) The term "net investment income" means the excess of investment income over investment expenses. If the taxpayer has investment interest for the taxable year to which this subdivision (as in effect before the enactment of the amendments made in this subdivision in the 1977–78 Legislative Session) applies, the amount of the net investment income taken into account under this subdivision shall be the amount of such income (determined without regard to this sentence) multiplied by a fraction, the numerator of which is the excess of the investment interest for the taxable year

over the investment interest to which such prior provision applies, and the denominator of which is the investment interest for the taxable year.

(B) The term "investment income" means—

(i) The gross income from interest, dividends, rents, and royalties,

(ii) The capital gain attributable to the disposition of property held for investment and held for not more than one year, and

(iii) Any amount treated under Sections 18211, 18212 to 18218, inclusive, and 18221 as gain from the sale or exchange of property which is neither a capital asset nor property described in Sections 18181 and 18182 but only to the extent such income, gain, and amounts are not derived from the conduct of a trade or business.

(C) The term "investment expenses" means the deductions allowable under Section 17202, paragraph (1) or (2) of subdivision (a) of Section 17204, Sections 17207, 17208 to 17211.7, inclusive, 17217 to 17221, inclusive, 17252, or 17681 directly connected with the production of investment income. For purposes of this subparagraph, the deduction allowable under Sections 17208 to 17211.5, inclusive, with respect to any property may be treated as the amount which would have been allowable had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life for which the taxpayer has held the property, and the deduction allowable under Section 17681 with respect to any property may be treated as the amount which would have been allowable had the taxpayer determined the deduction under Section 17681 without regard to Sections 17683 to 17688, inclusive, for each taxable year for which the taxpayer has held the property.

(D) The term "investment interest" means interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.

(E) The term "disallowed investment interest" means with respect to any taxable year, the amount not allowable as a deduction solely by reason of the limitation in paragraph (1).

(4) (A) For purposes of this subdivision, property subject to a lease shall be treated as property held for investment, and not as property used in a trade or business, for a taxable year, if—

(i) For such taxable year the sum of the deductions of the lessor with respect to such property which are allowable solely by reason of Section 17202 (other than rents and reimbursed amounts with respect to such property) is less than 15 percent of the rental income produced by such property, or

(ii) The lessor is either guaranteed a specified return or is guaranteed in whole or in part against loss of income.

(B) In the case of a partnership, each partner shall, under regulations prescribed by the Franchise Tax Board, take into account separately his or her distributive share of the partnership's investment interest and the other items of income and expense taken into account under this subdivision.

(C) For purposes of this subdivision, interest paid or accrued on

indebtedness incurred or continued in the construction of property to be used in a trade or business shall not be treated as investment interest.

(5) This subdivision shall not apply with respect to investment interest, investment income, and investment expenses attributable to a specific item of property, if the indebtedness with respect to such property—

(A) Is for a specified term, and

(B) Was incurred before December 17, 1969, or is incurred after December 16, 1969, pursuant to a written contract or commitment which, on such date and at all times thereafter prior to the incurring of such indebtedness, is binding on the taxpayer.

For taxable years beginning after December 31, 1976, the paragraph shall be applied on an allocation basis rather than a specific item basis.

(6) For purposes of subparagraph (A) of paragraph (4)—

(A) If a parcel of real property of the taxpayer is leased under two or more leases, clause (i) of subparagraph (A) of paragraph (4) shall, at the election of the taxpayer, be applied by treating all leased portions of such property as subject to a single lease; and

(B) At the election of the taxpayer, clause (i) of subparagraph (A) of paragraph (4) shall not apply with respect to real property of the taxpayer which has been in use for more than five years.

An election under subparagraph (A) or (B) shall be made at such time and in such manner as the Franchise Tax Board prescribes by regulations.

(7) (A) In the case of any 50-percent-owned corporation or partnership, the ten thousand dollar ($10,000) figure specified in paragraph (1) shall be increased by the lesser of—

(i) Fifteen thousand dollars ($15,000), or

(ii) The interest paid or accrued during the taxable year on investment indebtedness incurred or continued in connection with the acquisition of the interest in such corporation or partnership.

In the case of a separate return by a married individual, seven thousand five hundred dollars ($7,500) shall be substituted for the fifteen thousand dollars ($15,000) figure in clause (i).

(B) This paragraph shall apply with respect to indebtedness only if the taxpayer, his or her spouse, and his or her children own 50 percent or more of the total value of all classes of stock of the corporation or 50 percent or more of all capital interests in the partnership, as the case may be.

(e) (1) The amendments made in subdivision (d) by the First Extraordinary Session of the 1971 Legislature and the Regular Session of the 1972 Legislature shall apply to taxable years beginning after December 31, 1971.

(2) Except as provided in paragraph (3), the amendments made in subdivision (d) by the 1977–78 Legislature shall apply to taxable years beginning after December 31, 1976.

(3) In the case of indebtedness attributable to a specific item of

property which—

(A) Is for a specified term, and

(B) Was incurred before September 11, 1975, or is incurred after September 10, 1975, pursuant to a written contract or commitment which on September 11, 1975, and at all times thereafter before the incurring of such indebtedness, is binding on the taxpayer.

The amendments made by this section at the 1977–78 Regular Session of the Legislature shall not apply, but subdivision (d) of Section 17203 (as in effect before the enactment of these amendments) shall apply. For purposes of the preceding sentence, so much of the net investment income (as defined in subparagraph (A) of paragraph (3) of subdivision (d) of Section 17203) for any taxable year as is not taken into account under subdivision (d) of Section 17203, as amended by these amendments, by reason of the last sentence of subparagraph (A) of paragraph (3) of subdivision (d), shall be taken into account for purposes of applying such section as in effect before the date of enactment of these amendments with respect to interest on indebtedness referred to in the preceding sentence.

SEC. 409. Section 17206 of the Revenue and Taxation Code is amended to read:

17206. (a) There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

(b) For purposes of subdivision (a), the basis for determining the amount of the deduction for any loss shall be the adjusted basis provided in Section 18041 for determining the loss from the sale or other disposition of property.

(c) In the case of an individual, the deduction under subdivision (a) shall be limited to—

(1) Losses incurred in a trade or business;

(2) Losses incurred in any transaction entered into for profit, though not connected with a trade or business; and

(3) Losses of property not connected with a trade or business, if the losses arise from fire, storm, shipwreck, or other casualty, or from theft. A loss described in this paragraph shall be allowed only to the extent that the amount of loss to the individual arising from each casualty, or from each theft, exceeds one hundred dollars ($100). For purposes of the one hundred dollars ($100) limitation of the preceding sentence, a husband and wife making a joint return under Section 18402 for the taxable year in which the loss is allowed as a deduction shall be treated as one individual. No loss described in this paragraph shall be allowed if, at the time of filing the return, the loss has been claimed for inheritance tax purposes in the inheritance tax return.

(d) Losses from wagering transactions shall be allowed only to the extent of the gains from the transactions.

(e) For purposes of subdivision (a), any loss arising from theft shall be treated as sustained during the taxable year in which the

taxpayer discovers the loss.

(f) Losses from sales or exchanges of capital assets shall be allowed only to the extent allowed in Section 18152.

(g) (1) If any security which is a capital asset becomes worthless during the taxable year, the loss resulting therefrom shall, for purposes of this part, be treated as a loss from the sale or exchange, on the last day of the taxable year, of a capital asset.

(2) For purposes of this subdivision, the term "security" means—

(A) A share of stock in a corporation;

(B) A right to subscribe for, or to receive, a share of stock in a corporation; or

(C) A bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

SEC. 410. Section 17253 of the Revenue and Taxation Code is amended to read:

17253. There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise—

(a) The amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under subdivision (b)) for medical care of the taxpayer, his spouse, and dependents (as defined in Section 17056) exceeds 3 percent of the adjusted gross income, and

(b) An amount (not in excess of one hundred fifty dollars ($150)) equal to one-half of the expenses paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(c) As used in this section, "expenses" includes any amount paid, as required under the parental reimbursement regulation in Title 17 of the California Administrative Code, as certified by the State Department of Developmental Services.

SEC. 411. Section 17482 of the Revenue and Taxation Code is amended to read:

17482. (a) No gain or loss shall be recognized on an exchange consisting of the relinquishment or extinguishment of stock or securities in a corporation the plan or reorganization of which is approved by the court in a proceeding described in Section 17481, in consideration of the acquisition solely of stock or securities in a corporation organized or made use of to effectuate such plan of reorganization.

(b) If an exchange would be within the provisions of subdivision (a) if it were not for the fact that the property received in exchange consists not only of property permitted by subdivision (a) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

SEC. 412. Section 17631 of the Revenue and Taxation Code is amended to read:

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17631. An organization described in Section 17501 shall be exempt from taxation under this part unless such exemption is denied under Sections 17635 to 17639, inclusive.

SEC. 413. Section 17637 of the Revenue and Taxation Code is amended to read:

17637. For purposes of Sections 17635 to 17639, inclusive, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of Sections 17635 to 17639, inclusive—

(a) Lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;

(b) Pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;

(c) Makes any part of its services available on a preferential basis to;

(d) Makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;

(e) Sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth to; or

(f) Engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in subdivision (d) of Section 17289) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

SEC. 414. Section 18082 of the Revenue and Taxation Code is amended to read:

18082. If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted:

(a) Into property similar or related in service or use to the property so converted, no gain shall be recognized.

(b) Into money, and the disposition of the converted property occurred before January 1, 1953, no gain shall be recognized if such money is forthwith in good faith, under regulations prescribed by the Franchise Tax Board, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended (regardless of whether

such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For the purposes of this section and Section 18083, the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation. For purposes of this subdivision and subdivision (c) and Section 18083, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(c) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in subdivision (b)) occurred after December 31, 1952, the gain (if any) shall be recognized except to the extent hereinafter provided in Section 18083.

SEC. 415. Section 18211 of the Revenue and Taxation Code is amended to read:

18211. (a) (1) Except as otherwise provided in this section, if Section 18211 property is disposed of during a taxable year beginning after December 31, 1962, the amount by which the lower of—

(A) The recomputed basis of the property, or

(B) (i) In the case of a sale, exchange or involuntary conversion, the amount realized, or

(ii) In the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in Sections 18181 and 18182. Such gain shall be recognized notwithstanding any other provision of this part.

(2) For purposes of this section, the term "recomputed basis" means—

(A) With respect to any property referred to in subparagraph (A) or (B) of paragraph (3), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) With respect to any property referred to in subparagraph (C) of paragraph (3), its adjusted basis recomputed by adding thereto all adjustments attributable to periods after June 30, 1963,

(C) With respect to livestock its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969, or

(D) With respect to any property referred to in subparagraph (D) of paragraph (3), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under Section 17226 or 17227, reflected in such adjusted basis on account of deductions (whether in respect of the same or other property)

such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain). For the purposes of this section and Section 18083, the term "disposition of the converted property" means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation. For purposes of this subdivision and subdivision (c) and Section 18083, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(c) Into money or into property not similar or related in service or use to the converted property, and the disposition of the converted property (as defined in subdivision (b)) occurred after December 31, 1952, the gain (if any) shall be recognized except to the extent hereinafter provided in Section 18083.

SEC. 415. Section 18211 of the Revenue and Taxation Code is amended to read:

18211. (a) (1) Except as otherwise provided in this section, if Section 18211 property is disposed of during a taxable year beginning after December 31, 1962, the amount by which the lower of—

(A) The recomputed basis of the property, or

(B) (i) In the case of a sale, exchange or involuntary conversion, the amount realized, or

(ii) In the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in Sections 18181 and 18182. Such gain shall be recognized notwithstanding any other provision of this part.

(2) For purposes of this section, the term "recomputed basis" means—

(A) With respect to any property referred to in subparagraph (A) or (B) of paragraph (3), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) With respect to any property referred to in subparagraph (C) of paragraph (3), its adjusted basis recomputed by adding thereto all adjustments attributable to periods after June 30, 1963,

(C) With respect to livestock its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969, or

(D) With respect to any property referred to in subparagraph (D) of paragraph (3), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under Section 17226 or 17227, reflected in such adjusted basis on account of deductions (whether in respect of the same or other property)

allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under Section 17226, 17227, or (in the case of property described in subparagraph (C) of paragraph (3)) 17228. For purposes of the preceding sentence if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under Section 17226, 17227, or (in the case of property discussed in subparagraph (c) of paragraph (3)) 17228, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed. For purposes of this section, any deduction allowable under Section 17227 shall be treated as if it were a deduction for amortization.

(3) For purposes of this section, the term "Section 18211 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in Sections 17208 to 17211.7, inclusive, and is either—

(A) Personal property,

(B) Other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) Was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) Constituted research or storage facilities used in connection with any of the activities referred to in clause (i),

(C) An elevator or an escalator, or

(D) So much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under Section 17226, or 17227.

(4) (A) For purposes of this section, if a franchise to conduct any sports enterprise is sold or exchanged, and if, in connection with such sale or exchange, there is a transfer of any player contracts, the recomputed basis of such player contracts in the hands of the transferor shall be the adjusted basis of such contracts increased by the greater of—

(i) The previously unrecaptured depreciation with respect to player contracts acquired by the transferor at the time of acquisition of such franchise, or

(ii) The previously unrecaptured depreciation with respect to the player contracts involved in such transfer.

(B) For purposes of clause (i) of subparagraph (A), the term "previously unrecaptured depreciation" means the excess (if any) of—

(i) The sum of the deduction allowed or allowable to the taxpayer transferor for the depreciation attributable to periods after December 31, 1975, of any player contracts acquired by him or her

at the time of acquisition of such franchise, plus the deduction allowed or allowable for losses incurred after December 31, 1975, with respect to such player contracts acquired at the time of such acquisition, over

(ii) The aggregate of the amounts described in clause (i) treated as ordinary income by reason of this section with respect to prior dispositions of such player contracts acquired upon acquisition of the franchise.

(C) For purposes of clause (ii) of subparagraph (A), the term "previously unrecaptured depreciation" means the amount of any deduction allowed or allowable to the taxpayer transferor for the depreciation of any contracts involved in such transfer.

(D) For purposes of this paragraph, the term "player contract" means any contract for the services of an athlete which, in the hands of the taxpayer, is of a character subject to the allowance for depreciation provided in Section 17208.

(E) This section shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1976, in taxable years ending after the enactment of this section.

(b) (1) Subdivision (a) shall not apply to a disposition by gift.

(2) Except as provided in Sections 17831 to 17837, inclusive (relating to income in respect of a decedent), subdivision (a) shall not apply to a transfer at death.

(3) If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of Section 17431, 17481, 17881, 17891, or Section 24502, 24521, or 24551 of the Bank and Corporation Tax Law, then the amount of gain taken into account by the transferor under paragraph (1) of subdivision (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). This paragraph shall not apply to a disposition to an organization which is exempt from the tax imposed by this part.

(4) If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under Section 18081 or Sections 18082 to 18090.2, inclusive, then the amount of gain taken into account by the transferor under paragraph (1) of subdivision (a) shall not exceed the sum of—

(A) The amount of gain recognized on such disposition (determined without regard to this section), plus

(B) The fair market value of property acquired which is not Section 18211 property and which is not taken into account under subparagraph (A).

(5) Under regulations prescribed by the Franchise Tax Board, rules consistent with paragraphs (3) and (4) shall apply in the case of transactions described in Section 18121 (relating to gain from sale or exchange to effectuate policies of FCC) or Sections 18131 to 18134, inclusive (relating to exchanges in obedience to SEC orders).

(6) (A) For purposes of this section, the basis of Section 18211

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property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(i) The amount of the gain to which subdivision (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(ii) The amount of such gain to which Section 17912 applied.

(c) The Franchise Tax Board shall prescribe such regulations as it may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subdivision (a).

(d) This section shall apply notwithstanding any other provisions of this part.

SEC. 416. Section 18816.5 of the Revenue and Taxation Code is amended to read:

18816.5. (a) Whenever any payer required to deduct and withhold tax under Section 18805 sells, transfers, dissolves, withdraws, terminates or otherwise disposes of the business or a substantial portion of its assets, the successors (including assigns, purchasers, heirs, distributees, beneficiaries or other persons acquiring either a substantial portion of the assets or the business) shall withhold in trust a sufficient part of the purchase price or set aside in trust money or property to cover the amount of the taxes required to be withheld and any interest or penalties with respect thereto which are due or unpaid by the payer. The money, property or portion of the purchase price shall be held in trust until a certificate is issued by the Franchise Tax Board stating that no amount of such tax, interest or penalties are due or unpaid from the payer.

(b) Upon written request by the successor, the Franchise Tax Board shall, within 60 days, issue a certificate or a statement showing the amount of tax, interest and penalties due from the payer. Except as provided in subdivision (c), failure to issue a certificate or statement within the 60-day period shall be deemed equivalent to the issuance of a certificate stating that no tax, interest or penalties are due. If the Franchise Tax Board issues a statement showing that taxes, interest and penalties are claimed to be due, the amount stated therein (not in excess of the fair market value of the assets or business acquired) shall be paid by the successor to the Franchise Tax Board within (1) 30 days after the statement is mailed or delivered to the successor or (2) on the day the business or assets are acquired, whichever is the latest event. If a request for a certificate is not made by the successor, the amount of tax, interest or penalties due or unpaid by the payer shall be paid by the successor to the Franchise Tax Board on the day the business or assets are acquired. If a

successor fails to pay the amount required by this section by the time prescribed in this subdivision, a penalty of 10 percent of the amount payable shall be levied.

(c) The issuance of a certificate stating that no taxes, interest and penalties are due, or the failure to issue such certificate or statement within the period of 60 days shall not release the payer from liability on account of any taxes, interest, and penalties then or thereafter determined to be due from him or her, but shall release the successor from any further liability on account of any such taxes, interest and penalties. Payment by the successor pursuant to subdivision (b) shall not release the payer from liability except to the extent of the amount paid by the successor.

(d) Any successor that fails to withhold money or other property or fails to pay the amount or value of the property withheld as provided in this section shall be personally liable for the payment of the taxes, interest and penalties due from the payer up to but not exceeding the fair market value of the assets or business acquired. The Franchise Tax Board shall have all of the remedies for collection against any successor that acquires the business or substantially all the assets thereof of a payer as provided by this part against any payer liable for taxes, interest and penalties. The time within which the obligation may be enforced against the successor acquiring the business or substantially all the assets thereof of a payer shall commence from (1) the date the successor acquires the assets or business, (2) the date an assessment against the successor payer becomes final, or (3) 31 days after the statement is mailed or delivered to the successor if a certificate is requested by the successor as provided in subdivision (b), whichever of the three events is later.

SEC. 417. Section 19092 of the Revenue and Taxation Code is amended to read:

19092. If judgment is rendered against the Franchise Tax Board, the amount thereof shall first be credited against any taxes and interest due from the taxpayer under this part and the remainder refunded to the taxpayer by the State Treasurer on warrants drawn by the Controller.

SEC. 418. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) "Residential dwelling" means a dwelling occupied as the principal place of residence of the claimant, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, the claimant and spouse, or by the claimant and either another individual eligible for postponement under this chapter or an individual described in subdivision (a), (b) or (c) of Section 20511 and located in this state. It shall include condominiums and mobilehomes which are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built. In the case of a mobilehome not assessed as real property which is located on land owned by the claimant, residential "dwelling"

includes the land on which such mobilehome is situated and so much of the land surrounding it as reasonably necessary for use of the mobilehome as a home.

(b) As used in this chapter in reference to ownership interests in residential dwellings, "owned" includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that the instrument creating the life estate is recorded and only from the date of recordation of the instrument creating the life estate in the office of the county recorder where the residential dwelling is located, but "owned" does not include the interest of any remainderman or holder of a reversionary interest in the residential dwelling, (3) the interest of a joint tenant or a tenant in common in the residential dwelling or the interest of a tenant where title is held in tenancy by the entirety or a community property interest where title is held as community property.

(c) For purposes of this chapter, the registered owner of a mobilehome shall be deemed to be the owner of the mobilehome.

(d) Except as provided in subdivision (c), and Chapter 3 (commencing with Section 20625), ownership must be evidenced by an instrument duly recorded in the office of the county where the residential dwelling is located.

(e) "Residential dwelling" does not include any of the following:

(1) Any residential dwelling in which the owners do not have an equity of at least 20 percent of the full value of the property as determined for purposes of property taxation at the time a notice of lien for postponed taxes is recorded pursuant to Section 16182 of the Government Code.

(2) Any residential dwelling in which the claimant's interest is held pursuant to a contract of sale or under a life estate, unless such claimant obtains the written consent of the vendor under the contract of sale, or the holder of the reversionary interest upon termination of the life estate for the postponement of taxes and the creation of a lien on the real property in favor of the state for amounts postponed pursuant to this act.

(3) Any residential dwelling on which the claimant does not receive a secured tax bill.

(4) Any residential dwelling in which the claimant's interest is held as a possessory interest, except as provided in Chapter 3.5 (commencing with Section 20640).

(5) (A) Except as provided in this section, any residential dwelling on which the property taxes, as defined in Section 20584, are delinquent at the time the application for postponement under this chapter is made or on which any other property tax or special assessment imposed by a special district or other tax code area is delinquent at the time the application for postponement under this

chapter is made.

(B) Any taxes or assessments described in subparagraph (A) which are delinquent on July 1, 1977, shall not disqualify an otherwise eligible dwelling for postponement under this chapter. An application for postponement under this chapter to postpone the payment of property taxes for the 1977–78 fiscal year, shall also constitute an application for the postponement of all such delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from such delinquency and such amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code; provided, however, that upon payment of delinquent taxes and assessments for fiscal year 1976–77 out of the amount appropriated by Section 16100, any delinquent penalties, interest, fees or other charges resulting from the delinquency of such taxes and assessments for fiscal year 1976–77 shall be canceled.

(C) For 1978–79 and thereafter, any taxes or assessments described in subparagraph (A) which became delinquent after the claimant was 62 and before the claimant first has established a lien pursuant to Section 16182 of the Government Code shall not disqualify an otherwise eligible dwelling for postponement under this chapter. An application to postpone taxes for 1978–79 or thereafter shall also constitute an application for the postponement of all such delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from such delinquency and such amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code.

SEC. 419. Section 20640.6 of the Revenue and Taxation Code is amended to read:

20640.6. (a) Upon receipt of the information described in Section 20640.4 and Section 20640.5, the State Controller shall determine whether the state's interest would be adequately protected if postponement is granted, and if so, shall issue to the claimant a certificate of eligibility containing the name of claimant, address of the residential dwelling on which the claimant has applied for property tax postponement, and any other information and in the form as the State Controller shall prescribe. In the event that the residential dwelling is located in a chartered city which levies and collects its own taxes, the Controller shall issue a duplicate certificate of eligibility to pay all or any part of property taxes appearing on the city's tax bill.

(b) The Controller shall cause to be recorded with the county recorder of the county in which the real property is located, a copy of any instrument creating a security interest, which shall include

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(c) The Controller shall prescribe the form of certificates of eligibility to pay all delinquent taxes and assessments authorized by this chapter.

Upon or accompanying each certificate shall be a brief statement explaining that (1) those taxpayers whose property taxes are paid by a lender via an impound, trust or other similar account should enter the total amount of each installment on the certificates and mail the certificates to the tax collector and (2) those taxpayers will receive a refund check from the county or city in the amount they entered on the certificate, within 30 days following the date on which the installment is paid by the lender or the certificate of eligibility is received by the tax collector, whichever is later.

(d) When a certificate of eligibility has been signed by the claimant, his or her spouse, or authorized agent and countersigned by the person authorized to collect property taxes or assessments for the local agency, the certificate shall constitute a written promise on the part of the State of California to pay the sum of money specified therein and the signed and countersigned certificate shall be deemed a negotiable instrument for the sole purpose of the payment of property taxes owing in the name of the claimant or his or her spouse for purposes of all laws of this state.

(e) A certificate of eligibility shall be valid for the duration prescribed thereon by the Controller.

(f) The Controller shall issue certificates of eligibility at such times as the Controller determines will best implement the purpose of this chapter.

(g) The Controller shall prescribe the manner in which a claimant eligible under this chapter, who has been issued a certificate of eligibility which is lost or destroyed prior to being filed with the local agency may obtain a duplicate copy of the certificate as a replacement. (Under conditions as may be prescribed by the Controller, a duplicate copy shall be deemed as having been filed with the local agency as of the date a claimant requests issuance of a duplicate copy.)

SEC. 420. Section 24431 of the Revenue and Taxation Code is amended to read:

24431. If—

(a) Any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation; or

(b) Any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not

controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation;

and the principal purpose for which such acquisition was made is evasion or avoidance of tax under this part by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For purposes of subdivisions (a) and (b), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

SEC. 421. Section 24497 of the Revenue and Taxation Code is amended to read:

24497. For purposes of those provisions of this chapter to which the rules contained in this section are expressly made applicable—

(a) (1) An individual shall be considered as owning the stock owned, directly or indirectly, by or for—

(A) His or her spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance); and

(B) His or her children, grandchildren, and parents.

(2) For purposes of subparagraph (B) of paragraph (1), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(b) (1) Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(2) (A) Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in Section 17501 which is exempt from tax under Section 17631) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.

(B) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under Sections 17781 to 17792, inclusive, (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(3) If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(c) (1) Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

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of a trust (other than an employees' trust described in Section 17501 which is exempt from tax under Section 17631) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this subparagraph, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

(B) Stock owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under Sections 17781 to 17792, inclusive, (relating to grantors and others treated as substantial owners) shall be considered as owned by the trust.

(3) If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(d) If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(e) (1) Except as provided in paragraphs (2) and (3), stock constructively owned by a person by reason of the application of subdivision (a), (b), (c), or (d) shall, for purposes of applying subdivision (a), (b), (c), or (d), be treated as actually owned by such person.

(2) Stock constructively owned by an individual by reason of the application of subdivision (a) shall not be treated as owned by him or her for purposes of again applying subdivision (a) in order to make another the constructive owner of such stock.

(3) Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of subdivision (c) shall not be considered as owned by it for purposes of applying subdivision (b) in order to make another the constructive owner of such stock.

(4) For purposes of this paragraph, if stock may be considered as owned by an individual under subdivision (a) or (d), it shall be considered as owned by him or her under subdivision (d).

SEC. 422. Section 24563 of the Revenue and Taxation Code is amended to read:

24563. For purposes of this article, the term "a party to a reorganization" includes:

(a) A corporation resulting from a reorganization; and.

(b) Both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

In the case of a reorganization qualifying under paragraph (2) or paragraph (3) of subdivision (a) of Section 24562, if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a

reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under paragraph (1), paragraph (2) or paragraph (3) of subdivision (a) of Section 24562 by reason of paragraph (3) of subdivision (b) of Section 24562, the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets or stock are transferred.

In the case of a reorganization qualifying under paragraph (1) of subdivision (a) of Section 24562 by reason of paragraph (4) of subdivision (b) of Section 24562, the term "a party to a reorganization" includes the controlling corporation referred to in paragraph (4) of subdivision (b) of Section 24562. In the case of a reorganization qualifying under paragraph (1) of subdivision (a) of Section 24562, by reason of paragraph (5) of subdivision (b) of Section 24562, the term "party to a reorganization" includes the controlling corporation referred to in paragraph (5) of subdivision (b) of Section 24562.

(c) The amendments made to this section by the 1971 First Extraordinary Session of the Legislature shall apply to statutory mergers occurring after December 31, 1970.

SEC. 423. Section 24662 of the Revenue and Taxation Code is amended to read:

24662. (a) (1) In the case of insurance proceeds received as a result of destruction or damage to crops, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such proceeds in income for the income year following the income year of destruction or damage, if he establishes that, under his practice, income from such crops would have been reported in a following income year.

For purposes of the preceding sentence, payments received under the Agricultural Act of 1949, as amended, as a result of (A) destruction or damage to crops caused by drought, flood, or any other natural disaster, or (B) the inability to plant crops because of such a natural disaster, shall be treated as insurance proceeds received as a result of destruction or damage to crops.

An election under this section for any income year shall be made at such time and in such manner as the Franchise Tax Board prescribes.

(2) The amendment made to paragraph (1) by the 1977–78 Regular Session of the Legislature shall apply to payments received after income years beginning after December 31, 1976.

(b) (1) In the case of income derived from the sale or exchange of livestock (other than livestock described in subdivision (b) of Section 18182) in excess of the number the taxpayer would sell if it followed its usual business practices, a taxpayer reporting on the cash receipts and disbursements method of accounting may elect to include such income for the income year following the income year in which such sale or exchange occurs if it establishes that, under its usual business practices, the sale or exchange would not have

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(2) Subdivision (a) shall apply only to a taxpayer whose principal trade or business is farming (within the meaning of Section 6420(c)(3) of the Internal Revenue Code of 1954).

SEC. 424. Section 24949.2 of the Revenue and Taxation Code is amended to read:

24949.2. (a) For purposes of Sections 24943 through 24945, if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as a result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(b) (1) Subdivision (a) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subdivision (a) of Section 24944.

(2) Subdivision (a) shall apply with respect to the compulsory or involuntary conversion of any real property only if the disposition of the converted property (within the meaning of subdivision (b) of Section 24943) occurs after December 31, 1960.

(c) (1) A taxpayer may elect, at such time and in such manner as the Franchise Tax Board may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this part.

(2) An election made under paragraph (1) may not be revoked without the consent of the Franchise Tax Board.

(3) For purposes of this subdivision, the term "outdoor advertising display" means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

(4) For purposes of this subdivision, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in paragraph (3) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

(d) In the case of a compulsory or involuntary conversion described in subdivision (a), paragraph (1) of subdivision (b) of Section 24944 shall be applied by substituting "three years" for "two years."

(e) Subdivision (d) shall apply with respect to any disposition of

converted property (within the meaning of Section 24944) after December 31, 1976.

SEC. 425. Section 24952 of the Revenue and Taxation Code is amended to read:

24952. (a) If—

(1) A sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) The seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subdivisions (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

(b) (1) In the case of a reacquisition of real property to which subdivision (a) applies, gain shall result from such reacquisition to the extent that—

(A) The amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) The amount of the gain on the sale of such property included in the measure of tax or returned as income for periods prior to such reacquisition.

(2) The amount of gain determined under paragraph (1) resulting from a reacquisition during any income year beginning after December 31, 1964, shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) The amount of the gain on the sale of such property included in the measure of tax or returned as income for periods prior to the reacquisition of such property, and

(B) The amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

(3) Except as provided in this section, the gain determined under this subdivision resulting from a reacquisition to which subdivision (a) applies shall be recognized, notwithstanding any other provision of this part.

(c) If subdivision (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

(1) The amount of the gain determined under subdivision (b)

resulting from such reacquisition, and

(2) The amount described in subparagraph (B) of paragraph (2) of subdivision (b).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

(d) If, prior to a reacquisition of real property to which subdivision (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

(1) Such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and

(2) The adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

SEC. 426. Section 38108 of the Revenue and Taxation Code is amended to read:

38108. "Scaling date" means the date when the quantity of timber harvested, by species, is first definitely determined.

Except for national forest timber, the scaling date shall be no later than the date of delivery of the felled trees to the storage or wood-processing area, whichever is first, or an alternative approved by the board. For national forest timber, the definitely determined timber volume included in forest service, United States Department of Agriculture, billing statements to timber sale contract holders, or an alternative approved by the board after a public hearing, shall be the basis for tax payment.

SEC. 427. Section 38351 of the Revenue and Taxation Code is amended to read:

38351. Every person who owns timber subject to a timber harvest plan, every person who is required to file a notice of timber operations with the State Forester, and every person who is the first person who acquires either legal title or beneficial title to downed timber or timber after it has been felled from land owned by a federal agency or any other person or agency or entity exempt from state taxation under the Constitution or laws of the United States or under the Constitution or laws of the State of California shall register with the board giving such information as the board may require.

SEC. 428. Section 38421 of the Revenue and Taxation Code is amended to read:

38421. If any person fails to make a return, the board shall make an estimate of the amount of the total timber harvested by the person and the immediate harvest value of that timber. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or

more determinations may be made for one or for more than one period. When a person discontinues activities subject to the tax, a determination may be made at any time thereafter, within the periods specified in Section 38417, as to liability arising out of the person's activities subject to the tax, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

SEC. 429. Section 40081 of the Revenue and Taxation Code is amended to read:

40081. If any person fails to make a return, the board shall make an estimate of the amount of kilowatt-hours sold for consumption by the person, or, as the case may be, of the amount of kilowatt-hours purchased by the person, the consumption of which in this state is subject to the surcharge. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one period.

SEC. 430. Section 41080 of the Revenue and Taxation Code is amended to read:

41080. If any person fails to make a return, the board shall make an estimate of the amount of the charges for services by the person, or, as the case may be of the amount of charges for services received by the persons, in this state which are subject to the surcharge. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the board's possession or may come into its possession. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof, or ten dollars ($10), whichever is greater. One or more determinations may be made for one or for more than one period.

SEC. 431. Section 31856 of the Streets and Highways Code is amended to read:

31856. Property for additional parking places may be acquired by any of the following means:

(a) By a lump sum payment or by contract of purchase with payments made annually, or otherwise, over a period of years, but that contract shall not provide for payments to be over a period longer than 25 years from the date of the contract. The purchase price may be paid from the limited taxes levied for acquisition of parking places under Section 31822, from revenues derived from operation of parking places of the district, or from any other funds of the district available for the purpose.

(b) By lease, but the lease shall not run for a period longer than 25 years. Rental on any lease may be paid from revenues derived

from the operation of parking places of the district, from the limited taxes levied for maintenance, operation, repair, and improvement under Section 31822, or from any other funds of the district available for the purpose.

(c) Under lease and option to purchase but the lease and option shall not run for a longer period than 25 years. The purchase price may be provided from revenues derived from operation of parking places of the district, from the limited taxes levied for acquisition of parking places under Section 31822, or from any other funds of the district available for the purpose.

(d) Pursuant to Section 31861.

(e) Any contract of purchase, lease, or lease with option to purchase entered into pursuant to subdivision (a), (b), or (c) may contain agreements or covenants requiring levies pursuant to Section 31822, or requiring the fixing and collection of fees, charges, and rentals for the use of parking places of the district, or both, sufficient to produce funds from which the purchase price or rent shall be paid in accordance with the terms of the contract or lease.

SEC. 432. Section 2708.1 of the Unemployment Insurance Code is amended to read:

2708.1. Where an individual is entitled to receive unemployment compensation disability benefits reduced by the amount of temporary workers' compensation received for any day under Section 2629, it shall not be necessary that he or she obtain a certificate of a physician as required by Section 2708 to receive the reduced amount of disability benefits for that day; provided, that the claimant submits evidence to the department of receipt of temporary disability benefits under a workers' compensation law for that day.

SEC. 433. Section 9002 of the Unemployment Insurance Code is amended to read:

9002. Subject to the provisions of Sections 9600 and 9605, the Secretary of the Health and Welfare Agency shall coordinate all job training placement, and related programs, conducted by state agencies, with the federal government and ensure that there is no duplication of the programs among state agencies and that all agreements, contracts, plans, or programs conform to the provisions of this part. Any plan proposed to be submitted by any agency to the federal government in relation to a job training, placement, or related program, shall first be submitted to the Secretary of the Health and Welfare Agency for his or her review. The Health and Welfare Agency may require state departments to contract with it for services to carry out the provisions of this part.

SEC. 434. Section 1817 of the Vehicle Code is amended to read:

1817. Written allegations received by the department from members of the public identifying motor vehicles or other vehicles by license number from which any flaming or glowing substance has been thrown, or discharged, shall be forwarded to the Department of Forestry together with any information as to the identity of the

registered owner of the vehicle as shown by the records of the department.

SEC. 435. Section 2400 of the Vehicle Code is amended to read:

2400. The commissioner shall administer Chapter 4 (commencing with Section 10850) of Division 4, Article 3 (commencing with Section 17300) of Chapter 1 of Division 9, Division 10 (commencing with Section 20000), Division 11 (commencing with Section 21000) except Chapter 11 (commencing with Section 22950), Division 12 (commencing with Section 24000), Division 13 (commencing with Section 29000), Division 14 (commencing with Section 31600), Division 14.5 (commencing with Section 33000), Division 14.8 (commencing with Section 34500), Division 15 (commencing with Section 35000), Division 16 (commencing with Section 36000) except Chapter 2 (commencing with Section 36100) and Chapter 3 (commencing with Section 36300), and Division 16.5 (commencing with Section 38000) except Chapter 2 (commencing with Section 38010).

The commissioner shall enforce all laws regulating the operation of vehicles and the use of the highways except that, on ways or places to which Section 592 makes reference, the commissioner shall not be required to provide patrol or enforce this code other than those provisions applicable to private property.

The commissioner shall not be required to provide patrol for or enforce Division 16.5 (commencing with Section 38000).

The commissioner shall have full responsibility and primary jurisdiction for the administration and enforcement of those provisions and laws, and for the investigation of traffic accidents, on all state highways constructed as freeways within incorporated areas of the state. However, city police officers, while engaged primarily in general law enforcement duties, may incidentally enforce state and local traffic laws and ordinances on state freeways. In any city having either a population in excess of 2,000,000 or an area of more than 300 square miles, city police officers shall have full responsibility and primary jurisdiction for the administration and enforcement of those laws and ordinances, unless the city council of the city, by resolution, requests administration and enforcement of those laws by the commissioner.

SEC. 436. Section 3051 of the Vehicle Code is amended to read:

3051. This chapter does not apply to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesman under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch or representative. This chapter does not apply to transactions involving "mobilehomes", as defined in Section 18008 of the Health and Safety Code, "recreational vehicles", as defined in Section 18010.5 of the Health and Safety Code, "commercial coaches", as defined in Section 18012 of the Health and Safety Code or off-highway motor vehicles

subject to identification, as defined in Section 38012. Except as otherwise provided in this chapter, this chapter applies to a new motor vehicle dealer as defined in Section 426, a vehicle manufacturer as defined in Section 672, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

SEC. 437. Section 4451 of the Vehicle Code is amended to read:

4451. The certificate of ownership shall contain all of the following:

(a) Not less than the information required upon the face of the registration card.

(b) Provision for notice to the department of a transfer of the title or interest of the owner or legal owner.

(c) Provision for application for transfer of registration by the transferee.

SEC. 438. Section 5004 of the Vehicle Code is amended to read:

5004. (a) Notwithstanding any other provision of this code, any owner of a motor vehicle described in paragraph (1), (2), or (3) which is operated or moved over the highway primarily for the purpose of historical exhibition or other similar purpose shall, upon application in the manner and at the time prescribed by the department, be issued special identification plates for the motor vehicle:

(1) A motor vehicle with an engine of 16 or more cylinders manufactured prior to 1965.

(2) A motor vehicle manufactured in the year 1922 or prior thereto.

(3) A motor vehicle which was manufactured after 1922, is at least 25 years old, and is of historic interest.

(b) The special identification plates assigned to motor vehicles with an engine of 16 or more cylinders manufactured prior to 1965, and to any motor vehicle manufactured in the year 1922 and prior thereto, shall run in a separate numerical series, commencing with "Horseless Carriage No. 1".

The special identification plates assigned to motor vehicles manufactured after 1922 which are at least 25 years old and are motor vehicles of historic interest shall run in a separate numerical series, commencing with "Historical Vehicle No. 1."

Each series of plates shall have different and distinguishing colors.

(c) A fee of twenty-five dollars ($25) shall be charged for the initial issuance of the special identification plates. The plates shall be permanent and shall not be required to be replaced. If the special identification plates become damaged or unserviceable in any manner, replacement for the plates may be obtained from the department upon proper application and upon payment of the fee provided for in Section 9265.

(d) All funds received by the department, in payment for the identification plates or the replacement thereof, shall be deposited

in the California Environmental License Plate Fund.

(e) These vehicles are not exempt from the equipment provisions of Sections 26709, 27150, and 27600.

(f) As used in this section, a motor vehicle of historic interest is one which is collected, restored, maintained, and operated by a collector or hobbyist principally for purposes of exhibition and historic vehicle club activities.

SEC. 439. Section 5004.5 of the Vehicle Code is amended to read:

5004.5. Notwithstanding any other provision of this code, any owner of a motorcycle manufactured in the year 1942 or prior thereto shall, upon application in the manner and at the time prescribed by the department, be issued special license plates for the motorcycle. The special license plates assigned to the motorcycles shall run in a separate numerical series. An additional fee of fifteen dollars ($15) shall be charged for the initial issuance of the special license plates. The plates shall be permanent and shall not be required to be replaced. If the special license plates become damaged or unserviceable in any manner, replacement for the plates may be obtained from the department upon proper application and upon payment of the fee provided for in Section 9265. Except as otherwise provided in this section, the motorcycles are subject to the same annual registration fees and provisions of law as are other motorcycles.

All revenues derived from the fees provided for in this section above actual costs of the production and issuance of the special plates for motorcycles, or the replacement thereof, shall be deposited in the California Environmental License Plate Fund by the department.

SEC. 440. Section 9400 of the Vehicle Code is amended to read:

9400. In addition to any other registration fee, the fees set forth in this section shall be paid for the registration of commercial vehicles. Whenever a camper is temporarily attached to a motor vehicle designed to transport property, the motor vehicle shall be subject to the fees imposed by this section. The camper shall be deemed to be a load, and fees imposed by this section upon the motor vehicle shall be based upon the unladen weight of the motor vehicle, exclusive of the camper.

(a) For any electric vehicle designed, used, or maintained as described in this section, fees shall be paid for registration according to the following schedule:

Unladen Weight	Fee
Less than 6,000 lbs.	$54
6,000 lbs. or more but less than 10,000 lbs.	108
10,000 lbs. or more	145

(b) For any motor vehicle having not more than two axles and designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid for registration according to the following schedule:

Unladen wei
Less than 3,0
3,000 lbs. to
4,001 lbs. to
5,001 lbs. to
6,001 lbs. to
7,001 lbs. to
8,001 lbs. to
9,001 lbs. to
10,001 lbs. to
11,001 lbs. to
12,001 lbs. to
13,001 lbs. to
14,001 lbs. an

(c) For an
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Unladen wei
2,000 lbs. to
3,001 lbs. to
4,001 lbs. to
5,001 lbs. to
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Unladen weight	Fee
Less than 3,000 lbs.	$5
3,000 lbs. to and including 4,000 lbs.	15
4,001 lbs. to and including 5,000 lbs.	32
5,001 lbs. to and including 6,000 lbs.	62
6,001 lbs. to and including 7,000 lbs.	83
7,001 lbs. to and including 8,000 lbs.	104
8,001 lbs. to and including 9,000 lbs.	124
9,001 lbs. to and including 10,000 lbs.	146
10,001 lbs. to and including 11,000 lbs.	165
11,001 lbs. to and including 12,000 lbs.	186
12,001 lbs. to and including 13,000 lbs.	207
13,001 lbs. to and including 14,000 lbs.	228
14,001 lbs. and over	247

(c) For any motor vehicle having three or more axles, or for any trailer, semitrailer, pole or pipe dolly, logging dolly, or other dolly designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid for registration according to the following schedule:

Unladen weight	Fee
2,000 lbs. to and including 3,000 lbs.	$17
3,001 lbs. to and including 4,000 lbs.	31
4,001 lbs. to and including 5,000 lbs.	62
5,001 lbs. to and including 6,000 lbs.	92
6,001 lbs. to and including 7,000 lbs.	124
7,001 lbs. to and including 8,000 lbs.	155
8,001 lbs. to and including 9,000 lbs.	186
9,001 lbs. to and including 10,000 lbs.	217
10,001 lbs. to and including 11,000 lbs.	247
11,001 lbs. to and including 12,000 lbs.	278
12,001 lbs. to and including 13,000 lbs.	309
13,001 lbs. to and including 14,000 lbs.	341
14,001 lbs. to and including 15,000 lbs.	372
15,001 lbs. and over	413

(d) This section does not apply to any vehicle which is operated or moved over the highway exclusively for the purpose of historical exhibition or other similar noncommercial purpose.

SEC. 441. Section 11511 of the Vehicle Code is amended to read:

11511. In any administrative action to revoke or suspend an automobile dismantler's license:

(a) Proof that a stolen vehicle of a type subject to registration under this code, or a part thereof, was found in the possession of, or upon the premises of, the dismantler shall constitute in evidence a prima facie presumption that the dismantler had knowledge that the vehicle was stolen. This presumption may be rebutted by satisfactory

evidence that the dismantler has complied with paragraphs (1), (2), (3), and (5) of subdivision (a) of Section 11520.

(b) Proof that a vehicle of a type subject to registration under this code is found in a partially dismantled condition in the possession, or upon the premises, of the dismantler shall constitute in evidence a prima facie presumption that the vehicle was partially dismantled by the dismantler. The presumption may be rebutted by a business record of the dismantler reflecting the partially dismantled condition of the vehicle on the date of acquisition.

SEC. 442. Section 11515 of the Vehicle Code is amended to read:

11515. (a) Whenever an insurance company makes a total loss settlement on a total loss salvage vehicle, the insurance company shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, and a three dollar ($3) fee, to the department. The department, upon receipt of the certificate of ownership or other evidence of title and the three dollar ($3) fee, may issue a salvage certificate for the vehicle.

(b) Subdivision (a) does not apply if the owner retains possession of the total loss salvage vehicle and the fair retail market value of the vehicle was one thousand dollars ($1,000), or less, immediately prior to its becoming a total loss salvage vehicle. In that case, the owner may retain the certificate of ownership or other evidence of ownership, and the insurance company shall notify the department of the retention on a form prescribed by the department.

(c) Whenever the owner of a total loss salvage vehicle which had a fair market retail value of more than one thousand dollars ($1,000) immediately prior to becoming a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the department of the retention on a form prescribed by the department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with the provisions of this subdivision. The owner shall, within 10 days from the settlement of the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, and a three dollar ($3) fee, to the department. The department, upon receipt of the certificate of ownership or other evidence of title and the three dollar ($3) fee, may issue a salvage certificate for the vehicle. Whenever a total loss salvage vehicle is not the subject of an insurance settlement, the owner shall, within 10 days from the loss, forward the properly endorsed certificate of ownership or other evidence of ownership acceptable to the department, and a three dollar ($3) fee, to the department. This subdivision does not apply if the fair retail market value of the vehicle was one thousand dollars ($1,000), or less, immediately prior to its becoming a total loss salvage vehicle.

(d) Upon sale or disposal of a total loss salvage vehicle, the owner or salvage pool, if the vehicle is sold or disposed of through a salvage pool, shall deliver a properly endorsed salvage certificate to the

purchaser within 10 days after payment in full for the salvage vehicle and shall also comply with Section 5900. The department shall accept the endorsed salvage certificate in lieu of the certificate of ownership or other evidence of ownership when accompanied by an application and other documents and fees as may be required by the department.

(e) This section does not apply to a vehicle which has been driven or taken without the consent of the owner thereof, until the vehicle has been recovered by the owner and only if the vehicle is a total loss salvage vehicle.

SEC. 443. Section 11704.5 of the Vehicle Code is amended to read:

11704.5. (a) Except as otherwise provided in this section, every applicant for a mobilehome dealer's or salesman's license, and every vehicle salesman who commences working for a mobilehome dealer, shall, commencing July 1, 1976, be required to take, and successfully complete, a written examination, prepared and administered by the department. The examination shall include, but not be limited to, subjects relating to mobilehomes, laws relating to contracts for the sale of vehicles, laws covering truth in lending, and departmental and warranty requirements.

(b) The department may administer an oral examination in lieu of the written examination required by subdivision (a) under the following conditions:

(1) To any person who applies for a mobilehome salesman's license.

(2) To any person who applies for a mobilehome dealer's license, provided the person is not the sole owner of the dealership and other persons within the ownership structure meet the requirements of subdivision (a).

(c) No person who, on July 1, 1976, held a then valid salesman's license and who has continuously for the same employer been a salesman of mobilehomes shall be required to take the examination specified in subdivision (a).

(d) No person who, on July 1, 1976, held a then valid dealer's license and who has continuously without lapse been a mobilehome dealer shall be required to take the examination specified in subdivision (a), regardless of whether that person subsequently makes an application to do business under a different name or form of business organization, except that a salesman of mobilehomes who makes an application for a mobilehome dealer's license shall be required to take, and successfully complete, the examination specified in subdivision (a).

(e) If the applicant for a mobilehome dealer's license is a corporation, only those persons who will participate in the direction, control, or management, or any combination thereof, of the sales operations of the business, or who act in the capacity of vehicle salesmen, shall be required to take, and successfully complete, the examination specified in subdivision (a), except that, if no officer or director of the corporation participates in the direction, control, or

management, or any combination thereof, of the sales operations of the business, or acts in the capacity of a vehicle salesman, the corporation shall designate and maintain a responsible managing employee who is a licensed vehicle salesman and who shall be required to take, and successfully complete, the examination specified in subdivision (a) for a dealer's license before a dealer's license may be issued.

(f) If the applicant for a mobilehome dealer's license is a partnership, only those partners of the partnership who will participate in the direction, control, or management, or any combination thereof, of the sales operation of the business, or who acts in the capacity of vehicle salesman, shall be required to take, and successfully complete, the examination specified in subdivision (a).

SEC. 444. Section 11902 of the Vehicle Code is amended to read:

11902. (a) The department shall issue a representative's license when satisfied that the applicant has furnished the required information, and that he or she intends in good faith to act as a representative and has paid the fees as required in Sections 9262 and 11723.

(b) The department may refuse to issue or may suspend or revoke a license for any of the following reasons:

(1) The information contained in the application is incorrect.

(2) The applicant or licensee, based on the information contained in the application or by subsequent investigation, is not of good moral character.

The conviction of a crime, including a conviction after a plea of nolo contendere, involving moral turpitude shall be prima facie evidence that the applicant or licensee is not of good moral character.

(3) The applicant or licensee has outstanding an unpaid final court judgment rendered in connection with an activity licensed under this chapter.

(4) The applicant or licensee was previously the holder of, or was a partner in a partnership or was an officer, director, or stockholder involved in management of a corporation which was the holder of, a license and certificate issued under this chapter, which license and certificate were revoked for cause and never reissued by the department, or which license and certificate were suspended for cause and the terms of suspension have not been fulfilled.

(5) The applicant or licensee has committed any of those acts prohibited by Sections 11713.2 and 11713.3.

(c) Pending the satisfaction of the department that the applicant has met the requirements under this chapter, it may issue a temporary permit to any person applying for a representative's license. The temporary permit shall permit the operation by the representative for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to a license. The temporary permit shall be invalid when the applicant's license has

been issued or refused.

(d) The department may issue a probationary representative's license upon any ground or grounds contained in subdivision (b) subject to conditions to be observed in the exercise of the privilege granted either upon application for issuance of a license or upon application for renewal of a license. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

SEC. 445. Section 21051 of the Vehicle Code is amended to read:

21051. The following sections apply to trolley coaches:

(a) Sections 1800, 4000, 4001, 4002, 4003, 4006, 4009, 4150, 4151, 4152, 4153, 4155, 4156, 4158, 4166, 4300 to 4309, inclusive, 4450 to 4454, inclusive, 4457, 4458, 4459, 4460, 4600 to 4610, inclusive, 4750, 4751, 4850, 4851, 4852, 4853, 5000, 5200 to 5205, inclusive, 5904, 6052, 8801, 9254, and 40001 with respect to 4000, relating to original and renewal of registration.

(b) Sections 9250, 9265, 9400, 9406, 9407, 9408, 9550, 9552, 9553, 9554, 9800 to 9809, inclusive, 14901, 42230 to 42234, inclusive, relating to registration and other fees.

(c) Sections 2800, 10851, 10852, 10853, 20001 to 20009, inclusive, 21052, 21053, 21054, 21450 to 21457, inclusive, 21461, 21650, 21651, 21658, 21659, 21700, 21701, 21702, 21703, 21709, 21712, 21750, 21753, 21754, 21755, 21800, 21801, 21802, 21806, 21950, 21951, 22106, 22107, 22108, 22109, 22350, 22351, 22352, 22400, 22450 to 22453, inclusive, 23101 to 23107, inclusive, 23110, 40831, 42002 with respect to 10852 and 10853, and 42004, relating to traffic laws.

(d) Sections 26706, 26707, and 26708, relating to equipment.

(e) Sections 17301, 17302, 17303, 21461, 35000, 35100, 35101, 35105, 35106, 35111, 35550, 35551, 35750, 35751, 35753, 40000.1 to 40000.25, inclusive, 40001, 40003, and 42031, relating to the size, weight, and loading of vehicles.

SEC. 446. Section 25100 of the Vehicle Code is amended to read:

25100. (a) Except as provided in subdivisions (b) and (d), every vehicle 80 inches or more in overall width shall be equipped during darkness as follows:

(1) At least one amber clearance lamp on each side mounted on a forward-facing portion of the vehicle and visible from the front and at least one red clearance lamp on each side mounted on a rearward-facing portion of the vehicle and visible from the rear.

(2) At least one amber side-marker lamp on each side near the front and at least one red side-marker lamp on each side near the rear.

(3) At least one amber side-marker lamp on each side at or near the center on trailers and semitrailers 30 feet or more in length and which are manufactured and first registered after January 1, 1962. Any such vehicle manufactured and first registered prior to January

1, 1962, may be so equipped.

(4) At least one amber side-marker lamp mounted at approximate midpoint of housecars, motortrucks, and buses 30 or more feet in length and manufactured on or after January 1, 1969. Any such vehicle manufactured prior to January 1, 1969, may be so equipped.

(5) Combination clearance and side-marker lamps mounted as side-marker lamps and meeting the visibility requirements for both types of lamps may be used in lieu of required individual clearance or side-marker lamps.

(b) The following vehicles when 80 inches or more in overall width and not equipped as provided in subdivision (a) shall be equipped during darkness as follows:

(1) Truck tractors shall be equipped with at least one amber clearance lamp on each side on the front of the cab or sleeper and may be equipped with amber side-marker lamps on each side.

(2) Truck tractors manufactured on or after January 1, 1969, shall be equipped with one amber side-marker lamp on each side near the front.

(3) Pole or pipe dollies, or logging dollies, shall be equipped with at least one combination clearance and side-marker lamp on each side showing red to the front, side, and rear.

(4) Vehicles, except truck tractors, which are 80 inches or more in width over a distance not exceeding three feet from front to rear shall be equipped with at least one amber combination clearance lamp and side-marker lamp on each side visible from the front, side, and rear if the projection is near the front of the vehicle and at least one red lamp if the projection is near the rear of the vehicle.

(5) Towing motor vehicles engaged in driveaway-towaway operations shall be equipped with at least one amber clearance lamp at each side on the front and at least one amber side-marker lamp on each side near the front.

(6) Towed motor vehicles engaged in driveaway-towaway operations shall be equipped with at least one amber side-marker lamp on each side of intermediate vehicles, and the rearmost vehicle shall be equipped with at least one red side-marker lamp on each side and at least one red clearance lamp on each side on the rear.

(7) Trailers and semitrailers designed for transporting single boats in a cradle-type mounting and for launching the boat from the rear of the trailer need not be equipped with front and rear clearance lamps provided amber clearance lamps showing to the front and red clearance lamps showing to the rear are located on each side at or near the midpoint between the front and rear of the trailer to indicate the extreme width of the trailer.

(c) Loads extending beyond the side of a vehicle where the overall width of the vehicle and load is 80 inches or more shall be equipped with an amber combination clearance and side-marker lamp on the side at the front and a red combination clearance and side-marker lamp on the side at the rear. In lieu of the foregoing requirement, projecting loads not exceeding three feet from front to

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rear at the extreme width shall be equipped with at least one amber combination clearance and side-marker lamp on the side visible from the front, side, and rear if the projection is near the front of the vehicle and at least one red lamp if the projection is near the rear of the vehicle.

(d) Clearance and side-marker lamps are not required on auxiliary dollies or on passenger vehicles other than a housecar.

(e) Clearance lamps shall be visible from all distances between 500 feet and 50 feet to the front or rear of the vehicle, and side-marker lamps shall be visible from all distances between 500 feet and 50 feet to the side of the vehicle.

(f) Clearance lamps shall, so far as is practicable, be mounted to indicate the extreme width of the vehicle. Side-marker lamps shall be mounted not lower than 15 inches on vehicles manufactured on and after January 1, 1968. Combination clearance and side-marker lamps required on loads shall be mounted so the lenses project to the outer extremity of the vehicle or load.

SEC. 447. Section 26708.5 of the Vehicle Code is amended to read:

26708.5. It is unlawful for any person to place, install, affix, or apply any transparent material upon the windshield, or side or rear windows, of any motor vehicle if the material alters the color or reduces the light transmittance of the windshield or side or rear windows, except as provided in subdivision (b) or (c) of Section 26708.

This section does not apply to factory-installed tinted glass or the equivalent replacement thereof.

SEC. 448. Section 35780.5 of the Vehicle Code is amended to read:

35780.5. (a) The Department of Transportation may, upon application in writing from a company in the business of making or transporting trusses, as defined in Section 657, issue a special permit in writing authorizing the applicant to operate or move a vehicle carrying a load exceeding the maximum width specified by this code when the vehicle is actually being used to transport trusses upon a highway under the jurisdiction of the department, provided that the load does not exceed 12 feet in width and the company complies with the department's regulations governing the transportation of extra-legal loads.

(b) This section does not apply to highways which are part of the National System of Interstate and Defense Highways if that application would prevent this state from receiving any federal funds for highway purposes, and in that event the provisions of law applicable to the maximum permissible width of any load of trusses in effect on December 31, 1979, apply to that load.

SEC. 449. Section 42050 of the Vehicle Code, as added by Section 7.5 of Chapter 530 of the Statutes of 1980, is amended to read:

42050. To reimburse the General Fund for amounts appropriated therefrom for the laboratory phases of driver education pursuant to Section 41304 of the Education Code, and to augment the Peace Officers' Training Fund to the extent designated in Section 42052,

there shall be levied a penalty assessment on all offenses involving a violation of this code or any local ordinance adopted pursuant to this code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of a county pursuant to subparagraph (iii) of paragraph 3 of subdivision (a) of Section 258 of the Welfare and Institutions Code, in the following amounts:

(a) Where a fine is imposed	$5 for each $20 of fine, or fraction thereof.
(b) If sentence is suspended	$5 if jail only, otherwise based on the amount of the fine levied, as in subdivision (a).
(c) If bail is forfeited	$5 for each $20 of bail, or fraction thereof.
(d) Where multiple offenses are involved	The penalty assessment shall be based on the total fine or bail for all offenses, or $5 for each jail sentence.

When a fine is suspended, in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

SEC. 450. Section 8617 of the Water Code is amended to read:

8617. The board may give assurances satisfactory to the Secretary of Defense of the United States that the state will do all of the following:

(a) Provide, without cost to the United States, all lands, easements, and rights-of-way necessary for the construction of the project under the adopted flood control plan, except as otherwise provided in that certain act passed by the Congress of the United States, approved June 22, 1936, and entitled "An act authorizing the construction of certain public works on rivers and harbors for flood control and other purposes" (Public Law No. 738, Seventy-fourth Congress).

(b) Hold and save the United States free from damage due to the construction works.

(c) Maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of Defense.

(d) Promise, agree, do, or perform any or all other things required or necessary under the provisions of the act of Congress approved June 22, 1936, or any acts amending or adding to that act, now or hereafter adopted.

SEC. 451. Section 8886 of the Water Code is amended to read:

8886. The parcels of land specified in Section 8885 may be sold and conveyed by the board at any time after the expiration of the redemption period of one year at public or private sale and with or

without notice, to any person paying not less than the amount for which the parcel was bid in by the county treasurer at the delinquent sale for the drainage district, with interest thereon at the rate of 12 percent per annum compounded yearly from the date of the delinquent sale, and also the amount of all subsequent installments or other assessments then delinquent, with accrued interest and penalties thereon.

SEC. 452. Section 13220 of the Water Code is amended to read:

13220. Each regional board shall do all of the following:

(a) Establish an office.

(b) Select one of its members as chairman at the first regular meeting held each year.

(c) Appoint as its confidential employee, exempt from civil service under Section 4 of Article VII of the California Constitution, and fix the salary of, an executive officer who shall meet technical qualifications as defined by the State Water Resources Control Board. The executive officer shall serve at the pleasure of the regional board.

(d) Employ any other assistants which may be determined necessary to assist the executive officer.

SEC. 453. Section 13360 of the Water Code is amended to read:

13360. No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply therewith in any lawful manner. However, regarding disposal sites other than evaporation ponds from which there is no drainage or seepage, the restrictions of this section shall not apply to waste discharge requirements or orders or decrees with respect to the discharge of solid waste requiring the installation of riprap, the construction of walls and dikes, the installation of surface and underground drainage facilities to prevent runoff from entering the disposal area or leakage to underground or surface waters, or other reasonable requirements to achieve the above or similar purposes. If the court, in an action for an injunction brought under this division, finds that the enforcement of an injunction restraining the discharger from discharging waste would be impracticable, the court may issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order, or decree.

SEC. 454. Section 13627 of the Water Code is amended to read:

13627. (a) Supervisors and operators of municipal waste water treatment plants shall possess a certificate of appropriate grade in accordance with, and to the extent recommended by the advisory committee and required by, regulations adopted by the state board. The state board shall develop and specify in its regulations the training necessary to qualify a supervisor or operator for certification for each type and class of plant. The state board may accept

experience in lieu of qualification training. In lieu of a properly certified waste water treatment plant operator, the state board may approve use of a water treatment plant operator of appropriate grade certified by the State Department of Health Services, where water reclamation is involved.

(b) A person employed as a municipal waste water treatment plant supervisor or operator on the effective date of regulations adopted pursuant to this chapter shall be issued an appropriate certificate provided he meets the training, education, and experience requirements prescribed by regulations.

SEC. 455. Section 20023 of the Water Code is amended to read:

20023. The State Treasurer has been and is authorized to amend or revoke any order or report, other than a certification report, upon 10 days' notice upon any ground deemed by the State Treasurer to warrant amendment or revocation.

SEC. 456. Section 20054 of the Water Code is amended to read:

20054. Notwithstanding any other provision of law, where an improvement district of any district, prior to January 1, 1972, sold bonds for sewer purposes, where the bonds were approved as a legal investment for any trust funds, as well as funds of any insurance companies, commercial and saving banks, as well as trust companies and state school funds pursuant to this division, and where the purpose for which the bonds were approved for certification and sale was consistent with previously existing industrial or commercial plans or zoning ordinances over the property within the improvement district of any district, lands, within the improvement district planned and zoned for industrial or commercial uses, shall be deemed committed to those uses. No legal action brought subsequent to the sale and approval may seek, as a remedy, the invalidation of local plans, zoning, subsequent development approvals, or the provision of infrastructure, as each applies to those lands, nor shall the maintenance of the litigation or the judgment therein prevent the legislative body of the city, county, or district from taking any action to permit or authorize use of, or to provide infrastructure for, property served by the facilities in conformity with the general plan and zoning designations in force immediately prior to September 1, 1977. In any action to which this section applies, the judgment shall not prevent the authorization or sale of any bonds of an improvement district which encompasses the territory of an improvement district wherein bonds were sold for sewer purposes prior to January 1, 1972. Any legal action pending as of January 1, 1978, shall be deemed to be an action seeking relief not herein prohibited, and no court shall have jurisdiction to issue the prohibited relief.

This section does not preclude a city or county, at its discretion and in a manner pursuant to law, from altering plans, zoning, or subsequent development approvals applicable to those lands, or from enacting and enforcing further regulations upon their use. This section does not excuse developments on those lands from

compliance with all applicable requirements of state law.

SEC. 457. Section 25809 of the Water Code is amended to read:

25809. A district may make an additional reasonable charge for processing or reprocessing an invalid check or other instrument used to pay an assessment or service charge owed to the district. The reasonable charge shall be for cost of the processing or reprocessing of the invalid check or instrument. If the charge for processing becomes delinquent, the charge may become a lien against the land on which the assessment was made or to which the service was rendered, as provided in Section 25806.

SEC. 458. Section 25825.3 of the Water Code is amended to read:

25825.3. (a) Within the Anderson-Cottonwood Irrigation District only, any person having an interest in any land within the district may file with the secretary, in lieu of the petition authorized by Section 25825, a verified petition alleging it is appropriate to apply a special rate of assessment to that land and, as to that land, one of the following is applicable:

(1) His or her land, or a described portion of it, is used for residential or commercial purposes and has, for five years immediately prior to the date of filing a petition pursuant to this section, been irrigated or supplied water, wholly or partially, from a water system not owned or operated by the district.

(2) For five years immediately prior to the date of filing a petition pursuant to this section, his or her land, or a described portion of it, has never received water service from the district of any nature and the board of directors of the district has not, at any time prior to filing the petition, adopted a plan for future service of water to the lands, which plan may provide for the landowner to pay all costs of providing facilities to transport water from the nearest point at which the district has water available to the lands made subject to the petition.

(3) For five years immediately prior to the date of filing a petition pursuant to this section, his or her land, or a described portion of it, was served with water received from wells not owned, maintained, or operated by the district and which land and wells are not supplied water of any nature from the district, including, but not limited to, surface, subsurface, or seepage waters, which waters would be suitable for agricultural or domestic purposes.

(b) The procedure for any petition to which this section applies shall be in accordance with this article.

(c) After the conclusion of a hearing as provided in Section 25831, if the board finds that any of the land described in any petition has been supplied as alleged or no plan for future service has been adopted, and the lands made subject to the petition are not and will not be benefited by the operations of the district in a manner that would justify their assessment at the regular rate of assessment, then the board shall adjust the rate of assessment on the land made subject to the petition in an order entered in full upon its minutes.

SEC. 459. Section 26225 of the Water Code is amended to read:

26225. Property sold for delinquent assessments may be redeemed within five years from the date of sale, or thereafter before a collector's deed of the property has been delivered.

Where a collector's deed has been delivered to the district, the period of redemption is extended until the first bid is received for the property or until the board determines the property is not to be sold as provided in Section 26290.

Redemption before a collector's deed of the property has been delivered may be made by payment in lawful money of the United States to the collector of the amount for which the property was sold plus a penalty of three-fourths of 1 percent per month from the date of sale until redemption. Redemption after a collector's deed has been delivered may only be made by payment of the total of the following amounts:

(a) The total of the amount of the sale shown on each certificate of sale outstanding.

(b) A penalty on each certificate of sale outstanding of three-fourths of 1 percent per month from the date of sale until redemption.

(c) An amount for each year of escaped assessment determined as follows: The assessor shall establish the assessment value for the land for each year of escaped assessment and the collector shall apply the rate fixed in that year to determine the amount of the escaped assessment.

SEC. 460. Section 31303 of the Water Code is amended to read:

31303. Any money belonging to a district may be deposited or invested and drawn out as provided in Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, as now or hereafter amended. References in that chapter to "treasurer" shall mean, for the purposes of a district, the auditor thereof and to "auditor" shall mean, for the purposes of a district, the secretary thereof. This section provides for a deposit and investment procedure separate from that provided in Article 3 (commencing with Section 31335).

SEC. 461. Section 47127 of the Water Code is amended to read:

47127. Upon making the assessment order, the board shall prepare a supplementary assessment roll showing all the following:

(a) A description of each tract assessed.

(b) The total of assessments against each tract for construction purposes.

(c) The rate of assessment.

(d) The exact amount assessed against each tract by the supplementary assessment.

SEC. 462. Section 708 of the Welfare and Institutions Code is amended to read:

708. Whenever a minor who appears to be a danger to himself or others as a result of the use of narcotics (as defined in Section 11001 of the Health and Safety Code), or a restricted dangerous drug (as defined in Section 11901 of the Health and Safety Code), is brought

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before any judge of the juvenile court, the judge may continue the hearing and proceed pursuant to this section. The court may order the minor taken to a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. Thereupon the provisions of Section 11922 of the Health and Safety Code shall apply, except that the professional person in charge of the facility shall make a written report to the court concerning the results of the evaluation of the minor.

If the professional person in charge of the facility for 72-hour evaluation and treatment reports to the juvenile court that the minor is not a danger to himself or herself or others as a result of the use of narcotics or restricted dangerous drugs or that the minor does not require 14-day intensive treatment, or if the minor has been certified for not more than 14 days of intensive treatment and the certification is terminated, the minor shall be released if the juvenile court proceedings have been dismissed; referred for further care and treatment on a voluntary basis, subject to the disposition of the juvenile court proceedings; or returned to the juvenile court, in which event the court shall proceed with the case pursuant to this chapter.

Any expenditure for the evaluation or intensive treatment of a minor under this section shall be considered an expenditure made under Part 2 (commencing with Section 5600) of Division 5, and shall be reimbursed by the state as are other local expenditures pursuant to that part.

SEC. 463. Section 736 of the Welfare and Institutions Code is amended to read:

736. (a) The Youth Authority shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide that care. No person subject to this section shall be transported to any facility under the jurisdiction of the Youth Authority until the director thereof has notified the committing court of the place to which that person is to be transported and the time at which he or she can be received.

(b) The Youth Authority shall also accept a person committed to it pursuant to this article, provided that the Director of the Youth Authority certifies that staff and institutions are available (1) if he is a borderline psychiatric or borderline mentally deficient case, (2) if he or she is a sex deviate unless he or she is of a type whose presence in the community, under parole supervision, would present a menace to the public welfare, or (3) if he or she suffers from a primary behavior disorder. No person subject to this section shall be transported to any facility under the jurisdiction of the Youth Authority until the director thereof has notified the committing court of the place to which that person is to be transported and the time at which he can be received. To implement the administration of this paragraph, the Director of the Youth Authority and the

Director of Mental Health shall, at least annually, confer and establish policy with respect to the types of cases which should be the responsibility of each department.

SEC. 464. Section 1756 of the Welfare and Institutions Code is amended to read:

1756. Notwithstanding any other provision of law, if, in the opinion of the Director of the Youth Authority, the rehabilitation of any mentally disordered, or developmentally disabled person confined in a state correctional school may be expedited by treatment at one of the state hospitals under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the Director of the Youth Authority shall certify that fact to the director of the appropriate department who may authorize receipt of the person at one of the hospitals for care and treatment. Upon notification from the director that the person will no longer benefit from further care and treatment in the state hospital, the Director of the Youth Authority shall immediately send for, take, and receive the person back into a state correctional school. Any person placed in a state hospital under this section who is committed to the authority shall be released from the hospital upon termination of his or her commitment unless a petition for detention of that person is filed under the provisions of Part 1 (commencing with Section 5000) of Division 5.

SEC. 465. Section 1760.5 of the Welfare and Institutions Code is amended to read:

1760.5. The director may require persons committed to the authority to perform work necessary and proper to be done by the Department of Forestry, the Department of Parks and Recreation, and the Department of Fish and Game, by the Division of State Lands, by the United States Department of Agriculture, and by the federal officials and departments in charge of national forests and parks within this state. For the purposes of this section, the director, with the approval of the Department of General Services, may enter into contracts with federal and state officials and departments. All moneys received by the director pursuant to any of those contracts shall be paid into the State Treasury to the credit and in augmentation of the current appropriation for the support of the authority. The director may provide, from those moneys, for the payment of wages to the wards for work they do pursuant to any of those contracts, the wages to be paid into the Indemnity Fund created pursuant to Section 13967 of the Government Code, or to the parents or dependents of the ward, or to the ward in the manner and in those proportions as the Department of the Youth Authority directs.

SEC. 466. Section 4302 of the Civil Code, as amended by Section 30 of Chapter 429 of the Statutes of 1978, is repealed. The repeal made by this section shall not affect the existence or validity of Section 4302 of the Welfare and Institutions Code, as added by Chapter 1191 of the Statutes of 1980.

SEC. 467. Chapter 3 (commencing with Section 4330) is added to Division 4 of the Welfare and Institutions Code, to read:

CHAPTER 3. PILOT PROJECT FOR BRAIN-DAMAGED PERSONS

4330. It has come to the attention of the Legislature that:

(a) State public policy discriminates against brain-damaged adults.

(b) Brain damage is often a long-term chronic illness, the costs of which are most often not covered by health insurance or existing government assistance programs.

(c) Financial assistance is not available until after families have struggled to care for family members and exhausted their own financial resources.

(d) If brain damage is diagnosed as a mental disorder, financial liability is significantly less onerous.

(e) Separable and less onerous financial liability already exists for programs serving the developmentally disabled and crippled children even though the medical and treatment needs may be identical to those of brain-damaged persons.

(f) The term brain damage is broad in scope and covers a wide range of organic and neurological disorders.

(g) Services required by brain-damaged persons often cross the service line of a number of different programs.

4332. It is the intent of the Legislature to establish a pilot project to:

(a) Assist families in securing services, information, and counseling necessary for the care of brain-damaged family members.

(b) Coordinate funding and services among state departments and programs in order to provide an integrated program and single service access for persons with brain damage.

(c) Facilitate the integration of existing funds and services for persons with brain damage.

4333. The Director of Mental Health, herein referred to as director, shall administer this article and establish such rules, regulations, and standards, as the director deems necessary in carrying out the provisions of this article.

4334. The director shall establish a pilot project to be conducted by contract with an appropriate nonprofit community agency to integrate services and funds for persons with brain damage.

4335. In choosing an appropriate nonprofit community agency to conduct the pilot project, the director shall give priority to the following:

(a) An agency which has previously provided information and support services to families of brain-damaged persons within a population area or county of at least 500,000 persons.

(b) An agency which includes family members of persons with brain damage on its governing board or advisory boards.

(c) An agency which has shown a capacity to address the needs

of brain-damaged persons and their families.

4336. The agency conducting the pilot project shall provide the following services:

(a) In-home support services shall be provided by the pilot project through the establishment of a client voucher system. The voucher system should be available to family members, in lieu of cash assistance, to reimburse for a wide variety of in-home services, as specified in Sections 12300 and 14132, including but not limited to, the following:

(1) Nursing services.
(2) Housekeeping services.
(3) Home health services.
(4) Attendant care.
(5) Transportation.
(6) Respite care.

(b) If additional funding from sources other than the General Fund appropriation contained in the act by which this article is enacted become available, the pilot project under this article shall provide additional services in the following order of priority:

(1) Adult day health care services.
(2) Diagnostic services.
(3) Out-of-home 24-hour skilled nursing services.

(c) The pilot project shall provide legal, financial, and postdiagnostic family support counseling, information about services to persons with brain damage, and overall project administration. The pilot project may provide such services directly or by contract.

4337. The director shall establish criteria for program eligibility for persons with brain damage, including financial liability pursuant to Section 4338. The director shall assume coordination of existing funds and services for persons with brain damage, and for the purchase of in-home services through the client voucher system described in subdivision (b) of Section 4336, with other departments that may serve persons with brain damage, including the Department of Rehabilitation, the State Department of Health Services, the State Department of Social Services, and the State Department of Developmental Services.

4338. The parent, spouse, or child of a person receiving services under this article or the person receiving the services may be required to contribute to the cost of services depending upon their ability to pay, but not to exceed the actual cost thereof, as determined by the director.

4339. In considering total funds available for the project, the director shall utilize funding available from appropriate state departments, including, but not limited to: the State Department of Health Services, the State Department of Social Services, and the Department of Rehabilitation. Funding for services not available from existing programs shall be provided from the appropriation contained in Section 3 of Chapter 1058 of the Statutes of 1979.

4340. The pilot project under this article shall be limited to one

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year and the director shall evaluate the success of the pilot project. The director shall report such evaluation to the Legislature, not less than three months following the completion of the pilot project, and the findings of the evaluation shall address at least the following:

(a) Reduced need for institutionalized services by providing in-home support services.

(b) Number of persons in skilled nursing facilities who transfer to less dependent 24-hour care settings.

SEC. 468. Section 4446 of the Welfare and Institutions Code is repealed.

SEC. 469. Chapter 7.5 (commencing with Section 4740) of Division 4.1 of the Welfare and Institutions Code is repealed.

SEC. 470. Chapter 7.5 (commencing with Section 4740) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 7.5. RESIDENTIAL CARE FACILITY APPEALS PROCEDURES

4740. The Legislature finds the following:

(a) The quality of care provided to persons with developmental disabilities by residential facilities is contingent upon a closely coordinated "team" effort by the regional center or its designee, the client, the parent or representative if appropriate, the residential facility administrator, and the licensing agency. The rights and responsibilities of each must be identified in order to assure clear direction and accountability for each.

(b) The quality of care is impaired when inordinate numbers of staff from placement and licensing agencies give direction to the facility administrator regarding care and service requirements.

4741. An adult person with a developmental disability has the legal right to determine where his or her residence will be. Except in a situation which presents immediate danger to the health and well-being of the individual, the regional center or its designee shall not remove a client from a residential care facility against the client's wishes unless there has been specific court action to abridge such right with respect to an adult or unless the parent, guardian or conservator consents with respect to a child.

4742. The regional center or its designated representative shall (a) guide and counsel facility staff regarding the care and services required by each client served by the regional center; and (b) monitor the care and services provided the individual to assure that care and services are provided in accordance with the individual program plan.

4743. It is the intent of the Legislature that to the greatest extent possible, the staff of the regional center or its designee are assigned so as to minimize the number of persons responsible for programs provided in a given facility.

The regional center or its designee shall designate the staff person responsible for assuring that each individual client's program plan is

carried out. One person shall be assigned by the regional center as the principal liaison to a facility and to monitor the provision of care and the services provided by that facility in accordance with the individual program plans. If, due to the number of regional center clients in the facility, additional staff of a regional center or its designee serve clients in the facility, one person shall be assigned as having primary responsibility for, and assure consistency and continuity of, directions to the administrator and for the monitoring of care and services.

4744. The regional center or its designee shall provide to the residential facility administrator all information in its possession concerning any history of dangerous propensity of the client prior to the placement in that facility. However, no confidential client information shall be released pursuant to this section without the consent of the client or authorized representative.

4745. During each visit to the facility, the designated staff person shall inform the administrator orally of any substantial inadequacies in the care and services provided, the specific corrective action necessary and the date by which corrective action must be completed. The designated staff person shall confirm this information in writing to the administrator within 48 hours after the oral notice and inform the administrator of the right to appeal the findings.

4746. The severity of the deficiencies and the quality of care provided shall determine how long the regional center or its designee will work with the facility administrator to resolve inadequacies. After a reasonable period of time, if the care continues to be unacceptable, the designated staff person shall submit to his or her supervisor and to the licensing agency and administrator a recommended disposition with supporting documents attached. The placement agency shall develop sufficient documentation of inadequacies and care provided to sustain corrective action.

4747. If an adult person or the parent, guardian or conservator on behalf of a child requests a relocation, the regional center or its designee may provide assistance in locating and moving to another residence.

The regional center or its designee shall not encourage a client to move from a residential facility without reasonable cause. If reasonable cause does exist, the regional center or its designee shall give at least 15 days' written notice to the facility administrator of the intent, prior to counseling the client to move.

4748. Within nine months of the effective date of this section, the State Department of Developmental Services shall develop and implement regulations for use by the regional center or its designee to assure uniformity of the care and services to be provided to persons registered with the regional centers who reside in residential facilities.

SEC. 471. Section 9203 of the Welfare and Institutions Code is amended to read:

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9203. The commission may accept gifts and grants from any source, public or private, to assist it in the performance of its functions, and the gifts and grants shall operate to augment any appropriation made for the support of the commission, provided that the department shall serve as the fiscal agent for the accounting of the gifts and grants and that no gifts or grants shall be used for the operation by the commission of direct service programs which would conflict with the department's duties and functions as described by law.

SEC. 472. Section 9600 of the Welfare and Institutions Code is amended to read:

9600. In determining how state funds are to be allocated, the Department of Aging shall give first priority to existing Brown Bag programs that are not being sufficiently funded. "Sufficiently funded" means possessing adequate funds for the lease of needed equipment, warehouses, trucks, freezer space, and salaries for the paid staff to coordinate volunteers and provide for a timely, business-like response to donors and for distribution of foods.

Existing programs which meet criteria established by the Department of Aging shall also receive state money for the establishment of a statewide Brown Bag network the purpose of which will be to strengthen existing programs and establish new ones. The Brown Bag network shall receive fiscal support so that the distribution of existing resources can be more efficient and also aid in the establishment of new Brown Bag programs.

New Brown Bag programs shall be selected on the basis of counties with agricultural resources, access to agricultural resources, and large senior populations. A local cash or in-kind match of at least 25 percent of the Brown Bag program's budget shall be demonstrated before any program shall receive state subsidies. Sources from which the local match may be derived include, but are not limited to, city, county, and federal funds, membership dues, and private or business donations. Priority shall be given to those local programs with a larger local match. For both existing and new programs, state money shall be a catalyst for charitable contributions, including in-kind and local community support. State moneys shall not be used to replace other sources of fiscal and volunteer support unless absolutely necessary.

Each of the Brown Bag projects shall receive no more than one hundred thousand dollars ($100,000) per year for three years.

SEC. 473. Section 10653 of the Welfare and Institutions Code is amended to read:

10653. The county department shall be responsible for the initial selection of public assistance recipients who are to participate in training, vocational educational programs, or other employment preparation programs that are developed pursuant to the provisions of this chapter. The county department shall have primary responsibility for providing those services which will prepare recipients for the specific vocational training and employment

placement services offered by the Employment Development Department, the Department of Rehabilitation, the Department of Education, and any other state or federal agencies offering specialized programs to upgrade the capacity of recipients and potential recipients to improve their capacity for self-support or self-direction. The services provided by the county department shall be geared to complement those services offered by state and federal agencies to the end that recipients of public assistance receive and participate in the programs to the fullest extent of their capacity.

SEC. 474. Section 14145 of the Welfare and Institutions Code, as amended by Chapter 1240 of the Statutes of 1980, is amended and renumbered to read:

14144.5. Notwithstanding any provision of this article or of any other statute to the contrary, any person who is eligible under Section 14005.4 or 14005.7 for dialysis, parenteral hyperalimentation, and related services and who is employed and individually earning an amount which exceeds the minimum needs standard, and who receives dialysis services either through a self-dialysis unit of a dialysis clinic or through home dialysis or who receives parenteral hyperalimentation services through self-parenteral hyperalimentation, shall be eligible for dialysis, parenteral hyperalimentation, and related services under Medi-Cal pursuant to this article and shall, after utilizing other contractual or legal entitlements pursuant to Section 14143, be liable to pay only the amounts specified in subdivision (b) of Section 14142, except that such percentage obligations shall be 1 percent for each five thousand dollars ($5,000) of family unit net worth up to a maximum net worth of five hundred thousand dollars ($500,000). Persons eligible for services under this section shall not be subject to Section 14144.

SEC. 475. Section 18294 of the Welfare and Institutions Code, as added by Chapter 892 of the Statutes of 1977, is repealed. The repeal made by this section shall not affect the existence or validity of Section 18294 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980.

SEC. 476. Section 18295 of the Welfare and Institutions Code, as added by Chapter 892 of the Statutes of 1977, is repealed. The repeal made by this section shall not affect the existence or validity of Section 18295 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980.

SEC. 477. Section 18296 of the Welfare and Institutions Code, as added by Chapter 892 of the Statutes of 1977, is repealed. The repeal made by this section shall not affect the existence or validity of Section 18296 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980.

SEC. 478. Section 18297 of the Welfare and Institutions Code, as added by Chapter 892 of the Statutes of 1977, is repealed. The repeal made by this section shall not affect the existence or validity of Section 18297 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980.

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SEC. 479. Section 18298 of the Welfare and Institutions Code, as added by Chapter 892 of the Statutes of 1977, is repealed. The repeal made by this section shall not affect the existence or validity of Section 18298 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980.

SEC. 480. The heading of Chapter 8.5 (commencing with Section 19810) of Part 2 of Division 10 of the Welfare and Institutions Code is amended and renumbered to read:

CHAPTER 10. PILOT COMPREHENSIVE SERVICES CENTER FOR THE DISABLED

SEC. 481. Section 25 of Chapter 1313 of the Statutes of 1980 is amended to read:

Sec. 25. It is the intent of the Legislature, if this bill and Senate Bill No. 1811 are both chaptered and become effective January 1, 1981, both bills amend Section 1373 of the Health and Safety Code, and this bill is chaptered after Senate Bill No. 1811, that the amendments to Section 1373 proposed by both bills be given effect and incorporated in Section 1373 in the form set forth in Section 14.5 of this act. Therefore, Section 14.5 of this act shall become operative only if this bill and Senate Bill No. 1811 are both chaptered and become effective January 1, 1981, both amend Section 1373, and this bill is chaptered after Senate Bill No. 1811, in which case Section 14 of this act shall not become operative.

SEC. 482. Section 214 of this act, which repeals Section 1250.2 of the Health and Safety Code, shall not be operative if any other act enacted during the 1981 calendar year, which takes effect on or before January 1, 1982, amends Section 1250 of the Health and Safety Code.

SEC. 483. Section 449 of this act, which amends Section 42050 of the Vehicle Code, shall become operative January 1, 1983.

SEC. 484. Any section of any act enacted by the Legislature during the 1981 portion of the 1981–82 Regular Session, which takes effect on or before January 1, 1982, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether such act is enacted prior to or subsequent to this act.

CHAPTER 715

An act to amend Sections 4370 and 4811 of, and to repeal and add Section 4800.6 to, the Civil Code, relating to family law.

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
The County of Santa Clara

Airport Land Use Commissions/Plans II

Chapter 852, Statutes of 1967; Chapter 1182, Statutes of 1970; Chapter 844, Statutes of 1973; Chapter 725, Statutes of 1980; Chapter 714, Statutes of 1981; Chapter 1047, Statutes of 1982; Chapter 1117, Statutes of 1984; Chapter 1018, Statutes of 1987; Chapter 306, Statutes of 1989; Chapter 563, Statutes of 1990; Chapter 140, Statutes of 1991; Chapter 59, Statutes of 1993; Chapter 644, Statutes of 1994; Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002; and Chapter 971, Statutes of 2002

Volume II

(j) This section is repealed as of January 1, 1984.

CHAPTER 1041

An act to add and repeal Section 65302.3 of the Government Code, and to amend, repeal, and add Sections 21670, 21671, 21674, and 21676 of, and to add and repeal Section 21678 of, the Public Utilities Code, relating to airports.

[Approved by Governor September 14, 1982. Filed with Secretary of State September 15, 1982.]

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

SECTION 1. Section 65302.3 is added to the Government Code, to read:

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Section 65450, shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan prepared pursuant to Section 65450, shall be amended pursuant to subdivision (a) not later than December 31, 1983, to be consistent with provisions of the plan required under Section 21675 of the Public Utilities Code, as such plan may provide on July 1, 1983.

(c) In the event that the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

This section shall remain in effect only until January 1, 1984, and on that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1984, deletes or extends that date.

SEC. 2. Section 65302.3 is added to the Government Code, to read:

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Section 65450, shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) Notwithstanding the provisions of Section 65361, the general plan, and any applicable specific plan, shall be amended within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) In the event that the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

This section shall become operative January 1, 1984, and remain in effect only until January 1, 1989, and as of that date is repealed, unless

a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 3. Section 21670 of the Public Utilities Code is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding such airports in such a manner among other things, promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669, and prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that such areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, there is hereby created, in each county subject to this article and containing at least one airport operated for the benefit of the general public and served by an air carrier certificated by the Civil Aeronautics Board, an airport land use commission, hereinafter referred to as the "commission." Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county; provided, however, that, if there are any cities contiguous or adjacent to the qualifying airport, at least one such representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county; however, one such representative shall be appointed from an airport operated for the benefit of the general public.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the member who appointed him. A vacancy in the office of proxy shall

be filled promptly by appointment of a new proxy.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 4. Section 21670 is added to the Public Utilities Code, to read:

21670. There is hereby created, in each county subject to this article and containing at least one airport operated for the benefit of the general public and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, an airport land use commission, hereinafter referred to as the "commission." Each commission shall consist of seven members to be selected as follows:

(a) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county; provided, however, that, if there are any cities contiguous or adjacent to the qualifying airport, at least one such representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by subdivisions (b) and (c) shall each be increased by one.

(b) Two representing the county, appointed by the board of supervisors.

(c) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county; however, one such representative shall be appointed from an airport operated for the benefit of the general public.

(d) One representing the general public, appointed by the other six members of the commission.

Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

Each member shall promptly appoint a single proxy to represent him in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the member who appointed him. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

This section shall become operative January 1, 1989.

SEC. 5. Section 21671 of the Public Utilities Code is amended to read:

21671. In any county where there is an airport operated for the general public, and served by an air carrier certificated by the Civil Aeronautics Board, which is owned by a city or district in another county or by another county, one of the representatives provided by paragraph (1) of subdivision (b) of Section 21670 shall be appointed by the mayors of the cities of the county in which the owner of that airport is located, and one of the representatives provided by paragraph 2 of subdivision (b) of Section 21670 shall be appointed by

the board of supervisors of the county in which the owner of that airport is located.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 6. Section 21671 is added to the Public Utilities Code, to read:

21671. In any county where there is an airport operated for the general public, and served by an air carrier certified by the Public Utilities Commission or the Civil Aeronautics Board, which is owned by a city or district in another county or by another county, one of the representatives provided by subdivision (a) of Section 21670 shall be appointed by the mayors of the cities of the county in which the owner of that airport is located, and one of the representatives provided by subdivision (b) of Section 21670 shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

This section shall become operative January 1, 1989.

SEC. 7. Section 21674 of the Public Utilities Code is amended to read:

21674. The commission shall have the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:

(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of such airports is not already devoted to incompatible uses.

(b) To coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.

(c) To prepare and adopt an airport land use plan pursuant to Section 21675.

(d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.

(e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 8. Section 21674 is added to the Public Utilities Code, to read:

21674. The commission shall have the following powers and duties, subject to the limitations upon its jurisdiction herein set forth:

(a) To study conditions and make recommendations concerning the need for height restrictions on buildings near airports;

(b) To make recommendations for the use of the land surrounding airports to assure safety of air navigation and the promotion of air commerce.

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(c) To hold public hearings regarding the subject matter in subdivisions (a) and (b) and make findings of fact thereon which would be advisory only to the involved jurisdiction.

(d) To make and enforce rules and regulations for the orderly and fair conduct of such hearings which shall conform as nearly as possible to the provisions applicable to hearings conducted by local agency formation commissions.

(e) To achieve by zoning compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of such airports is not already devoted to incompatible uses, and to this end the commissions shall require that all new construction in such areas shall conform to such standards as the department may from time to time adopt.

The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

This section shall become operative January 1, 1989.

SEC. 9. Section 21676 of the Public Utilities Code is amended to read:

21676. (a) Each local agency whose general plan includes areas covered by an airport land use commission plan, shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the commission's plan. If the plan or plans are inconsistent with the commission's plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its plans. The local agency may overrule the commission after such hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(c) Each public agency owning any airport within the boundaries of an airport land use commission plan, shall, prior to modification of its airport master plan, refer such proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action

is consistent with the purposes of this article stated in Section 21670.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the commission's plan.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 10. Section 21676 is added to the Public Utilities Code, to read:

21676. Each public agency having representation on the commission shall assist in the development of an area plan. All such plans shall be filed with the commission for its approval. If in the determination of the commission, an action or regulation of any public agency within the boundaries of the area plan is inconsistent with the commission plan, then the commission shall hold a hearing to determine whether or not the proposed action is in the best interest of the airport and the adjacent area. If it is determined that the action would be harmful, then the public agency shall be notified and the public agency shall have another hearing to reconsider its action. The public agency proposing the action or regulation, however, may overrule the commission after such hearing by a four-fifths vote of its governing body.

Each public agency owning any airport within the boundaries of the area plan shall file any substantive change in development plans with the commission for its approval. If such plans are inconsistent with the commission plan, then the public agency shall be notified and shall have another hearing to reconsider its action. Such public agency, however, may overrule the commission by a four-fifths vote of its governing body.

This section shall become operative January 1, 1989.

SEC. 11. Section 21678 is added to the Public Utilities Code, to read:

21678. With respect to a publicly owned airport that a public agency does not operate, if such public agency pursuant to Section 21676 overrides a commission's action or recommendation, the operator of such airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 12. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may

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CHAPTER 1042

An act to amend Section 41907 of the Education Code, and to amend Sections 12800, 12811, and 13005.3 of the Vehicle Code, relating to motor vehicles.

[Approved by Governor September 14, 1982. Filed with Secretary of State September 15, 1982.]

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

SECTION 1. Section 41907 of the Education Code is amended to read:

41907. A qualified instructor is one who has passed an approved driver's instruction examination and holds a designated subjects credential or who holds a valid prior credential authorizing instruction in automobile driver education and driver training.

SEC. 2. Section 12800 of the Vehicle Code, as amended by Section 1.5 of Chapter 1102 of the Statutes of 1981, is amended to read:

12800. Every application for a driver's license shall contain the following information:

(a) The applicant's true full name, age, sex, mailing address, and residence address.

(b) A brief description of the applicant for the purpose of identification.

(c) A legible print of the thumb or finger of the applicant.

(d) The type of motor vehicle or combination of vehicles the applicant desires to operate.

(e) Whether the applicant has ever previously been licensed as a driver and, if so, when and in what state or country and whether or not the license has been suspended or revoked and, if so, the date of and reason for the suspension or revocation.

(f) Whether the applicant has ever previously been refused a driver's license in this state and, if so, the date of and the reason for the refusal.

(g) Whether the applicant, within the last three years, has experienced, on one or more occasions, either a lapse of consciousness or an episode of marked confusion caused by any condition which may bring about recurrent lapses, or whether the applicant has any disease, disorder, or disability which affects ability to exercise reasonable and ordinary control in operating a motor vehicle upon a highway.

(h) Whether the applicant understands traffic signs and signals.

(i) Whether the applicant has ever previously been issued an

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to immediately resolve a critical problem in the intercountry adoptions program, which has caused a suspension of some intercountry placements, and a reluctance of out-of-state adoption agencies to work with California families, it is necessary that this act take effect immediately.

CHAPTER 1117

An act to amend Sections 21659, 21670, 21671, 21675, 21678, and 21681 of, and to add Section 21676.5 to, the Public Utilities Code, relating to aeronautics.

[Approved by Governor September 13, 1984. Filed with Secretary of State September 13, 1984.]

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

SECTION 1. Section 21659 of the Public Utilities Code is amended to read:

21659. (a) No person shall construct any structure or permit any natural growth to grow at a height so as to constitute a hazard to air navigation, as a hazard to air navigation is defined in accordance with the regulations of the Federal Aviation Administration relating to objects affecting navigable airspace contained in Title 14 of the Code of Federal Regulations, Part 77, unless a permit allowing the construction or growth is issued by the department.

(b) The permit shall not be required if the Federal Aviation Administration has determined that the construction or growth does not constitute a hazard to air navigation or would not create an unsafe condition for air navigation. Subdivision (a) does not apply to a pole, pole line, distribution or transmission tower, or tower line of substation of a public utility.

(c) Section 21658 is applicable to subdivision (b).

SEC. 2. Section 21670 of the Public Utilities Code, as amended by Section 3 of Chapter 1041 of the Statutes of 1982, is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669, and prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public

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airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county, except that one representative shall be appointed from an airport operated for the benefit of the general public.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date.

SEC. 3. Section 21670 of the Public Utilities Code, as added by Section 4 of Chapter 1041 of the Statutes of 1982, is amended to read:

21670. (a) Every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that these are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by subdivisions (b) and (c) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two representing the airports within that county, appointed by a selection committee comprised of the managers of all of the public airports within that county, except that one representative shall be appointed from an airport operated for the benefit of the general public.

(4) One representing the general public, appointed by the other six members of the commission.

(b) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(c) Each member shall promptly appoint a single proxy to represent the member in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(d) This section shall become operative January 1, 1989.

SEC. 4. Section 21671 of the Public Utilities Code, as amended by Section 5 of Chapter 1041 of the Statutes of 1982, is amended to read:

21671. In any county where there is an airport operated for the general public which is owned by a city or district in another county or by another county, one of the representatives provided by paragraph (1) of subdivision (b) of Section 21670 shall be appointed by the mayors of the cities of the county in which the owner of that

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This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1989, deletes or extends that date.

SEC. 5. Section 21671 of the Public Utilities Code, as added by Section 6 of Chapter 1041 of the Statutes of 1982, is amended to read:

21671. In any county where there is an airport operated for the general public which is owned by a city or district in another county or by another county, one of the representatives provided by paragraph (1) of subdivision (a) of Section 21670 shall be appointed by the mayors of the cities of the county in which the owner of that airport is located, and one of the representatives provided by paragraph (2) of subdivision (a) of Section 21670 shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

This section shall become operative January 1, 1989.

SEC. 5.5. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) The commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall not be amended more than once in any calendar year.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 6. Section 21676.5 is added to the Public Utilities Code, to read:

21676.5. (a) If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of

this article as stated in Section 21670, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made. If, in the determination of the commission, an action, regulation, or permit of the local agency is inconsistent with the commission plan, the local agency shall be notified and that local agency shall hold a hearing to reconsider its plan. The local agency may overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670.

(b) Whenever the local agency has revised its general plan or specific plan or has overruled the commission pursuant to subdivision (a), the proposed action of the local agency shall not be subject to further commission review, unless the commission and the local agency agree that individual projects shall be reviewed by the commission.

SEC. 7. Section 21678 of the Public Utilities Code is amended to read:

21678. (a) With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676 or 21676.5 overrides a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation.

(b) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1989, deletes or extends that date.

SEC. 8. Section 21681 of the Public Utilities Code is amended to read:

21681. For the purposes of this article:

(a) "Own and operate" means that the public entity must own property in fee simple or by a long-term lease of a minimum of 20 years, unless otherwise approved by the department, and must maintain dominion and control of the property. Operations of the airport will be for and on behalf of the public entity. All leases to the public entity of property must be approved by the department. A lease of the property to an agent or agency other than the public entity does not meet the criteria for participation in airport assistance funds.

(b) "Matching funds" means money provided by the public entity and which does not consist of funds previously received from state or federal agencies or public entity funds previously used to match federal or state funds. This definition shall be retroactive to July 1, 1967.

(c) "General aviation" means all aviation with the exception of air carrier and military aviation.

(d) "Public entity" means any city, county, airport district, airport

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authority, port district, port authority, public district, public authority, political subdivision, airport land use commission, or public corporation and the University of California.

(e) "Public agency" means the various agencies of the State of California and the federal government.

(f) "Airport and aviation purposes" means expenditures of a capital improvement nature, including the repair or replacement of a capital improvement, and expenditures for compatible land use planning in the area surrounding an airport, for any of the following purposes:

(1) Land acquisition for development and improvement of general aviation aircraft landing facilities.

(2) Grading and drainage necessary for the construction or reconstruction of runways or taxiways.

(3) Construction or reconstruction of runways or taxiways.

(4) Acquisition of "runway clear zones" as defined in current regulations of the Federal Aviation Administration.

(5) Acquisition of easements through, or other interests in, airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility.

(6) Removal of natural obstructions from runway clear zones.

(7) Original installation of "segmented circle airport marker systems" as defined in current regulations of the Federal Aviation Administration.

(8) Original installation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment.

(9) Original erection of minimum security fencing around the perimeter of an aircraft landing facility.

(10) Grading and drainage necessary to provide for parking of transient general aviation aircraft.

(11) Construction or reconstruction of transient general aviation aircraft parking areas.

(12) Servicing of revenue or general obligation bonds issued to finance capital improvements for airport and aviation purposes.

(13) Air navigational facilities.

(14) Engineering and preliminary engineering related directly to a project funded under this article.

(15) Such other capital improvements as may from time to time be designated in rules and regulations promulgated by the department.

(16) Activities of an airport land use commission in connection with the preparation of a new or updated comprehensive land use plan pursuant to Section 21675.

Expenditures which cannot be clearly identified as capital improvements must be submitted to the department for consideration and approval.

(g) "Operation and maintenance" means expenditures for wages or salaries, utilities, service vehicles, and all other noncapital

expenditures which are included in insurance, professional services, supplies, construction equipment, upkeep and landscaping, and such other items of expenditure which may be designated as "operation and maintenance" in rules and regulations promulgated by the department.

(h) "Enplanement" means the boarding of an aircraft by a revenue passenger, including an original, stopover, or transfer boarding thereof. For purposes of this subdivision, a stopover is a deliberate and intentional interruption of a journey by a passenger scheduled to exceed four hours in the case of an intrastate or interstate passenger or not to exceed 24 hours in the case of an international passenger at a point between the point of departure and the point of destination, and a transfer is an occurrence at an intermediate point in an itinerary whereby a passenger or shipment changes from a flight of one carrier to another flight either of the same or a different carrier with or without a stopover.

SEC. 8.5. Section 21681 of the Public Utilities Code is amended to read:

21681. For purposes of this article:

(a) "Own and operate" means that the public entity shall own the property in fee simple or by a long-term lease of a minimum of 20 years, unless otherwise approved by the department, and shall maintain dominion and control of the property, except that the public entity may provide by contract with a person for the operation and management of an airport otherwise meeting the requirements of this article. Operations of the airport shall be for, and on behalf of, the public entity. All leases to the public entity of property are required to be approved by the department. A lease of the property by the public entity to an agent or agency other than to a public entity does not meet the criteria for participation in airport assistance funds.

(b) "Matching funds" means money which is provided by the public entity and which does not consist of funds previously received from state or federal agencies or public entity funds previously used to match federal or state funds. This definition shall be retroactive to July 1, 1967.

(c) "General aviation" means all aviation with the exception of air carrier and military aviation.

(d) "Public entity" means any city, county, airport district, airport authority, port district, port authority, public district, public authority, political subdivision, airport land use commission, or public corporation and the University of California.

(e) "Public agency" means the various agencies of the State of California and the federal government.

(f) "Airport and aviation purposes" means expenditures of a capital improvement nature, including the repair or replacement of a capital improvement, and expenditures for compatible land use planning in the area surrounding an airport, for any of the following purposes:

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(2) Grading and drainage necessary for the construction or reconstruction of runways or taxiways.

(3) Construction or reconstruction of runways or taxiways.

(4) Acquisition of "runway clear zones" as defined in current regulations of the Federal Aviation Administration.

(5) Acquisition of easements through, or other interests in, airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility.

(6) Removal of natural obstructions from runway clear zones.

(7) Original installation of "segmented circle airport marker systems" as defined in current regulations of the Federal Aviation Administration.

(8) Original installation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment.

(9) Original erection of minimum security fencing around the perimeter of an aircraft landing facility.

(10) Grading and drainage necessary to provide for parking of transient general aviation aircraft.

(11) Construction or reconstruction of transient general aviation aircraft parking areas.

(12) Servicing of revenue or general obligation bonds issued to finance capital improvements for airport and aviation purposes.

(13) Air navigational facilities.

(14) Engineering and preliminary engineering related directly to a project funded under this article.

(15) Such other capital improvements as may, from time to time, be designated in rules and regulations adopted by the department.

(16) Activities of an airport land use commission in connection with the preparation of a new or updated comprehensive land use plan pursuant to Section 21675.

Expenditures which cannot be clearly identified as capital improvements shall be submitted to the department for consideration and approval.

(g) "Operation and maintenance" means expenditures for wages or salaries, utilities, service vehicles, and all other noncapital expenditures which are included in insurance, professional services, supplies, construction equipment, upkeep and landscaping, and such other items of expenditure which may be designated as "operation and maintenance" in rules and regulations adopted by the department.

(h) "Enplanement" means the boarding of an aircraft by a revenue passenger, including an original, stopover, or transfer boarding thereof. For purposes of this subdivision, a stopover is a deliberate and intentional interruption of a journey by a passenger scheduled to exceed four hours in the case of an intrastate or

interstate passenger or not to exceed 24 hours in the case of an international passenger at a point between the point of departure and the point of destination, and a transfer is an occurrence at an intermediate point in an itinerary whereby a passenger or shipment changes from a flight of one carrier to another flight either of the same or a different carrier with or without a stopover.

SEC. 9. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 10. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 11. Section 8.5 of this bill incorporates amendments to Section 21681 of the Public Utilities Code proposed by both this bill and AB 2640. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1985, (2) each bill amends Section 21681 of the Public Utilities Code, and (3) this bill is enacted after AB 2640, in which case Section 8 of this bill shall not become operative.

CHAPTER 1118

An act to amend Section 22511.5 of, and to add Section 22511.6 to, the Vehicle Code, relating to vehicles and making an appropriation therefor.

[Approved by Governor September 13, 1984. Filed with Secretary of State September 13, 1984.]

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

SECTION 1. Section 22511.5 of the Vehicle Code is amended to read:

22511.5. (a) A disabled person is any of the following:

(1) Any person who has lost, or has lost the use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, or who has a diagnosed disease or disorder which substantially impairs or interferes with mobility, or who is so severely disabled as to be unable to move without the aid of an assistant device.

(2) Any person who is blind to such an extent that the person's central visual acuity does not exceed 20/200 in the better eye, with

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(b) (1) There is hereby established the Public Awards Fund, which is continuously appropriated, without regard to fiscal years, for the purpose of this section.

(2) The director may receive contributions pursuant to this section and deposit them in the Public Awards Fund for use pursuant to subdivision (c).

(3) Sections 11005 and 16302 of the Government Code shall not apply to funds under this section.

(c) In order to achieve the public policy of the State of California, as specified in Section 19000, the director may present awards to those employers, architects, clients, ex-clients, disabled Californians nominated or selected for the Hall of Fame, and other persons whose superior cooperation and contributions to the employment of the handicapped deserve special recognition.

CHAPTER 1018

An act to amend Section 65302.3 of the Government Code, and to amend Sections 21670, 21670.1, 21671, 21673, 21674, 21675, 21676, and 21678 of, to add Section 21679 to, and to repeal Sections 21670, 21671, 21674, and 21676 of, the Public Utilities Code, relating to airport land uses.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 65302.3 of the Government Code is amended to read:

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

SEC. 2. Section 21670 of the Public Utilities Code, as amended by Section 2 of Chapter 1117 of the Statutes of 1984, is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and

objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

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(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport. The commission shall be constituted pursuant to this section on and after March 1, 1988.

SEC. 3. Section 21670 of the Public Utilities Code, as amended by Section 3 of Chapter 1117 of the Statutes of 1984, is repealed.

SEC. 4. Section 21670.1 of the Public Utilities Code is amended to read:

21670.1. (a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b) A body designated pursuant to subdivision (a) which does not include among its membership at least two members having an expertise in aviation, as defined in subdivision (e) of Section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.

SEC. 5. Section 21671 of the Public Utilities Code, as amended by Section 4 of Chapter 1117 of the Statutes of 1984, is amended to read:

21671. In any county where there is an airport operated for the general public which is owned by a city or district in another county or by another county, one of the representatives provided by paragraph (1) of subdivision (b) of Section 21670 shall be appointed by the city selection committee of mayors of the cities of the county in which the owner of that airport is located, and one of the representatives provided by paragraph (2) of subdivision (b) of Section 21670 shall be appointed by the board of supervisors of the county in which the owner of that airport is located.

SEC. 6. Section 21671 of the Public Utilities Code, as amended by Section 5 of Chapter 1117 of the Statutes of 1984, is repealed.

SEC. 8. Section 21673 of the Public Utilities Code is amended to read:

21673. In any county not having a commission or a body designated to carry out the responsibilities of a commission, any owner of a public airport may initiate proceedings for the creation of a commission by presenting a request to the board of supervisors that a commission be created and showing the need therefor to the satisfaction of the board of supervisors.

SEC. 9. Section 21674 of the Public Utilities Code, as amended by Section 7 of Chapter 1041 of the Statutes of 1982, is amended to read:

21674. The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:

(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses.

(b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.

(c) To prepare and adopt an airport land use plan pursuant to Section 21675.

(d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.

(e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

(f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article.

SEC. 10. Section 21674 of the Public Utilities Code, as added by Section 8 of Chapter 1041 of the Statutes of 1982, is repealed.

SEC. 11. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

SEC. 12. Section 21676 of the Public Utilities Code, as amended by Section 9 of Chapter 1041 of the Statutes of 1982 is amended to read:

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21676. (a) Each local agency whose general plan includes areas covered by an airport land use commission plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the commission's plan. If the plan or plans are inconsistent with the commission's plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its plans. The local agency may overrule the commission after such hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(c) Each public agency owning any airport within the boundaries of an airport land use commission plan shall, prior to modification of its airport master plan, refer such proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the commission's plan.

SEC. 13. Section 21676 of the Public Utilities Code, as added by Section 10 of Chapter 1041 of the Statutes of 1982, is repealed.

SEC. 14. Section 21678 of the Public Utilities Code is amended to read:

21678. With respect to a publicly owned airport that a public agency does not operate, if the public agency pursuant to Section 21676 or 21676.5 overrides a commission's action or recommendation, the operator of the airport shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation.

SEC. 15. Section 21679 is added to the Public Utilities Code, to

read:

21679. (a) In any county in which there is no airport land use commission or other body designated to assume the responsibilities of an airport land use commission, or in which the commission or other designated body has not adopted an airport land use plan, an interested party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, which directly affects the use of land within one mile of the boundary of a public airport within the county.

(b) The court may issue an injunction which postpones the effective date of the zoning change, zoning variance, permit, or regulation until the governing body of the local agency which took the action does one of the following:

(1) In the case of an action which is a legislative act, adopts a resolution declaring that the proposed action is consistent with the purposes of this article stated in Section 21670.

(2) In the case of an action which is not a legislative act, adopts a resolution making findings based on substantial evidence in the record that the proposed action is consistent with the purposes of this article stated in Section 21670.

(3) Rescinds the action.

(4) Amends its action to make it consistent with the purposes of this article stated in Section 21670, and complies with either paragraph (1) or (2) of this subdivision, whichever is applicable.

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency which took the action demonstrates that the general plan and any applicable specific plan of the agency accomplishes the purposes of an airport land use plan as provided in Section 21675.

(d) An action brought pursuant to subdivision (a) shall be commenced within 30 days of the decision or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever is longer.

(e) If the governing body of the local agency adopts a resolution pursuant to subdivision (b) with respect to a publicly owned airport that the local agency does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the zoning change, zoning variance, permit, or regulation.

(f) As used in this section, "interested party" means any owner of land within two miles of the boundary of the airport or any organization with a demonstrated interest in airport safety and efficiency.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2

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of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1019

An act to amend Sections 138.4, 139.6, 3550, 3760, 6409, 6409.1, 6412, 6413.5, and 6431 of the Labor Code, relating to employment injuries and illnesses.

[Approved by Governor September 22, 1987. Filed with Secretary of State September 23, 1987.]

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

SECTION 1. Section 138.4 of the Labor Code is amended to read:

138.4. The administrative director shall, with respect to injuries involving loss of time:

(a) Prescribe reasonable rules and regulations for the serving on the employee of notices dealing with the payment, nonpayment or delay in payment of temporary disability, permanent disability, and death benefits and the provision of vocational rehabilitation services, with copies to the administrative director. A pamphlet published or approved by the administrative director, meeting the criteria specified in subdivision (b) of Section 139.6, shall be included with the first notice of payment or notice of delay in payment served on each injured employee.

(b) Prescribe reasonable rules and regulations for providing the employee notice of any change in the amount or type of benefits being provided, the termination of benefits, and an accounting of the benefits paid, with copies to the administrative director.

(c) Prescribe reasonable rules and regulations for serving on the employee notice of rejection of any liability for compensation and the remedies available to the employee, and the employee's right to seek information and advice from an information and assistance officer or an attorney.

SEC. 2. Section 139.6 of the Labor Code is amended to read:

139.6. The administrative director shall establish and effect within the Division of Industrial Accidents a continuing program to provide information and assistance concerning the rights, benefits, and obligations of the workers' compensation law to employees and employers subject thereto. The program shall include, but not be limited to, the following:

(a) The preparation, publishing, and as necessary, updating, of guides to the California workers' compensation system for employees and employers. The guides shall detail, in easily understandable language, the rights and obligations of employees

Section 854.1 of the Financial Code nor abrogate or modify in any manner the holdings of Hannon v. Western Title Insurance Company, 89 D.A.R. 8451.

CHAPTER 306

An act to amend Section 54993 of the Government Code, and to amend Sections 21671.5 and 21675 of, and to add Sections 21675.1, 21675.2, and 21679.5 to, the Public Utilities Code, relating to airports.

[Approved by Governor September 6, 1989. Filed with Secretary of State September 7, 1989.]

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

SECTION 1. Section 54993 of the Government Code is amended to read:

54993. This chapter shall apply only to fees and charges as described in Sections 54990, 54991, 56383, 56654, 56655, 57004, 65104, 65456, 65863.7, 65909.5, and 66451.2 of this code, and in Sections 17951, 19132.3, and 19852 of the Health and Safety Code and in Section 21671.5 of the Public Utilities Code.

SEC. 2. Section 21671.5 of the Public Utilities Code is amended to read:

21671.5. (a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his or her successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing him or her. The expiration date of the term of office of each member shall be the first Monday in May in the year in which his or her term is to expire. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairperson of the commission shall be selected by the members thereof.

(b) Compensation, if any, shall be determined by the board of supervisors.

(c) Staff assistance, including the mailing of notices and the keeping of minutes, and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

(d) Notwithstanding any other provisions of this article, the

commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.

(e) The commission shall meet at the call of the commission chairperson or at the request of the majority of the commission members. A majority of the commission members shall constitute a quorum for the transaction of business. No action shall be taken by the commission except by the recorded vote of a majority of the full membership.

(f) The commission may establish a schedule of fees for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of Section 21675. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 of the Government Code. After June 30, 1991, a commission which has not adopted the comprehensive land use plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.

SEC. 3. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include a long-range master plan that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, may specify use of land, and may determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the plan and each amendment to the plan.

SEC. 4. Section 21675.1 is added to the Public Utilities Code, to

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21675.1. (a) By June 30, 1991, each commission shall adopt the comprehensive land use plan required pursuant to Section 21675.

(b) Until a commission adopts a comprehensive land use plan, a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall give public notice in the same manner as the city or county is required to give for those actions, regulations, or permits. As used in this section, "vicinity" means land which will be included or reasonably could be included within the plan. If the commission has not designated a study area for the plan, then "vicinity" means land within two miles of the boundary of a public airport.

(c) The commission may approve an action, regulation, or permit if it finds, based on substantial evidence in the record, all of the following:

(1) The commission is making substantial progress toward the completion of the plan.

(2) There is a reasonable probability that the action, regulation, or permit will be consistent with the plan being prepared by the commission.

(3) There is little or no probability of substantial detriment to or interference with the future adopted plan if the action, regulation, or permit is ultimately inconsistent with the plan.

(d) If the commission disapproves an action, regulation, or permit, the commission shall notify the city or county. The city or county may overrule the commission, by a two-thirds vote of its governing body, if it makes specific findings that the proposed action, regulation, or permit is consistent with the purposes of this article, as stated in Section 21670.

(e) If a city or county overrules the commission pursuant to subdivision (d), that action shall not relieve the city or county from further compliance with this article after the commission adopts the plan.

(f) If a city or county overrules the commission pursuant to subdivision (d) with respect to a publicly owned airport that the city or county does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the city's or county's decision to proceed with the action, regulation, or permit.

(g) A commission may adopt rules and regulations which exempt any ministerial permit for single-family dwellings from the requirements of subdivision (b) if it makes the findings required pursuant to subdivision (c) for the proposed rules and regulations, except that the rules and regulations may not exempt either of the following:

(1) More than two single-family dwellings by the same applicant within a subdivision prior to June 30, 1991.

(2) Single-family dwellings in a subdivision where 25 percent or more of the parcels are undeveloped.

SEC. 5. Section 21675.2 is added to the Public Utilities Code, to read:

21675.2. (a) If a commission fails to act to approve or disapprove any actions, regulations, or permits within 60 days of receiving the request pursuant to Section 21675.1, the applicant or his or her representative may file an action pursuant to Section 1094.5 of the Code of Civil Procedure to compel the commission to act, and the court shall give the proceedings preference over all other actions or proceedings, except previously filed pending matters of the same character.

(b) The action, regulation, or permit shall be deemed approved only if the public notice required by this subdivision has occurred. If the applicant has provided seven days advance notice to the commission of the intent to provide public notice pursuant to this subdivision, then, not earlier than the date of the expiration of the time limit established by Section 21675.1, an applicant may provide the required public notice. If the applicant chooses to provide public notice, that notice shall include a description of the proposed action, regulation, or permit substantially similar to the descriptions which are commonly used in public notices by the commission, the location of any proposed development, the application number, the name and address of the commission, and a statement that the action, regulation, or permit shall be deemed approved if the commission has not acted within 60 days. If the applicant has provided the public notice specified in this subdivision, the time limit for action by the commission shall be extended to 60 days after the public notice is provided. If the applicant provides notice pursuant to this section, the commission shall refund to the applicant any fees which were collected for providing notice and which were not used for that purpose.

(c) Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65946, inclusive, of the Government Code, may constitute grounds for disapproval of actions, regulations, or permits.

(d) Nothing in this section diminishes the commission's legal responsibility to provide, where applicable, public notice and hearing before acting on an action, regulation, or permit.

SEC. 6. Section 21679.5 is added to the Public Utilities Code, to read:

21679.5. (a) Until June 30, 1991, no action pursuant to Section 21679 to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport, shall be commenced in any county in which the commission or other designated body has not adopted an airport land use plan, but is making substantial progress toward the completion of the plan.

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(b) If a commission has been prevented from adopting the comprehensive land use plan by June 30, 1991, or if the adopted plan could not become effective, because of a lawsuit involving the adoption of the plan, the June 30, 1991, date in subdivision (a) shall be extended by the period of time during which the lawsuit was pending in a court of competent jurisdiction.

(c) Any action pursuant to Section 21679 commenced prior to January 1, 1990, in a county in which the commission or other designated body has not adopted an airport land use plan, but is making substantial progress toward the completion of the plan, which has not proceeded to final judgment, shall be held in abeyance until June 30, 1991. If the commission or other designated body adopts an airport land use plan on or before June 30, 1991, the action shall be dismissed. If the commission or other designated body does not adopt an airport land use plan on or before June 30, 1991, the plaintiff or plaintiffs may proceed with the action.

(d) An action to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport for which an airport land use plan has not been adopted by June 30, 1991, shall be commenced within 30 days of June 30, 1991, or within 30 days of the decision by the local agency, or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever date is later.

SEC. 7. The Legislature finds and declares that the requirement for airport land use commissions to adopt comprehensive land use plans was adopted in 1970. The Legislature finds and declares that this act sets July 1, 1991, as the deadline for the commissions to adopt these required plans. The Legislature further finds and declares that this deadline provides sufficient time to the commissions to adopt these plans. Therefore, it is the intent of the Legislature not to reimburse airport land use commissions for costs incurred by the commissions after July 1, 1991, for the preparation of comprehensive land use plans pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of the Public Utilities Code.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

commenced within three years of the department's discovery of the facts constituting the grounds for that action.

CHAPTER 562

An act to add Section 1861.135 to, the Insurance Code, relating to insurance.

[Approved by Governor August 24, 1990. Filed with Secretary of State August 27, 1990.]

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

SECTION 1. Section 1861.135 is added to the Insurance Code, to read:

1861.135. (a) Notwithstanding Section 1861.13, surety insurance shall not be subject to Sections 1861.01 and 1861.05; however, any rate, rating plan or rating system for surety insurance shall be filed with the commissioner before it may be used in this state, and that rate, rating plan, or rating system may be used immediately upon filing with the commissioner.

(b) The rates for surety insurance shall not be excessive, inadequate, unfairly discriminatory, or otherwise in violation of this chapter, except Sections 1861.01 and 1861.05.

SEC. 2. The Legislature finds and declares that this act furthers the purpose of Proposition 103 by clarifying the applicability of the proposition to surety insurance.

SEC. 3. This act applies to rates, rating plans and rating systems for surety insurance on and after November 8, 1988. This act shall not relieve any insurer of the obligations set forth in Section 12979 of the Insurance Code arising prior to January 1, 1991.

CHAPTER 563

An act to amend Section 21675 of the Public Utilities Code, relating to airports.

[Approved by Governor August 27, 1990. Filed with Secretary of State August 28, 1990.]

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

SECTION 1. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction

of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission may include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all of the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the plan and each amendment to the plan.

(e) If a comprehensive land use plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

CHAPTER 564

An act to add Section 2889.5 to the Public Utilities Code, relating to public utilities.

[Approved by Governor August 27, 1990. Filed with Secretary of State August 28, 1990.]

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

SECTION 1. Section 2889.5 is added to the Public Utilities Code, to read:

2889.5. No interexchange telephone corporation, or any person, firm, or corporation representing an interexchange telephone corporation, shall authorize a local exchange telephone company to make any change in a residential telephone subscriber's presubscribed long-distance carrier until all of the following steps have been completed:

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in an amount equaling the percentages set forth in this chapter, any excess shall be deducted from, and any deficiency not in excess of an amount agreed upon between the association and the horsemen's organization contracting with the association with respect to the conduct of racing meetings shall be added to, the amount the association is required to pay to or for the benefit of owners and breeders of horses at its racing meeting in the following calendar year. Any deficiency in excess of the amount agreed upon shall be distributed as provided in the agreement.

(d) If, at the close of any other racing meeting, it is determined that the association conducting the meeting has not made payments to or for the benefit of owners and breeders of horses in an amount equaling the percentages set forth in this chapter, any excess shall be deducted from, and any deficiency shall be added to, the amount the association is required to pay to or for the benefit of owners and breeders of horses at its racing meeting in the following calendar year.

(e) Any two associations conducting a meeting pursuant to Section 19612 or 19612.6 may, with the approval of the board, combine their excesses or deficiencies from prior meetings if the associations and the organizations representing the horsemen all agree.

(f) Any associations conducting a harness meeting in the northern zone, including an association conducting any meeting pursuant to Section 19549.3, may, with the approval of the board, combine their excesses or deficiencies from prior meetings if the associations and the organizations representing horsemen all agree.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure viable quarter horse, harness, and Arabian racing meetings during the summer and fall of 1991 and in order to preserve night racing in this state, it is necessary that this act take effect immediately.

CHAPTER 140

An act to amend Sections 21671.5 and 21675.1 of the Public Utilities Code, relating to airports, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1991. Filed with Secretary of State July 22, 1991.]

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

SECTION 1. Section 21671.5 of the Public Utilities Code is amended to read:

21671.5. (a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his or her successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body which originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which that member's term is to expire. Any vacancy in the membership of the commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairperson of the commission shall be selected by the members thereof.

(b) Compensation, if any, shall be determined by the board of supervisors.

(c) Staff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

(d) Notwithstanding any other provisions of this article, the commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.

(e) The commission shall meet at the call of the commission chairperson or at the request of the majority of the commission members. A majority of the commission members shall constitute a quorum for the transaction of business. No action shall be taken by the commission except by the recorded vote of a majority of the full membership.

(f) The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission which has not adopted the comprehensive land use plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.

(g) In any county which has undertaken by contract or otherwise completed land use plans for at least one-half of all public use airports in the county, the commission may continue to charge fees necessary

to comply with this article until June 30, 1992, and, if the land use plans are complete by that date, may continue charging fees after June 30, 1992. If the land use plans are not complete by June 30, 1992, the commission shall not charge fees pursuant to subdivision (f) until the commission adopts the land use plans.

SEC. 2. Section 21675.1 of the Public Utilities Code is amended to read:

21675.1. (a) By June 30, 1991, each commission shall adopt the comprehensive land use plan required pursuant to Section 21675, except that any county which has undertaken by contract or otherwise completed land use plans for at least one-half of all public use airports in the county, shall adopt that plan on or before June 30, 1992.

(b) Until a commission adopts a comprehensive land use plan, a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall give public notice in the same manner as the city or county is required to give for those actions, regulations, or permits. As used in this section, "vicinity" means land which will be included or reasonably could be included within the plan. If the commission has not designated a study area for the plan, then "vicinity" means land within two miles of the boundary of a public airport.

(c) The commission may approve an action, regulation, or permit if it finds, based on substantial evidence in the record, all of the following:

(1) The commission is making substantial progress toward the completion of the plan.

(2) There is a reasonable probability that the action, regulation, or permit will be consistent with the plan being prepared by the commission.

(3) There is little or no probability of substantial detriment to or interference with the future adopted plan if the action, regulation, or permit is ultimately inconsistent with the plan.

(d) If the commission disapproves an action, regulation, or permit, the commission shall notify the city or county. The city or county may overrule the commission, by a two-thirds vote of its governing body, if it makes specific findings that the proposed action, regulation, or permit is consistent with the purposes of this article, as stated in Section 21670.

(e) If a city or county overrules the commission pursuant to subdivision (d), that action shall not relieve the city or county from further compliance with this article after the commission adopts the plan.

(f) If a city or county overrules the commission pursuant to subdivision (d) with respect to a publicly owned airport that the city or county does not operate, the operator of the airport is not liable for damages to property or personal injury resulting from the city's

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(g) A commission may adopt rules and regulations which exempt any ministerial permit for single-family dwellings from the requirements of subdivision (b) if it makes the findings required pursuant to subdivision (c) for the proposed rules and regulations, except that the rules and regulations may not exempt either of the following:

(1) More than two single-family dwellings by the same applicant within a subdivision prior to June 30, 1991.

(2) Single-family dwellings in a subdivision where 25 percent or more of the parcels are undeveloped.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to extend, in a timely manner, the date for compliance with the requirement for adoption of a comprehensive land use plan for land surrounding airports in counties with a high number of public use airports, it is necessary that this act take immediate effect.

CHAPTER 141

An act to add Sections 66015 and 66161.5 to the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 20, 1991. Filed with Secretary of State July 22, 1991.]

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

SECTION 1. Section 66015 is added to the Education Code, to read:

It is the intent of the Governor and the Legislature, in cooperation with the Trustees of the California State University, to do both of the following:

(a) Place a major priority on resolving the serious problem of impacted and overcrowded classes, not only with respect to the California State University, but throughout public postsecondary education.

(b) Ensure that needy students receive financial aid sufficient to cover the cost of fee increases for the 1991–92 academic year. The Trustees of the California State University shall provide to the Legislature and the Governor, by January 1, 1992, documentation verifying the extent to which this provision has been satisfied.

SEC. 2. Section 66161.5 is added to the Education Code, to read:

66161.5. For the 1991–92 academic year, notwithstanding Sections 66156, 66158, 66160, and 66161, the Trustees of the California

to the school employees subject to the jurisdiction of that county superintendent of schools, who are initially employed by that district, or first employed under the jurisdiction of that county superintendent of schools, on or after either July 1, 1993, or the effective date of this section, whichever is later.

(b) The agreement entered into pursuant to subdivision (a) shall require that the employer contribution for a part-time employee who has 20 years or more of credited service with the contracting agency shall be 100 percent of the employer contribution.

SEC. 2. The Legislature finds and declares that the health benefits coverage of employees of the North Orange County Community College District and the school employees under the jurisdiction of the Riverside County Superintendent of Schools constitutes a unique situation to which a general statute cannot be make applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 3. The Legislature declares that this act was enacted in response to local requests within the meaning of subdivision (a) of Section 6 of Article XIII B of the California Constitution. Therefore, even if the Commission on State Mandates or any other entity determines that this bill imposes a state-mandated local program, no reimbursement is required under Section 6 of Article XIII B.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the benefits provided by this act and the related savings of the North Orange County Community College District, the Riverside County Superintendent of Schools, and the school employers subject to the jurisdiction of that county superintendent of schools may take effect on or as near as possible to the commencement of the 1993–94 school year, as targeted by the related local collective bargaining agreements, it is necessary that this act take effect immediately.

CHAPTER 59

An act to amend Section 45452 of the Education Code, to repeal Section 6555 of the Elections Code, to amend Sections 53646, 66451.13, 66451.20, and 66451.21 of, and to add and repeal Sections 17582 and 17751.5 of, the Government Code, to amend Sections 10254 and 11361.5 of, and to add Section 4023.35 to, the Health and Safety Code, to amend Section 1198.5 of the Labor Code, to amend Sections 1203 and 14206 of the Penal Code, to amend Section 1513 of the Probate Code, to amend Section 21670 of the Public Utilities Code, to amend Section 20018 of the Vehicle Code, and to amend Sections 209, 653, and 653.5 of the Welfare and Institutions Code, relating to

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[Approved by Governor June 30, 1993. Filed with Secretary of State June 30, 1993.]

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

SECTION 1. It is the intent of the Legislature in enacting this act, to relieve local entities of the duty to incur unnecessary expenses in certain aspects of the following subjects:

(a) Candidate filing fees.

(b) The destruction of records pertaining to marijuana offenses.

(c) Dental examinations of unidentified bodies.

(d) Victims' statements in connection with probation proceedings.

(e) School crossing guards.

(f) Felony arrest records of juveniles.

(g) Real property subdivision mergers.

(h) Employee personnel files.

(i) Missing person reports.

(j) Airport land use.

(k) Investment reports.

(*l*) Audits of Short-Doyle programs.

(m) Motorists' assistance.

(n) Investigations of guardianships.

(o) Detention of minors.

(p) Pretreatment facilities for water systems.

SEC. 2. Section 45452 of the Education Code is amended to read:

45452. Standards, terms, and conditions under which school crossing guards are provided by the governing board of a school district shall be set forth in a written agreement between the governing board and a city or between the governing board and a county or between the governing board and a city and county.

SEC. 3. Section 6555 of the Elections Code is repealed.

SEC. 4. Section 17751.5 is added to the Government Code, to read:

17751.5. (a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district shall not be required to continue to implement or give effect to any statute or executive order, or portion thereof, which mandates a new program or higher level of service in an existing program because the maximum service charges, fees, or assessments which that local agency or school district is authorized to levy to pay for the costs of the statute or executive order are not sufficient to pay for the mandated new program or higher level of service.

(b) Any claim filed pursuant to subdivision (a) shall be given priority over any other matter pending before the commission and

shall be heard and decided no later than 60 days from the date of its filing.

(c) This section shall remain operative only until July 1, 1995, and as of January 1, 1996, is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends the dates upon which this section becomes inoperative and is repealed.

SEC. 5. Section 17582 is added to the Government Code to read:

17582. (a) No local agency or school district shall be required to continue to implement or give effect to any statute or executive order, or portion thereof, if a claim based on that statute or executive order has been heard and approved for that local agency or school district by the commission pursuant to Section 17551.5.

(b) This section shall remain operative only until July 1, 1995, and as of January 1, 1996, is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends the dates upon which the section becomes inoperative and is repealed.

SEC. 6. Section 53646 of the Government Code is amended to read:

53646. The treasurer may render to the depositary and to the auditor, controller, secretary, or corresponding officer of the local agency a statement showing the amount of accrued interest for each depositary for the preceding quarter if so required by the legislative body of the local agency.

SEC. 7. Section 66451.13 of the Government Code is amended to read:

66451.13. Prior to recording a notice of merger, the local agency may cause to be mailed by certified mail to the then current record owner of the property a notice of intention to determine status, notifying the owner that the affected parcels may be merged pursuant to standards specified in the merger ordinance, and advising the owner of the opportunity to request a hearing on determination of status and to present evidence at the hearing that the property does not meet the criteria for merger. The notice of intention to determine status may be filed for record with the recorder of the county in which the real property is located on the date that notice is mailed to the property owner.

SEC. 8. Section 66451.20 of the Government Code is amended to read:

66451.20. Prior to amending a merger ordinance which was in existence on January 1, 1984, in order to bring it into compliance with Section 66451.11, the legislative body of the local agency shall adopt a resolution of intention and the clerk of the legislative body may cause notice of the adoption of the resolution to be published in the manner prescribed by Section 6061. The publication shall have been completed not less than 30 days prior to adoption of the amended ordinance.

SEC. 9. Section 66451.21 of the Government Code is amended to read:

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(a) Contain the text of the resolution.

(b) State the time and place of the hearing.

(c) State that at the hearing all interested persons will be heard.

SEC. 10. Section 4023.35 is added to the Health and Safety Code, to read:

4023.35. Notwithstanding Sections 4023, 4023.3, and 4028, public water systems are not required to observe the standards of subdivision (f) of Section 64435 of Title 22 of the California Code of Regulations.

SEC. 11. Section 10254 of the Health and Safety Code is amended to read:

10254. In deaths investigated by the coroner or medical examiner where he or she is unable to establish the identity of the body or human remains by visual means, fingerprints, or other identifying data, the coroner or medical examiner may have a qualified dentist, as determined by the coroner or medical examiner, carry out a dental examination of the body or human remains. If the coroner or medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward the dental examination records to the Department of Justice on forms supplied by the Department of Justice for that purpose.

The Department of Justice shall act as a repository or computer center, or both, with respect to the dental examination records. The Department of Justice shall compare the dental examination records with dental records filed with it pursuant to Section 11114 of the Penal Code, shall determine which scoring probabilities are the highest for purposes of identification, and shall submit the information to the coroner or medical examiner who prepared and forwarded the dental examination records.

Not later than three years following implementation of the dental identification program required by this section and Section 11114 of the Penal Code, the Department of Justice shall submit a report on the program to the Legislature.

SEC. 12. Section 11361.5 of the Health and Safety Code is amended to read:

11361.5. (a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency pertaining to the arrest or conviction of any person for a violation of subdivision (b),

(c), (d), or (e) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, except with respect to a violation of subdivision (e) of Section 11357 the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357 or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents ($37.50). The application form may be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request

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Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application.

(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

SEC. 13. Section 1198.5 of the Labor Code is amended to read:

1198.5. (a) Every employer shall at reasonable times, and at reasonable intervals as determined by the Labor Commissioner, upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer subject to this section shall keep a copy of each employee's personnel file at the place the employee reports to work, or shall make such file available at such place within a reasonable period of time after a request therefor by the employee.

(c) This section does not apply to the records of an employee relating to the investigation of a possible criminal offense. It shall not apply to letters of reference.

(d) If a local agency has established an independent employee relations board or commission, any matter or dispute pertaining to this section shall be under the jurisdiction of that board or commission, but an employee shall not be prohibited from pursuing any available judicial remedy, whether or not relief has first been sought from a board or commission.

(e) This section shall not apply to public employers, including, but not limited to, every city, county, city and county, district, and every public and quasi-public agency. This section shall not apply to the state or any state agency, and shall not apply to public school districts with respect to employees covered by Section 44031 of the Education Code. Nothing in this section shall be construed to limit the rights of employees pursuant to Section 31011 of the Government Code or Section 87031 of the Education Code, or to provide access by a public safety employee to confidential preemployment information.

SEC. 14. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) Except as provided in subdivision (j), in every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be

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considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney, nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon,

other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and was armed with such a weapon at either of those times.

(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

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(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court and as stated in the order, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

SEC. 14. Section 14206 of the Penal Code is amended to read:

14206. (a) (1) When any person makes a report of a missing person to a police department, sheriff's department, district attorney's office, California Highway Patrol, or other law enforcement agency, the report shall be given in person or by mail in a format acceptable to the Attorney General. That form shall include a statement authorizing the release of the dental or skeletal X-rays, or both, of the person reported missing and authorizing the release of a recent photograph of a person reported missing who is under 18 years of age. Included with the form shall be instructions which state that if the person reported missing is still missing 30 days after the report is made, the release form signed by a member of the family or next of kin of the missing person shall be taken by the family member or next of kin to the dentist, physician and surgeon, or medical facility in order to obtain the release of the dental or skeletal X-rays, or both, of that person or may be taken by a peace officer, if others fail to take action, to secure those X-rays. Notwithstanding any other provision of law, dental or skeletal X-rays, or both, shall be released by the dentist, physician and surgeon, or medical facility to the person presenting the request and shall be submitted within 10 days by that person to the police or sheriff's department or other law enforcement agency having jurisdiction over the investigation. When the person reported missing has not been found within 30 days and no family or next of kin exists or can be located, the law enforcement agency may execute a written declaration, stating that an active investigation seeking the location of the missing person is being conducted, and that the dental or skeletal X-rays, or both, are necessary for the exclusive purpose of furthering the investigation. Notwithstanding any other provision of law, the written declaration, signed by a peace officer, is sufficient authority for the dentist, physician and surgeon, or medical facility to release the missing person's dental or skeletal X-rays, or both.

(2) The form provided under this subdivision shall also state that if the person reported missing is under 18 years of age, the completed form shall be taken to the dentist, physician and surgeon, or medical facility immediately when the law enforcement agency determines that the disappearance involves evidence that the person is at risk or when the law enforcement agency determines that the person missing is under 12 years of age and has been missing at least 14 days. The form shall further provide that the dental or skeletal X-rays, or both, and a recent photograph of the missing child shall be submitted immediately to the law enforcement agency. Whenever authorized under this subdivision to execute a written declaration to obtain the release of dental or skeletal X-rays, or both, is provided, the investigating law enforcement agency may obtain those X-rays when a person reported missing is under 18 years of age and the law enforcement agency determines that the disappearance involves evidence that the person is at risk. In each case, the law enforcement agency may confer immediately with the coroner or medical

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examiners and may submit its report including the dental or skeletal X-rays, or both, within 24 hours thereafter to the Attorney General. The Attorney General's office shall code and enter the dental or skeletal X-rays, or both, into the center.

(b) When a person reported missing has not been found within 45 days, the sheriff, chief of police, or other law enforcement agency conducting the investigation for the missing person may confer with the coroner or medical examiner prior to the preparation of a missing person report. The coroner or medical examiner shall cooperate with the law enforcement agency. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement agency initiating and conducting the investigation for the missing person may submit a missing person report and the dental or skeletal X-rays, or both, and photograph received pursuant to subdivision (a) to the Attorney General's office in a format acceptable to the Attorney General.

Nothing in this section prohibits a parent or guardian of a child, reported to a law enforcement agency as missing, from voluntarily submitting fingerprints, and other documents, to the law enforcement agency accepting the report for inclusion in the report which is submitted to the Attorney General.

SEC. 16. Section 1513 of the Probate Code is amended to read:

1513. (a) Unless waived by the court, a court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation concerning each proposed guardianship of the person or guardianship of the estate. Investigations where the proposed guardian is a relative shall be made by a court investigator. Investigations where the proposed guardian is a nonrelative shall be made by the county agency designated to investigate potential dependency. The report for the guardianship of the person shall include, but need not be limited to, an investigation and discussion of all of the following:

(1) A social history of the guardian.

(2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs.

(3) The relationship of the proposed ward to the guardian, including the duration and character of the relationship, where applicable, the circumstances whereby physical custody of the proposed ward was acquired by the guardian, and a statement of the proposed ward's attitude concerning the proposed guardianship, unless the statement of the attitude is affected by the proposed ward's developmental, physical, or emotional condition.

(4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child. The court may waive this requirement for cases involving relative guardians.

(b) The report shall be read and considered by the court prior to ruling on the petition for guardianship, and shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

(c) If the investigation finds that any party to the proposed guardianship alleges the minor's parent is unfit, as defined by Section 300 of the Welfare and Institutions Code, the case shall be referred to the county agency designated to investigate potential dependencies. Guardianship proceedings shall not be completed until the investigation required by Sections 328 and 329 of the Welfare and Institutions Code is completed and a report is provided to the court in which the guardianship proceeding is pending.

(d) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The county clerk shall make provisions for the limitation of the report exclusively to persons entitled to its receipt.

(e) For the purpose of writing the report authorized by this section, the person making the investigation and report shall have access to the proposed ward's school records, probation records, and public and private social services records, and to an oral or written summary of the proposed ward's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The physician, psychologist, or psychiatrist shall be available to clarify information regarding these records pursuant to the investigator's responsibility to gather and provide information for the court.

(f) This section does not apply to guardianships resulting from a permanency plan for a dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

SEC. 17. Section 21670 of the Public Utilities Code is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline may establish an airport land use commission. Every county, in which there is located an airport which is not served by a

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(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport. The commission shall be constituted pursuant to this section on and after March 1, 1988.

SEC. 18. Section 20018 of the Vehicle Code is amended to read:

20018. Every law enforcement agency having traffic law enforcement responsibility as specified in subdivision (a) of Section 830.1 and in subdivision (a) of Section 830.2 of the Penal Code may develop, adopt, and implement a written policy for its officers to provide assistance to disabled motorists on highways within its

primary jurisdiction. A copy of the policy, if adopted, shall be available to the public upon request.

SEC. 19. Section 209 of the Welfare and Institutions Code, as amended by Section 26 of Chapter 695 of the Statutes of 1992, is amended to read:

209. (a) The judge of the juvenile court of a county, or, if there is more than one judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or special purpose juvenile hall which, in the preceding calendar year, was used for confinement, for more than 24 hours, of any minor.

The judge shall note in the minutes of the court whether the facility is a suitable place for confinement of minors.

If a judge of the juvenile court, after inspection of a jail, juvenile hall, special purpose juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for the confinement of minors, the juvenile court shall give notice of its finding to all persons having authority to confine minors pursuant to this chapter and commencing 60 days thereafter the facility shall not be used for confinement of minors until the judge finds, after reinspection of the facility that the conditions which rendered the facility unsuitable have been remedied, and the facility is a suitable place for confinement of minors.

The custodian of each jail, juvenile hall, special purpose juvenile hall, and lockup may make any reports as may be requested by the Department of the Youth Authority or the juvenile court to effectuate the purposes of this section.

(b) A judge of the juvenile court shall conduct an annual inspection, either in person or through a delegated member of the appropriate county or regional juvenile justice commission, of any law enforcement facility which contains a lockup for adults which, in the preceding year, was used for the secure detention of any minor.

If the judge finds after inspection that the facility is not being operated and maintained in conformity with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2, the juvenile court shall give notice of its finding to all persons having authority to securely detain minors in the facility, and, commencing 60 days thereafter, the facility shall not be used for the secure detention of a minor until the judge finds, after reinspection, that the conditions which rendered the facility unsuitable have been remedied, and the facility is a suitable place for the confinement of minors in conformity with all requirements of law.

The custodian of each law enforcement facility which contains a lockup for adults may make any report as may be requested by the Department of the Youth Authority or by the juvenile court to effectuate the purposes of this subdivision.

(c) The Department of the Youth Authority shall collect annual data on the number, place, and duration of confinements of minors in jails and lockups, as defined in subdivision (i) of Section 207.1, and

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shall annually publish this information in the form as it deems appropriate for the purpose of providing public information on continuing compliance with the requirements of Section 207.1.

(d) Every person in charge of a jail, juvenile hall, special purposes juvenile hall, or lockup that, in the preceding calendar year, was used for confinement, for more than 24 hours, of any minor, may certify annually to the Department of the Youth Authority that the facility is in conformity with the regulations adopted by the department under Section 210 or 210.2, whichever is applicable. The department may provide forms and instructions to local jurisdictions to facilitate compliance with this subdivision.

(e) This section shall remain operative until July 1, 1995, on which date it shall be repealed.

SEC. 20. Section 209 of the Welfare and Institutions Code, as amended by Section 27 of Chapter 695 of the Statutes of 1992, is amended to read:

209. (a) The judge of the juvenile court of a county, or, if there is more than one judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or special purpose juvenile hall which, in the preceding calendar year, was used for confinement, for more than 24 hours, of any minor.

The judge shall note in the minutes of the court whether the facility is a suitable place for confinement of minors.

The Department of the Youth Authority shall likewise conduct an annual inspection of each jail, juvenile hall, lockup, or special purpose juvenile hall situated in this state which, during the preceding calendar year, was used for confinement, for more than 24 hours, of any minor.

If either a judge of the juvenile court or the department, after inspection of a jail, juvenile hall, special purpose juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for the confinement of minors, the juvenile court or the department shall give notice of its finding to all persons having authority to confine minors pursuant to this chapter and commencing 60 days thereafter the facility shall not be used for confinement of minors until the time the judge or department, as the case may be, finds, after reinspection of the facility that the conditions which rendered the facility unsuitable have been remedied, and the facility is a suitable place for confinement of minors.

The custodian of each jail, juvenile hall, special purpose juvenile hall, and lockup may make any reports as may be requested by the department or the juvenile court to effectuate the purposes of this section.

(b) The Department of the Youth Authority may inspect any law enforcement facility which contains a lockup for adults and which it has reason to believe may not be in compliance with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2.

A judge of the juvenile court shall conduct an annual inspection, either in person or through a delegated member of the appropriate county or regional juvenile justice commission, of any law enforcement facility which contains a lockup for adults which, in the preceding year, was used for the secure detention of any minor.

If either the judge or the department finds after inspection that the facility is not being operated and maintained in conformity with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2, the juvenile court or the department shall give notice of its finding to all persons having authority to securely detain minors in the facility, and, commencing 60 days thereafter, the facility shall not be used for the secure detention of a minor until the time the judge or the department, as the case may be, finds, after reinspection, that the conditions which rendered the facility unsuitable have been remedied, and the facility is a suitable place for the confinement of minors in conformity with all requirements of law.

The custodian of each law enforcement facility which contains a lockup for adults may make any report as may be requested by the department or by the juvenile court to effectuate the purposes of this subdivision.

(c) The department shall collect annual data on the number, place, and duration of confinements of minors in jails and lockups, as defined in subdivision (i) of Section 207.1, and shall annually publish this information in the form as it deems appropriate for the purpose of providing public information on continuing compliance with the requirements of Section 207.1.

(d) This section shall become operative on July 1, 1995.

SEC. 21. Section 653 of the Welfare and Institutions Code is amended to read:

653. Whenever any person applies to the probation officer or the district attorney in accordance with subdivision (e) of Section 601.3, to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 601 and setting forth facts in support thereof. The probation officer or the district attorney, in consultation with the probation officer, may make such investigation as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced.

SEC. 22. Section 653.5 of the Welfare and Institutions Code is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer may make any investigation he or she deems

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(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer may cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding the provisions of subdivision (b), the probation officer may cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b) of Section 707.

(2) If it appears to the probation officer that the minor is under 16 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 16 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 729.6 and "restitution" in subdivision (d) of Section 729.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the

prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1993, unless a later enacted statute, which is enacted before January 1, 1993, changes that date.

SEC. 23. The Legislature finds and declares that certain state-mandated local programs which in prior years have been suspended through nonappropriation in the state budget should be permanently eliminated and that this is the purpose of this act.

SEC. 24. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that essential modifications in the process and extent of mandates imposed upon local agencies may be revised for the 1993–94 fiscal year, it is essential that this act take effect immediately.

CHAPTER 60

An act to amend Section 8261 of, and to repeal Sections 45452 and 45452.5 of, the Education Code, to amend Section 30501 of the Food and Agriculture Code, to amend Section 8690.6 of the Government Code, to amend Section 46050.1 of the Health and Safety Code, to amend Section 3711 of the Labor Code, to amend Section 42911 of the Public Resources Code, to amend Section 4108.5 of, and to add Section 10878 to, the Revenue and Taxation Code, to amend Section 2105 of the Streets and Highways Code, and to amend Section 275 of the Welfare and Institutions Code, relating to governmental operations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

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BILL TEXT

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FILED WITH SECRETARY OF STATE SEPTEMBER 20, 1994
APPROVED BY GOVERNOR SEPTEMBER 19, 1994
PASSED THE ASSEMBLY AUGUST 31, 1994
PASSED THE SENATE AUGUST 27, 1994
AMENDED IN SENATE AUGUST 23, 1994
AMENDED IN SENATE AUGUST 17, 1994
AMENDED IN SENATE AUGUST 8, 1994
AMENDED IN ASSEMBLY MAY 31, 1994
AMENDED IN ASSEMBLY APRIL 19, 1994
AMENDED IN ASSEMBLY APRIL 7, 1994

INTRODUCED BY Assembly Member Mountjoy

FEBRUARY 14, 1994

An act to amend Section 8570 of the Government Code, to amend Sections 21670 and 21670.1 of, and to add Section 21674.7 to, the Public Utilities Code, relating to airports.

LEGISLATIVE COUNSEL'S DIGEST

AB 2831, Mountjoy. Airports: land use commissions: plans.

Existing law authorizes the Governor to take various actions in accordance with the State Emergency Plan and programs for the mitigation of the effects of an emergency in the state.

This bill would include within those actions the provision for the use of public airports.

Under existing law, each county in which there is an airport served by a scheduled airline and, with a specified exception, each county with an airport operated for the benefit of the general public, was required, prior to June 30, 1993, and permitted thereafter, to establish an airport land use commission. The commission is required to formulate a comprehensive land use plan to provide for the orderly growth of the airport and the area surrounding the airport within the jurisdiction of the commission.

This bill would impose a state-mandated local program by reinstating the requirement to establish an airport land use commission, but would provide an alternative procedure for the formulation of the land use plan other than by establishing the commission, under specified conditions.

The bill would also require an airport land use commission that formulates, adopts or amends a comprehensive airport land use plan to be guided by the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8570 of the Government Code is amended to read:

8570. The Governor may, in accordance with the State Emergency Plan and programs for the mitigation of the effects of an emergency in this state:

(a) Ascertain the requirements of the state or its political subdivisions for food, clothing, and other necessities of life in the event of an emergency.

(b) Plan for, procure, and pre-position supplies, medicines, materials, and equipment.

(c) Use and employ any of the property, services, and resources of the state as necessary to carry out the purposes of this chapter.

(d) Provide for the approval of local emergency plans.

(e) Provide for mobile support units.

(f) Provide for use of public airports.

(g) Institute training programs and public information programs.

(h) Make surveys of the industries, resources, and facilities, both public and private, within the state, as are necessary to carry out the purposes of this chapter.

(i) Plan for the use of any private facilities, services, and property and, when necessary, and when in fact used, provide for payment for that use under the terms and conditions as may be agreed upon.

(j) Take all other preparatory steps, including the partial or full mobilization of emergency organizations in advance of an actual emergency; and order those test exercises needed to insure the furnishing of adequately trained and equipped personnel in time of need.

SEC. 2. Section 21670 of the Public Utilities Code is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring

the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

SEC. 3. Section 21670.1 of the Public Utilities Code is amended to read:

21670.1. (a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b) A body designated pursuant to subdivision (a) which does not include among its membership at least two members having an expertise in aviation, as defined in subdivision (e) of Section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.

(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a

commission need not be formed in that county.

(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1) of this subdivision, that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

(A) Adopt processes for the preparation, adoption, and amendment of the comprehensive airport land use plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.

(B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the comprehensive airport land use plans.

(C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the comprehensive airport land use plans.

(D) Adopt processes for the amendment of general and specific plans to be consistent with the comprehensive airport land use plans.

(E) Designate the agency that shall be responsible of the preparation, adoption, and amendment of each comprehensive airport land use plan.

(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are consistent with the procedure required by this article and will do all of the following:

(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.

(B) Rely on the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations.

(C) Provide adequate opportunities for notice to, review of, and comment by the general public, landowners, interested groups, and other public agencies.

(4) If the county does not comply with the requirements of paragraph (3) within 120 days, then the plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and a plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

(d) A commission need not be formed in a county that has contracted for the preparation of comprehensive airport land use plans with the Division of Aeronautics under the California Aids to Airport Program (Title 21 (commencing with Section 4050) of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the plans:

(1) Agree to adopt and implement the comprehensive airport plans that have been developed under contract.

(2) Incorporated the height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations as part of the general and specific plans for the county and for each affected city.

(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

(e) (1) A commission need not be formed in a county if all of the following conditions are met:

(A) The county has only one public use airport that is owned by a city.

(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.

(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article.

SEC. 4. Section 21674.7 is added to the Public Utilities Code, to read:

21674.7. An airport land use commission that formulates, adopts or amends a comprehensive airport land use plan shall be guided by information prepared and updated pursuant to Section 21674.5 and referred to as the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Senate Bill No. 1350

CHAPTER 506

An act to amend Sections 14482 and 14483 of the Business and Professions Code, to repeal Section 1279 of the Code of Civil Procedure, to amend Section 18025 of the Education Code, to amend Sections 3102, 3105, 6523.5, 6523.6, 6523.7, 15365.30, 23119, 23130, 23212, 23285, 29321, 36501, 51283.4, 54988, 61737.05, 65400, 66412, 66451.17, 66463.5, and 66499.19 of, to amend and renumber Section 6523.75 of, to add Section 6500.1 to, to repeal Section 16153 of, to repeal Division 2 (commencing with Section 60400) of Title 6 of, and to repeal and add Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1 of Title 5 of, the Government Code, to repeal Division 36 (commencing with Section 56000) of the Health and Safety Code, to amend Sections 3211.92 and 3211.93a of the Labor Code, to amend Section 26593 of the Public Resources Code, to amend Section 21670 of the Public Utilities Code, to amend Sections 10 and 10.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), and to repeal Section 901 of the Pajaro River Watershed Flood Prevention Authority Act (Chapter 963 of the Statutes of 1999), relating to local agencies.

[Approved by Governor September 17, 2000. Filed with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1350, Committee on Local Government. Local Government Omnibus Act of 2000.

(1) Existing law provides for the registration of laundry marks by filing a description of the mark in the offices of the Secretary of State and the county clerk, and publishing a description of the mark in the county where the description was filed.

This bill would delete the provision for filing with the county clerk and change the required place of publication to the county where the principal place of business is located.

(2) Existing law requires a certified copy of a court decree changing a person's name to be filed in the office of the county clerk where the person lives.

This bill would delete that provision.

(3) Existing law requires the State Librarian to determine annually the amount of support for each public library and requires the amount appropriated to be based on the total amount of revenues previously received, and authorizes local agencies to waive that amount, as specified.

This bill would authorize local agencies to request from the State Librarian a specified waiver of the requirements as to the amount appropriated commencing with the 2000–01 fiscal year.

(4) Existing law requires the oath or affirmation of a disaster service worker of a county to be filed in the office of the county clerk, or, in certain instances, to be filed with the county auditor or the clerk of the board of supervisors.

This bill would delete the provisions relating to filing with the county auditor or the board of supervisors, authorize the filing to be in the official department personnel file of the worker, and authorize the oath to be destroyed after 5 years.

(5) Existing law establishes the California Central Valley International Trade Center in Tulare County to coordinate and work with ongoing international trade efforts in specified counties.

This bill would add Merced County to those counties.

(6) Existing law specifies the boundaries of Los Angeles County and Orange County.

This bill would revise those boundary specifications, as prescribed.

(7) Existing law provides that when a county boundary is changed, the boards of supervisors of the affected counties shall file with the State Board of Equalization and the assessors of the affected counties before the following January 1 certain documents concerning the new boundaries.

This bill would change that date to December 1.

(8) Existing law authorizes a board of supervisors to establish a revolving fund not to exceed $100,000 for use by any county officer.

This bill would increase that amount to $250,000.

(9) Existing law provides that the government of a general law city is vested in certain officers, including a city council of 5 members.

This bill would provide that the city council consists of at least 5 members.

(10) Existing law provides procedures for the cancellation or nullification of contracts that establish agricultural preserves and for the rescission of those contracts in order to place the land under a farmland security zone contract.

This bill would recodify and make technical, nonsubstantive changes in the provisions governing the procedures for the establishment and cancellation of farmland security zone contracts.

(11) Existing law requires a city or county to provide specified notice of a proposed lien for costs incurred in abating a nuisance.

This bill would require the notice to be mailed by certified mail to the last known address of the property owner.

(12) Existing law requires a community services district to approve various claims and demands by majority vote in an open meeting.

This bill would authorize certain warrants for claims and demands to be approved by the finance officer and ratified by the district board after payment.

(13) Existing law establishes procedures for the formation and conduct of the Rossmoor Special Community Services District.

This bill would repeal that law.

(14) Existing law requires the legislative body of a city or county to submit an annual report on the status of the general plan and progress in its implementation to various agencies on or before July 1 of each year.

This bill instead would require that the housing portion of that report be submitted to those agencies on or before October 1 of each year.

(15) Under existing law, when a local agency approves a vesting tentative map, that approval confers a vested right to proceed with the development in substantial compliance with specified ordinances, policies, and standards.

This bill would correct an obsolete reference to provisions relating to vesting tentative maps.

(16) The Urban Development Incentive Act provides for the planning and expedited permitting of large scale urban developments.

This bill would repeal those provisions.

(17) Under existing law, geologic hazard districts may borrow money from public agencies.

This bill would authorize those districts to borrow money from private sources.

(18) Existing law requires cities and counties to conform their general plans to the comprehensive land use plan of an airport land use commission.

This bill would declare the intent of the Legislature to clarify that special districts are also subject to that plan.

(19) Existing law does not provide a procedure to transfer a Mello-Roos Community Facilities District from a county to a special district.

This bill would authorize Riverside County to transfer the governance of a community facilities district to the Rancho California Water District.

(20) The bill would also delete obsolete provisions and make various clarifying, conforming, and other changes relating to, among other things, joint exercise of powers agreements, farmland preservation, subdivisions, redevelopment, and flood control.

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

SECTION 1. (a) This act shall be known and may be cited as the Local Government Omnibus Act of 2000.

(b) The Legislature finds and declares that Californians desire their government to be run efficiently and economically, and that public officials should avoid waste and duplication whenever possible. The Legislature further finds and declares that it desires to control its own operating costs by reducing the number of separate bills. Therefore, it is the intent of the Legislature in enacting this act to combine several minor, noncontroversial statutory changes relating to local agencies into a single measure.

SEC. 2. Section 14482 of the Business and Professions Code is amended to read:

14482. In order to register a name, mark or device under this article, the supplier shall do all of the following:

(a) File in the office of the Secretary of State a description of the names, marks, or devices so used.

(b) Cause the description of the name, mark or device to be printed once a week for three successive weeks in a newspaper published in the county in which the principal place of business of the supplier is located.

SEC. 3. Section 14483 of the Business and Professions Code is amended to read:

14483. The registrant shall pay to the Secretary of State for filing each laundry supply designation described and for issuing a certificate of filing a fee as set forth in subdivision (e) of Section 12193 of the Government Code.

SEC. 4. Section 1279 of the Code of Civil Procedure is repealed.

SEC. 5. Section 18025 of the Education Code is amended to read:

18025. (a) For the 1982–83 fiscal year and each fiscal year thereafter, the State Librarian shall determine the amount to which each public library is entitled for support of the library during the fiscal year. The amount shall be equal to 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(b) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under Chapter 282 of the Statutes of 1979, total less than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall be reduced proportionately. A proportional reduction in the state allocation as described in this subdivision shall not be made, however, commencing with the 1997–98 fiscal year and each fiscal year thereafter, if the amount appropriated to the Public Library Fund for that fiscal year is equal to or greater than the amount necessary to fund each public library in the amount it received for the prior fiscal year, thus providing the state's share of the cost of the foundation program to each library based only on its population served, as certified by the State Librarian. After the first fiscal year in which the proportional reduction is not made, no further reductions based on this subdivision shall be made in any

future fiscal year. It is the intent of this subdivision to make this change without harm to any library currently receiving an unreduced share of the state's cost of the foundation program.

(c) If local revenues appropriated for a public library for the 1982–83 fiscal year and each fiscal year thereafter, including tax revenues made available under the provisions of Chapter 282 of the Statutes of 1979, total more than 90 percent of the cost of the foundation program as determined pursuant to Section 18022, the state allocation for that fiscal year shall remain at 10 percent of the cost of the foundation program as determined pursuant to Section 18022.

(d) In order for a public library to receive state funds under this chapter in the 1983–84 fiscal year and any fiscal year thereafter, the total amount of local revenues appropriated for the public library for that fiscal year, including tax revenues made available under Chapter 282 of the Statutes of 1979 and other revenues deemed to be local revenues according to Section 18023, shall be equal to at least the total amount of local revenues, as defined, appropriated for the public library in the previous fiscal year. State funds provided under this chapter shall supplement, but not supplant, local revenues appropriated for the public library.

(e) (1) Notwithstanding subdivision (d), or any other provision of law, in the 1993–94 fiscal year, any city, county, district, or city and county, that reduces local revenues appropriated for the public library for the 1993–94 fiscal year shall continue to receive state funds appropriated under this chapter for the 1993–94 fiscal year only, provided that the amount of the reduction to the appropriation to that public library for the 1993–94 fiscal year is no more than 20 percent of the 1992–93 fiscal year appropriation made to that public library as certified by the fiscal officer of the public library and transmitted to the State Librarian pursuant to Section 18023.

(2) Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) or of paragraph (1) by demonstrating that the percentage of the reduction in local revenues appropriated for the public library is no greater than the percentage of the reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of changes made to Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code by statutes enacted during or after the 1991–92 Regular Session having the effect of shifting property tax revenues from cities, counties, special districts, and redevelopment agencies to school districts and community colleges. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any

other report of appropriations applying to public libraries required by any other provision of law.

(3) Commencing with the 1997-98 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) by demonstrating that the percentage of reduction in local revenues appropriated for the public library is no greater than the percentage of reduction of local revenues received by the city, county, district, or city and county operating the public library as a result of the addition of Article XIII D, otherwise known as the Right to Vote on Taxes Act, to the California Constitution as approved by the voters at the November 5, 1996, general election. Requests for the waiver and the substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(4) Commencing with the 2000–01 fiscal year, and each fiscal year thereafter, any city, county, district, or city and county may request from the State Librarian a waiver of the requirements of subdivision (d) or of paragraph (1) by demonstrating that the reduction in local revenues appropriated for the public library is no greater than the reduction in local revenues received by the city, county, district, or city and county operating the public library as a result of the automatic termination of a locally approved special tax or benefit assessment for that public library. Requests for the waiver and substantiating documentation shall be submitted to the State Librarian along with the annual report of appropriation required by Section 18023 or any other report of appropriations applying to public libraries required by any other provision of law.

(f) If the state allocations computed pursuant to this section exceed the total amount of funds appropriated for purposes of this section in any fiscal year, the State Librarian shall adjust on a pro rata basis public library allocations prescribed by this section so that the total amount in each fiscal year does not exceed this amount.

SEC. 6. Section 3102 of the Government Code is amended to read:

3102. (a) All disaster service workers shall, before they enter upon the duties of their employment, take and subscribe to the oath or affirmation required by this chapter.

(b) In the case of intermittent, temporary, emergency or successive employments, then in the discretion of the employing agency, an oath taken and subscribed as required by this chapter shall be effective for the purposes of this chapter for all successive periods of employment which commence within one calendar year from the date of that subscription.

(c) Notwithstanding subdivision (b), the oath taken and subscribed by a person who is a member of an emergency

organization sanctioned by a state agency or an accredited disaster council, whose members are duly enrolled or registered with the Office of Emergency Services, or any accredited disaster council of any political subdivision, shall be effective for the period the person remains a member with that organization.

SEC. 7. Section 3105 of the Government Code is amended to read:

3105. (a) The oath or affirmation of any disaster service worker of the state shall be filed as prescribed by State Personnel Board rule, within 30 days of the date on which it is taken and subscribed.

(b) The oath or affirmation of any disaster service worker of any county shall be filed in the office of the county clerk of the county or in the official department personnel file of the county employee who is designated as a disaster service worker. The oath may be destroyed without duplication five years after the termination of the employee's employment by the county.

(c) The oath or affirmation of any disaster service worker of any city shall be filed in the office of the city clerk of the city.

(d) The oath or affirmation of any disaster service worker of any other agency or district shall be filed with any officer or employee of the agency or district that may be designated by the agency or district.

SEC. 8. Section 6500.1 is added to the Government Code, to read:

6500.1. This chapter shall be known and may be cited as the Joint Exercise of Powers Act.

SEC. 9. Section 6523.5 of the Government Code is amended to read:

6523.5. Notwithstanding any other provision of this chapter, a private, nonprofit hospital in the County of Contra Costa may enter into a joint powers agreement with a public agency, as defined in Section 6500.

SEC. 10. Section 6523.6 of the Government Code is amended to read:

6523.6. (a) Notwithstanding any other provision of this chapter, a private, nonprofit hospital in the County of Tulare may enter into a joint powers agreement with a public agency, as defined in Section 6500.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(c) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

SEC. 11. Section 6523.7 of the Government Code is amended to read:

6523.7. (a) Notwithstanding any other provision of this chapter, a private, nonprofit hospital in the County of Kings may enter into a joint powers agreement with a public agency, as defined in Section 6500.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority. The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(c) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital corporation or a public agency, to participate as a party to an agreement authorized under this section.

SEC. 12. Section 6523.75 of the Government Code is amended and renumbered to read:

6523.9. (a) Notwithstanding any other provision of this chapter, a nonprofit hospital in the County of San Diego may enter into a joint powers agreement with any public agency, as defined in Section 6500.

(b) Nonprofit hospitals and public agencies participating in a joint powers agreement entered into pursuant to subdivision (a) shall not reduce or eliminate any emergency services, as a result of that agreement, following the creation of the joint powers authority without a public hearing by the authority.

(c) The joint powers authority shall provide public notice of the hearing to the communities served by the authority not less than 14 days prior to the hearing and the notice shall contain a description of the proposed reductions or changes.

(d) Nothing in this section shall be construed to grant any power to any nonprofit hospital that participates in an agreement authorized under this section to levy any tax or assessment. Nothing in this section shall permit any entity, other than a nonprofit hospital

corporation or a public agency, to participate as a party to an agreement authorized under this section.

SEC. 13. Section 15365.30 of the Government Code is amended to read:

15365.30. (a) The California Central Valley International Trade Center in Tulare County has been created for the purpose of assisting Central Valley businesses interested in expanding their markets.

(b) It is the intent of the Legislature that the Central Valley International Trade Center in Tulare County coordinate and work cooperatively with other ongoing international trade efforts in the Central Valley, including the Counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

SEC. 14. Section 16153 of the Government Code is repealed.

SEC. 15. Section 23119 of the Government Code is amended to read:

23119. The boundaries of Los Angeles County are as follows:

Beginning at a point in the southwesterly boundary line of the State of California, said point being on the southerly prolongation of the westerly boundary line of Rancho Topanga Malibu Sequit; thence northerly along said prolongation and westerly line of said rancho to the northwesterly corner thereof; thence northeasterly in a direct line to corner number seven of the boundary of Rancho Simi; thence easterly along line number seven, northerly along line number eight, easterly along line number nine of the boundary of Rancho Simi to corner number ten of the boundary of Rancho Simi; thence following the boundary line as surveyed by E. T. Wright and J. T. Stow, county surveyors, in June and July, 1881, as shown on map recorded in book 43, page 25 et seq., miscellaneous records of Los Angeles County as follows: north 105.01 chains to a point; thence north 07 degrees 29 minutes W., 157.50 chains to a point; thence north 21 degrees 57 minutes W., to a point in the north line of Sec. 4, T. 8 N., R. 19 W., S. B. M., distant westerly along said north line 1,400 feet, more or less, from the northeast corner of said Sec. 4, said point being common to the boundaries of Kern, Ventura and Los Angeles; thence east along the north line of T. 8 N., S. B. M., to the northeast corner of T. 8 N., R. 8 W., S. B. M., said corner being a point common to the boundaries of San Bernardino, Kern, and Los Angeles;

Thence south along the range line between R. 7 and 8 W., to the southeast corner of T. 6 N., R. 8 W., S. B. M.; thence east along the township line between T. 5 and 6 N., to the northeast corner of T. 5 N., R. 8 W., S. B. M.; thence south along the range line between R. 7 and 8 W., to a point in the east line of Sec. 12, T. 4 N., R. 8 W., S. B. M., distant southerly 940 feet, measured along said east line, from the northeast corner of said Sec. 12; thence southerly in a direct line to the summit of San Antonio Peak; thence southerly along a straight line which passes through the northwest corner of the Rancho Cucamonga to a point in said straight line distant south 11°51′04″ west

thereon, 333.81 feet from its intersection with the north line of Tract 37, T. 2 N., R. 7 W., S. B. M.; thence north 25°38′59″ west, 15.06 feet; thence south 70°15′29″ west, 47.76 feet; thence south 09°57′30″ east, 62.51 feet; thence south 34°17′02″ east, 36.94 feet to said straight line; thence continuing southerly along said straight line to a point in said straight line distant north 11°51′04″ east, 547.37 feet from its intersection with the south line of said Tract 37; thence south 84°57′02″ west, 35.25 feet; thence south 23°47′27″ west, 75.70 feet to the beginning of a nontangent curve concave to the southwest having a radius of 181.00 feet and to which beginning a radial line bears south 29°24′24″ west; thence southeasterly along said curve through a central angle of 12°08′32″ an arc distance of 38.36 feet to the beginning of a reverse curve concave to the northeast having a radius of 169.00 feet; thence southeasterly 16.07 feet along said curve through a central angle of 05°26′52″ to said straight line; thence southwest in a direct line to the northwest corner of Rancho Cucamonga, thence southwesterly along the northwesterly boundary line of Rancho Cucamonga to the most westerly corner of Rancho Cucamonga; thence southwesterly in a direct line to the northeast corner of Rancho San Jose; thence southwesterly and westerly along the easterly and southerly boundary lines of Rancho San Jose to the range line between R. 8 and 9 W. in T. 2 S., S. B. M.;

Thence south along the range line between R. 8 and 9 W., to the southeast corner of Sec. 12, T. 2 S., R. 9 W., S. B. M., said corner being an angle point in the boundary line of the Rancho Santa Ana del Chino; thence westerly, southwesterly, southerly, easterly, and southerly along the boundary line of the Rancho Santa Ana del Chino to the southwest corner of the Rancho Santa Ana del Chino, said corner being the center of Sec. 35, T. 2 S., R. 9 W., S. B. M.; thence southeasterly in a straight line to a point in the south line of Sec. 36, T. 2 S., R. 9 W., S. B. M., distant 52.84 feet easterly thereon from the southwest corner of said Sec. 36, said point being common to the boundaries of San Bernardino, Orange, and Los Angeles; thence westerly along the northern line of Orange to the southeasterly corner of Tract No. 46685 filed in Book 1209, pages 56 and 57, of Maps, in the office of the Recorder of the County of Los Angeles, said southeasterly corner being common to the boundaries of Orange and Los Angeles; thence northerly following along the boundary of said Tract No. 46685, the following courses: north 13°53′07″ east 100.12 feet, north 76°01′25″ west 1018.58 feet, north 85°34′56″ west 163.25 feet, and south 00°57′29″ west 47.01 feet to a point in the northerly line of Tract No. 25335, filed in Book 775, pages 35 and 36, of said Maps, said point distant westerly along said northerly line 10.26 feet from the northeasterly corner of said Tract No. 25335; thence northwesterly following along the boundary of said Tract No. 25335 the following courses: north 76°00′59″ west 1224.52 feet and south 00°52′39″ west 564.75 feet to a point on the boundary common to

Orange and Los Angeles; thence westerly along the northern line of Orange to the southwesterly boundary line of the State of California; thence northwesterly along the southwesterly boundary line of the State of California to the point of beginning. Also the islands of Santa Catalina and San Clemente.

SEC. 16. Section 23130 of the Government Code is amended to read:

23130. The boundaries of Orange County are as follows:

Beginning at the northwest corner of San Diego County at a point in the Pacific Ocean opposite San Mateo point; thence northerly along the San Diego County line to the southerly line of the Rancho Mission Viejo as shown on the survey on file in book 8, pages 34 through 46 inclusive of Records of Survey in the office of the County Recorder of Orange County;

Thence, easterly and northeasterly to an angle point therein, said point being Rancho Mission Viejo Corner No. 7, as shown on said Record of Survey; thence northerly 12,693.95 feet along the northwestern boundary of San Diego County to the southwest corner of Section 33, T. 7 S., R. 6 W., said point being also the most southwest corner of Riverside County; thence northerly 1,324.46 feet along the western boundary of said Riverside County to the southwesterly corner of Government Lot 3, Fractional Section 33, T. 7 S., R. 6 W., S.B.M., as shown on that survey on file in book 122, pages 17 and 18 of Records of Survey in the office of the County Recorder of Orange County;

Thence leaving said western boundary south 89°25′11″ east, 2,042.68 feet to the southeast corner of the NE. 1/4 of the SE. 1/4 of said Section 33; thence north 01°00′50″ east, 1,320.33 feet to the northeast corner of the NE. 1/4 of the SE. 1/4 of said Section 33; thence north 00°27′14″ east, 2,647.46 feet to the northeast corner of said Section 33; thence along the north line of said section north 89°16′14″ west, 2,086.39 feet to the northwest corner of Government Lot 1 of said section, being a point on the existing western boundary of said Riverside County;

Thence along said boundary of Riverside County northerly, northeasterly, northwesterly, westerly, northerly, westerly and northwesterly to a point on the south line of Section 36, T. 3 S., R. 8 W., as shown on that survey on file in book 131, pages 24 and 25 of Records of Survey in the office of the Orange County Recorder, said point lying distant therein north 89°05′38″ west 151.58 feet from the southeast corner of said Section 36;

Thence leaving said existing boundary of Riverside County and along said south line north 89°05′38″ west, 2,484.00 feet; thence continuing along said south line, north 89°07′27″ west, 818.46 feet to the easterly line of the Rancho Lomas de Santiago; thence along said easterly line north 02°53′27″ west, 3,273.18 feet to a point on a nontangent curve, concave to the northwest and having a radius of

1,550.00 feet, a radial from said point bears north 14°05′30″ west; thence easterly, leaving said east line, along said curve through a central angle of 15°01′17″ and arc length of 406.35 feet; thence nontangent to said curve, south 84°32′29″ east, 155.61 feet; thence north 65°40′06″ east, 75.15 feet; thence north 48°16′56″ east, 150.70 feet; thence north 68°49′57″ east, 35.37 feet to said existing boundary of Riverside County;

Thence northwesterly along the said boundary to the corner common to Riverside, San Bernardino, and Orange Counties; thence northwesterly along the southwest boundary of San Bernardino County to the point of intersection of said boundary with the southerly line of T. 2 S., R. 9 W., being also the corner common to San Bernardino and Los Angeles Counties; thence westerly along the township line between T. 2 and 3 S., to the northeast corner of Annexation 69-1 (Ryness-Smith No. 2) to the City of Brea, said point also being the southeast corner of Tract No. 46685, per map filed in Book 1209, pages 56 and 57, of Maps, in the office of the Recorder of the County of Los Angeles, being distant north 89°00′53″ west, 1670.40 feet from the northeast corner of Section 3, Township 3 South, Range 10 West; thence, leaving the Township line between T. 2 and 3 S., along the boundary line of said Tract No. 46685, the following courses: north 13°53′07″ east, along the easterly line of said Tract, 100.12 feet to the northeast corner thereof; thence, north 76°01′25″ west, along the northeasterly line of said Tract, 1018.58 feet to the easterly terminus of that course shown as "north 86°32′58″ west, 163.32 feet" on said Tract; thence, north 85°34′56″ west, along the northerly line of said Tract, 163.25 feet to the northwest corner thereof; thence, south 00°57′29″ west, along the most westerly line of said Tract, 47.01 feet, to the northeasterly boundary line of Tract No. 25335, per map filed in Book 775, pages 35 and 36, of Maps, in the office of the Recorder of the County of Los Angeles, said point being north 76°00′59″ west, along said northeasterly line 10.26 feet, from the northeast corner of said Tract; thence along the boundary of said Tract No. 25335, the following courses: north 76°00′59″ west, along said northeasterly line of said Tract, 1224.52 feet to the northwest corner thereof; thence south 00°52′39″ west, along the westerly line of said Tract, 564.75 feet to the southwest corner of said Tract, being a point of intersection with the Township line between T. 2 and 3 S., distant south 89°00′53″ east, 1449.86 feet from the northwest corner of said Section 3, Township 3 South, Range 10 West; thence, leaving said boundary of Tract No. 25335, westerly along the Township line between T. 2 and 3 S., to the corner common to T. 2 and 3 S., R. 10 and 11 W.; thence southerly along the range line between R. 10 and 11 W., to the southeast corner of Section 13, T. 3 S., R. 11 W., in the Rancho Los Coyotes; thence in a general southwesterly direction along section lines, quarter section lines and quarter quarter section lines in the Rancho Los Coyotes, as follows: westerly along the section

line to the quarter corner on the south line of said Section 13; thence southerly along the quarter section line to the center of Section 24, T. 3 S., R. 11 W.; thence westerly along the quarter section line to the quarter corner on the west line of said Section 24; thence southerly along the section line to the southwest corner of said Section 24; thence westerly along the section line to the quarter corner on the north line of Section 26, T. 3 S., R. 11 W.; thence southerly along the quarter section line to the center of said Section 26;

Thence westerly along the quarter section line to the quarter corner on the west line of said Section 26; thence southerly along the section line to the southwest corner of said Section 26; thence westerly along the section line to the northeast corner of Section 33, T. 3 S., R. 11 W.; thence southerly along the section line to the quarter corner on the east line of said Section 33; thence westerly along the quarter section line to the center of said Section 33; thence southerly along the quarter section line to the northeast corner of the SE. 1/4 of the SW. 1/4 of said Section 33; thence westerly along the quarter quarter section line to the center of the SW. 1/4 of said Section 33; thence southerly along the quarter quarter section line to the south line of said Section 33; thence westerly along the township line between T. 3 and 4 S., to the northeast corner of Section 5, T. 4 S., R. 11 W.; thence southerly along the section line to the northeast corner of the SE. 1/4 of said Section 5; thence westerly along the quarter section line to the northwest corner of the NE. 1/4 of the SE. 1/4 of said Section 5; thence southerly along the quarter quarter section line to the center of the SE. 1/4 of said Section 5; thence westerly along the quarter quarter section line to the westerly line of the SE. 1/4 of said Section 5; thence southerly along the quarter section line to the quarter corner on the south line of said Section 5; thence westerly along the section line to the northeast corner of the NW. 1/4 of the NW. 1/4 of Section 8, T. 4 S., R. 11 W.;

Thence southerly along the quarter quarter section lines to the northeast corner of the SW. 1/4 of the SW. 1/4 of said Section 8; thence southwesterly in a straight line to a point on the south line of the Moody Creek Channel as shown on that survey on file in book 120, page 5 of Records of Survey in the office of the Recorder of Orange County, said point being on a nontangent curve, concave southeasterly and having a radius of 950.00 feet, a radial from said point bears south 03°41′24″ east; thence westerly along said south line and said curve through a central angle of 26°34′39″ and an arc length of 440.67 feet to its point of intersection with the east line of the Coyote Creek Channel, said point being on a nontangent curve concave northwesterly and having a radius of 5,200.00 feet, a radial from said point bears north 75°11′46″ west; thence southwesterly along said easterly line and said curve through a central angle of 03°10′38″ and an arc length of 288.36 feet; thence continuing along said easterly line, tangent to said curve, south 17°58′52″ west, 132.27

feet to a point on the existing boundary of Los Angeles County; thence southwesterly along said boundary in a straight line to the southwest corner of Section 8, T. 4 S., R. 11 W. said corner also being Los Angeles/Orange County Corner No. 11 as shown on Los Angeles County Surveyor's Map No. 8175 on file in the office of the Surveyor of the County of Los Angeles;

Thence south 00°11′50″ east, along the section line to a point on the boundary line between Rancho Los Coyotes and Rancho Los Alamitos, said point also being Los Angeles/Orange County Corner No. 10;

Thence south 59°07′40″ west, a distance of 3,391.48 feet to Los Angeles/Orange County Corner No. 9;

Thence south 39°48′20″ west, a distance of 5,650.97 feet to Los Angeles/Orange County Corner No. 8;

Thence south 11°36′55″ west, a distance of 2,241.41 feet to Los Angeles/Orange County Corner No. 7;

Thence south 27°55′55″ west, a distance of 8,375.40 feet to Los Angeles/Orange County Corner No. 6;

Thence south 31°22′50″ east, a distance of 1,296.21 feet to Los Angeles/Orange County Corner No. 5;

Thence south 27°12′00″ east, a distance of 2,106.10 feet to Los Angeles/Orange County Corner No. 4;

Thence south 16°46′45″ east, a distance of 1,444.82 feet to Los Angeles/Orange County Corner No. 3;

Thence south 2°48′35″ east, a distance of 2,207.94 feet to Los Angeles/Orange County Corner No. 2;

Thence south 57°10′40″ west, a distance of 8,238.78 feet to Los Angeles/Orange County Corner No. 1;

Thence south 33°00′00″ west, a distance of 622.43 feet to a point on the northeasterly line of block 59, Alamitos Bay tract, as shown on the map recorded in map book 5, page 137, on file in the office of the Recorder of the County of Los Angeles, distant thereon south 57°50′45″ east, a distance of 428.91 feet from the most northerly corner of said block 59; thence continuing south 33°00′00″ west, a distance of three miles, more or less to the southwesterly boundary line of the State of California (the boundary line between Los Angeles and Orange hereinabove described and established being shown on said county surveyor's map No. 8175; and likewise on map No. 300 on file in the office of the Surveyor of Orange County); thence southeasterly along the state line to the point of beginning.

SEC. 17. Section 23212 of the Government Code is amended to read:

23212. When a county boundary is changed pursuant to this article, the boards of supervisors of the affected counties shall file before the following December 1, with the State Board of Equalization and with the assessors of the affected counties, a statement setting forth the legal description of the boundary, as

changed, together with a map or plat indicating the boundary. The change of the boundary shall not be effective for purposes of assessment or taxation unless the statement, together with the map or plat is filed with the assessors and the State Board of Equalization on or before December 1 of the year immediately preceding the year in which the assessments or taxes are to be levied.

SEC. 18. Section 23285 of the Government Code is amended to read:

23285. Whenever county boundaries are changed pursuant to this article, the board of supervisors of both affected counties shall cause to be filed before the following December 1, with the State Board of Equalization and with the assessors of both affected counties, a statement setting forth the legal description of the boundaries, as changed, together with a map or plat indicating those boundaries. The change of the boundaries shall not be effective for purposes of assessment or taxation unless the statement, together with the map or plat required by this section, is filed with the county assessors and with the State Board of Equalization on or before December 1 of the year immediately preceding the year in which the assessments or taxes are to be levied.

SEC. 19. Section 29321 of the Government Code is amended to read:

29321. The board of supervisors may establish a revolving fund for the use of any officer of the county by adopting a resolution setting forth: (a) the necessity for the fund, (b) the office, department, service, or institution for which the fund is available, and (c) the amount of the fund, which shall not exceed two hundred fifty thousand dollars ($250,000).

SEC. 20. Section 36501 of the Government Code is amended to read:

36501. The government of a general law city is vested in:

(a) A city council of at least five members.
(b) A city clerk.
(c) A city treasurer.
(d) A chief of police.
(e) A fire chief.
(f) Any subordinate officers or employees provided by law.

SEC. 21. Section 51283.4 of the Government Code is amended to read:

51283.4. (a) Upon tentative approval of a petition accompanied by a proposal for a specified alternative use of the land, the clerk of the board or council shall record in the office of the county recorder of the county in which is located the land as to which the contract is applicable a certificate of tentative cancellation, which shall set forth the name of the landowner requesting the cancellation, the fact that a certificate of cancellation of contract will be issued and recorded at the time that specified conditions and contingencies are satisfied,

a description of the conditions and contingencies which must be satisfied, and a legal description of the property. Conditions to be satisfied shall include payment in full of the amount of the fee computed under the provisions of Section 51283, together with a statement that unless the fee is paid, or a certificate of cancellation of contract is issued within one year from the date of the recording of the certificate of tentative cancellation, the fee shall be recomputed as of the date of notice described in subdivision (b). Any provisions related to the waiver of the fee or portion thereof shall be treated in the manner provided for in the certificate of tentative cancellation. Contingencies to be satisfied shall include a requirement that the landowner obtain all permits necessary to commence the project. The board or council may, at the request of the landowner, amend a tentatively approved specified alternative use if it finds that the amendment is consistent with the findings made pursuant to subdivision (a) of Section 51282.

(b) The landowner shall notify the board or council when he or she has satisfied the conditions and contingencies enumerated in the certificate of tentative cancellation. Within 30 days of receipt of the notice, and upon a determination that the conditions and contingencies have been satisfied, the board or council shall execute a certificate of cancellation of contract and cause the same to be recorded.

(c) If the landowner has been unable to satisfy the conditions and contingencies enumerated in the certificate of tentative cancellation, the landowner shall notify the board or council of the particular conditions or contingencies he or she is unable to satisfy. Within 30 days of receipt of the notice, and upon a determination that the landowner is unable to satisfy the conditions and contingencies listed, the board or council shall execute a certificate of withdrawal of tentative approval of a cancellation of contract and cause the same to be recorded. However, the landowner shall not be entitled to the refund of any cancellation fee paid.

SEC. 22. Article 7 (commencing with Section 51296) of Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

SEC. 23. Article 7 (commencing with Section 51296) is added to Chapter 7 of Part 1 of Division 1 of Title 5 of the Government Code, to read:

Article 7. Farmland Security Zones

51296. The Legislature finds and declares that it is desirable to expand options available to landowners for the preservation of agricultural land. It is therefore the intent of the Legislature in enacting this article to encourage the creation of longer term voluntary enforceable restrictions within agricultural preserves.

51296.1. A landowner or group of landowners may petition the board to rescind a contract or contracts entered into pursuant to this chapter in order to simultaneously place the land subject to that contract or those contracts under a new contract designating the property as a farmland security zone. A landowner or group of landowners may also petition the board to create a farmland security zone for the purpose of entering into farmland security zone contracts pursuant to this section.

(a) Before approving the rescission of a contract or contracts entered into pursuant to this chapter in order to simultaneously place the land under a new farmland security zone contract, the board shall create a farmland security zone, pursuant to the requirements of Section 51230, within an existing agricultural preserve.

(b) No land shall be included in a farmland security zone unless expressly requested by the landowner. Any land located within a city's sphere of influence shall not be included within a farmland security zone, unless the creation of the farmland security zone within the sphere of influence has been expressly approved by resolution by the city with jurisdiction within the sphere of influence.

(c) If more than one landowner requests the creation of a farmland security zone and the parcels are contiguous, the county shall place those parcels in the same farmland security zone.

(d) A contract entered into pursuant to this section shall be for an initial term of no less than 20 years. Each contract shall provide that on the anniversary date of the contract or on another annual date as specified by the contract, a year shall be added automatically to the initial term unless a notice of nonrenewal is given pursuant to Section 51245.

(e) Upon termination of a farmland security zone contract, the farmland security zone designation for that parcel shall simultaneously be terminated.

51296.2. Both of the following shall apply to land within a designated farmland security zone:

(a) The land shall be eligible for property tax valuation pursuant to Section 423.4 of the Revenue and Taxation Code.

(b) Notwithstanding any other provision of law, any special tax approved by the voters for urban-related services on or after January 1, 1999, on the land or any living improvement shall be levied at a reduced rate unless the tax directly benefits the land or the living improvements.

51296.3. Notwithstanding any provision of the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000)), a local agency formation commission shall not approve a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a city. However, this subdivision shall not apply under any of the following circumstances:

(a) If the farmland security zone is located within a designated, delineated area that has been approved by the voters as a limit for existing and future urban facilities, utilities, and services.

(b) If annexation of a parcel or a portion of a parcel is necessary for the location of a public improvement, as defined in Section 51290.5, except as provided in subdivision (f) or (g) of this section.

(c) If the landowner consents to the annexation.

51296.4. Notwithstanding any provision of the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000)), a local agency formation commission shall not approve a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a special district that provides sewers, nonagricultural water, or streets and roads, unless the facilities or services provided by the special district benefit land uses that are allowed under the contract and the landowner consents to the change of organization or reorganization.

51296.5. Notwithstanding Article 5 (commencing with Section 53090) of Chapter 1 of Division 2 of Title 5, a school district shall not render inapplicable a county zoning ordinance to the use of land by the school district if the land is within a designated farmland security zone.

51296.6. Notwithstanding any other provision of law, a school district shall not acquire any land that is within a designated farmland security zone.

51296.7. The board shall not approve any use of land within a designated farmland security zone based on the compatible use provisions contained in subdivision (c) of Section 51238.1.

51296.8. Sections 51296 to 51297.4, inclusive, shall only apply to land that is designated on the Important Farmland Series maps, prepared pursuant to Section 65570 as predominantly one or more of the following:

(a) Prime farmland.

(b) Farmland of statewide significance.

(c) Unique farmland.

(d) Farmland of local importance.

If the proposed farmland security zone is in an area that is not designated on the Important Farmland Series maps, the land shall qualify if it is predominantly prime agricultural land, as defined in subdivision (c) of Section 51201.

51296.9. Nonrenewal of a farmland security zone contract shall be pursuant to Article 3 (commencing with Section 51240), except as otherwise provided in this article.

51297. A petition for cancellation of a farmland security zone contract created under this article may be filed only by the landowner with the city or county within which the contracted land is located. The city or county may grant a petition only in accordance

with the procedures provided for in Article 5 (commencing with Section 51280) and only if all the following requirements are met:

(a) The city or county shall make both of the findings specified in paragraphs (1) and (2) of subdivision (a) of Section 51282, based on substantial evidence in the record. Subdivisions (b) to (e), inclusive, of Section 51282 shall apply to the findings made by the city or county.

(b) In its resolution tentatively approving cancellation of the contract, the city or county shall find all of the following:

(1) That no beneficial public purpose would be served by the continuation of the contract.

(2) That the uneconomic nature of the agricultural use is primarily attributable to circumstances beyond the control of the landowner and the local government.

(3) That the landowner has paid a cancellation fee equal to 25 percent of the cancellation valuation calculated in accordance with subdivision (b) of Section 51283.

(c) The Director of Conservation approves the cancellation. The director may approve the cancellation after reviewing the record of the tentative cancellation provided by the city or county, only if he or she finds both of the following:

(1) That there is substantial evidence in the record supporting the decision.

(2) That no beneficial public purpose would be served by the continuation of the contract.

(d) A finding that no authorized use may be made of a remnant contract parcel of five acres or less left by public acquisition pursuant to Section 51295, may be substituted for the finding in subdivision (a).

51297.1. All of the provisions of Article 6 (commencing with Section 51290) shall apply to farmland security zones created pursuant to this article except as specifically provided in this article.

51297.2. No state agency, as defined in Section 65934, or local agency, as defined in Section 65930, shall require any land to be placed under a farmland security zone contract as a condition of the issuance of any entitlement to use or the approval of a legislative or adjudicative act involving, but not limited to, the planning, use, or development of real property, or a change of organization or reorganization, as defined in Section 56021 or 56073. No contract shall be executed as a condition of an entitlement to use issued by an agency of the United States government.

51297.3. Sections 51296.3 and 51296.4 shall not apply during the three-year period preceding the termination of a farmland security zone contract.

51297.4. Nothing in Sections 51296 to 51297.4, inclusive, shall be construed to limit the authority of a board to rescind a portion or portions of a Williamson Act contract or contracts for the purpose of immediately enrolling the land in a farmland security zone contract so long as the remaining land is retained in a Williamson Act contract

and the board determines that its action would improve the conservation of agricultural land within the county where the rescission occurs. The creation of multiple contracts under this section does not constitute a subdivision of the land.

SEC. 24. Section 54988 of the Government Code is amended to read:

54988. (a) (1) In addition to any other remedy provided by law, including the current powers of charter cities, the legislative body of a city, county, or city and county may collect any fee, cost, or charge incurred in (A) the abatement of public nuisances; (B) the correction of any violation of any law or regulation that would also be a violation of Section 1941.1 of the Civil Code; (C) the enforcement of zoning ordinances adopted pursuant to Chapter 4 (commencing with Section 65800) of Division 1 of Title 7 or any other constitutional or statutory authority; (D) inspections and abatement of violations of Article 1 (commencing with Section 13100) of Chapter 2 of Part 2 of Division 12 of the Health and Safety Code; (E) inspections and abatement of violations of the State Housing Law, Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code and regulations adopted pursuant thereto; (F) inspections and abatement of violations of the California Building Standards Code, Title 24 of the California Code of Regulations; or (G) inspections and abatement related to local ordinances and regulations that implement any of the foregoing, if the fee, cost, or charge has not been paid within 45 days of notice thereof, by making the amount of the unpaid fee, cost, or charge a proposed lien against the property that is the subject of the enforcement activity. Except as provided in subdivision (c), the amount of the proposed lien may be collected at the same time and in the same manner as property taxes are collected. All laws applicable to the levy, collection, and enforcement of ad valorem taxes shall be applicable to the proposed lien, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of enforcement relating to the property shall be transferred to the unsecured roll for collection.

(2) The amount of any fee, cost, or charge shall not exceed the actual cost incurred performing the inspections and enforcement activity, including permit fees, fines, late charges, and interest.

(3) This section shall not apply to owner-occupied residential dwelling units.

(4) This section does not apply to any enforcement, abatement, correction, or inspection activity regarding a violation in which the violation was evident on the plans that received a building permit.

(b) (1) A city, county, or city and county shall provide the owner of the property with written notice in plain language of the proposed lien, a description of the basis for the amounts comprising the lien, a minimum of 45 days after notice to pay the fee, cost, or charge, and an opportunity to appear before the legislative body and be heard regarding the amount of the proposed lien. The notice shall be mailed by certified mail to the last known address of the owner of the property.

(2) In any city, county, or city and county, the legislative body may delegate the holding of the hearing required by paragraph (1) to a hearing board designated by the legislative body. The hearing board may be the housing appeals board established pursuant to Section 17920.5 of the Health and Safety Code or any other body designated by the legislative body. The hearing board shall make a written recommendation to the legislative body which shall include factual findings based on evidence introduced at the hearing. The legislative body may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the legislative body. Notice in writing of the de novo hearing shall be provided to the property owner at least 10 days in advance of the scheduled hearing.

(c) If the legislative body determines that the proposed lien authorized pursuant to subdivision (a) shall become a lien, the body may also cause a notice of lien to be recorded. This lien shall attach upon recordation in the office of the county recorder of the county in which the property is situated and shall have the same force, priority, and effect as a judgment lien, not a tax lien. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, set forth the date upon which the lien was created against the property, and include a description of the real property subject to the lien and the amount of the lien.

SEC. 25. Division 2 (commencing with Section 60400) of Title 6 of the Government Code is repealed.

SEC. 26. Section 61737.05 of the Government Code is amended to read:

61737.05. (a) Bond principal and interest and salaries shall be paid when due. Except as provided in subdivisions (b) and (c), all other claims and demands shall be approved in an open meeting by a majority of the members of the board.

(b) Warrants drawn in payment of claims and demands approved by the finance officer as conforming to an approved budget need not be approved by the board prior to payment.

(c) Claims and demands paid by warrants pursuant to subdivision (b) shall be presented to the board for ratification and approval in the audited comprehensive annual financial report.

SEC. 27. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) (1) Provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(2) The housing portion of the annual report required to be provided to the Office of Planning and Research and the Department of Housing and Community Development pursuant to this subdivision shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of, Chapter 4 (commencing with Section 11370) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2). This report shall be provided to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on or before October 1 of each year.

SEC. 28. Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between two or more existing adjacent parcels, where the land taken from one parcel is added to an adjacent parcel, and where a greater number of parcels than originally existed is not thereby created, provided the lot line adjustment is approved

by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to local zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(4) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 1351 of the Civil Code, to a condominium, as

defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is "individually owned" if and only if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(5) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, "agricultural purposes" means the cultivation of food or fiber, or the grazing or pasturing of livestock.

SEC. 29. Section 66451.17 of the Government Code is amended to read:

66451.17. If, within the 30-day period specified in Section 66451.14, the owner does not file a request for a hearing in accordance with Section 66451.16, the local agency may, at any time thereafter, make a determination that the affected parcels are to be merged or are not to be merged. A determination of merger shall be recorded as provided for in Section 66451.12 no later than 90 days following the mailing of notice required by Section 66451.13.

SEC. 30. Section 66463.5 of the Government Code is amended to read:

66463.5. (a) When a tentative map is required, an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

(b) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no parcel map of all or any portion of the real property included within the tentative map shall be filed without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(c) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. Prior to the expiration of an approved or conditionally approved tentative map, upon the application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(d) (1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) Once a moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(e) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (c), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is, or was, pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(f) For purposes of this section, a development moratorium shall include a water or sewer moratorium or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a parcel map.

(g) Notwithstanding subdivisions (a), (b), and (c), for the purposes of Chapter 4.5 (commencing with Section 66498.1), subdivisions (b), (c), and (d) of Section 66498.5 shall apply to vesting tentative maps prepared in connection with a parcel map except that, for purposes of this section, the time periods specified in subdivisions (b), (c), and (d) of Section 66498.5 shall be determined from the recordation of the parcel map instead of the final map.

SEC. 31. Section 66499.19 of the Government Code is amended to read:

66499.19. When a reversion is effective, all fees and deposits shall be returned to the current owner of the property and all improvement security released, except those retained pursuant to Section 66499.17.

SEC. 32. Division 36 (commencing with Section 56000) of the Health and Safety Code is repealed.

SEC. 33. Section 3211.92 of the Labor Code is amended to read:

3211.92. (a) "Disaster service worker" means any natural person who is registered with an accredited disaster council or a state agency for the purpose of engaging in disaster service pursuant to the California Emergency Services Act without pay or other consideration.

(b) "Disaster service worker" includes public employees performing disaster work that is outside the course and scope of their regular employment without pay and also includes any unregistered person impressed into service during a state of war emergency, a

state of emergency, or a local emergency by a person having authority to command the aid of citizens in the execution of his or her duties.

(c) Persons registered with a disaster council at the time that council becomes accredited need not reregister in order to be entitled to the benefits provided by Chapter 10 (commencing with Section 4351).

(d) "Disaster service worker" does not include any member registered as an active firefighting member of any regularly organized volunteer fire department, having official recognition, and full or partial support of the county, city, or district in which the fire department is located.

SEC. 34. Section 3211.93a of the Labor Code is amended to read:

3211.93a. "Disaster service" does not include any activities or functions performed by a person if the accredited disaster council with which that person is registered receives a fee or other compensation for the performance of those activities or functions by that person.

SEC. 35. Section 26593 of the Public Resources Code is amended to read:

26593. A district may borrow money from or otherwise incur an indebtedness to a local agency, the state, any instrumentality or political subdivision thereof, the federal government, or any private source, and may comply with any conditions imposed upon the incurring of that indebtedness.

SEC. 36. Section 21670 of the Public Utilities Code is amended to read:

21670. (a) The Legislature hereby finds and declares that:

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

(2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the

appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

(1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.

(2) Two representing the county, appointed by the board of supervisors.

(3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.

(4) One representing the general public, appointed by the other six members of the commission.

(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

(f) It is the intent of the Legislature to clarify that, for the purposes of this article, special districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.

SEC. 37. Section 10 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as amended by Section 66 of Chapter 829 of the Statutes of 1998, is amended to read:

Sec. 10. (a) For the purposes of this section, the following definitions apply to the terms used: the term "city" means and

includes any municipal corporation or municipality of the State of California, whether organized under a freeholder's charter or under the provisions of general law of the type and class of cities and incorporated towns; and the term "water district" means and includes any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or any other public corporation or agency of the State of California of similar character.

(b) Territory may be annexed to any county water authority organized under this act by one of the following methods:

(1) By annexation to, or consolidation with, the area of any city, the area of which, as a separate unit, has become a part of any county water authority organized under this act, the annexation or consolidation to occur upon compliance with the provisions of law governing the annexation to, or consolidation with, the area of the city. Upon completion of the annexation to, or consolidation with, the city in compliance with the provisions of law applicable thereto, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the authority at the time authorized or outstanding.

(2) By annexation to, or consolidation with, any city which, as a separate unit, has become a part of any water district whose area, as a separate unit, has become a part of any county water authority organized under this act, in instances where, under the applicable provisions of law governing the change of boundaries of the water district, the annexation or consolidation automatically will result in the enlargement of the area of the water district, the annexation or consolidation to occur upon compliance with the provisions of law governing the annexation to, or consolidation with, the area of the city. Upon completion of the annexation to, or consolidation with, the city in compliance with the provisions of law applicable thereto, the territory shall become, and be, a part of the water district and of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the water district and of the county water authority, including payment of bonds and other obligations of the water district and of the county water authority at the time authorized or outstanding. If any territory has been so annexed to, or consolidated with, any city prior to the effective date of this paragraph, under conditions which would have resulted in the enlargement of the area of the county water authority had this paragraph then been in effect, upon compliance with the following provisions of this paragraph, the territory shall be annexed to, and shall become and be part of, the county water authority and shall be a part of the water district for all purposes, the last-mentioned provisions being as follows:

(A) The governing body of the city, at any time after the effective date of this paragraph, may adopt an ordinance which, after reciting that the territory has been annexed to, or consolidated with, the city by proceedings previously taken under statutory authority, and after referring to the applicable statutes and to the date and place of filing of the certificate or certificates evidencing the annexation or consolidation, shall describe the territory and shall determine and declare that the territory shall be, and thereby is, annexed to the county water authority, and the ordinance shall further determine and declare that the territory shall become and be, and thereby is, a part of the county water authority, and shall be, and thereby is, a part of the water district for all purposes.

(B) The governing body, or clerk thereof, of the city shall file a certified copy of the ordinance with the county clerk of the county in which the county water authority is situated. Upon the filing of the certified copy of the ordinance in the office of the county clerk of the county in which the county water authority is situated, the territory shall become, and be, a part of the county water authority and shall be a part of the water district for all purposes, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority and of the water district, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding.

(C) Upon the filing of the certified copy of the ordinance, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate, describing the territory, reciting the filing of the certified copy of the ordinance and the annexation of the territory to the county water authority, and declaring that the territory is a part of the county water authority and of the water district. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority and a duplicate of the original certificate to the clerk of the governing body of the water district.

(3) Upon terms and conditions fixed by the board of directors of the county water authority and in the manner provided in subdivision (c), by direct annexation, as a separate unit, of the corporate area of any water district or city.

(4) Upon terms and conditions fixed by the board of directors of the county water authority and in the manner provided in subdivision (d), by annexation to, or consolidation with, any water district, the area of which, in whole or in part, is included within the county water authority as a separate unit; provided that, unless the territory is so annexed to the county water authority with the consent of the board of directors, the annexation of territory to, or the consolidation of the territory with, the water district does not authorize or entitle the water district or the territory to demand or

receive any water from the county water authority for use in the territory; and provided further, that, except where automatic annexation results under the conditions specified in paragraph (2), nothing in this act prevents the annexation of territory to, or the consolidation of territory with, any water district for its local purposes only and without annexing their territory to the county water authority, and the local annexation or consolidation may occur without requesting or obtaining the consent thereto of the board of directors of the county water authority.

(c) The governing body of any water district or city may apply to the board of directors of the county water authority for consent to annex the corporate area of the water district or city to the county water authority. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the corporate area of the water district or city may be annexed to, and become a part of, the county water authority. These terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the water district or city, in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case these terms and conditions provide for the levy of these special taxes, the board of directors, in fixing these terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising the aggregate sum, and that substantially equal annual levies will be made for the purpose of raising the sum over the period so prescribed. The action of the board of directors, evidenced by resolution, shall be promptly transmitted to the governing body of the applying water district or city and, if the action grants consent to the annexation, the governing body may thereupon submit, to the qualified electors of the water district or city at any general or special election held therein, the proposition of the annexation subject to the terms and conditions. Notice of the election shall be mailed to each voter qualified to vote at the election and shall be given by posting or publication. When notice is given by posting, the notices shall be posted at least 10 days and in three public places in the water district or city. When notice is given by publication, the notice shall be published in the water district or city pursuant to Section 6061 of the Government Code, at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed in the manner provided by law for elections in the water district or city. If the proposition receives the affirmative vote of a majority of electors of the water district or city voting thereon at the election, the governing body of the water district or city shall certify the result of the election on the proposition to the board of directors of the county water authority, together with a legal description of the

boundaries of the corporate area of the water district or city, accompanied by a map or plat indicating those boundaries. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing thereof in the office of the county clerk of the county in which the county water authority is situated, the corporate area of the water district or city shall become, and be, an integral part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed as authorized. Upon the filing of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate, reciting the filing of the papers and the annexation of the corporate area of the water district or city to the county water authority. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority.

(1) If a water district applies to a county water authority for consent to annex its corporate area, as a separate unit, the water district shall include as a part of its corporate area the corporate areas of any cities (whether one or more) which are already included within the county water authority as separate units, or the water district shall include as a part of its corporate area the corporate areas, or portion thereof, already included within the county water authority, of any water districts (whether one or more) whose corporate areas, in whole or in part, are already included within the county water authority as separate units. That fact shall be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the applying water district may be annexed to the county water authority, to the end that the areas within the unit member cities or water districts which are already a part of the county water authority, shall not be required to assume any greater financial burden or obligation to the county water authority than they would have had if they had remained a part of the county water authority as separate units.

Concurrently with any election called by an applying water district to submit to the qualified electors of the water district the question of whether the terms and conditions fixed by the board of directors of the county water authority for annexation shall be approved, the governing bodies of the unit member cities or water districts may call and hold elections within their respective corporate limits or portions thereof already included within the county water authority, to

determine whether or not the cities or water districts shall withdraw from the county water authority as separate units, and the proposed withdrawal may be made and submitted conditioned upon and effective when the applying water district has finally been annexed to the county water authority.

The effect of the concurrent elections, if a majority of the electors of the applying water district voting thereat vote in favor of annexation, and a majority of the electors of the unit member cities or water districts voting thereat vote in favor of withdrawing, shall be that the annexing water district thereafter shall be authorized to exercise the privileges and to discharge the duties prescribed in this act for public agencies whose areas, as separate units, are included within the county water authority, in place of and instead of the cities or water districts so withdrawing. Notwithstanding Section 11 of this act, the areas within the withdrawing cities or water districts shall remain a part of the county water authority and shall not be excluded therefrom, notwithstanding the fact that the cities or water districts, as corporate entities, have withdrawn from the authority.

If the water district does annex to the county water authority, the directors representing the withdrawing cities or water districts on the board of directors of the county water authority shall continue to act until their successors have been chosen and designated by the appropriate officers of the annexing water district and have qualified as members of the board of directors of the county water authority, after which time the directors representing the withdrawing cities or water districts shall no longer sit or vote on the board.

(2) If a water district applies to a county water authority for consent to annex its corporate area as a separate unit, the water district shall include as a part of its corporate area lands which are in public ownership exempt from taxation by a county water authority, and not within or adjacent to the area within the water district served with water by the district, and which are not to be supplied by the water district with water obtained from, and by reason of, its annexation to the county water authority. That fact may be taken into consideration by the board of directors of the county water authority in fixing the terms and conditions upon which the water district may be annexed to the county water authority and in determining the boundaries of the area to be annexed, and the county water authority may, in the discretion of its board of directors, annex all of the corporate area of the water district as a separate unit excepting that portion consisting of the publicly owned and tax-exempt lands.

(d) The governing body of any water district, the area of which, in whole or in part, is included within a county water authority as a separate unit, may apply to the board of directors of the county water authority for consent to annex to the county water authority territory which the water district seeks to annex to, or consolidate with, the water district, or territory which, without making the territory a part

of the county water authority, already has been annexed to, or consolidated with, the water district. The board of directors may grant or deny the application and, in granting the application, may fix the terms and conditions upon which the territory may be annexed to, and become a part of, the county water authority. The terms and conditions may provide, among other things, for the levy by the county water authority of special taxes upon taxable property within the territory in addition to the taxes authorized to be levied by the county water authority by other provisions of this act. In case the terms and conditions provide for the levy of those special taxes, the board of directors, in fixing those terms and conditions, shall specify the aggregate amount to be so raised and the number of years prescribed for raising that aggregate sum and that substantially equal annual levies will be made for the purpose of raising that sum over the period so prescribed. The action of the board of directors evidenced by resolution shall be promptly transmitted to the governing body of the applying water district and to the executive officer of the local agency formation commission of the county in which the county water authority is situated, who may defer the issuance of a certificate of filing until receipt of that resolution, and if the action grants consent to the annexation, the territory may be annexed to the county water authority as provided in paragraph (1) or (2).

(1) If the territory has not been previously annexed to, or consolidated with, the water district, upon completion of the annexation to, or consolidation with, the water district in compliance with the provisions of law applicable thereto, including this section, the territory shall become and be a part of the county water authority and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation fixed; provided that, if the applicable provisions of law governing the annexation to, or consolidation with, the water district require any notice of any election called for the purpose of determining whether the proposed annexation or consolidation shall occur, or shall require any notice of hearing or other notice to be given to the residents or electors of, or owners of property in, the territory, the notice shall contain the substance of the terms and conditions of annexation to the county water authority fixed by the board of directors of the county water authority; and provided further, that the local agency formation commission shall require that the annexation to the water district be subject to the terms and conditions fixed by the board of directors of the county water authority in addition to any other terms and conditions that may be required by the commission; and

provided further, that the executive officer of the local agency formation commission having the duty of preparing, executing, and filing a certificate of completion resulting in the annexation to, or consolidation with, the water district, pursuant to the provisions of law applicable thereto, shall include in the certificate of completion the terms and conditions fixed by the board of directors of the county water authority in accordance with the provisions of this act, and shall file a duplicate of the certificate with the board of directors of the county water authority.

(2) If the territory sought to be annexed to a county water authority has been previously annexed to, or consolidated with, the water district, the governing body of the water district, upon being advised of the action of the board of directors of the county water authority, and if the action grants consent to the annexation, may submit to the qualified electors of the territory, if the territory has 12 or more registered voters, at any general or special election held therein, the proposition of the annexation to the county water authority subject to the terms and conditions fixed by the board of directors of the county water authority. Notice of the election shall be given by publication. When the notice is given by posting, the notice shall be posted at least 10 days and in three public places in the territory. When the notice is given by publication, the notice shall be published in the water district pursuant to Section 6061 of the Government Code at least 10 days before the date fixed for the election. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns thereof canvassed by the governing body of the water district in the manner provided by law for elections in the water district. If the proposition receives the affirmative vote of a majority of electors of the territory voting thereon at the election, the governing body of the water district shall certify the result of the election on the proposition to the board of directors of the county water authority. If the territory has less than 12 registered voters, no election shall be required, and, following written notice to each owner of property shown on the last equalized assessment roll and the holding of a hearing not less than 10 days after that notice, the annexation may be approved upon the written consent of the owners of more than 50 percent of the assessed valuation of the territory. A certificate of proceedings shall be made by the secretary of the county water authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing thereof in the office of the county clerk of the county in which the county water authority is situated, the territory shall become, and be, a part of the county water authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of the county water authority, including the payment of bonds and other obligations of the county water authority at the time authorized or

outstanding, and the board of directors of the county water authority may do all things necessary to enforce and make effective the terms and conditions of annexation of the territory to the county water authority fixed by its board of directors. Upon the filing of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate reciting the filing of the papers and the annexation of the territory to the county water authority. The county clerk of the county in which the county water authority is situated shall transmit the original of the certificate to the secretary of the county water authority.

(e) Should the corporate area, or all portions thereof already included within a county water authority, of any water district or city, the corporate area of which, in whole or in part, already is included within the county water authority as a separate unit, annex to a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, upon the completion of the annexation pursuant to the law pertaining thereto, the water district or city, the corporate area (or portions thereof) of which is so annexed, shall automatically cease to be a separate unit member of the county water authority, but the corporate area (or portions thereof) shall remain a part of the county water authority as a part of the unit member water district or city to which it was annexed. The executive officer of the local agency formation commission having the duty of preparing, executing, and filing the certificate of completion shall file, in addition to any other filings that may be required by law, a duplicate of the certificate with the board of directors of the county water authority.

Should any water district or city, the corporate area of which, in whole or in part, already is included within a county water authority as a separate unit, consolidate with a water district or city the corporate area of which, in whole or in part, already is a part of the county water authority as a separate unit, under the provisions of any law by the terms of which, after consolidation, a new district or city will result and the former water districts or cities participating in the consolidation shall no longer exist, the resulting new water district or city shall be substituted for the water districts or cities whose corporate existence has been terminated by the consolidation as a unit member of the county water authority, and the corporate areas (or portions thereof) of the former water district or cities shall remain a part of the county water authority as a part of the consolidation. The executive officer of the local agency formation commission having the duty of preparing, executing, and filing a certificate of completion shall file, in addition to any other filings that may be required by law, a duplicate of the certificate with the board of directors of the county water authority.

(f) The validity of any proceedings for the annexation to any county water authority organized under this act, of the corporate area of a water district or city as a separate unit, or of territory annexed to, or consolidated with, a water district or city which, as a unit, has been included within a county water authority, shall not be contested in any action unless the action has been brought within three months after the completion of the annexation or, in case the annexation is completed prior to the time that this subdivision takes effect, then within three months after this subdivision became effective.

(g) Whenever territory is annexed to or consolidated with any water district, the corporate area of which, as a unit, has become a part of any county water authority organized under this act, regardless of whether the territory is annexed to and becomes a part of the county water authority, or whenever territory is annexed to any city under the conditions specified in paragraph (1) or (2) of subdivision (b), or whenever territory previously annexed to any city is annexed to the county water authority under the conditions specified in paragraph (2) of subdivision (b), the governing or legislative body, or clerk thereof, of the water district or city, shall file with the board of directors of the county water authority a statement of the change of boundaries of the water district or city, setting forth the legal description of the boundaries of the water district or city, as so changed, and of the part thereof within the county water authority, which statement shall be accompanied by a map or plat indicating those boundaries.

(h) The inclusion in a county water authority of the corporate area, in whole or in part, of any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or other public corporation or agency of the state of similar character, referred to in Section 2, shall not destroy the identity or legal existence or impair the powers of any municipal water district, municipal utility district, public utility district, county water district, irrigation district, or other public corporation or agency of the state of similar character, notwithstanding the identity of purpose or substantial identity of purpose of the county water authority.

(i) In determining the number of members of the board of directors of a county water authority organized under this act from the component public agencies, the corporate areas of which, in whole or in part, are included as units within the county water authority, there shall be considered only the assessed valuation of the property taxable for county water authority purposes lying in the public agencies and in the county water authority. The directors shall be appointed by the chief executive officers, with the consent and approval of the governing bodies, of the component public agencies, respectively, without regard to whether the chief executive officers or members of the governing bodies have been chosen from, or

represent, areas of their respective public agencies which lie outside of the county water authority. The phrase "any water district, the corporate area of which is included within the county water authority" and the phrase "each city, the area of which shall be a part of any county water authority incorporated under this act," and like phrases, used elsewhere in this act, shall be deemed to mean and refer to any water district or city, the corporate area of which, either in whole or in part, is included within the county water authority, but the duties and obligations of the county water authority shall extend only to that part of the corporate area of the water district or city that lies within the county water authority. As to the water district, city, or public agency, the corporate area of which lies partly within and partly without the county water authority, the word "therein" and the phrase "within the city" and like words and phrases, used elsewhere in this act, shall be deemed to mean and refer to that part of the corporate area of the water district, city, or public agency which lies within the county water authority. The charges for water supplied by the county water authority to any component public agency, pursuant to its request, shall be and become an obligation of the public agency, regardless of whether the entire corporate area of the public agency is included within the county water authority, and the county water authority, in administrative and contractual matters, shall deal with the chief executive officers and governing bodies and other proper officials of the component public agencies as chosen or constituted under applicable laws governing the respective public agencies.

SEC. 38. Section 10.2 of the County Water Authority Act (Chapter 545 of the Statutes of 1943), as amended by Section 67 of Chapter 829 of the Statutes of 1998, is amended to read:

Sec. 10.2. (a) Notwithstanding any other provisions of this act, territory within a federal military reservation may be annexed to any county water authority organized hereunder as a single member of an authority in the manner provided in this section. As used in this section, "federal military reservation" or "military reservation" means a single federal military reservation or separate but contiguous federal military reservations which are jointly annexed to a county water authority as a single member agency of an authority.

(b) Proceedings for the annexation of a military reservation shall be initiated by the adoption by the board of directors of an authority of a resolution proposing annexation of a military reservation to an authority as a member of an authority.

(c) The resolution proposing the annexation may provide that the annexation shall include one or more separate areas, which may be separately identified for assessing and tax collecting purposes, and that each such area may be subject to one or more of the following terms and conditions:

(1) The fixing and establishment of priorities for the use of, or right to use, water, or capacity rights in any public improvement or facilities, and the determination of, or limitation on, the quantity of, the purposes for which, and the places where, water may be delivered by the authority to the military reservation for military purposes and uses incidental thereto, as well as for nonmilitary purposes.

(2) The levying by the authority of special taxes upon any private leasehold, possessory interest or other taxable property within the territory annexed, and the imposition and collection of special fees or charges prior to the annexation.

(3) Should portions of any area annexed hereunder be subsequently made available for nonmilitary purposes not in existence at the time of the annexation of the area, the board of directors of the authority may impose new terms and conditions for any subsequent service of water, directly or indirectly, by the authority to that area, including the separation of such an area for assessing and tax collecting purposes and the levying by the authority of special taxes on those portions.

(4) The effective date of the annexation.

(5) Any other matters necessary or incidental to any of the foregoing.

(d) A certified copy of the resolution proposing annexation shall be sent to the official in authority over the military reservation. If the military reservation consents in writing to the annexation and to the terms and conditions established by the board of directors, the board may, by resolution, order the annexation to the authority of the territory situated within the military reservation, subject to said terms and conditions.

(e) A certificate of proceedings taken hereunder shall be made by the secretary of the authority and filed with the county clerk of the county in which the county water authority is situated. Upon the filing in his or her office of the certificate of proceedings, the county clerk of the county in which the county water authority is situated shall, within 10 days, issue a certificate reciting the filing of those papers in his or her office and the annexation of the territory to the authority. The county clerk of the county in which the county water authority is situated shall transmit the original of said certificate to the secretary of the authority.

(f) Upon the filing of the certificate of proceedings with the county clerk of the county in which the county water authority is situated, or upon the effective date of the annexation provided for in the terms and conditions, whichever is later, the territory within the military reservation shall become and be an integral part of the authority, and the taxable property therein shall be subject to taxation thereafter for the purposes of said authority, including the payment of bonds and other obligations of the authority at the time

authorized or outstanding, and the board of directors of the authority shall be empowered to do all things necessary to enforce and make effective the terms and conditions of annexation fixed as hereinabove authorized.

(g) On and after the effective date of the annexation, the military reservation shall be a separate unit member of the authority and shall be entitled to one representative on the board of directors of the authority. For the purposes of this act, a military reservation shall be deemed a public agency. The representative shall be designated and appointed by the official in authority over the military reservation, shall hold office for a term of six years or until his or her successor is appointed and qualified, and may be recalled by that official.

(h) The transfer of ownership of the fee title of a military reservation, or of any portion thereof, to nonmilitary ownership after annexation to the authority pursuant to this section shall result in the automatic exclusion from the authority of the territory transferred to that ownership.

(i) If a county water authority is a member public agency of a metropolitan water district organized under the Metropolitan Water District Act (Chapter 200 of the Statutes of 1969), that metropolitan water district may impose any or all of the terms and conditions that may be imposed by a county water authority pursuant to subdivisions (a) through (h) of this section in any resolution fixing the terms and conditions for the concurrent annexation of territory in a military reservation.

SEC. 39. Section 901 of the Pajaro River Watershed Flood Prevention Authority Act (Chapter 963 of the Statutes of 1999), is repealed.

SEC. 40. (a) The County of Riverside and the legislative body of Community Facilities District No. 89-5 of the County of Riverside may transfer the governance of that district to the Rancho California Water District consistent with Article 6 (commencing with Section 53368) of Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code.

(b) For the purposes of this section, "city," as defined in Section 53368 of the Government Code, shall include the Rancho California Water District.

(c) In enacting this section, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique geographical and fiscal circumstances involving Community Facilities District No. 89-5 of the County of Riverside.

O

Assembly Bill No. 3026

CHAPTER 438

An act to amend Sections 14035, 14038, 14553.6, 14553.8, and 14554.8 of, and to repeal Section 14404 of, the Government Code, to amend Sections 10265 and 19100 of the Public Contract Code, to amend Section 21096 of the Public Resources Code, to amend Sections 21602, 21670.1, 21670.2, 21670.4, 21671.5, 21674, 21674.5, 21674.7, 21675, 21675.1, 21676, 21676.5, 21679, 21679.5, 21681, and 21702 of the Public Utilities Code, to amend Sections 150, 164.16, 170, and 216 of the Streets and Highways Code, and to amend Section 22656 of the Vehicle Code, relating to transportation.

[Approved by Governor September 7, 2002. Filed with Secretary of State September 9, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3026, Committee on Transportation. Transportation.

(1) Existing law authorizes the Department of Transportation to enter into contracts with the National Railroad Passenger Corporation.

This bill would make nonsubstantive changes to those provisions, deleting references to obsolete federal law.

(2) Existing law continuously appropriates to the Treasurer the amounts identified in the Budget Act as having been deposited in the State Highway Account in the State Transportation Fund from federal transportation funds and pledged by the California Transportation Commission, for the purposes of issuing federal highway grant anticipation notes to fund transportation projects selected by the commission. Projects eligible for this special funding are limited to transportation projects that have been designated for accelerated construction by the commission, including toll bridge seismic retrofit projects, projects approved for funding under the Traffic Congestion Relief Act of 2000, and projects programmed under the current adopted State Transportation Improvement Program (STIP) or the current State Highway Operation and Protection Program.

Existing law requires that all federal and state funds to be allocated by the commission or expended by the Department of Transportation for transportation improvements under the STIP, except as specified, be programmed 40 percent in County Group No. 1, as defined, and 60 percent in County Group No. 2, as defined, and allocated among the counties in each county group in accordance with certain county share formulas.

Existing law requires that all funds allocated to a project under the provisions of existing law described above relating to federal highway grant anticipation notes be counted against the STIP county share for the county in which the project is located.

This bill would instead provide that the projects included in the STIP would be counted against the STIP interregional improvement program share for a project in the interregional improvement program and the county share for the county in which a project is located for a project in a regional improvement program.

(3) Existing law requires a political subdivision to adopt a comprehensive land use plan to provide for the orderly growth of a public airport within its jurisdiction.

This bill would change the term to "airport land use compatibility plan" in those provisions.

(4) Existing law designates certain state highways and segments of those highways as part of the interregional road system.

This bill would include within this designation the segment of Route 246 between Routes 1 and 101. The bill would also make nonsubstantive changes to provisions pertaining to the state highway system.

(5) Under existing law, any peace officer, as defined, may remove a vehicle from the right-of-way of a railroad, street railway, or light rail line located within the territorial limits in which the officer is empowered to act if the vehicle is parked or abandoned upon any track or within $7^1/_2$ feet of the nearest rail.

This bill would also authorize the officer to remove a vehicle that is parked beyond $7^1/_2$ feet of the nearest rail but within the right-of-way of a railroad, street railway, or light rail if signs are posted giving notice that vehicles may be removed.

(6) Existing law describes the parameters of State Highway Route 91 that constitute the Willard Murray Freeway.

This bill would require the Department of Transportation to revise the description of this freeway.

(7) Under existing law, in the absence of an express provision to the contrary, the last enacted statute prevails over a statute enacted earlier during the same year of a session.

This bill would specify that irrespective of the sequence of enactment, the provisions of another statute enacted during the 2002 calendar year that takes effect on or before January 1, 2003, and that affects a provision amended, added, or repealed by this act would prevail over this act.

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

SECTION 1. Section 14035 of the Government Code is amended to read:

14035. (a) The department may enter into contracts with the National Railroad Passenger Corporation under Section 403(b) of the Rail Passenger Service Act of 1970 to provide commuter and intercity passenger rail services. The contracts may include, but are not limited to, the extension of intercity passenger rail services or the upgrading of commuter rail services.

(b) The department may contract with railroad corporations for the use of tracks and other facilities and the provision of passenger services on terms and conditions as the parties may agree.

(c) The department may construct, acquire, or lease, and improve and operate, rail passenger terminals and related facilities that provide intermodal passenger services along the following corridors: the San Diego-Los Angeles-Santa Barbara corridor, the San Francisco-San Jose-Monterey corridor, the Los Angeles-Riverside-San Bernardino-Calexico corridor, the San Jose-Oakland-Sacramento-Reno corridor, the Los Angeles-Bakersfield-Fresno-Stockton-Sacramento-Oakland corridor, and the Los Angeles-Santa Barbara-Oakland-Sacramento-Redding corridor.

(d) The department may enter into a contract with the National Railroad Passenger Corporation to provide additional trains over the San Joaquin route running between Bakersfield and Oakland and to extend the existing route to Sacramento.

(e) The Transportation Agency of Monterey County may be a party to any contract entered into under this section between the department and the National Railroad Passenger Corporation for passenger rail service along the San Francisco-San Jose-Monterey corridor.

SEC. 2. Section 14038 of the Government Code is amended to read:

14038. (a) The department may purchase, sell, and lease rail passenger cars and locomotives and other self-propelled rail vehicles.

(b) The department may acquire, lease, design, construct, and improve track lines and related facilities, and the department may contract with the private sector for the design, improvement, or construction of track lines and related facilities. If a railroad corporation refuses to allow improvements to tracks and related facilities, the Public Utilities Commission shall, within 60 days after application by the department, order the institution of those improvements, if it finds that the improvements are necessary to the safety of the railroad

corporation's employees, passengers, customers, and the public, and the operating efficiency of the service for which they are requested.

(c) Any facility or equipment acquired or improved by any entity with funds made available to it pursuant to this section shall become the property of that entity at the time and under the conditions as are agreed upon by the department in the agreement that makes the funds available to the entity. Section 10295 of the Public Contract Code does not apply to any agreement entered into pursuant to this section.

(d) The department shall deposit in the Passenger Equipment Acquisition Fund, for expenditure pursuant to Section 14066, the net proceeds from the sale of rail passenger cars and locomotives and other self-propelled rail vehicles.

SEC. 3. Section 14404 of the Government Code is repealed.

SEC. 4. Section 14553.6 of the Government Code is amended to read:

14553.6. Funds allocated to a State Transportation Improvement Program project under this chapter, including cost overruns and financing costs, shall be counted against the interregional improvement program share in the case of a project in the interregional improvement program and the county share for the county in which the project is located in the case of a project in a regional improvement program.

SEC. 5. Section 14553.8 of the Government Code is amended to read:

14553.8. Before notes are issued under this chapter, the commission, in cooperation with the department and the Department of Finance, shall consider and determine the appropriateness of the mechanism authorized by this chapter in comparison to other funding mechanisms, including, but not limited to, pay-as-you-go, federal advance construction, federal incremental advance construction, or other funding methods authorized under federal law to achieve maximum efficiency from the state's federal allocation of transportation funds.

SEC. 6. Section 14554.8 of the Government Code is amended to read:

14554.8. (a) Notwithstanding Section 13340 of the Government Code or any other provision of law, the amounts specified in the annual Budget Act as having been deposited in the State Highway Account in the State Transportation Fund from federal transportation funds, and pledged by the commission under this chapter, are hereby continuously appropriated, without regard to fiscal years, to the Treasurer for the purposes of, and in accordance with, this chapter.

(b) Funds that are subject to Section 1 or 2 of Article XIX of the California Constitution may be used as the state or local principal match

for any project that is eligible for federal matching funds and is funded pursuant to this chapter.

SEC. 7. Section 10265 of the Public Contract Code is amended to read:

10265. A claim pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code is not required, but legal action on any claim shall be commenced within the time period specified in Section 10240.1. The department may compromise or otherwise settle any claims arising from the contract at any time.

SEC. 8. Section 19100 of the Public Contract Code is amended to read:

19100. (a) Presentation of a claim pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code is not required to commence a legal action or arbitration proceeding for money or damages on a contract with the state, but any action or proceeding shall be commenced not later than six months after either of the following:

(1) The contracting agency's final written decision under contract claim provisions.

(2) The accrual of the cause of action, if there are no contract claim provisions.

(b) This section shall not apply to a claim that is subject to the provisions of Section 10240.1.

SEC. 8.5. Section 21096 of the Public Resources Code is amended to read:

21096. (a) If a lead agency prepares an environmental impact report for a project situated within airport land use compatibility plan boundaries, or, if an airport land use compatibility plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation, in compliance with Section 21674.5 of the Public Utilities Code and other documents, shall be utilized as technical resources to assist in the preparation of the environmental impact report as the report relates to airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

SEC. 9. Section 21602 of the Public Utilities Code is amended to read:

21602. (a) Subject to the terms and within the limits of special appropriations made by the Legislature, the department may render

financial assistance by grant or loan, or both, to political subdivisions jointly, in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled, by a political subdivision or subdivisions, if the financial assistance has been shown by public hearing to be appropriate to the proper development or maintenance of a statewide system of airports. Financial assistance may be furnished in connection with federal or other financial aid for the same purpose.

(b) Notwithstanding subdivision (a) of Section 21681, a city or county designated by the Airport Land Use Commission is eligible to compete for funds held in the Aeronautics Account in the State Transportation Fund on behalf of any privately owned, public use airport that is included in an airport land use compatibility plan. However, the city or county shall be eligible to compete for the funds only when zoning on the parcel is tantamount to a taking of all reasonable uses that might otherwise be permitted on the parcel. The eligible airport and aviation purposes are limited to those specified in paragraphs (4), (5), (6), (9), and (14) of subdivision (f) of Section 21681, and, further, any capital improvements or acquisitions shall become the property of the designated city or county. Matching funds pursuant to subdivision (a) of Section 21684 may include the in-kind contribution of real property, with the approval of the department.

(c) Any grant of funds held in the Aeronautics Account in the State Highway Account on behalf of any privately owned airports shall contain a covenant that the airport remain open for public use for 20 years. Any grant made to a city or county on behalf of a privately owned airport shall contain a payback provision based upon existing market value at the time the private airport ceases to be open for public use.

(d) Upon request, California Aid to Airports Program (CAAP) projects included within the adopted Aeronautics Program, may be funded in advance of the year programmed, with the concurrence of the department, in order to better utilize funds in the account.

(e) There is, in the Aeronautics Account in the State Transportation Fund, a subaccount for the management of funds for loans to local entities pursuant to this chapter. All funds for airport loans in the Special Deposit Fund are hereby transferred to the subaccount. With the approval of the Department of Finance, the department shall deposit in the subaccount all money received by the department from repayments of and interest on existing and future airport loans including, but not limited to, the sums of five hundred forty thousand dollars ($540,000) in repayments from the General Fund due in July 1987, and July 1988, and may, upon appropriation, transfer additional funds from the Aeronautics Account in the State Transportation Fund to the subaccount

as the department deems appropriate. Interest on money in the subaccount shall be credited to the subaccount as it accrues.

(f) Notwithstanding Section 13340 of the Government Code, the money in the subaccount created by subdivision (e) is hereby continuously appropriated to the department without regard to fiscal years for purposes of loans to political subdivisions for airport purposes.

SEC. 10. Section 21670.1 of the Public Utilities Code is amended to read:

21670.1. (a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.

(b) A body designated pursuant to subdivision (a) which does not include among its membership at least two members having an expertise in aviation, as defined in subdivision (e) of Section 21670, shall, when acting in the capacity of an airport land use commission, be augmented so that body, as augmented, will have at least two members having that expertise. The commission shall be constituted pursuant to this section on and after March 1, 1988.

(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.

(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1), that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

(A) Adopt processes for the preparation, adoption, and amendment of the airport land use compatibility plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.

(B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the airport land use compatibility plans.

(C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the airport land use compatibility plans.

(D) Adopt processes for the amendment of general and specific plans to be consistent with the airport land use compatibility plans.

(E) Designate the agency that shall be responsible of the preparation, adoption, and amendment of each airport land use compatibility plan.

(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are consistent with the procedure required by this article and will do all of the following:

(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.

(B) Rely on the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations.

(C) Provide adequate opportunities for notice to, review of, and comment by the general public, landowners, interested groups, and other public agencies.

(4) If the county does not comply with the requirements of paragraph (2) within 120 days, then the airport land use compatibility plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and an airport land use compatibility plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

(d) A commission need not be formed in a county that has contracted for the preparation of airport land use compatibility plans with the Division of Aeronautics under the California Aid to Airports Program (Title 21 (commencing with Section 4050) of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the airport land use compatibility plans:

(1) Agree to adopt and implement the airport land use compatibility plans that have been developed under contract.

(2) Incorporated the height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the Airport Land Use Planning Handbook, published by

the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations as part of the general and specific plans for the county and for each affected city.

(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

(e) (1) A commission need not be formed in a county if all of the following conditions are met:

(A) The county has only one public use airport that is owned by a city.

(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.

(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article.

SEC. 11. Section 21670.2 of the Public Utilities Code is amended to read:

21670.2. (a) Sections 21670 and 21670.1 do not apply to the County of Los Angeles. In that county, the county regional planning commission has the responsibility for coordinating the airport planning of public agencies within the county. In instances where impasses result relative to this planning, an appeal may be made to the county regional planning commission by any public agency involved. The action taken by the county regional planning commission on an appeal may be overruled by a four-fifths vote of the governing body of a public agency whose planning led to the appeal.

(b) By January 1, 1992, the county regional planning commission shall adopt the airport land use compatibility plans required pursuant to Section 21675.

(c) Sections 21675.1, 21675.2, and 21679.5 do not apply to the County of Los Angeles until January 1, 1992. If the airport land use compatibility plans required pursuant to Section 21675 are not adopted by the county regional planning commission by January 1, 1992, Sections 21675.1 and 21675.2 shall apply to the County of Los Angeles until the airport land use compatibility plans are adopted.

SEC. 12. Section 21670.4 of the Public Utilities Code is amended to read:

21670.4. (a) As used in this section, "intercounty airport" means any airport bisected by a county line through its runways, runway protection zones, inner safety zones, inner turning zones, outer safety

zones, or sideline safety zones, as defined by the department's Airport Land Use Planning Handbook and referenced in the airport land use compatibility plan formulated under Section 21675.

(b) It is the purpose of this section to provide the opportunity to establish a separate airport land use commission so that an intercounty airport may be served by a single airport land use planning agency, rather than having to look separately to the airport land use commissions of the affected counties.

(c) In addition to the airport land use commissions created under Section 21670 or the alternatives established under Section 21670.1, for their respective counties, the boards of supervisors and city selection committees for the affected counties, by independent majority vote of each county's two delegations, for any intercounty airport, may do either of the following:

(1) Establish a single separate airport land use commission for that airport. That commission shall consist of seven members to be selected as follows:

(A) One representing the cities in each of the counties, appointed by that county's city selection committee.

(B) One representing each of the counties, appointed by the board of supervisors of each county.

(C) One from each county having expertise in aviation, appointed by a selection committee comprised of the managers of all the public airports within that county.

(D) One representing the general public, appointed by the other six members of the commission.

(2) In accordance with subdivision (a) or (b) of Section 21670.1, designate an existing appropriate entity as that airport's land use commission.

SEC. 13. Section 21671.5 of the Public Utilities Code is amended to read:

21671.5. (a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years and until the appointment and qualification of his or her successor. The members of the first commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The body that originally appointed a member whose term has expired shall appoint his or her successor for a full term of four years. Any member may be removed at any time and without cause by the body appointing that member. The expiration date of the term of office of each member shall be the first Monday in May in the year in which that member's term is to expire. Any vacancy in the membership of the

commission shall be filled for the unexpired term by appointment by the body which originally appointed the member whose office has become vacant. The chairperson of the commission shall be selected by the members thereof.

(b) Compensation, if any, shall be determined by the board of supervisors.

(c) Staff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

(d) Notwithstanding any other provisions of this article, the commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.

(e) The commission shall meet at the call of the commission chairperson or at the request of the majority of the commission members. A majority of the commission members shall constitute a quorum for the transaction of business. No action shall be taken by the commission except by the recorded vote of a majority of the full membership.

(f) The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.

(g) In any county that has undertaken by contract or otherwise completed airport land use compatibility plans for at least one-half of all public use airports in the county, the commission may continue to charge fees necessary to comply with this article until June 30, 1992, and, if the airport land use compatibility plans are complete by that date, may continue charging fees after June 30, 1992. If the airport land use compatibility plans are not complete by June 30, 1992, the commission shall not charge fees pursuant to subdivision (f) until the commission adopts the land use plans.

SEC. 14. Section 21674 of the Public Utilities Code is amended to read:

21674. The commission has the following powers and duties, subject to the limitations upon its jurisdiction set forth in Section 21676:

(a) To assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the

extent that the land in the vicinity of those airports is not already devoted to incompatible uses.

(b) To coordinate planning at the state, regional, and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare.

(c) To prepare and adopt an airport land use compatibility plan pursuant to Section 21675.

(d) To review the plans, regulations, and other actions of local agencies and airport operators pursuant to Section 21676.

(e) The powers of the commission shall in no way be construed to give the commission jurisdiction over the operation of any airport.

(f) In order to carry out its responsibilities, the commission may adopt rules and regulations consistent with this article.

SEC. 15. Section 21674.5 of the Public Utilities Code is amended to read:

21674.5. (a) The Department of Transportation shall develop and implement a program or programs to assist in the training and development of the staff of airport land use commissions, after consulting with airport land use commissions, cities, counties, and other appropriate public entities.

(b) The training and development program or programs are intended to assist the staff of airport land use commissions in addressing high priority needs, and may include, but need not be limited to, the following:

(1) The establishment of a process for the development and adoption of airport land use compatibility plans.

(2) The development of criteria for determining airport land use planning boundaries.

(3) The identification of essential elements that should be included in the airport land use compatibility plans.

(4) Appropriate criteria and procedures for reviewing proposed developments and determining whether proposed developments are compatible with the airport use.

(5) Any other organizational, operational, procedural, or technical responsibilities and functions that the department determines to be appropriate to provide to commission staff and for which it determines there is a need for staff training or development.

(c) The department may provide training and development programs for airport land use commission staff pursuant to this section by any means it deems appropriate. Those programs may be presented in any of the following ways:

(1) By offering formal courses or training programs.

(2) By sponsoring or assisting in the organization and sponsorship of conferences, seminars, or other similar events.

(3) By producing and making available written information.

(4) Any other feasible method of providing information and assisting in the training and development of airport land use commission staff.

SEC. 16. Section 21674.7 of the Public Utilities Code is amended to read:

21674.7. An airport land use commission that formulates, adopts, or amends an airport land use compatibility plan shall be guided by information prepared and updated pursuant to Section 21674.5 and referred to as the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation.

SEC. 17. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years. In formulating an airport land use compatibility plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the planning area. The airport land use compatibility plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission may include, within its airport land use compatibility plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any federal military airport for all of the purposes specified in subdivision (a). This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the airport land use compatibility plan and each amendment to the airport land use compatibility plan.

(e) If an airport land use compatibility plan does not include the matters required to be included pursuant to this article, the Division of

Aeronautics of the department shall notify the commission responsible for the airport land use compatibility plan.

SEC. 18. Section 21675.1 of the Public Utilities Code is amended to read:

21675.1. (a) By June 30, 1991, each commission shall adopt the airport land use compatibility plan required pursuant to Section 21675, except that any county that has undertaken by contract or otherwise completed airport land use compatibility plans for at least one-half of all public use airports in the county, shall adopt that airport land use compatibility plan on or before June 30, 1992.

(b) Until a commission adopts an airport land use compatibility plan, a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall give public notice in the same manner as the city or county is required to give for those actions, regulations, or permits. As used in this section, "vicinity" means land that will be included or reasonably could be included within the airport land use compatibility plan. If the commission has not designated a study area for the airport land use compatibility plan, then "vicinity" means land within two miles of the boundary of a public airport.

(c) The commission may approve an action, regulation, or permit if it finds, based on substantial evidence in the record, all of the following:

(1) The commission is making substantial progress toward the completion of the airport land use compatibility plan.

(2) There is a reasonable probability that the action, regulation, or permit will be consistent with the airport land use compatibility plan being prepared by the commission.

(3) There is little or no probability of substantial detriment to or interference with the future adopted airport land use compatibility plan if the action, regulation, or permit is ultimately inconsistent with the airport land use compatibility plan.

(d) If the commission disapproves an action, regulation, or permit, the commission shall notify the city or county. The city or county may overrule the commission, by a two-thirds vote of its governing body, if it makes specific findings that the proposed action, regulation, or permit is consistent with the purposes of this article, as stated in Section 21670.

(e) If a city or county overrules the commission pursuant to subdivision (d), that action shall not relieve the city or county from further compliance with this article after the commission adopts the airport land use compatibility plan.

(f) If a city or county overrules the commission pursuant to subdivision (d) with respect to a publicly owned airport that the city or

county does not operate, the operator of the airport is not liable for damages to property or personal injury resulting from the city's or county's decision to proceed with the action, regulation, or permit.

(g) A commission may adopt rules and regulations that exempt any ministerial permit for single-family dwellings from the requirements of subdivision (b) if it makes the findings required pursuant to subdivision (c) for the proposed rules and regulations, except that the rules and regulations may not exempt either of the following:

(1) More than two single-family dwellings by the same applicant within a subdivision prior to June 30, 1991.

(2) Single-family dwellings in a subdivision where 25 percent or more of the parcels are undeveloped.

SEC. 19. Section 21676 of the Public Utilities Code is amended to read:

21676. (a) Each local agency whose general plan includes areas covered by an airport land use compatibility plan shall, by July 1, 1983, submit a copy of its plan or specific plans to the airport land use commission. The commission shall determine by August 31, 1983, whether the plan or plans are consistent or inconsistent with the airport land use compatibility plan. If the plan or plans are inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall have another hearing to reconsider its airport land use compatibility plans. The local agency may overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(b) Prior to the amendment of a general plan or specific plan, or the adoption or approval of a zoning ordinance or building regulation within the planning boundary established by the airport land use commission pursuant to Section 21675, the local agency shall first refer the proposed action to the commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The local agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, overrule the commission by a two-thirds vote of its governing body if it makes

specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670.

(d) Each commission determination pursuant to subdivision (b) or (c) shall be made within 60 days from the date of referral of the proposed action. If a commission fails to make the determination within that period, the proposed action shall be deemed consistent with the airport land use compatibility plan.

SEC. 20. Section 21676.5 of the Public Utilities Code is amended to read:

21676.5. (a) If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670, the commission may require that the local agency submit all subsequent actions, regulations, and permits to the commission for review until its general plan or specific plan is revised or the specific findings are made. If, in the determination of the commission, an action, regulation, or permit of the local agency is inconsistent with the airport land use compatibility plan, the local agency shall be notified and that local agency shall hold a hearing to reconsider its plan. The local agency may overrule the commission after the hearing by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670.

(b) Whenever the local agency has revised its general plan or specific plan or has overruled the commission pursuant to subdivision (a), the proposed action of the local agency shall not be subject to further commission review, unless the commission and the local agency agree that individual projects shall be reviewed by the commission.

SEC. 21. Section 21679 of the Public Utilities Code is amended to read:

21679. (a) In any county in which there is no airport land use commission or other body designated to assume the responsibilities of an airport land use commission, or in which the commission or other designated body has not adopted an airport land use compatibility plan, an interested party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, that directly affects the use of land within one mile of the boundary of a public airport within the county.

(b) The court may issue an injunction that postpones the effective date of the zoning change, zoning variance, permit, or regulation until the

governing body of the local agency that took the action does one of the following:

(1) In the case of an action that is a legislative act, adopts a resolution declaring that the proposed action is consistent with the purposes of this article stated in Section 21670.

(2) In the case of an action that is not a legislative act, adopts a resolution making findings based on substantial evidence in the record that the proposed action is consistent with the purposes of this article stated in Section 21670.

(3) Rescinds the action.

(4) Amends its action to make it consistent with the purposes of this article stated in Section 21670, and complies with either paragraph (1) or (2), whichever is applicable.

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency that took the action demonstrates that the general plan and any applicable specific plan of the agency accomplishes the purposes of an airport land use compatibility plan as provided in Section 21675.

(d) An action brought pursuant to subdivision (a) shall be commenced within 30 days of the decision or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever is longer.

(e) If the governing body of the local agency adopts a resolution pursuant to subdivision (b) with respect to a publicly owned airport that the local agency does not operate, the operator of the airport shall be immune from liability for damages to property or personal injury from the local agency's decision to proceed with the zoning change, zoning variance, permit, or regulation.

(f) As used in this section, "interested party" means any owner of land within two miles of the boundary of the airport or any organization with a demonstrated interest in airport safety and efficiency.

SEC. 22. Section 21679.5 of the Public Utilities Code is amended to read:

21679.5. (a) Until June 30, 1991, no action pursuant to Section 21679 to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport, shall be commenced in any county in which the commission or other designated body has not adopted an airport land use compatibility plan, but is making substantial progress toward the completion of the airport land use compatibility plan.

(b) If a commission has been prevented from adopting the airport land use compatibility plan by June 30, 1991, or if the adopted airport land

use compatibility plan could not become effective, because of a lawsuit involving the adoption of the airport land use compatibility plan, the June 30, 1991, date in subdivision (a) shall be extended by the period of time during which the lawsuit was pending in a court of competent jurisdiction.

(c) Any action pursuant to Section 21679 commenced prior to January 1, 1990, in a county in which the commission or other designated body has not adopted an airport land use compatibility plan, but is making substantial progress toward the completion of the airport land use compatibility plan, which has not proceeded to final judgment, shall be held in abeyance until June 30, 1991. If the commission or other designated body adopts an airport land use compatibility plan on or before June 30, 1991, the action shall be dismissed. If the commission or other designated body does not adopt an airport land use compatibility plan on or before June 30, 1991, the plaintiff or plaintiffs may proceed with the action.

(d) An action to postpone the effective date of a zoning change, a zoning variance, the issuance of a permit, or the adoption of a regulation by a local agency, directly affecting the use of land within one mile of the boundary of a public airport for which an airport land use compatibility plan has not been adopted by June 30, 1991, shall be commenced within 30 days of June 30, 1991, or within 30 days of the decision by the local agency, or within the appropriate time periods set by Section 21167 of the Public Resources Code, whichever date is later.

SEC. 23. Section 21681 of the Public Utilities Code is amended to read:

21681. As used in this article, the following terms have the following meanings:

(a) "Own and operate" means that the public entity shall own the property in fee simple or by a long-term lease of a minimum of 20 years, unless otherwise approved by the department, and shall maintain dominion and control of the property, except that the public entity may provide by contract with a person for the operation and management of an airport otherwise meeting the requirements of this article. Operations of the airport shall be for, and on behalf of, the public entity. All leases to the public entity of property are required to be approved by the department. A lease of the property by the public entity to an agent or agency other than to a public entity does not meet the criteria for participation in airport assistance funds.

(b) "Matching funds" means money that is provided by the public entity and does not consist of funds previously received from state or federal agencies or public entity funds previously used to match federal or state funds. This definition shall be retroactive to July 1, 1967.

(c) "General aviation" means all aviation except air carrier and military aviation.

(d) "Public entity" means any city, county, airport district, airport authority, port district, port authority, public district, public authority, political subdivision, airport land use commission, community services district, or public corporation and the University of California.

(e) "Public agency" means the various agencies of the State of California and the federal government.

(f) "Airport and aviation purposes" means expenditures of a capital improvement nature, including the repair or replacement of a capital improvement, and expenditures for compatible land use planning in the area surrounding an airport, for any of the following purposes:

(1) Land acquisition for development and improvement of general aviation aircraft landing facilities.

(2) Grading and drainage necessary for the construction or reconstruction of runways or taxiways.

(3) Construction or reconstruction of runways or taxiways.

(4) Acquisition of "runway protection zones" as defined in Federal Aviation Administration Advisory Circular 150/1500-13.

(5) Acquisition of easements through, or other interests in, airspace as may be reasonably required for safeguarding aircraft operations in the vicinity of an aircraft landing facility.

(6) Removal of natural obstructions from runway protection zones.

(7) Installation of "segmented circle airport marker systems" as defined in current regulations of the Federal Aviation Administration.

(8) Installation of runway, taxiway, boundary, or obstruction lights, together with directly related electrical equipment.

(9) Installation of minimum security fencing around the perimeter of an aircraft landing facility.

(10) Grading and drainage necessary to provide for parking of transient general aviation aircraft.

(11) Construction or reconstruction of transient general aviation aircraft parking areas.

(12) Servicing of revenue or general obligation bonds issued to finance capital improvements for airport and aviation purposes.

(13) Air navigational facilities.

(14) Engineering and preliminary engineering related directly to a project funded under this article.

(15) Other capital improvements as may be designated in rules and regulations adopted by the department.

(16) Activities of an airport land use commission in connection with the preparation of a new or updated airport land use compatibility plan pursuant to Section 21675. Expenditures that cannot be clearly

identified as capital improvements shall be submitted to the department for consideration and approval.

(17) Airport master plans and airport layout plans.

(g) "Operation and maintenance" means expenditures for wages or salaries, utilities, service vehicles, and all other noncapital expenditures that are included in insurance, professional services, supplies, construction equipment, upkeep and landscaping, and other items of expenditure designated as "operation and maintenance" in rules and regulations adopted by the department.

(h) "Enplanement" means the boarding of an aircraft by a revenue passenger, including an original, stopover, or transfer boarding of the aircraft. For purposes of this subdivision, a stopover is a deliberate and intentional interruption of a journey by a passenger scheduled to exceed four hours in the case of an intrastate or interstate passenger or not to exceed 24 hours in the case of an international passenger at a point between the point of departure and the point of destination, and a transfer is an occurrence at an intermediate point in an itinerary whereby a passenger or shipment changes from a flight of one carrier to another flight either of the same or a different carrier with or without a stopover.

SEC. 24. Section 21702 of the Public Utilities Code is amended to read:

21702. The California Aviation System Plan shall include, but not be limited to, all of the following elements:

(a) A background and introduction element, which summarizes aviation activity in California and establishes goals and objectives for aviation improvement.

(b) An air transportation issues element, which addresses issues such as aviation safety, airport noise, airport ground access, transportation systems management, airport financing, airport land use compatibility planning, and institutional relationships.

(c) A regional plan alternative element, which consists of the aviation elements of the regional transportation plans prepared by each transportation planning agency. This element shall include consideration of regional air transportation matters relating to growth, capacity needs, county activity, airport activity, and systemwide activity in order to evaluate adequately the overall impacts of regional activity in relation to the statewide air transportation system. This element shall propose general aviation and air carrier public use airports for consideration by the commission for funding eligibility under this chapter.

(d) A state plan alternative element, which includes consideration of statewide air transportation matters relating to growth, including, but not limited to, county activity, airport activity, and systemwide activity in

order to evaluate adequately the state aviation system and to designate an adequate number of general aviation and air carrier public use airports for state funding in order to provide a level of air service and safety acceptable to the public.

(e) A comparative element, which compares and contrasts the regional plan alternative with the state plan alternative, including, but not limited to, airport noise, air quality, toxic waste cleanup, energy, economics, and passengers served.

(f) A 10-year capital improvement program, which is divided into two five-year phases for each airport, based on the airport's adopted master plan, prepared by each transportation planning agency, and submitted to the division for inclusion in the California Aviation System Plan.

(g) Any other element deemed appropriate by the division and the transportation planning agencies.

(h) A summary and conclusion element, which presents the findings and recommended course of action.

SEC. 25. Section 150 of the Streets and Highways Code is amended to read:

150. When the department, in cooperation with rapid transit districts, recommends that mass public transportation facilities should be located along a proposed freeway corridor in order to establish a planned balanced transportation system, the commission shall consider this recommendation in making its decision as to the location of the freeway.

If the commission determines that the location of mass public transportation facilities should be located along the proposed freeway corridor, it may also direct the department to plan, design, and construct the freeway so as to provide locations for those facilities, and the cost thereof shall be considered as part of the cost of constructing the state highway. In making this determination, the commission shall consider the extent to which the mass public transportation facilities will reduce the volume of traffic on the proposed freeway and the impact the joint development will have on community values. The commission shall also consider whether the rapid transit district has adopted a general plan for the development of its mass public transportation facilities and the likelihood as to whether sufficient funds will be available for the development of mass public transportation service in those locations. The commission shall authorize the department to provide those locations along federal-aid highways only in instances in which it has received assurances of full federal financial participation in the cost of providing those locations.

If mass public transportation facilities other than roadways and other facilities for use of buses are to be constructed and placed in use in those locations, the department may enter into agreements for the sale of the locations to transit districts for that use at a price equal to the market value of the property at the time of sale. If mass public transportation facilities are not placed in use in the locations provided within five years of completion of the freeway, the department may develop those locations for freeway purposes, or it may lease or otherwise dispose of the locations in accordance with the provisions of this code.

The department may, in cooperation with rapid transit districts, develop exclusive or preferential bus lanes in those locations in accordance with Section 149.

SEC. 26. Section 164.16 of the Streets and Highways Code is amended to read:

164.16. For purposes of Section 164.3, the eligible interregional and intercounty routes include all of the following:

Route 120, between Route 5 and Route 395.

Route 126, between the east urban limits of Oxnard-Ventura-Thousand Oaks and Route 5.

Route 127.

Route 128.

Route 129, between Route 1 and Route 101.

Route 132, west of Route 99.

Route 138, between Route 5 and Route 14 in Los Angeles County and between Route 14 in Los Angeles County and Route 18 near Crestline in San Bernardino County.

Route 139, between Route 299 and the Oregon state line.

Route 246, between Route 1 and Route 101.

SEC. 27. Section 170 of the Streets and Highways Code is amended to read:

170. Where it is estimated by the department that the work involved in a project to be constructed under the State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code) will not be completed within a given fiscal year, the department, in the contract specifications, may provide a limitation upon the amounts that will be paid to the contractor during the first or second fiscal years of the construction period. Subject to this limitation, the contracts shall provide for the completion of the work and full payment therefor.

For the purposes of complying with Section 169, the department may include in any proposed budget, and the commission may allocate, at least the amounts with reference to those construction projects as would

be payable during the fiscal year, together with all necessary engineering and other charges.

SEC. 28. Section 216 of the Streets and Highways Code is amended to read:

216. (a) The noise level produced by the traffic on, or by the construction of, a state freeway shall be measured in the classrooms, libraries, multipurpose rooms, and spaces used for pupil personnel services of a public or private elementary or secondary school if the rooms or spaces are being used for the purpose for which they were constructed and they were constructed under any of the following circumstances:

(1) Prior to the award of the initial construction contract for the freeway route and prior to January 1, 1974.

(2) After December 31, 1973, and prior to the issuance of a statement of present and projected noise levels of the freeway route by the department pursuant to subdivision (f) of Section 65302 of the Government Code.

(3) Subsequent to the construction of the freeway but prior to any alteration or expansion of the freeway that results in a significant and perceptible increase in ambient noise levels in the rooms or spaces.

(b) The measurements shall be made at appropriate times during regular school hours and shall not include noise from sources that exceed the maximum permitted by law.

(c) If the noise level produced from the freeway traffic, or the construction of the freeway, exceeds 55dBA, L10, or 52dBA, Leq., the department shall undertake a noise abatement program in any classroom, library, multipurpose room, or space used for pupil personnel services to reduce the freeway traffic noise level therein to 55dBA, L10, or 52dBA, Leq., or less, by, measures including, but not limited to, installing acoustical materials, eliminating windows, installing air-conditioning, or constructing sound baffle structures.

(d) If the department determines that the construction of the freeway will result in a noise level exceeding 55dBA, L10, or 52dBA, Leq., the department shall complete the temporary or permanent noise abatement program prior to commencing that construction, or as soon as practicable thereafter.

(e) If it becomes necessary to convert the classrooms, libraries, multipurpose rooms, or spaces used for pupil personnel services to other school-related purposes because the freeway traffic noise level therein exceeds 55dBA, L10, or 52dBA, Leq., the department shall pay the cost of the conversions.

(f) If the noise level generated from sources within and without the classrooms, libraries, multipurpose rooms, or spaces used for pupil

personnel services exceeds 55dBA, L10, or 52dBA, Leq. prior to construction of the freeway or completion of the alteration or expansion of the freeway, as the case may be, and the noise from the freeway, or its construction, alteration, or expansion, also exceeds 55dBA, L10, or 52dBA, Leq., the department shall undertake a noise abatement program that will reduce the noise to its preconstruction, prealteration, or preexpansion level.

(g) Priority for noise abatement programs shall be given to those public and private elementary and secondary classrooms, libraries, multipurpose rooms, and spaces used for pupil personnel services constructed in conformance with Article 3 (commencing with Section 17280) of Chapter 3 of Part 10.5 of Division 1 of Title 1 of the Education Code or subject to paragraph (3) of subdivision (a).

(h) As used in this section, dBA means decibels measured by the "A" weighting described in Section 3.1 of the American National Standard specification for sound level meters, S1.4-1971, approved April 27, 1971, and published by the American National Standards Institute. L10 is the sound level that is exceeded 10 percent of the time for the period under consideration and is a value which is an indicator of both the magnitude and frequency of occurrence of the loudest noise events. Leq. is the equivalent steady state sound which in a stated period of time would contain the same acoustic energy as the time-varying sound level during the same time period.

SEC. 29. Section 22656 of the Vehicle Code is amended to read:

22656. Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a vehicle from the right-of-way of a railroad, street railway, or light rail line located within the territorial limits in which the officer is empowered to act if the vehicle is parked or abandoned upon any track or within $7^1/_2$ feet of the nearest rail. The officer may also remove a vehicle that is parked beyond $7^1/_2$ feet of the nearest rail but within the right-of-way of a railroad, street railway, or light rail if signs are posted giving notice that vehicles may be removed.

SEC. 30. The Department of Transportation shall revise the existing designation of the Willard Murray Freeway from "the portion of State Highway Route 91 in the City of Compton from Alameda Road to Central Avenue" to "the segment of State Highway Route 91 between State Highway Route 605 and State Highway Route 110."

SEC. 31. Any section of any act enacted by the Legislature during the 2002 calendar year that does both of the following shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act:

(a) Takes effect on or before January 1, 2003.

(b) Amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, added, or repealed by this act.

O

Senate Bill No. 1468

CHAPTER 971

An act to amend Sections 65040.2, 65302, 65302.3, 65560, and 65583 of, and to add Section 65040.9 to, the Government Code, and to amend Section 21675 of the Public Utilities Code, relating to local planning.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1468, Knight. General plans: military facilities.

(1) The Planning and Zoning Law requires that a city or county general plan consist of various elements, including, among other things, land use, circulation, housing, open space, and conservation elements, which are required to meet specified requirements.

This bill would require the land use element to consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land or other territory adjacent to those military facilities, or underlying designated military aviation routes and airspace. The bill would, with respect to the open-space element, define open-space land to include areas adjacent to military installations, military training routes, and restricted airspace.

The bill would also require the circulation element to consist of the general location and extent of existing and proposed military airports and ports. The bill would also provide that a city or county is not required to comply with these provisions until a specified agreement is entered into between the federal government and the state to fully reimburse all claims approved by the Commission on State Mandates and paid by the Controller that cities and counties would be eligible to file as a result of the enactment of this bill and until the city's or county's next general plan revision. It would make these provisions inoperative on the January 1 following the date that this agreement is terminated.

By increasing the duties of local agency officials, the bill would impose a state-mandated local program.

(2) Existing law establishes the Governor's Office of Planning and Research as the comprehensive state planning agency, responsible for long-range planning with responsibilities to, among other things, provide planning assistance to city and county planning agencies. The office is required to develop and adopt guidelines for the preparation and

content of the mandatory elements required in city and county general plans.

This bill would require the office, on or before January 1, 2004, if sufficient federal funds become available, to prepare and publish an advisory planning handbook for local officials, planners, and builders, and to develop and adopt guidelines that, among other things, explain how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on specified military installations and areas.

(3) Existing law requires the California Public Utilities Commission to formulate a comprehensive land use plan that provides, among other things, for the orderly growth of public airports and the area surrounding the airport that is within the jurisdiction of the commission. The plan may include the area within the jurisdiction of the commission surrounding any federal military airport.

This bill instead would require that the area within the jurisdiction of the commission surrounding any military airport be included in the plan, and would require that the plan be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport. The bill would also require that a county's general plan and any applicable specific plan be consistent with these safety and noise standards in each county where an airport land use commission does not exist, but where there is a military airport.

(4) This bill also would incorporate additional changes in Section 65040.2 of the Government Code proposed by AB 2175, to be operative if AB 2175 and this bill are both enacted and become effective on or before January 1, 2003, and this bill is enacted last.

This bill also would incorporate additional changes in Section 65560 of the Government Code proposed by AB 3057, to be operative if AB 3057 and this bill are both enacted and become effective on or before January 1, 2003, and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California contains an integrated system of military installations and special use airspace, connected by low-level flight corridors, that provides a key foundation for our nation's security. This integrated system provides for the training of military personnel, as well as the research, development, testing, and evaluation of military hardware.

(2) The military is a key component of California's economy comprising direct economic expenditures of over $29,800,000,000 each year, making the military larger than other economic sectors of the state, including agriculture, and the military represented over 263,000 working adults in the 2000–01 fiscal year.

(3) The federal Department of Defense's research, development, test, and evaluation programs, which included $3,900,000,000 in direct 2000–01 fiscal year contracts in California, make an important contribution to maintaining the state's lead in technology development.

(b) The Legislature therefore finds that the protection of this integrated system of military installations and special use airspace is in the public interest.

SEC. 1.5. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (*l*) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

(1) Military installations.

(2) Military operating areas.

(3) Military training areas.

(4) Military training routes.

(5) Military airspace.

(6) Other territory adjacent to those installations and areas.

(g) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 1.7. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (*l*) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

(1) Military installations.

(2) Military operating areas.

(3) Military training areas.

(4) Military training routes.

(5) Military airspace.

(6) Other territory adjacent to those installations and areas.

(g) The guidelines shall include guidelines for addressing human services matters within the context of a general plan. For the purposes of this section, "human services matters" means provisions that assist a community in its efforts to establish goals to address the needs of targeted community members, which may include, but are not limited to, seniors, children, young adults, families, workers, and persons with disabilities, with the objective of improving the overall quality of life of both the targeted community members and the community. In preparing guidelines for addressing human services matters, the office shall consult with interested persons, organizations, and public agencies that have knowledge, training, and experience in the organization and delivery of human services and services for persons with disabilities. The office shall hold at least one public hearing prior to the release of any draft guidelines for addressing human services matters, and at least one public hearing after the release of the draft guidelines. The hearings may be held at regular meetings of the Planning Advisory and Assistance Council.

(h) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 2. Section 65040.9 is added to the Government Code, to read:

65040.9. (a) On or before January 1, 2004, the Office of Planning and Research shall, if sufficient federal funds become available for this purpose, prepare and publish an advisory planning handbook for use by local officials, planners, and builders that explains how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on military installations, military operating areas, military training areas, military training routes, and

military airspace, and other territory adjacent to those installations and areas.

(b) At a minimum, the advisory planning handbook shall include advice regarding all of the following:

(1) The collection and preparation of data and analysis.

(2) The preparation and adoption of goals, policies, and standards.

(3) The adoption and monitoring of feasible implementation measures.

(4) Methods to resolve conflicts between civilian and military land uses and activities.

(5) Recommendations for cities and counties to provide drafts of general plan and zoning changes that may directly impact military facilities, and opportunities to consult with the military base personnel prior to approving development adjacent to military facilities.

(c) In preparing the advisory planning handbook, the office shall collaborate with the Office of Military Base Retention and Reuse within the Trade, Technology, and Commerce Agency. The office shall consult with persons and organizations with knowledge and experience in land use issues affecting military installations and activities.

(d) The office may accept and expend any grants and gifts from any source, public or private, for the purposes of this section.

SEC. 3. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall also do both of the following:

(1) Designate in a land use category that provides for timber production those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(2) Consider the impact of new growth on military readiness activities carried out on military bases, installations, and operating and training areas, when proposing zoning ordinances or designating land uses covered by the general plan for land, or other territory adjacent to military facilities, or underlying designated military aviation routes and airspace.

(A) In determining the impact of new growth on military readiness activities, information provided by military facilities shall be considered. Cities and counties shall address military impacts based on information that the military provides.

(B) The following definitions govern this paragraph:

(i) "Military readiness activities" mean all of the following:

(I) Training, support, and operations that prepare the men and women of the military for combat.

(II) Operation, maintenance, and security of any military installation.

(III) Testing of military equipment, vehicles, weapons, and sensors for proper operation or suitability for combat use.

(ii) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense as defined in paragraph (1) of subsection (e) of Section 2687 of Title 10 of the United States Code.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, any military airports and ports, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. The conservation element shall consider the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands, including military installations. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies that have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county. The conservation element may also cover the following:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources, including, but not limited to, military installations, identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each

county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

SEC. 4. Section 65302.3 of the Government Code is amended to read:

65302.3. (a) The general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the plan adopted or amended pursuant to Section 21675 of the Public Utilities Code.

(b) The general plan, and any applicable specific plan, shall be amended, as necessary, within 180 days of any amendment to the plan required under Section 21675 of the Public Utilities Code.

(c) If the legislative body does not concur with any provision of the plan required under Section 21675 of the Public Utilities Code, it may satisfy the provisions of this section by adopting findings pursuant to Section 21676 of the Public Utilities Code.

(d) In each county where an airport land use commission does not exist, but where there is a military airport, the general plan, and any applicable specific plan prepared pursuant to Article 8 (commencing with Section 65450), shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.

SEC. 5. Section 65560 of the Government Code is amended to read:

65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

SEC. 5.5. Section 65560 of the Government Code is amended to read:

65560. (a) The "local agricultural and open-space element" is the component of a county or city general plan adopted by the board or council, either as the local open-space element or as the interim local open-space element adopted pursuant to Section 65563.

(b) "Agricultural and open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an agricultural or open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Land used for the production of food and fiber, including, but not limited to, rangeland and agricultural lands.

(2) Lands used for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.

(3) Land used for the managed production of resources, including but not limited to, forest lands ; areas required for recharge of groundwater

basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(4) Land used for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(5) Land used for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

SEC. 6. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all

income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement

housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 7. Section 21675 of the Public Utilities Code is amended to read:

21675. (a) Each commission shall formulate a comprehensive land use plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the

anticipated growth of the airport during at least the next 20 years. In formulating a land use plan, the commission may develop height restrictions on buildings, specify use of land, and determine building standards, including soundproofing adjacent to airports, within the planning area. The comprehensive land use plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.

(b) The commission shall include, within its plan formulated pursuant to subdivision (a), the area within the jurisdiction of the commission surrounding any military airport for all of the purposes specified in subdivision (a). The plan shall be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport. This subdivision does not give the commission any jurisdiction or authority over the territory or operations of any military airport.

(c) The planning boundaries shall be established by the commission after hearing and consultation with the involved agencies.

(d) The commission shall submit to the Division of Aeronautics of the department one copy of the plan and each amendment to the plan.

(e) If a comprehensive land use plan does not include the matters required to be included pursuant to this article, the Division of Aeronautics of the department shall notify the commission responsible for the plan.

SEC. 8. (a) A city or county shall not be required to comply with the amendments made by this act to Sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations, until both of the following occur:

(1) An agreement is entered into between the United States Department of Defense or other federal agency and the State of California, through the Governor's Office of Planning and Research, for the federal government to fully reimburse all claims approved by the Commission on State Mandates and paid by the Controller that cities and counties would be eligible to file as a result of the enactment of this act.

(2) The city or county undertakes its next general plan revision.

(b) The amendments made by this act to Sections 65302, 65302.2, 65560, and 65583 of the Government Code shall become inoperative on the January 1 following the date that the Director of Planning and Research executes a declaration stating that the agreement described in paragraph (1) of subdivision (a) has been terminated by either party.

SEC. 9. Section 1.7 of this bill incorporates amendments to Section 65040.2 of the Government Code proposed by both this bill and AB 2175. It shall only become operative if (1) both bills are enacted and

become effective on or before January 1, 2003, (2) each bill amends Section 65040.2 of the Government Code, and (3) this bill is enacted after AB 2175, in which case Section 1.5 of this bill shall not become operative.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 65560 of the Government Code proposed by both this bill and AB 3057. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 65560 of the Government Code, and (3) this bill is enacted after AB 3057, in which case Section 5 of this bill shall not become operative.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

O

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency
Exhibit B

Memorandum

Flex your power!
Be energy efficient!

To: PAULA HIGASHI
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Date: October 22, 2003

File:

RECEIVED
OCT 23 2003
COMMISSION ON
STATE MANDATES

From: RAIYN BAIN
Attorney
Legal Division - MS 57

Subject: Notice of Complete Test Claim Filing and Schedule for Comments–*Airport Land Use Commissions/Plans*, 03-TC-12

The test claim of the County of Santa Clara states that in 1967 airport land use commissions were a voluntary position created pursuant to the Public Utilities Code sections. However, by 1994 the establishment of the Airport Land Use Commission was mandatory and not an option. A test claim had been filed successfully by San Bernardino County regarding the above, but the San Bernardino test claim had failed to address several points. The subject test claim seeks to correct this oversight.

The test claim for the County of Santa Clara further indicates that the net effect of this legislation is to cause an increase in the workload of the Airport Land Use Commission not considered as part of the San Bernardino County test claim. "The requirement that commissions review and update comprehensive land use lands ... review local agencies' amendments of general plans, specific plans, adoption of or approval of zoning ordinances or building regulations with a 60 day time period necessitates the use of staff time for analysis and attending meetings/hearings and other resources to ensure the job gets done ... the total costs of this program are reimbursable." (Test claim, p. 6.)

The claim further states that Public Utilities Code sections 21670, 21675 and 21676 directly relate to the reimbursable provisions of the subject test claim. The estimated cost for discharging the subject program by the County of Santa Clara is approximately $1,000 per year.

The State of California, Division of Aeronautics, disagrees with the above position as Public Utilities Code section 21675.1 holds to the contrary.

Section 21671.5 states the following:

> "(a) Except for the terms of office of the members of the first commission, the term of office of each member shall be four years ....

"(b) Compensation, if any, shall be determined by the board of supervisors.

"(c) Staff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge.

"(d) Notwithstanding any other provisions of this article, the commission shall not employ any personnel either as employees or independent contractors without the prior approval of the board of supervisors.

"……

"(f) The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code ... a commission that has not adopted the airport land use compatibility plan required by Section 21675 shall not charge fees ... until the commission adopts the plan."

Government Code section 66016, subdivision (a), states:

"(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, ...

"(b) Any action by a local agency to levy a new fee or service charge or approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge."

As stated above, all expenses and costs by the Airport Land Use Commission shall be provided by its County. Moreover, section 66016 states that any new charges must be noticed by a public meeting and passed through an ordinance or regulation.

The State of California, Division of Aeronautics, contends that the subject test claim by the County of Santa Clara for reimbursement be rejected on grounds that it is prohibited by statute and impermissible.

c: Dave Elledge
Controller-Treasurer
County of Santa Clara
1553 Berger Drive
San Jose, CA 95112

Allan P. Burdick
Pamela Stone
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

DEPARTMENT OF FINANCE
915 L STREET ■ SACRAMENTO CA ■ 95814

EXHIBIT C

GRA

November 6, 2003

RECEIVED
NOV 07 2003
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

CSM-03-TC-12—County of Santa Clara

This letter is to inform you that the Department of Finance has conducted a preliminary review of the Commission on State Mandates test claim 03-TC-12, "Airport Land Use Commissions/Plans." However, due to competing workload demands during development of the Governor's Budget, we have been unable to complete our formal review. Therefore, we respectfully request an extension to November 26, 2003, for completion of our review and preparation of a response.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 7, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Matt Paulin, Principal Program Budget Analyst at (916) 322-2263 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Connie Squires
Program Budget Manager

Attachment

PROOF OF SERVICE

Test Claim Name: Airport Land Use Commissions/Plans
Test Claim Number: CSM-03-TC-12

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On November 6, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-15
Mr. Bruce Behrens
General Counsel
Department of Transportation
1120 N Street
Sacramento, CA 95814

Mr. Allan P. Burdick
Ms. Pamela Stone
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. David Wellhouse
David Wellhouse & Associates
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

Mr. Dave Elledge
Controller-Treasurer
County of Santa Clara
1553 Berger Drive
San Jose, CA 95112

Mr. Paul Minney
Spector, Middleotn, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Ms. Cindy Sconce
Centration, Inc.
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

A-15
Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 6, 2003 at Sacramento, California.

Meredith Campbell

Meredith Campbell

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814

EXHIBIT D

November 26, 2003

RECEIVED

NOV 26 2003

COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of October 7, 2003, the Department of Finance has reviewed the test claim submitted by the Santa Clara County (claimant) asking the Commission to determine whether specified costs incurred under the authority of Chapter 852, Statutes of 1967, Chapter 1182, Statutes of 1970, Chapter 844, Statutes of 1973, Chapter 725, Statutes of 1980, Chapter 714, Statutes of 1981, Chapter 1047, Statutes of 1982, Chapter 1117, Statutes of 1984, Chapter 1018, Statutes of 1987, Chapter 306, Statutes of 1989, Chapter 563, Statutes of 1990, Chapter 140, Statutes of 1991, Chapter 59 Statutes of 1993, Chapter 644, Statutes of 1994, Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002, And Chapter 971, Statutes of 2002 are reimbursable State mandated costs (Claim No. CSM-03-TC-12 "Airport Land Use Commissions/Plans"). The claimant has identified the following new duties, which it asserts are reimbursable State mandates:

- Review and update comprehensive land use plans.
- Review local agencies' amendments of general plans and specific plans within a 60-day time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.
- Attending meetings/hearings and other resources to meeting the 60-day requirement.

As the result of our review, we have concluded that a reimbursable State mandate has not been created by the amendments specified in the above statutes.

Section 21671.5 of the Public Utilities Code states: "The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code."

Therefore, the mandated activities specified by the claimant are not reimbursable because airport land use commissions have the authority to charge fees to cover their costs associated with the new duties specified by the claimant.

In addition, in the case of Chapter 971, Statutes of 2002, we note that the mandate added by that statute should not result in reimbursable State mandated costs because the provisions

requiring local governments to address military bases when revising any components of their general plan would only take effect if federal funding were made available for this purpose through an agreement with the Governor's Office of Planning and Research.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your November 12, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Matt Paulin, Principal Program Budget Analyst at (916) 322-2263 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Connie Squires
Program Budget Manager

Attachments

Attachment A

DECLARATION OF MATT PAULIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-12

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that Chapter 852, Statutes of 1967, Chapter 1182, Statutes of 1970, Chapter 844, Statutes of 1973, Chapter 725, Statutes of 1980, Chapter 714, Statutes of 1981, Chapter 1047, Statutes of 1982, Chapter 1117, Statutes of 1984, Chapter 1018, Statutes of 1987, Chapter 306, Statutes of 1989, Chapter 563, Statutes of 1990, Chapter 140, Statutes of 1991, Chapter 59 Statutes of 1993, Chapter 644, Statutes of 1994, Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002, And Chapter 971, Statutes of 2002 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Matt Paulin

Matt Paulin

11/26/03

Date

PROOF OF SERVICE

Test Claim Name: Airport Land Use Commissions/Plans
Test Claim Number: CSM-03-TC-12

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On November 26, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-15
Mr. Bruce Behrens
General Counsel
Department of Transportation
1120 N Street
Sacramento, CA 95814

Mr. Dave Elledge
Controller-Treasurer
County of Santa Clara
1553 Berger Drive
San Jose, CA 95112

Mr. Allan P. Burdick
Ms. Pamela Stone
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Paul Minney
Spector, Middleotn, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. David Wellhouse
David Wellhouse & Associates
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Ms. Cindy Sconce
Centration, Inc.
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

A-15
Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 26, 2003 at Sacramento, California.

Meredith Campbell

Meredith Campbell

RESPONSE TO DEPARTMENT OF FINANCE

On Original Test Claim
Chapter 852, Statutes of 1967; Chapter 1182, Statutes of 1970; Chapter 844, Statutes of 1973; Chapter 725, Statutes of 1980; Chapter 714, Statutes of 1981; Chapter 1047, Statutes of 1982; Chapter 1117, Statutes of 1984; Chapter 1018, Statutes of 1987; Chapter 306, Statutes of 1989; Chapter 563, Statutes of 1990; Chapter 140, Statutes of 1991; Chapter 59, Statutes of 1993; Chapter 644, Statutes of 1994; Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002; and Chapter 971, Statutes of 2002

RECEIVED
FEB 05 2004
COMMISSION ON
STATE MANDATES

Claim no. CSM-03-TC-12

Airport Land Use Commissions/Plans II

The following are comments and responses to the letter of the Department of Finance, dated November 26, 2003, regarding the original test claim as submitted by the County of Santa Clara.

A. Department of Finance's Comments

"As the result of our review, we have concluded that a reimbursable State mandated program has not been created by the amendments specified in the above statutes.

Section 21671.5 of the Public Utilities Code states: 'The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code.'

Therefore, the mandated activities specified by the claimant are not reimbursable because airport land use commissions have the authority to charge fees to cover their costs associated with the new duties specified by the claimant.

In addition, in the case of Chapter 971, Statutes of 2002, we note that the mandate added by the statute should not result in reimbursable State mandated costs because the provisions requiring local governments to address military bases when revising any components of their general plan would only take effect if federal funding were made available for this purpose through an agreement with the Governor's Office of Planning and Research."

At first blush, the assertion by the Department of Finance seems to preclude the further consideration of this test claim. Section 17556 of the Government Code does bar reimbursement when the local agency "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." In this case, however, the county bringing forward the test claim does not have the authority to levy services charges, fees or assessments. Only the commission has such authority. And, without the commission exercising its authority, the county must shoulder the

financial burden of the commission's dealings without the ability to raise money through fees to off-set the costs. Moreover, the county cannot sway the actions of the commission. Section 21670 of the Public Utilities Code, subdivision b, delineates the seven members of the commission as including only two county representatives. This is hardly a number that would indicate county control over the commission.

Finally, assuming *arguendo* that the commission does exercise its authority and levy fees, there is no guarantee that the fees would be, in the language of Section 17556 of the Government Code, "sufficient to pay for the mandated program or increased level of service." In addition, the fee authority available to the commission refers only to the costs of processing referrals: The commission has no fee authority to off-set the very costly mandate of updating the airport land use plan. Thus unless and until the commission acts to set fees and those fees result in sufficient monies to fully off-set the costs of the entire program, Section 17556 does not act to bar this test claim.

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 29 day of January, 2004, at San Jose, California, by:

Dave Elledge
Controller-Treasurer
County of Santa Clara

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On February 5, 2004, I served:

RESPONSE TO DEPARTMENT OF FINANCE

On Original Test Claim
Chapter 852, Statutes of 1967; Chapter 1182, Statutes of 1970; Chapter 844, Statutes of 1973; Chapter 725, Statutes of 1980; Chapter 714, Statutes of 1981; Chapter 1047, Statutes of 1982; Chapter 1117, Statutes of 1984; Chapter 1018, Statutes of 1987; Chapter 306, Statutes of 1989; Chapter 563, Statutes of 1990; Chapter 140, Statutes of 1991; Chapter 59, Statutes of 1993; Chapter 644, Statutes of 1994; Chapter 506, Statutes of 2000, Chapter 438, Statutes of 2002; and Chapter 971, Statutes of 2002

Claim no. CSM-03-TC-12

Airport Land Use Commissions/Plans II

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied States mail at Sacramento, California, with postage thereon fully prepaid..

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 5th day of February, 2004, at Sacramento, California.

Joyce Johnson
Declarant

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

State Controller's Office
Division of Accounting & Reporting
Attn: Michael Havey
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Bruce Behrens
General Counsel
Department of Transportation
1120 N Street
Sacramento, CA 95814

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

Mr. Keith B. Peterson, President
Six Ten and Associates
5252 Balboa Avenue; Suite 807
San Diego, CA 92117

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Paul Minney
Spector, Middleton, Young & Minney
7 Park Center Drive
Sacramento, CA 95825

Mr. David Wellhouse
David Wellhouse & Associates
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr. Steve Smith
Mandated Cost Systems
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Ms. Cindy Sconce
Centration
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Ms. Bonnie Ter Keurst
County of San Bernardino
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Exhibit F

STATE OF CALIFORNIA

Governor's Office of Planning and Research

State Clearinghouse and Planning Unit

May 11, 2009

RECEIVED
MAY 11 2009
COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA. 95814

Re: Response to Request for Comments on Test Claim
Airport Land Use Commissions/Plans II; 03-TC-12,
County of Santa Clara, Claimant

Dear Ms. Higashi:

The State Clearinghouse provides the following response to the Commission's request dated April 14, 2009 regarding the above mentioned Test Claim.

The reference to an agreement between the Department of Defense (DOD) and the Governor's Office of Planning and Research (OPR) appears in uncodified language of Senate Bill 1468 (Statutes of 2002, Chapter 971). OPR contacted DOD in an effort to reach such an agreement but we were informed that DOD could not enter into such an agreement. The status of the agreement is that it was never developed or executed.

We have no other relevant information to offer regarding the activities that airport land use commissions are required to perform under this statute.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sincerely,

Terry Roberts

Terry Roberts
State Clearinghouse Director

Date Signed: May 11, 2009
Place Signed: Los Angeles, California

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044
TEL (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

OFFICE OF GOVERNOR ARNOLD SCHWARZENEGGER
LOS ANGELES

Fax

To: Paula Higashi
From: Terry Roberts
Fax:
Pages: 2.
Phone:
Date: 5/11/09.
Re: 03-TC-12
CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please see attached, which is due tomorrow.

My direct line is: (213) 897-9507

- Terry

300 South Spring Street, Suite 16701
213-897-0322 Phone
Los Angeles, CA 90013
213-897-0319 Fax

Hearing Date: May 29, 2009
J:\MANDATES\2003\TC\03-tc-12\TC\dsa

ITEM ____

TEST CLAIM
DRAFT STAFF ANALYSIS

Public Utilities Code Sections 21670, 21675, and 21676 as added or amended by Statutes 1967, Chapter 852; Statutes 1970, Chapter 1182; Statutes 1973, Chapter 844; Statutes 1980, Chapter 725; Statutes 1981, Chapter 714; Statutes 1982, Chapter 1047; Statutes 1984, Chapter 1117; Statutes 1987, Chapter 1018; Statutes 1989, Chapter 306; Statutes 1990, Chapter 563; Statutes 1991, Chapter 140; Statutes 1993, Chapter 59; Statutes 1994, Chapter 644; Statutes 2000, Chapter 506; Statutes 2002, Chapter 438; and Statutes 2002, Chapter 971

Airport Land Use Commission/Plans II

03-TC-12

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

This test claim addresses Airport Land Use Commissions (ALUCs) and Airport Land Use Compatibility Plans (ALUCPs). ALUCs were created under article 3.5 of the Public Utilities Code[1] to protect the "public health, safety, and welfare by encouraging orderly expansion of airports and the adoption of land use measures that minimize exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."[2] Generally, each county's ALUC prepares an ALUCP focused on broadly defined noise and safety impacts. In addition, ALUCs make compatibility determinations for proposed amendments to airport master plans, general plans, specific plans, zoning ordinances and building regulations within the planning boundary established by the ALUC.

Staff finds that the Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507. However, the Commission does have jurisdiction over the activities that are required to be performed by the ALUC pursuant to sections 21675 and 21676 as amended by the test claim statutes.

Staff finds sections 21675 and 21676 as amended by the test claim statutes require local agencies to perform a number of activities and that some of these activities impose a new program or higher level of service. Staff finds that some of these requirements constitute a state-mandated new program or higher level of service, however, only when the requirement to establish an ALUC is not suspended by the Legislature in the Budget Act.

---

[1] All further code references are to the Public Utilities Code, unless otherwise specified.

[2] Statutes 1967, chapter 852.

However, staff finds that there are no costs mandated by the state as defined by Government Code section 17514, because the exception to reimbursement in Government Code section 17556, subdivision (d) applies and both the ALUCs and the counties have sufficient fee authority pursuant to Public Utility Code section 21671.5, Government Code section 66014 and the police power under article XI, section 7 of the California Constitution to cover the costs for compliance with article 3.5 which includes all of the activities mandated by the test claim statutes.

CONCLUSION

Staff concludes that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction over Section 21670 as amended by Statutes of 1994, chapter 59 or section 21675 with regard to the activity of adopting the initial ALUCP.
2. There is fee authority (under Cal. Const. article XI, § 7; Pub. Util. Code § 21671.5; and Gov. Code § 66014) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the mandated activities.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

STAFF ANALYSIS

Claimant

City of Santa Clara

Chronology

09/26/03	City of Santa Clara filed test claim with the Commission on State Mandates ("Commission")[3]
10/07/03	Commission staff issued completeness review letter and requested comments from state agencies
10/22/03	Department of Transportation (DOT)[4] submitted comments on the test claim with the Commission
11/06/03	DOF requested an extension to November 26, 2003 for filing comments due to competing workload demands
11/12/03	The Commission granted DOF's request for an extension to file comments on test claim with the Commission to November 26, 2003 for good cause
11/26/03	DOF submitted comments on the test claim with the Commission
02/05/04	Claimant submitted a response to DOF's comments on the test claim with the Commission
04/21/09	Commission staff issued a draft staff analysis

Background

This test claim addresses Airport Land Use Commissions (ALUCs) and Airport Land Use Compatibility Plans (ALUCPs). All further code references are to the Public Utilities Code unless otherwise specified.

In 1967, the California State Legislature authorized the creation of ALUCs, to protect the "public health, safety, and welfare by encouraging orderly expansion of airports and the adoption of land use measures that minimize exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."[5] Generally, each County's ALUC prepares an ALUCP with a twenty-year planning horizon focused on broadly defined noise and safety impacts. In addition, ALUCs make compatibility determinations for proposed amendments to airport master plans, general plans, specific plans, zoning ordinances and building regulations within the planning boundary established by the ALUC. ALUCPs were originally known as "Airport Comprehensive Land Use Plans" until Statutes 2002, chapter 438 and Statutes 2004, chapter 615 renamed ALUCPs in the several code sections in which they are mentioned to provide for the use of uniform terminology in airport

---

[3] Based on the filing date of September 26, 2003, the potential period of reimbursement for this test claim begins on July 1, 2002.

[4] Note that in this analysis DOT refers to the California agency commonly known as CalTrans.

[5] Statutes 1967, chapter 852.

land use planning law and publications.[6] The acronym ALUCP will be used throughout this analysis.

Establishment of an ALUC

In 1967, the Legislature adopted Statutes 1967, chapter 852 which added Article 3.5 (sections 21670-21674) to create an ALUC in every county containing one or more airports for the benefit of the general public served by a regularly scheduled airline.

The original Article 3.5 included, among other provisions: section 21670 which contains findings and provides for the establishment of ALUCs including membership selection; section 21671 which addresses the situation where an airport is owned by city, district or county and provides for the appointment of certain members by cities and counties; and, section 21671.5 which provides for terms of office; removal of members; filling vacancies; compensation; staff assistance; prior approval for employment of personnel; and ALUC meetings.

Article 3.5 was subsequently amended by Statutes 1970, chapter 1182, which added: section 21670.1 allowing for action by designated body instead of the ALUC and requiring two members with expertise in aviation; and, section 21670.2 regarding applicability to County of Los Angeles[7]. This statute also added section 21675 and 21676 which required preparation of an ALUCP and the requirement for local land use plans to be submitted to the ALUC for a compatibility review.

These initial statutes applied to all counties having an airport served by a regularly scheduled airline. The planning requirement applied to the entire county, including all airports in the county, even though all airports in the county may not have been served by the scheduled airline. The counties exempted from the planning requirements were those without an airport served by a scheduled airline.

The applicability of the requirements of article 3.5 was expanded by Statutes 1984, chapter 1117 to include counties having airports having only general aviation airports.[8] Several statutes have since amended the provisions relating to membership of the ALUC.

In 1993, the Legislature made the establishment of an ALUC discretionary. In 1994, the Legislature made the establishment of an ALUC mandatory again and provided several new alternatives to forming an ALUC including designating an alternative planning entity to fulfill the duties of an ALUC or contracting out for the preparation of the ALUCP.

---

[6] Senate Floor Analysis of Assembly Bill No. (AB) 3026 and Senate Transportation Committee Analysis of Senate Bill No. (SB) 1233.

[7] Note that sections 21670 and 21670.1 do not apply to the counties of Los Angeles or San Diego. The Los Angeles Regional Planning Commission and the San Diego County Regional Airport Authority have the responsibility for preparing, reviewing and amending their respective ALUCPs. (See §§ 21670.2 and 21670.3.)

[8] A general aviation airport is an airport not served by a scheduled airline but operated for the benefit of the general public.

ALUCPs

ALUCs must prepare an ALUCP to provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the ALUC, and to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. (Section 21675.) The original ALUCP preparation was required to be completed by June 30, 1991. (Section 21674.5.) Later amendments to the statutes, however, require that the ALUCP "be reviewed as often as necessary in order to accomplish its purposes" and restrict amendments of the ALUCP to "no more than once in any calendar year." (Section 21675.)

The contents of the ALUCP must be based on a long-range master plan or airport layout plan, as determined by DOT's Division of Aeronautics and include, among other things, the area within the jurisdiction surrounding any military airport, and be consistent with the safety and noise standards in the federal Air Installation Compatible Use Zone prepared for that military airport. (Section 21675.)

Compatibility of Local Land Use Decisions with the ALUCP

Local agencies are required to submit their airport master plans, general plans, specific plans, zoning ordinances and building regulations to the ALUC for a determination of consistency with the ALUCP. However, there are procedures by which local agencies can overrule an ALUCP finding of incompatibility. (Section 21676.)

The Role of the Counties

The counties were charged with the responsibility for establishing an ALUC or alternative body/process. (Sections 21670 and 21670.1.) The board of supervisors also is responsible for providing for the staffing and operational expenses of the ALUC and it controls the ALUC's budget. (Section 21671.5.) With regard to budget controls, the board of supervisors determines:

- ALUC member "compensation, *if any*" [21671.5, subdivision (b).]
- the level of staff assistance and budgeting for operating expenses [21671.5, subdivision (c).]
- whether to approve the ALUCs decision to employ any personnel as employees or independent contractors. [21671.5, subdivision (d).]

The Role of the Division of Aeronautics

ALUC is required to submit a copy of the ALUCP and each amendment to the ALUCP to DOT's Division of Aeronautics. (Section 21675.) Additionally, DOT provides training and development programs to ALUC staff. (21674 5.)

Fee Authority

Under prior law, 21671.5 subdivision (f) as added by Statutes 1990, chapter 1572 provided that "[t]he [ALUC] may establish a schedule of fees for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675. . . ." However, current law authorizes the ALUC to "....establish a schedule of fees necessary to comply with this article. . . ." (21671.5, as amended by Stats. 1991, ch.140.)

Test Claim History

The Commission has adopted two prior Statements of Decision on ALUCs. These prior decisions, while relevant to the issue of jurisdiction, are not precedential or binding on the Commission's decision for this test claim.

CSM 4231, *Airport Land Use*, Statutes 1984, chapter 1117

In CSM 4231 the Commission found Chapter 1117, Statutes 1984 imposed a reimbursable state mandate on counties with only general aviation airports by requiring them to form an ALUC, and develop an ALUCP. The CSM 4231 mandate was suspended under the provisions of Government Code section 17581 from 1990 though 1993. This mandate was then eliminated by Statutes 1993, chapter 59, which made the establishment of an ALUC discretionary.

CSM 4507, *Airport Land Use Commissions/Plans*, Public Utility Code Sections 21670 and 21670.1 as amended by Statutes 1994, chapter 644, Statutes 1995, chapter 66, and, Statutes 1995, chapter 91

The Commission in CSM 4507 found that Statutes 1993, chapter 59 "caused a gap in the continuity" of the state requirement to establish an ALUC, by changing the word "shall" to "may," and therefore, Statutes 1994, chapter 644, which replaced the word "may" with "shall," imposed a new requirement on counties which had disbanded their airport land use commissions, or alternative bodies, to reestablish such commissions or bodies.[9] The Commission also found that Statutes 1994, chapter 644 provided a new alternative process that a county could choose to implement rather than forming an ALUC or designating an alternative body, and that the choice by a county to establish this alternative process instead of reestablishing a commission or alternative body was also reimbursable. However, the Commission found that the development of the ALUCP was not a new state-mandated program or activity, because those plans had long been required by section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to section 21675.1, subdivision (a).

Eligible claimants under CSM 4507 include counties, cities, cities and counties, or other appropriately designated local government entities, except as provided by Public Utilities Code section 21670.2.[10] The CSM 4507 period of reimbursement began January 1, 1995 and the parameters and guidelines adopted December 17, 1998 authorize reimbursement for the following activities:

A. For each eligible Claimant, the direct and indirect costs of the following activities are eligible for reimbursement on a one-time basis:

1. Selection of the Method of Compliance

   a. Analyze the enacted legislation and alternatives.

   b. Coordinate positions of the county and affected cities within the county, providing information, and resolving issues.

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[9] CSM 4507, Corrected Statement of Decision, adopted July 31, 1997.

[10] CSM 4507, Parameters and Guidelines, adopted December 17, 1998, page 1.

2. Establishment of one of the following methods:

METHOD 1 - Set up or restore an airport land use commission.

a. Establish and appoint the members.

b. Establish proxies of the members.

METHOD 2 - Determination of a designated body, pursuant to Public Utilities Code section 21670.1, subdivisions (a) and (b).

a. Conduct hearing(s) to designate the appropriate body.

b. Augment the body, if with two members with expertise in aviation.

METHOD 3 –Establishment of an alternative process, pursuant to Public Utilities Code section 21670.1, subdivision (c).

a. Develop, adopt and implement the specified processes.

b. Submit and obtain approval of the processes or alternatives from the Department of Transportation, Division of Aeronautics.

METHOD 4 - Establishment of an exemption, pursuant to Public Utilities Code sections 21670 (b) or 21670.1, subdivisions (d) and (e).

a. Determine that a commission need not be formed and meet the specified conditions.

If an eligible claimant, which has selected and established an exemption as specified under 21670 (b) or 21670.1, subdivisions (d) or (e), determines that the exemption no longer complies with the purposes of Public Utilities Code section 21670 (a), activities to select the Method of Compliance and to establish Method 1, 2 or 3 are eligible for reimbursement.

B. For each eligible claimant, per diem for Commission members of up to $100 for each day actually spent in the discharge of official duties and any actual and necessary expenses incurred in connection with the performance of duties as a member of the Commission.

The parameters and guidelines adopted December 17, 1998 also specifically state: "the airport land use planning process described in Public Utilities Code section 21675 is not reimbursable."

The CSM 4507 mandate has been suspended in each Budget Act from 2005-2006 to 2008-2009.

Claimant's Position

The claimant states that test claim CSM 4507 filed by San Bernardino County on the 1994 and 1995 amendments "did not address several points incumbent within the newly mandated establishment of airport land use commissions." Claimant maintains that these points remain "unreviewed and unconsidered by the Commission" and that this test claim "seeks to correct that oversight."[11] Specifically, because only sections 21670 and 21670.1 were pled and analyzed in CSM 4507, that test claim "did not examine the effect the creation of the mandate would have on other statutes closely associated with it that were heretofore voluntary."[12] With regard to section

[11] Test Claim, page 1.

[12] Test Claim, page 3.

21675, the claimant admits that this section pre-dates 1975 but states that it was amended several times between 1980 and 2002 and did not mention amending the comprehensive plan until the enactment of Statutes 1984, chapter 117.[13] Claimant also states that Statutes 1987, chapter 1018 first set forth the requirement in section 21675 to review ALUCPs as often as necessary. Claimant states that section 21675 was not part of the CSM 4507 test claim, though it should have been because Statutes 1993, chapter 59 made the activities under 21675 optional and Statutes 1994, chapter 644 made them mandatory again. Claimant argues that this is true because immediately prior to the enactment of 1994, chapter 644 ALUCs were not required to exist and Statutes 1994, chapter 644 establishment of an ALUC or alternate body/process, and hence the requirements of 21675, mandatory. Finally, regarding section 21676, claimant states that though it was added in 1970, there was no requirement for ALUCs to review general plans, specific plans, zoning ordinances or building regulations within 60 days before they are approved or adopted until the enactment of Statutes 1982, chapter 1041. Thus, claimant identifies the following activities which it claims are new and reimbursable:

- Review and amend comprehensive land use plans (i.e. ALUCPs).[14]
- Review local agencies' amendments of general plans and specific plans within a 60-day[15] time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.[16]
- Meetings/hearings and other resources to meet the 60-day requirement.[17]

Department of Finance's (DOF's) Position

DOF, in its comments on the test claim, concludes that "a reimbursable State mandate has not been created by the amendments specified" in the test claim because ALUCs have the authority to charge fees to cover their costs associated with the new activities specified.[18] In support of this argument DOF cites section 21671.5 of the Public Utility Code. Additionally, DOF states that the mandated activities of including the area within the ALUC's jurisdiction which surrounds a military airport in the ALUCP and ensuring that the ALUCP is consistent with the safety and noise standards in the federal Air Installation Compatible Use Zone prepared for that military airport are not reimbursable because, based on the language of the statute (Stats. 2002, ch. 971), the mandate is contingent upon federal funding being made available through an agreement with the Governor's Office of Planning and Research (OPR).[19]

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[13] Test Claim, page 4.

[14] Ibid.

[15] Test Claim, page 6.

[16] Ibid.

[17] Ibid.

[18] DOF comments on the test claim, page 1.

[19] Ibid.

Department of Transportation's (DOT's) Position

DOT, in its' comments dated October 22, 2003, states that section 21675.1, subdivision (c) requires that all expenses and costs by the ALUC be provided by its county and reimbursement of the test claim is thus prohibited by statute.[20]

Discussion

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[21] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[22] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[23]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[24] To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[25] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[26] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[27]

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[20] DOT Comments on the Test Claim, October 22, 2003, page 3.

[21] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[22] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[23] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.)*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3rd 830, 835 *(Lucia Mar).*

[24] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,*

[25] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[26] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[27] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[28] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[29]

The analysis addresses the following issues:

- Do the test claim statutes require local agencies to perform state-mandated activities and impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?
- Do the test claim statutes impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Issue 1: Do the test claim statutes require local agencies to perform state-mandated activities and impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?

The eligible period of reimbursement for this claim begins July 1, 2001. During this time period, Public Utilities Code section 21670, subdivision (b), has required counties that have an airport served by a scheduled airline to establish an airport land use commission. Counties that have an airport not served by a scheduled airline, but operated for the benefit of the general public, are required to establish an ALUC, or declare that the county is exempt from creating a ALUC by adopting a resolution finding that there is no noise, public safety, or land use issues affecting any airport in the county. In the event the county determines that an ALUC is not necessary, the county is required to transmit a copy of the resolution to the Director of Transportation. The ALUC consists of the following members:

> (1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.
>
> (2) Two representing the county, appointed by the board of supervisors.
>
> (3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.
>
> (4) One representing the general public, appointed by the other six members of the commission.

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[28] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[29] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

The ALUC is required by section 21675 to perform the following activities:

- Formulate an airport land use compatibility plan that will provide for the orderly growth of each public airport and the area surrounding the airport within the jurisdiction of the commission, including the area surrounding any military airport, and will safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general.
- The plan shall include and be based on a long-range master plan or airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years.
- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
- Establish the airport influence area after hearing and consultation with involved agencies.
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.

Section 21676 requires the ALUC to review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed action. In addition, the ALUC is required to review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

The claimant requests reimbursement for the following activities which it claims are new and reimbursable:

- Review and amend comprehensive land use plans (i.e. ALUCPs)[30]
- Review local agencies' amendments of general plans and specific plans within a 60-day[31] time period.
- Review local agencies' adoption of or approval of zoning ordinances or building regulations within a 60-day time period.[32]
- Meetings/hearings and other resources to meet the 60-day requirement.[33]

The claimant contends that since the Legislature made the ALUC discretionary in 1993, and then made the ALUC mandatory in 1994, the bulleted activities mandate a new program or higher level of service.

For the reasons stated below, staff finds that some of the required activities mandate a new program or higher level of service in fiscal years when the Legislature does not suspend the creation of the ALUC.

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[30] Ibid.

[31] Test Claim, page 6.

[32] Ibid.

[33] Ibid.

Staff finds that the Commission does not have jurisdiction to address section 21670 as amended by Statutes 1994, chapter 644, with regard to the activity of establishing the ALUC, or to address section 21675 with regard to the activity of developing the original ALUCP because those issues were the subject of a final decision in CSM 4507. In 1997, the Commission decided the *Airport Land Use Commissions/Plans* test claim (CSM 4507) and determined that before the Legislature enacted the test claim statute (Statutes 1994, chapter 644), counties were not required to establish an ALUC under section 21670. From January 1, 1994 through December 31, 1994, the Legislature made the ALUC optional. Beginning January 1, 1995, the test claim statute mandated counties to establish an ALUC in every county with a general aviation airport or an airport served by a scheduled airline, or to adopt a resolution that an ALUC is not necessary for the county. The Commission also determined that the development of the original ALUCP pursuant to section 21675 was not a new state-mandated activity since the original plan was required to be completed by June 30, 1991 (or June 30, 1992, under specified circumstances). An administrative agency does not have jurisdiction to rehear a decision that has become final.[34]

However, the Commission does have jurisdiction over the activities listed below that are required to be performed by the ALUC pursuant to sections 21675 and 21676. These activities either became newly required of ALUCs once Statutes 1994, chapter 644 required counties that have an airport served by a scheduled airline or that have an airport not served by a scheduled airline, but operate for the benefit of the general public, to establish the ALUC, or they were mandated by later legislation.

- The plan shall be reviewed as often as necessary in order to accomplish its purposes, but shall not be amended more than once in any calendar year.
- The ALUCP must include the area within the jurisdiction of the ALUC surrounding any military airport and be consistent with the safety and noise standards in the Air Installation Compatible Use Zone prepared for that military airport.[35]
- Submit to the Division of Aeronautics of the Department of Transportation one copy of the plan and each amendment to the plan.

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[34] *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

[35] DOF argued in its comments that unless federal funding is provided, these activities are not mandated. Statutes 2002, chapter 971, which added the requirements regarding military airports, added an uncodified provision, section 8 of Senate Bill 1233 (Knight), which states with regard to amendments to the Government Code: "[a] city or county shall not be required to comply with the amendments made by this act to sections 65302, 65302.3, 65560, and 65583 of the Government Code, relating to military readiness activities, military personnel, military airports, and military installations. . ." until an agreement is entered into between the federal government and OPR to fully reimburse all claims approved by the Commission on State Mandates and the city or county undertakes its next general plan revision. However, the statute is silent regarding reimbursement for activities required by the amendments made to section 21675. Because section 21675 as amended by Statutes 2002, chapter 971 was not among the sections listed as being contingent upon federal funding, staff finds that the activities mandated by that section are not contingent upon receipt of federal funds.

- Review amendments to the general or specific plans, and proposed zoning ordinances or building regulations of local agencies within the planning boundary established by the ALUC within 60 days from the date of referral of the proposed action.
- Review any proposed changes to an airport master plan of any public agency owning an airport within the boundaries of the ALUC within 60 days from the date of referral of the proposed action.

These requirements constitute a mandated new program or higher level of service; however, only when the requirement to establish an ALUC is not suspended by the Legislature in the Budget Act. The CSM 4507 mandate to establish an ALUC or alternative body/ process has been suspended under the following budget acts, pursuant to Government Code section 17581:

- The Budget Act of 2005-2006 (Statutes 2005, chapters 38 and 39)
- The Budget Act of 2006-2007 (Statutes 2006, chapters 47 and 48)
- The Budget Act of 2007-2008 (Statutes 2007, chapters 171 and 172)
- The Budget Act of 2008-2009 (Statutes 2008, chapters 268 and 269)

Government Code section 17581 states:

> (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
> (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to section 6 of Article XIIIB of the California Constitution.
>
> (2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year.
>
> (b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

The Legislature specifically identified Statutes 1994, chapter 644 in each Budget Act from 2005 through 2008 and assigned a zero dollar appropriation to it. By suspending Statutes 1994, chapter 644, the Legislature made establishing an ALUC or alternate body/process an optional activity for local government. This means that any downstream activities in sections 21675 or 21676 that are required because of the mandatory nature of section 21670 as amended by Statutes 1994, chapter 644 are also optional beginning in the 2005-2006 budget year until the CSM 4507 mandate is no longer suspended. Staff finds that the activities required by sections 21675 and 21676 impose the above stated mandates only in fiscal years 2002-2003 through 2004-2005 and for future years when CSM 4507 is no longer suspended.

Issue 2. Do sections 21675 and 21676 impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

The final issue is whether the test claim statutes impose costs mandated by the state and whether any statutory exemptions listed in Government Code section 17556 apply to this test claim.[36] Article XIII B, section 6, subdivision (a) of the California Constitution, with few specified exceptions, requires that:

> [w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...

Pursuant to Government Code section 17514, "costs mandated by the state" includes any increased cost a local agency is required to incur as a result of a statute enacted on or after January 1, 1975 that mandates a new program or higher level of service. Additionally, Government Code section 17564 requires reimbursement claims to exceed $1000 to be eligible for reimbursement. The claimant estimates costs in excess of $1,000 per year.[37]

This estimate, which is supported with a claim certification and a declaration finding costs mandated by the state as defined in Government Code section 17514, demonstrates that the annual costs associated with the test claim activities will likely exceed $1,000.

However, the Commission cannot find "costs mandated by the state" within the meaning of Government Code section 17514 if any exceptions in Government Code section 17556, which is discussed below, apply. Claimant asserts that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.[38]

Staff finds that there are no costs mandated by the state as defined by Government Code section 17514, because the exception to reimbursement in Government Code section 17556, subdivision (d) applies, and both the ALUCs and the counties have sufficient fee authority under the statutory provisions and the police power discussed below.

A. The claimant has fee authority for the test claim activities within the meaning of Government Code section 17556, subdivision (d)

Staff finds that section 21671.5 authorizes ALUCs to impose fees on proponents of actions, regulations or permits sufficient to cover the costs of performing all of the mandatory activities imposed by the test claim statutes. Further, with regard to the "county charge" issue and the ability of the county to recoup its costs, staff finds that section 21671.5 provides counties with significant power over ALUCs: namely the power of the purse. Moreover, staff finds that in addition to the fee authority provided by 21671.5, counties have their own fee authority pursuant to Government Code section 66014 and pursuant to their police power under article XI, section 7 of the California Constitution.

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[36] *Lucia Mar*, supra, 44 Cal. 3d 830, 835: Government Code section 17514.

[37] Test Claim Page 6.

[38] Test Claim, page 8.

Government Code section 17556, subdivision (d), states:

> The commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency ... if, after a hearing, the commission finds any one of the following: [¶]...[¶] (d) The local agency ... has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Government Code section 17556, subdivision (d), was upheld by the California Supreme Court in *County of Fresno v. State of California*,[39] in which the court stated:

> [s]ection 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*
>
> In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.[40]

1. ALUCs have fee authority pursuant to section 21671.5

Section 21671.5, subdivision (f) provides:

> (f) The commission may establish a schedule of fees *necessary to comply with this article*. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to section 66016 of the Government Code. Except

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[39] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

[40] *County of Fresno v. State of California, supra,* 53 Cal.3d 482, 487.

> as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan.[41] (Emphasis added.)

DOF argues that even in the event that the Commission finds that there is a state-mandated program or higher level of service that it should deny the claim because section 21671.5 provides ALUCs with fee authority sufficient to comply with the requirements of Article 3.5.[42]

DOT argues that provisions of section 21671.5, subdivision (c) prohibits reimbursement for the mandated activities and specifically requires that all expenses and costs of the ALUC be provided by the county.[43] Section 21671.5, subdivision (c) provides that: "[s]taff assistance, including the mailing of notices and the keeping of minutes and necessary quarters, equipment, and supplies shall be provided by the county. The usual and necessary operating expenses of the commission shall be a county charge."

Staff finds that section 21671.5, subdivision (f) provides fee authority to cover all of the activities mandated by article 3.5 which includes all of the mandated activities imposed by the test claim statutes.

<u>The Plain Meaning of Section 21671.5, Subdivision (f) Demonstrates That Claimants Have Fee Authority Sufficient to Cover the Costs of Performing the Activities Mandated by the Test Claim Statutes</u>

According to the California Supreme Court: "[w]hen interpreting a statute, our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent."[44] Further, our Supreme Court has noted: "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature. . ."[45] Subdivision (f) specifically authorizes the imposition of "fees necessary to comply with this article". "This article" encompasses all of Article 3.5 which includes subdivisions 21675 and 21676 as amended by the test claim statutes. The language is clear and unambiguous. Thus, 21671.5 as amended by Statutes 1991, chapter 140 provides fee authority for the mandated activities.

Legislative history supports this conclusion. Section 21671.5, subdivision (f) was amended by Statutes 1991, chapter 140 (S.B. 532) as follows:

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[41] Note that section 66016 requires that the fees must be adopted by ordinance or resolution, after providing notice and holding a public hearing.

[42] DOT comments on the test claim, page 2; DOF comments on the Test Claim, page 1.

[43] DOT comments on the test claim, page 2. Note that these provisions have historically been called the "county charge" issue, in reference to the fact that the counties are charged for the costs incurred by the ALUC pursuant to section 21671.5.

[44] *Freedom Newspapers, Inc v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.

[45] *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.

> (f) The commission may establish a schedule of fees ~~for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675~~ necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission that has not adopted the airport land use compatibility plan required by section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan. (Deletions in strikeout and additions in underline.)

Prior to this amendment, fees imposed under section 21671.5, subdivision (f) were limited to fees "for reviewing and processing proposals and for providing the copies of land use plans, as required by subdivision (d) of section 21675."

The language "fees necessary to comply with this article" was proposed by the Assembly Committee on Local Government analysis of SB 532 which says:

> SB 1333 (Dills) Chapter 459, Statutes 1990, suspended numerous mandates, including the mandate relating to airport land use planning during 1990-91, and there were no subsequent reimbursements. Because the Legislature also provided fee authority in SB 1333 to cover costs associated with the various suspended mandates, should the existing fee authority in Airport Land Use Planning Law for reviewing and processing proposals be similarly revised to cover all airport land use planning activities?[46] (Emphasis in original.)

Similarly, the Senate Floor Analysis states that Assembly amendments "[a]llow[] the schedule of fees adopted by an airport land use commission to be those necessary to carry out the provisions of law relating to its land use planning instead of [just for] reviewing and processing proposals."[47]

The Fee Authority provided by Section 21671.5 is Sufficient to Cover the Costs of the Program

The claimant, County of Santa Clara, also asserts in its comments submitted in February 2004 that even if the ALUC imposes fees, there is no guarantee that the fees would be sufficient to pay for the mandated program or increased level of service. Additionally, the claimant states that that the fee authority granted to the ALUC by section 21671.5 is limited to "the costs of processing referrals: the commission has no fee authority to off-set the very costly mandate of updating the airport land use plan." [48]

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[46] Assembly Committee on Local Government analysis of SB 532, as amended May 14, 1991, page 3.

[47] Senate Floor Analysis (Unfinished Business), SB 532 (Bergeson), as amended June 27, 1991, page 1.

[48] Id., page 2.

In *Connell v. Superior Court,*[49] the dispute was whether local agencies had sufficient fee authority for a mandate involving increased purity of reclaimed wastewater used for certain types of irrigation. The court first noted that the facial constitutionality of Government Code section 17556, subdivision (d), was upheld by the California Supreme Court in the *County of Fresno v. State of California* case. The court also cited statutory fee authority for the reclaimed wastewater, and noted that the water districts did not dispute their fee authority. Rather, the water districts argued that they lacked "sufficient" fee authority in that it was not economically feasible to levy fees sufficient to pay the mandated costs. In finding the fee authority issue is a question of law, the court stated that Government Code section 17556, subdivision (d), is clear and unambiguous. The court rejected the districts' argument that "authority" as used in the statute should be construed as a "practical ability in light of surrounding economic circumstances" because that construction cannot be reconciled with the plain language of section 17556, and would create a vague standard not capable of reasonable adjudication. The court also said that nothing in the fee authority statute limited the authority of the Districts to levy fees "sufficient" to cover their costs. Thus, the court concluded that the plain language of section 17556 made the fee authority issue solely a question of law, and that the water districts could not be reimbursed due to that fee authority.[50] Similarly here, there is nothing in section 21670.5 restricting the ability of ALUCs to impose fees sufficient to cover the costs of performing the activities required by sections 21675 and 21676.

2. The Counties Also Have Fee Authority

The claimant, County of Santa Clara, asserts in its comments submitted in February 2004, that it "does not have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Only the Commission has such authority. And, without the Commission exercising its authority, the County must shoulder the financial burden of the Commission's dealings without the ability to raise money through fees to off-set the costs."[51] The claimant further claims that it cannot sway the actions of the ALUC as it has only two members on the seven member ALUC body.[52]

In fact, claimant Santa Clara County's most recent adopted fee schedule includes a minimum non-refundable fee adopted by the ALUC pursuant to section 21671.5 and imposed on applicants within the ALUP of $3,500 for a major project and $700 for a minor project.[53] The fee schedule provides that "when fee is exhausted the owner/applicant will be required to pay additional fees to cover the costs of staff time to process/review application. The hourly rate for actual cost application is $160."[54] It also provides for numerous other fees that may be imposed on

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[49] *Connell v. Superior Court* (1997) 59 Cal.App.4th 382.

[50] Id., pages 398-402.

[51] County of Santa Clara, Response to Department of Finance, February 2004, page 1.

[52] Id., page 2.

[53] Santa Clara County Planning Office, Fees, Revised 01/07/09, Planning Fees adopted by the Board of Supervisors on April 8, 2008.

[54] Ibid.

developments throughout its jurisdiction (which overlaps with ALUC jurisdiction) including among others a: building permit plan review fee, comprehensive planning fee (to fund "policy studies, plan and ordinance updates, including the General Plan and similar mandated activities"[55]), building site approval fee, General Plan amendment fee and a zone change fee.[56]

County Fee Authority Pursuant to Government Code Section 66014

Government Code section 66014 authorizes local agencies to impose zoning and permit fees that include "costs reasonably necessary to prepare and revise plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations."[57] Pursuant to this authority, claimant, County of Santa Clara and several other counties have imposed "comprehensive planning fees" to "fund required functions and activities of comprehensive planning, including policy studies, plan and ordinance updates including the General Plan, and similar mandated functions and activities."[58] As is discussed directly below under sub-issue 3, utilizing comprehensive planning fees for related ALUC purposes would be consistent with the statutory and constitutional restrictions on the use of such funds.

County Fee Authority Pursuant to the Police Power

Pursuant to article XI, section 7, staff finds that the claimants have fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to carry out all of the activities mandated by the test claim statutes. Therefore, staff does not find "costs mandated by the state" within the meaning of Government Code section 17514 and 17556 to perform the activities.

The law on local government fee authority begins with article XI, section 7, of the California Constitution, which states: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." The Third District Court of Appeal has stated that article XI, section 7, includes the authority to impose fees. In *Mills v. Trinity County*,[59] a taxpayer challenged a county ordinance that imposed new and increased fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors. In upholding the fees, the court stated:

> [S]o long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees does not depend on legislatively authorized taxing

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[55] County of Santa Clara, Department of Planning and Development, Planning Office, PLN01 021406, February 14, 2006, page 2.

[56] Santa Clara County Planning Office, Fees, Supra.

[57] Government Code section 66014, subdivision (b).

[58] County of Santa Clara, Department of Planning and Development, Planning Office, PLN01 021406, February 14, 2006, page 2.

[59] *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656.

power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution.[60]

Similarly in *Collier*,[61] San Francisco imposed a regulatory building inspection fee which produced revenues in excess of what was needed for inspections and so it transferred the excess funds to the planning and fire departments to use for related services (i.e. general plan update and building fire safety activities, respectively). There, the court held that:

> San Francisco properly transferred excess [building inspection fee] revenues, monies collected from building permit applicants, from the [Department of Building Inspection] to the Planning and Fire Departments to cover actual costs incurred by those departments in performing regulatory activities related to the building permit process. (*Sinclair Paint*, supra, 15 Cal.4th at p. 879, 64 Cal.Rptr.2d 447, 937 P.2d 1350 [where "'an unusual burden [is imposed] on city services, a municipality may properly impose fees pursuant to its police powers to assure that the persons responsible 'pay their fair share of the cost of government'"].)

The plaintiff in that case argued that the fees were spent for unrelated revenue purposes but the court disagreed, stating:

> A regulatory fee, after all "is enacted for purposes broader than the privilege to use a service or obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public," (*California Assn. of Prof. Scientists, supra*, 79 Cal.App. 4th at p. 950, 94 Cal. Rptr.2d 535.).[62]

The court's reasoning is instructive as it applies with equal force to fees imposed against "proponents of actions, regulations, or permits" within an ALUP area. In *Collier* the court reasoned:

> The regulatory fees at issue are those being assessed against persons engaged in building construction in San Francisco to cover services related to building permits and inspections. When those persons submit building permit applications, San Francisco officials must process and review their applications and their building plans, perform all necessary field inspections, ensure compliance with the relevant code provisions, and prepare and reproduce all necessary documents. According to the undisputed evidence produced below, these tasks are the joint responsibility of several departments, including DBI and the Planning and Fire Departments.

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[60] *Mills v. County of Trinity, supra,* 108 Cal.App.3d 656, 662.

[61] *Collier v. San Francisco* (2007) 151 Cal.App.4th 1326, page 1353, review denied.

[62] Id., page 1340.

Similarly, with regard to submittals by proponents of actions, regulations, or permits within an ALUP area, a number of separate but related duties such as review, inspection, compliance and document preparation are triggered for the ALUC and various county departments and fees may be imposed to cover all of those county costs.

In *Sinclair Paint v. State Board of Equalization*, [63] the California Supreme Court upheld a fee imposed on manufacturers of paint that funded a child lead-poisoning program, ruling it was a regulatory fee and not a special tax. The court recognized that determining under Proposition 13 whether impositions were fees or taxes is a question of law. In holding that the fee on paint manufacturers was "regulatory" and not a special tax, the court stated:

> From the viewpoint of general police power authority, we see no reason why statutes *or ordinances* calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Viewed as a mitigating effects measure, [the fee] is comparable in character to several police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.[64] [Emphasis added.]

Likewise, fees imposed on proponents of actions, regulations, or permits within an ALUP area are used to defray the actual or anticipated adverse effects of development near airports. Specifically, these fees are used to prevent development which would increase the risk of plane crashes and to minimize exposure to excessive noise and safety hazards within areas around public airports.

Courts will uphold regulatory fees if they comply with the following principles:

> Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A section 4 analysis if the "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." [Citations omitted] "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." [Citations omitted] "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." [Citations omitted] Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. [Citations omitted] Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee."[65]

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[63] *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866.

[64] Id., page 877.

[65] *California Assn. of Prof. Scientists v. Dept. of Fish and Game, supra,* 79 Cal.App.4th 935, 945.

Fees imposed on proponents of actions, regulations, or permits within an ALUP area could be imposed to comply with the criteria courts have used to uphold regulatory fees articulated above. And the regulatory fees fall within the local police power to defray the actual or anticipated adverse effects of development by minimizing exposure to excessive noise and safety hazards within areas around public airports.

3. Imposition of Fees Sufficient to Cover the Cost of Updating the ALUCP is Not Imposition of a Special Tax

California Constitution Article XIII A, commonly known as Proposition 13, was enacted by California voters in 1978 to ensure effective real property tax relief.[66] California Constitution Article XIII A, section 4 provides: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." Article XIII A, section 4 must be construed in light of its underlying rationale: *to shift costs away from the taxpaying public towards the class of individuals that benefits from or necessitates those costs.*[67] (Emphasis added.) The California Legislature enacted enabling legislation, Government Code section 50075 et Seq., which provides cities, counties, and special districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution. Government Code section 50076 specifies that "[a]s used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes." California courts have subsequently clarified that, based on Government Code section 50076's limitation, the term "special taxes" in Article XIII A, section 4 "does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes."[68] "In general, taxes are imposed for revenue purposes rather than in return for a specific benefit conferred or privilege granted."[69]

Consistent with the requirements of Article XIII A of the California Constitution and Government Code section 50076, the fee authority statute at issue here, section 21671.5, provides that the fees "charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing the service..." Likewise, fees are imposed under Government Code section 66014 upon proponents of actions or permits. Government Code section 66014, subdivision (a) provides that local agency fees for building inspections and permits *may not exceed the estimated reasonable cost of providing the service for which the fee is charged* unless the excess amounts are submitted to and approved by a two-thirds vote of the electorate. Significantly, Government Code section 66016 applies to fees under both 21671.5 and

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[66] *Sinclair Paint v. State Board of Equalization* (1997) 15 Cal.4th 866 at p. 872.

[67] *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1148-1149

[68] *Sinclair Paint*, supra, 15 Cal.4th at p. 876.

[69] *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 700.

Government Code section 66014 and it provides a remedy if the fee creates revenues in excess of service. Government Code section 66016, subdivision (a) provides: "[u]nless there has been voter approval, as prescribed by section 66013 or section 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess."

Regulatory fees are not dependent on government conferred benefits or privileges and are imposed under the police power, rather than the taxing power.[70] The court in *Collier* determined that a fee similar to that imposed on proponents of actions, regulations, or permits within the ALUCP area was a regulatory fee.[71] In *Collier* the First District Court of Appeal addressed the transfer of surplus building permit fee revenues to the planning and fire departments to fund review of applications and building plans by those departments and for long-term planning purposes. With regard to long-term planning, the planning department used the funds for preparation and implementation of San Francisco's general plan including the administrative and overhead costs of the long-range planning division. In that case, Collier sued San Francisco contending that the building permit fee revenue transfers constituted a special tax in violation of Article XIII A, section 4 because the revenues were diverted to "fund the unrelated operations of ... other departments."[72] According to Collier, the revenues were thus used by other departments for unrelated revenue purposes, which Government Code section 50076 precludes. Had the Planning and Fire Departments needed additional revenues to fund their unrelated operations, Collier argued, they should have assessed their own regulatory fees rather than taken regulatory fees collected by the Department of Building Inspection.[73] However, the court found that the fees were not spent for unrelated purposes stating: "[w]e thus slightly broaden the import of *Sinclair Paint* by holding that a municipality may, under its police powers, spend regulatory fee

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[70] *Sinclair Paint*, supra, 15 Cal.4th at p. 876 (citing: *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740 [upholding regulatory fees charged to alcoholic beverage sale licensees to support pilot project to address public nuisances associated with those sales]; *Kern County Farm Bureau v. County of Kern*, 19 Cal.App.4th at pp. 1422-1425 [upholding landfill assessment based on land use to reduce illegal waste disposal]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280-285, [upholding waste disposal surcharge imposed on waste haulers]; *Evans v. City of San Jose*, 3 Cal.App.4th at p. 737; *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1149 (SDG & E) [upholding emissions-based formula for recovering direct and indirect costs of pollution emission permit programs]; *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 166-168, 154 Cal.Rptr. 263 (United Business) [upholding fees for inspecting and inventorying on-premises advertising signs].)

[71] *Collier v. San Francisco* (2007) 151 Cal.App.4th 1326, review denied.

[72] Id., page 1339.

[73] Ibid.

revenues for the purpose of legitimate regulation so long as those revenues do not exceed the reasonably necessary expense of the regulatory effort."[74]

Importantly, the court reasoned:

> ...we note that, were we to adopt a too narrow definition of "regulatory activities" in applying Government Code section 50076, we would risk depriving municipalities of a reasonable degree of flexibility to determine whether regulatory fee revenues collected by their agencies are being spent in furtherance of the purpose for which those fees were assessed. (*Sinclair Paint, supra,* 15 Cal.4th at pp. 876-877, 64 Cal.Rptr.2d 447, 937 P.2d 1350; *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 950, 94 Cal.Rptr.2d 535 ["[t]he legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion the costs of regulatory programs in a variety of reasonable financing schemes ... [and] [a]n inherent component of reasonableness in this context is flexibility"]; *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 193, 29 Cal.Rptr.2d 128 ["cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity"].) That, in turn, could hinder a municipality's ability to address burdens placed on the community by the activities of certain classes of individuals. *A regulatory fee, after all, "is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public."* (*California Assn. of Prof. Scientists, supra,* 79 Cal.App.4th at p. 950, 94 Cal.Rptr.2d 535.)[75]

(Emphasis added.) This reasoning applies with equal force to fees imposed on proponents of actions, regulations, or permits within an ALUCP area. The complexities of the airport land use law and the interrelated duties of the ALUCs and the counties arguably warrant a similar degree of flexibility with regard to the imposition and expenditure of fees. Therefore, staff finds that the imposition of a local regulatory fee charged for compliance with the requirements of article 3.5, if appropriately calculated and charged, would not be a special tax within the meaning of article XIII A, section 4. There is no indication that a local regulatory fee charged for the mandated ALUC activities, that does not exceed the reasonable cost of those activities and related services, would violate the criteria in section 50076.

Given the existence of the statutory fee authority in section 21675.1 and Government Code 66014 and the local regulatory fee authority under the police power (Cal. Const, art. XI, § 7), and lacking any evidence or information to the contrary, staff finds that the claimants' authority to adopt a regulatory fee is sufficient [pursuant to Gov. Code, § 17556, subd. (d)] to pay for the all of the mandated activities required by section 21675 and 21676.

Therefore, the staff finds that there are no "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556.

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[74] Ibid.

[75] Ibid.

CONCLUSION

Staff concludes that the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution because:

1. The Commission does not have jurisdiction over Section 21670 as amended by Statutes of 1994, chapter 59 or section 21675 with regard to the activity of adopting the initial ALUCP.
2. There is fee authority (under Cal. Const. article XI, § 7; Pub. Util. Code § 21671.5; and Gov. Code § 66014) within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the mandated activities.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

EXHIBIT H

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

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FAX
TELECOPIER COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Paula Higashi, Executive Director

OFFICE: Commission on State Mandate

FAX #: (916) 445-0278 REG. OFFICE #:

FROM

NAME: Lizanne Reynolds, Deputy County Counsel

OFFICE: OFFICE OF THE COUNTY COUNSEL, COUNTY OF SANTA CLARA

FAX#: (408) 292-7240 REG. OFFICE #: (408) 299-5900

Comments: RE: Airport Land Use Commissions/Plans II; 03-TC-12
Comments on Draft Staff Analysis

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May 12, 2009

VIA FACSIMILE & U.S. MAIL

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: *Airport Land Use Commissions/Plans II*; 03-TC-12
Comments on Draft Staff Analysis

Dear Ms. Higashi:

We have reviewed the draft staff analysis for the above-described test claim and offer the following comments. We will attend and testify at the Commission's hearing on this claim, which is currently scheduled for May 29, 2009.

1. Public Utilities Code § 21671.5(f) only gives ALUCs Authority to Adopt Fees.

Once established, an ALUC is an independent body and is not subject to the direct control of any other public agency.[1] Counties are statutorily mandated to provide staff assistance and other services to ALUCs.[2] However, the statutory authority to adopt a fee schedule for ALUC-related activities rests solely with the ALUC.[3]

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[1] Pub. Util. Code § 21670. All further statutory references are to the Public Utilities Code unless otherwise indicated. Although ALUC commissioners are appointed by various public entities, once appointed, the commissioners act independently.

[2] § 21671.5(c).

[3] § 21671.5(f) provides, in pertinent part:

The commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or

The statute says that ALUCs "may" establish a fee schedule, but does not mandate that they do so. Consequently, unless and until an ALUC exercises its discretion to adopt a fee schedule, the county providing services to that ALUC has no mechanism for recovering its ALUC-related costs.

Even if an ALUC adopts a fee schedule, those fees may not fully cover the county's costs. For example, the Santa Clara County ALUC did not choose to exercise its authority to adopt fees until 2004. When the ALUC finally adopted fees, they were based on the estimated costs of processing referrals under section 21676, and did not reflect the significant costs associated with updating and maintaining the ALUC's airport land use compatibility plan ("ALUCP") under section 21675. Hence, the County was still forced to absorb mandated costs.

The County acknowledges that, if an ALUC chooses to adopt a fee schedule and those fees are sufficient to provide full reimbursement to the county for costs incurred in fulfilling all of its mandates under section 21671.5, subdivision (c), then there is no basis for an SB90 claim. However, where an ALUC either does not adopt a fee schedule or the fees generated by that fee schedule do not provide full cost reimbursement to the county, then the county has an unreimbursed state mandate.

2. <u>The County Fee Adoption Authority Cited in the Draft Staff Analysis does not apply to Mandated ALUC Activities.</u>

The draft staff analysis cites Government Code section 66014 and county police power as other sources of fee authority that counties may employ to recover their ALUC-related costs. However, these provisions pertain to situations where the county is acting in its capacity and exercising its regulatory authority <u>as a county</u>. There is no basis in statute or case law to find that this fee authority extends to the county's performance of mandatory duties for an ALUC.

Government Code section 66014 provides, in pertinent part:

> (a) Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government

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> permits, shall not exceed the estimated reasonable cost of providing the service, and shall be imposed pursuant to Section 66016 of the Government Code. . . . (Emphasis added.)

> Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 or under any other authority . . . those fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged . . .
>
> (b) The fees charged pursuant to subdivision (a) may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.

The text of Government Code section 66014 addresses activities that a county undertakes when exercising its land use jurisdiction over development projects. I.e., when the county is performing as the county, not as ALUC staff. This includes, for example, processing applications for zoning amendments and use permits pursuant to the Planning and Zoning Law, Gov. Code § 65000 *et seq.*, and subdivisions pursuant to the Subdivision Map Act, Gov. Code § 66410 *et seq.* There is nothing in this section that suggests it applies to activities a county performs when fulfilling its obligations on behalf an ALUC pursuant to the mandate in section 21671.5, subdivision (c).

A local agency's ability to recover costs of plans and policies in Government Code section 66014, subdivision (b) expressly pertains only to those "costs reasonably necessary to prepare and revise the plans and policies <u>that a local agency is required to adopt</u> before it can make any necessary findings and determinations." (Emphasis added.) Such plans include, for example, a General Plan that a county or city must adopt pursuant to Government Code section 65300 before it may approve development projects pursuant to its land use jurisdiction. An ALUCP is adopted by the ALUC, not the county. Consequently, the fee authority in section 66014, subdivision (b), does not authorize counties to charge fees to cover the costs of ALUCP preparation.

Moreover, a county's land use and other regulatory jurisdiction is generally limited to the unincorporated area of a county. Referrals to ALUCs pursuant to section 21676 come from all areas that fall within the ALUC's "referral boundaries" surrounding public use airports, including both incorporated and unincorporated areas.[4] In fact, in Santa Clara County, the vast majority of referrals to the ALUC come from the cities, not the county. A county clearly has no

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[4] § 21676(b) (referring to referral boundaries established by an ALUC pursuant to § 21675).

authority to charge fees to applicants for development projects in incorporated areas.

The assertion that counties may adopt their own ALUC-related fees is also inconsistent with the Legislature's express grant of fee authority to ALUCs in section 21671.5, subdivision (f), and the requirement that ALUCs follow the fee adoption procedures in Government Code section 66016.

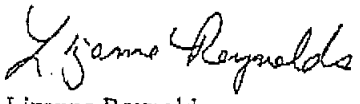
A county's police power under article XI, section 7 of the California Constitution is also limited to the regulatory functions the county performs when it exercises its police power and the adoption of fees related thereto.[5] The services a county performs for an ALUC do not flow from any regulatory authority of the county; rather, they flow solely and directly from the statutory mandate to provide "staff assistance" and other "usual and necessary operating expenses" imposed by section 21671.5, subdivision (c). Therefore, the constitutional fee authority associated with a county's regulatory activity does not apply to a county's ALUC-related costs.

Conclusion

For the reasons discussed above, the County of Santa Clara respectfully disagrees with the conclusions in the draft staff analysis. Please contact us if you have any questions or wish to discuss these matters.

Very truly yours,

ANN MILLER RAVEL
County Counsel



Lizanne Reynolds
Deputy County Counsel

c: Service List

[5] *See, e.g., Pennell v. City of San Jose* (1986) 42 Cal.3d 365; *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740.

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

May 12, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of April 22, 2009, the Department of Finance (Finance) has reviewed the Commission draft staff analysis of Claim No. CSM-03-TC-12 "Airport Land Use Commissions/Plans II."

As a result of our review, Finance concurs with the Commission staff's recommendation to deny the test claim because the Airport Land Use Commissions (ALUCs) and the counties have sufficient fee authority pursuant to subdivision (d) of Section 17556 of the Government Code (GC). The fee authority established by Section 21671.5 of the Public Utilities Code (PUC) allows the ALUCs to establish fees necessary to comply with Sections 21675 and 21676 of the PUC. These fees are to be charged to the proponents of actions, regulations, or permits, not to exceed the estimated reasonable cost of providing the service, and must be imposed pursuant to Section 66016 of the GC. As authorized, an ALUC could impose fees necessary to cover all costs associated with the ALUC's reviewing, processing, and planning activities. Therefore, the costs of the activities are not reimbursable.

The counties also have sufficient fee authority to levy regulatory fees related to ALUC services pursuant to Section 66014 of the GC and the direct grant of police power under Section 7 of Article XI of the California Constitution. A county may use its police power to enact regulations to promote or maintain the health, safety, and welfare of the community. In this case, the counties can levy regulatory fees to offset costs related to all of the activities at issue. Fees established under this authority will not be found to be special taxes if they do not exceed the reasonable cost of the services, and are levied for related revenue purposes as noted in the Commission's analysis on page 21. As a result, the costs incurred by ALUCs and counties are not reimbursable within the meaning of Section 6 of Article XIII B of the California Constitution, and the test claim should be denied.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your April 22, 2009 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-12

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

May 12, 2009
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Airport Land Use Commissions/Plans
Test Claim Number: CSM-03-TC-12

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12th Floor, Sacramento, CA 95814.

On 5/12/09, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Ms. Annette Chinn
Cost Recover Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

B-08
Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

A-08
Ms. Terry Roberts
Governor's Office of Planning & Research
P.O. Box 3044, Room 212
Sacramento, CA 95812-3044

Mr. Allan Burdick
MAXIMUS
3130 Kilgore Road, Suite 400
Rancho Cordova, CA 95670

Mr. Vonod K. Sharma
County of Santa Clara
70 West Hedding Street, East Wing, 2nd Floor
San Jose, CA 95110

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Leonard Kaye
County of Los Angeles
Auditor – Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

A-15
Ms. Carla Castaneda
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Glen Everroad
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92659-1768

Ms. Jolene Tollenaar
MGT of America
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1280
Sacramento, CA 95814

Ms. Bonnie TerKeurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 5-12-09 at Sacramento, California.

K Montelongo
Kelly Montelongo

EXHIBIT I

Supreme Court of California
BARRATT AMERICAN, INCORPORATED, Plaintiff and Appellant,
v.
CITY OF RANCHO CUCAMONGA, Defendant and Respondent.
No. S117590.

Dec. 22, 2005.

Background: Real estate developer filed petition for writ of mandate and complaint against city, challenging fees for building permits and plan reviews. The Superior Court, San Bernardino County, No. RCY063382,Joseph E. Johnston, J., sustained city's demurrer without leave to amend. Developer appealed. The Court of Appeal affirmed, and the Supreme court granted developer's petition for review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Chin, J., held that:
(1) fees developer paid were not "development project fees" subject to Mitigation Fee Act's individual refund remedy and limitations period;
(2) permit and plan review fees were not "special taxes" subject to penalty or offset under Proposition 62;
(3) city was not required to conduct annual financial audit of revenues received from fees;
(4) city's resolution reenacting previously enacted fees was subject to challenge; and
(5) mandamus was not available remedy for city's alleged failure to comply with statutory duty to review and adjust fees.

Judgment of the Court of Appeal affirmed in part and reversed in part, and matter remanded.

Opinion, 135 Cal.Rptr.2d 85, superseded.

West Headnotes

[1] Appeal and Error 30 ⚷917(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k915 Pleading
30k917 Demurrers
30k917(1) k. In General. Most Cited Cases
When a case comes to the Supreme Court on a demurrer for failure to state a cause of action, the Court accepts as true the facts alleged in the plaintiff's complaint.

[2] Zoning and Planning 414 ⚷382.4

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k382.1 Maps, Plats, or Plans, Conditions and Agreements
414k382.4 k. Fees, Bonds, and in Lieu Payments. Most Cited Cases

Zoning and Planning 414 ⚷584.1

414 Zoning and Planning
414X Judicial Review or Relief
414X(B) Proceedings
414k584 Time for Proceedings
414k584.1 k. In General. Most Cited Cases
Building permit and plan review fees real estate developer paid to city were simply fees to defray administrative and enforcement costs of local regulatory program, and thus were not "development project fees" subject to Mitigation Fee Act's individual refund remedy and limitations period for alleged overcharges. West's Ann.Cal.Gov.Code §§ 66000, 66014, 66016, 66020, 66021.
See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 818; 9 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 25:200; Cal. Jur. 3d, Zoning and Other Land Controls, § 243 et seq.; Cal. Civil Practice (Thomson/West 2003) Real Property Litigation, § 14:79.

[3] Statutes 361 ⚷208

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction

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361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k208 k. Context and Related Clauses. Most Cited Cases
The Supreme Court must construe a statute in the context of the entire statutory scheme of which it is a part, in order to achieve harmony among the parts.

[4] Taxation 371 ⚷2002

371 Taxation
371I In General
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases

Zoning and Planning 414 ⚷382.4

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k382.1 Maps, Plats, or Plans, Conditions and Agreements
414k382.4 k. Fees, Bonds, and in Lieu Payments. Most Cited Cases
Even if excessive, city's building permit and plan review fees were not "special taxes" subject to penalty or offset remedies under Proposition 62; sole remedy for excessive fee was contained in Mitigation Fee Act. West's Ann.Cal.Gov.Code §§ 53728, 66016.

[5] Taxation 371 ⚷2001

371 Taxation
371I In General
371k2001 k. Nature of Taxes. Most Cited Cases
In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.

[6] Municipal Corporations 268 ⚷885

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(B) Administration in General, Appropriations, Warrants, and Payment
268k885 k. Reports and Statements as to Finances. Most Cited Cases
City was not required, under government spending limitation provision of state Constitution, to conduct annual financial audit of revenues received from building permit and plan review fees imposed on developers to assess whether it had any surplus fees that would constitute proceeds of taxes. West's Ann.Cal. Const. Art. 13B, §§ 1.5, 8(b).

[7] Zoning and Planning 414 ⚷586

414 Zoning and Planning
414X Judicial Review or Relief
414X(B) Proceedings
414k584 Time for Proceedings
414k586 k. Commencement of Limitation Period. Most Cited Cases
Challenge to city's resolution reenacting previously enacted building permit and plan review fees was not barred by statute requiring such challenges to be brought within 120 days of enactment; even though fees remained essentially unchanged, legislation constituted modification or amendment of those fees, thereby triggering new limitations period. West's Ann.Cal.Gov.Code §§ 66016, 66022.

[8] Mandamus 250 ⚷3(4)

250 Mandamus
250I Nature and Grounds in General
250k3 Existence and Adequacy of Other Remedy in General
250k3(2) Remedy at Law
250k3(4) k. Acts and Proceedings of Public Officers and Boards and Municipalities in General. Most Cited Cases
Mandamus was not remedy available to real estate developer that alleged city had failed to comply with its statutory duty to review and adjust building permit fees, since Mitigation Fee Act provided adequate legal remedy. West's Ann.Cal.Gov.Code § 66016.

[9] Mandamus 250 ⚷3(4)

250 Mandamus
250I Nature and Grounds in General
250k3 Existence and Adequacy of Other Remedy in General
250k3(2) Remedy at Law
250k3(4) k. Acts and Proceedings of Public Officers and Boards and Municipalities in General. Most Cited Cases
Where the Legislature has provided for a validation

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action to review government actions, mandamus is unavailable to bypass the statutory remedy after the limitations period has expired.
***150 Law Offices of Walter P. McNeill, Walter P. McNeill, Redding; Law Offices of Richard D. Gann and Richard D. Gann, for Plaintiff and Appellant.

Sheppard, Mullin, Richter & Hampton and David P. Lanferman, San Francisco, for California Building Industry Association as Amicus Curiae on behalf of Plaintiff and Appellant.

Jonathan M. Coupal and Timothy A. Bittle, Sacramento, for Howard Jarvis Taxpayers Association as Amicus Curiae on behalf of Plaintiff and Appellant.

Law Office of Brent & Klein and Jason G. Brent, Tehachapi, for George C. Jenkins as Amicus Curiae on behalf of Plaintiff and Appellant.

James S. Burling and Meriem L. Hubbard, Sacramento, for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiff and Appellant.

Richards, Watson & Gershon, James L. Markman, Brea, B. TildenKim Los Angeles, and Juliet E. Cox, for Defendant and Respondent.

Best, Best & Krieger, Jeffrey V. Dunn, Irvine, and Mark D. Servin, for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Defendant and Respondent.

CHIN, J.

*691 **720 The Mitigation Fee Act (Gov.Code, §§ 66000-66025) [FN1] (the Act) was passed by the Legislature " 'in response to concerns among developers that local agencies were ***151 imposing development fees for purposes unrelated to development projects.' " (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 864, 50 Cal.Rptr.2d 242, 911 P.2d 429.) Although most of the Act is concerned with development fees, it also addresses fees or charges that do not necessarily relate to a development project. (*Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2 (*Utility Cost Management*).) The various sections of the Act cover fees for development projects (§§ 66000-66011), water or sewer connections (§ 66013), and zoning and building permits (§ 66014). This case involves legal challenges to building inspection and permit fees and appropriate remedies when excessive fees are imposed.

FN1. Except as otherwise noted, all further statutory references are to the Government Code.

Section 66014, subdivision (a), provides that local agency fees for *building inspections and permits* may not exceed the estimated reasonable cost of providing the service for which the fee is charged unless the excess amounts are submitted to and approved by a two-thirds vote of the electorate. Section 66016, subdivision (a), provides a *prospective fee reduction remedy* when fees or service charges exceed actual costs and create excess revenues. Both sections specify that any judicial challenge to a fee thereunder is subject to the requirements of **721section 66022, which states that the action or proceeding "shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion."(§ 66022, subd. (a); see also §§ 66014, subd. (c), 66016, subd. (e).)

Sections 66020 and 66021, which authorize a *refund* of any unlawful part of the fees imposed on a *development project,* are subject to a different statute of limitations period. Local agencies must give project applicants written notice of the fee amount, indicating that they have 90 days to protest it. (§ 66020, subd. (d)(1).) Any party who files a protest may then file an action attacking the imposition of the fees within 180 days after delivery of the local agency's notice. (§ 66020, subd. (d)(2).)

In this case, we determine: (1) whether a party who challenges a local agency's fees for building inspections and permits under section 66014 can state a claim for remedies under both section 66016 (prospective fee reduction) and section 66020 (refund); (2) whether the limitations period of section 66020 or section 66022 applies to a claim that the local agency's building permit fees are excessive; and (3) whether a local agency's reenactment of the same building permit and inspection fees is subject to challenge under *692 section 66022. In addition, we decide other issues: (4) whether local agencies that charge excessive building permit and plan review fees are subject to a penalty for collecting and retaining "special taxes" without voter approval within the

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meaning of section 53728; and (5) whether local agencies are constitutionally required to conduct annual financial audits to assess whether their fees create excess revenues. We conclude that building permit fees are not fees imposed on a development project. Therefore, the applicable remedy and limitations period for excessive building fees claims under section 66014 are found in sections 66016 and 66022, not in sections 66020 and 66021. Also, we conclude that a reenactment of the same building permit fee is a modification or amendment of an existing fee or service charge under section 66022, which triggers a new limitations period; that local agencies that charge excessive building permit fees are not subject to a section 53728 penalty; and that local agencies are not constitutionally required to conduct annual financial audits.

I. FACTUAL AND PROCEDURAL HISTORY

[1] Because this case comes to us on a demurrer for failure to state a cause of action, we accept as true the facts alleged ***152 in plaintiff Barratt American, Inc. (Barratt)'s complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.)

In July 1999, the City of Rancho Cucamonga (City) adopted resolution No. 99-146, setting forth a comprehensive fee schedule for various services the City provides. It included a fee schedule for building permits and plan reviews based on the "total valuation of work." The charges for building permit fees started at $25 for work valued up to $1,000 and ended at $555 for work valued up to $100,000. Each additional $1,000 in value incurred a fee of $2.50. Plan review fees were a percentage of the building permit fees. The City building official was authorized to determine the "total valuation of work." In December 2000, the City adopted resolution No. 00-268, which modified certain fees set in 1999. The 2000 resolution slightly increased, by 50 cents, the building permit fee from $555 for work valued at $100,000 to $555.50. The resolution explained that the new fee was a correction of a previous typographical error. In January 2002, the City adopted resolution No. 02-023, which modified certain fees set in 2000. However, the building permit fee was not changed, except to the extent it was reset at $555 for work valued at $100,000. The 2002 ordinance apparently reintroduced the typographical error that the 2000 ordinance had corrected.

In June 2000, Barratt, a real estate developer, began to construct a 123-unit residential subdivision in the City. In May 2002, Barratt sued the City, alleging that the City's building permit and plan review fees were excessive, *693 that the City's method of establishing those fees was arbitrary and unrelated to the actual cost of the service provided, that the fees were based improperly on the monetary value of the work, and that the building officials had unfettered authority**722 to determine the final valuation component of the fee. The complaint further alleged that, beginning in June 2000, Barratt had paid more than $143,000 in building permit and plan review fees for at least 83 building permits for the construction of single-family homes in the 123-unit subdivision, that it intended to continue construction until it completed the project, and that the City collectively received more than $1 million per year (and more than $3 million total) in excess building permit and plan review fees. Barratt sought: (1) a refund of $143,000 for the allegedly excessive fees already paid (§ 66020) or in the alternative, a refund in excess of $110,000, after crediting the City with the reasonable value of services it rendered in issuing the building permits and reviewing Barratt's plans; (2) a writ of mandate compelling the City to apply the excess fee revenues to reduce future fees (§ 66016, subd. (a)) and to perform an annual audit to identify excess fee revenues (Cal. Const., art. XIII B, §§ 1.5, 8, subd. (b)); (3) a declaration that the fees imposed were invalid "special taxes," resulting in the reduction or forfeiture of property tax revenues (§§ 53722, 53728); and (4) the invalidation of resolution No. 02-023 (§§ 66016, subd. (e), 66022, subd. (b)). When it filed the action, Barratt was midway through the development and sales of the homes in the subdivision.

The City demurred to Barrett's complaint. The trial court sustained its demurrer without leave to amend, ruling that: (1) Barratt could not obtain a refund under section 66020 because building permit and plan review fees are not development fees within the meaning of that section; (2) a writ of mandamus to compel the City to comply with section 66016 and to perform an annual audit and fee adjustment was an inappropriate remedy because the timing of any fee review and adjustment is a matter of legislative discretion; and (3) declaratory relief under ***153 sections 53722 and 53728 was not an appropriate remedy. Instead, the court found that the appropriate

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remedy for excessively high building permit fees was to challenge the ordinance in a validation action and obtain a prospective fee reduction, as specified in section 66016. That remedy was unavailable to Barratt, however, because the statute of limitations period had expired. In addition, the court determined that Barratt could not attack the validity of resolution No. 02-023 because the 2002 resolution only reenacted the fee previously set forth in the 2000 resolution and was not a new or increased fee under section 66016.

The Court of Appeal agreed with the trial court's reasoning and result and affirmed the judgment. We granted Barratt's petition for review.

*694 II. DISCUSSION

Barratt contends that payers of excess building permit fees in violation of sections 66014 and 66016 have *several* remedies for those overcharges: (1) individual refunds (§§ 66020, 66021, subd. (a)); (2) application of excess fees to future costs (§ 66016, subd. (a)); and forfeiture of property tax revenues (§ 53728). Barratt also claims that to ensure that cities comply with sections 66014, subdivision (a), and 66016, subdivision (a), they must conduct annual audits. (Cal. Const., art. XIII B.) We discuss those claims below.

Sections 66014, 66016, and 66022.

Section 66014, subdivision (a), permits local agencies to impose building inspection and permit fees "not [to] exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue."

Section 66016, subdivision (a), which also expressly applies to building inspection and permit fees, provides the remedy for over-collections: "Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce **723 the fee or service charge creating the excess."

Both sections 66014 and 66016 require that "[a]ny judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion" authorizing the charge of a fee subject to those sections "shall be brought pursuant to Section 66022."(§§ 66014, subd. (c), 66016, subd. (e).)

Section 66022, subdivision (a), provides: "Any judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee or service charge, adopted by a local agency, as defined in Section 66000, shall be commenced within 120 days of the effective date of the ordinance, resolution, or motion." Subdivision (c) of that same section states: "This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014."

*695 *1. Individual Refund Remedy and Limitations Period Under Sections 66020 and 66021 Do Not Apply to the Building Permit Fees Barratt Paid.*

[2] Although Barratt agrees that the charges at issue are fees for "building ***154 inspections" and "building permits" that are subject to sections 66014 and 66016, it argues that it does not seek "to attack, review, set aside, void, or annul" the ordinances under section 66022. Instead, it claims that it is protesting the imposition of specific fees on a particular development project, which is governed by the separate protest and refund procedures and remedy and limitations scheme set forth in sections 66020 and 66021.

Section 66020 provides that "Any party may protest the imposition of any *fees*, dedications, reservations, or other exactions *imposed on a development project, as defined in Section 66000*, by a local agency" by paying the fees and serving a written notice of protest. (§ 66020, subd. (a), italics added.) A local agency must provide a development project applicant written notice of the amount of the fees when imposing them and must indicate that the applicant has 90 days to protest the fees. (§ 66020, subd. (d)(1).) "Any party who files a protest pursuant to subdivision (a)

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may file an action to attack, review, set aside, void, or annul the imposition of the fees, dedications, reservations, or other exactions imposed on a development project by a local agency within 180 days after the delivery of the notice."(§ 66020, subd. (d)(2).)

Section 66021 provides that "Any party on whom a *fee,* tax, assessment, dedication, reservation, or other exaction has been imposed, the payment or performance of which is *required to obtain governmental approval of a development, as defined by Section 65927, or development project,* may protest the establishment or imposition of the fee, tax, assessment, dedication, reservation, or other exaction as provided in Section 66020."(§ 66021, subd. (a), italics added.)

Barratt argues that it complied with the statutory procedural requirements of sections 66020 and 66021 by paying the fees and submitting a letter of protest to the City, dated September 21, 2001. The City responds that those sections do not create a refund remedy for "excess" regulatory fees, such as building permit and plan review fees, because they are not fees imposed on a development project within the meaning of sections 66020 and 66021. Thus, those sections do not apply here. We agree that Barratt's refund claim fails because sections 66020 and 66021 do not apply to the building permit fees it paid.

*696 "[F]ees ... imposed on a development project," as used in section 66020, refers to "fees" and a "development project" as defined in section 66000. A "development project" is defined as "any project undertaken for the purpose of development ... includ[ing] a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate."(§ 66000, subd. (a).) A "fee" is defined as "a monetary exaction other than a tax or special assessment ... that is charged by a local agency to the applicant *in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include ... fees for processing applications for governmental regulatory actions**724 or approvals....*" (§ 66000, subd. (b), italics added.) Thus, section 66020, by its own terms, applies only to "development fees" that alleviate the effects of development on the community and does *not* include fees for specific regulations or services.

On the other hand, Government Code section 66016 applies to a long list of local regulatory fees described in Government Code sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, and 66451.2; to building, planning, and zoning fees described in section 66014; to public facility ***155 capacity and connection charges described in section 66013; and to building permit fees described in Health and Safety Code sections 17951, 19132.3, and 19852.[FN2]

FN2. Section 66016, subdivision (d), states that: "This section shall apply only to fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code."

Here, Barratt paid building permit and plan review fees to cover the costs of regulating construction quality and ensuring public safety. (See Health & Saf.Code, §§ 17951, subds. (c) and (e), 19132.3.) Although sections 66014 and 66016 govern these regulatory fees, they do not qualify as "development project" fees under section 66000. In addition, the building permit and plan review fees were not made "in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project ...." (§ 66000, subd. (b).) They were not "fees imposed on development projects in order to finance public improvements or programs that bear a 'reasonable relationship' to the development at issue." (*Utility Cost Management, supra,* 26 Cal.4th at p. 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2.) Instead, the building permit and plan review fees were simply fees to defray the administrative and enforcement costs of a local regulatory program. (See Gov.Code, §§ 66014, subd. (a), 66016, subd. (a); Health & Saf.Code, §§ 17951, subd. (c), 19132.3 [fees may not exceed the reasonable cost of providing the regulatory service for which the fee is charged].)

*697 Although the plain language of the statutes dictates the result here (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal.Rptr. 115, 755 P.2d 299), legislative history provides additional authority. The California Legislative Counsel has simi-

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larly concluded that section 66020 does not include fees associated with plan check or inspection fees. (Ops. Cal. Legis. Counsel, No. 1518 (Jan. 28, 1997) Development Fees, pp. 1, 6.) The Legislative Counsel reasoned that building permit fees are "separately authorized under the Health and Safety Code and do not relate to fees in the nature of monetary exactions imposed for the purpose of defraying all or a portion of the cost of public facilities related to a development project as contemplated in the Mitigation Fee Act."(*Id.* at p. 6.) Legislative Counsel opinions have great persuasive weight, "since they are prepared to assist the Legislature in its consideration of pending legislation." (*Cal. Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17, 270 Cal.Rptr. 796, 793 P.2d 2.) Accordingly, we conclude that the Legislature did not intend section 66020 to authorize a refund action for overcharges of building permit and plan review fees.

Barratt claims that section 66021 expands the scope of section 66020's protest procedures to cover building permit fees. He argues that a fee paid to obtain approval of a building permit for construction of residential housing qualifies as a fee "the payment or performance of which is required to obtain governmental approval of a development, as defined by Section 65927."(§ 66021, subd. (a).) Section 65927 defines "development" broadly to include "the placement or erection of any solid material or structure."

However, section 66021 operates not to extend section 66020's protest procedures to regulatory fees, but to extend them to taxes and assessments. (Compare § 66020, subd. (a) ["Any party may protest ***156 the imposition of any *fees, dedications, reservations, or other exactions....*"] with § 66021, subd. (a) ["Any party on whom a *fee, tax, assessment, **725 dedication, reservation, or other exaction* has been imposed ...."]; see also § 66000, subd. (b) [excluding taxes and assessments from the Act's definition of " fee"].) In addition, section 66021 limits its scope to those fees or taxes that are "required to obtain governmental approval of a development, as defined by Section 65927."(§ 66021, subd. (a).)

As the City notes, many cities require applicants to pay certain mitigation fees as a precondition to the issuance of a building permit. This building permit process might reasonably be characterized as being "required to obtain governmental approval of a development" (§ 66021, subd. (a)). (See, e.g., *Trend Homes, Inc. v. Central Unified Sch. Dist.* (1990) 220 Cal.App.3d 102, 108, 269 Cal.Rptr. 349 [noting that the City of Fresno required certain *698 homebuilders to pay school impact fees before becoming eligible for building permits].) However, Barratt challenges only the City's charges for ministerial, regulatory building plan review and construction inspection activities that implement state and local building safety standards. These fees-for regulatory services the Health and Safety Code requires-do not necessarily relate to a development project (e.g., fees imposed on a homeowner's addition of a laundry room). They fund a program that supervises *how, not whether,* Barratt may build. Thus, the building permit fees in this case were *not*"required to obtain governmental approval of a development."(§ 66021, subd. (a).)

Analogously, it has been held that water and sewer connection fees under section 66013-fees that are also included in section 66016-"are not 'fees ... imposed on a development project' for purposes of Section 66020" and thus, are not subject to review under the payment and protest provisions of section 66020. (*Cal. Psychiatric Transitions, Inc. v. Delhi County Water Dist.* (2003) 111 Cal.App.4th 1156, 1161, 4 Cal.Rptr.3d 503 (*Cal. Psychiatric Transitions*).) The Court of Appeal reasoned: "As the Supreme Court pointed out in *Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2, the mere fact that fees are imposed in a particular instance in connection with development does not make them 'fees imposed on a development project for purposes of section 66020.' The court stated that 'development fees [are] fees imposed on development projects in order to finance public improvements or programs that bear a 'reasonable relationship' to the development at issue.' (*Utility Cost Management*, at p. 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2.) The fees and charges authorized by section 66013 may or may not involve development ... but the fees and charges are always tied directly to a benefit conferred on the property assessed (*id.* at p. 1189, 114 Cal.Rptr.2d 459, 36 P.3d 2). Accordingly, such charges are user fees (in the case of connection fees)....

"By contrast, 'fees ... imposed on a development project,' as used in section 66020, refers to 'fees' as defined in section 66000, subdivision (b). That definition states that a fee is 'a monetary exaction *other*

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than a tax or special assessment... that is charged by a local agency to the applicant ... for the purpose of defraying all or a portion of the cost of public facilities related to the development project ....' (66000, subd. (b), italics added.) Thus, definitionally, a fee subject to the payment/protest procedure of section 66020 [does not] include[ ] ... a connection fee (because it does not pay for public facilities, only for the private party's connection to the system)." ***157(*Cal. Psychiatric Transitions, supra,* 111 Cal.App.4th at p. 1161, 4 Cal.Rptr.3d 503.)

Similarly, in *Capistrano Beach Water Dist. v. Taj Development Corp.* (1999) 72 Cal.App.4th 524, 529-530, 85 Cal.Rptr.2d 382 (*Capistrano Water Dist.*), the Court of Appeal held that sewer connection fees (§ 66013) paid by a developer to connect its hotel to a sanitation district's sewer system were *699 not "fees" for a "development project" under section 66000, subdivisions (a) and (b). Thus, fees imposed under section 66013 could not be refunded. The court noted that: (1) the district did not condition the approval of the hotel project on payment of the fee or impose the fee in connection with issuing or approving a permit for development and (2) sections 66013 and 66016 do not include a **726 refund remedy. (*Capistrano Water Dist., supra,* 72 Cal.App.4th at pp. 528-529, 85 Cal.Rptr.2d 382.)

In short, a fee does not become a "development fee" simply because it is made in connection with a development project. (*Cal. Psychiatric Transitions, supra,* 111 Cal.App.4th at p. 1161, 4 Cal.Rptr.3d 503; see also *Utility Cost Management, supra,* 26 Cal.4th at p. 1191, 114 Cal.Rptr.2d 459, 36 P.3d 2.) Just as fees imposed under section 66013 cannot be refunded (*Capistrano Water Dist., supra,* 72 Cal.App.4th at pp. 527-530, 85 Cal.Rptr.2d 382), fees imposed under sections 66014 and 66016 cannot be refunded under sections 66020 and 66021.

[3] Moreover, we must construe a statute in the context of the entire statutory scheme of which it is a part, in order to achieve harmony among the parts. (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 779, 38 Cal.Rptr.2d 699, 889 P.2d 1019; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1009-1010, 239 Cal.Rptr. 656, 741 P.2d 154.) Section 66016 applies specifically to building permit fees and states the remedy for any facial overcharges: "If however, the fees or service charges create revenues in excess of actual cost, those revenues *shall be used* to reduce the fee or service charge creating the excess."(§ 66016, subd. (a), italics added.) Surplus fees that have been refunded cannot simultaneously be "paid forward" to reduce fees. In other words, permitting both retrospective refund and prospective reduction remedies would allow two different dispersions of the same funds and would create incongruous results. Because section 66016 applies specifically to building permit fees, it prevails over the more general statutes that might otherwise seem to conflict with it. (See *San Francisco Taxpayers Assn. v. Bd. of Supervisors* (1992) 2 Cal.4th 571, 577-578, 7 Cal.Rptr.2d 245, 828 P.2d 147.) When read together, sections 66016, 66020, 66021, and 66022 do not authorize a refund remedy for excessive regulatory fees.

Barratt argues that depriving individual fee payers, such as itself, of a refund remedy is unfair because a prospective fee reduction remedy only benefits future fee payers collectively. By invoking the protest and refund procedure in section 66020, Barratt necessarily claims that such protests are timely up to 90 days after imposition of the fees. (§ 66020, subd. (d)(1).) However, such fee challenges would subject cities to suits for building permit fee refunds at any time well beyond the 120-day limitations period set forth in section 66022. This would undermine the purpose of that shortened limitations period, to give public agencies "certainty with respect to *700 the enforceability of their fee ordinances and resolutions." (*Utility Cost Management, supra,* 26 Cal.4th at p. 1197, 114 Cal.Rptr.2d 459, 36 P.3d 2.) We must apply the statutory scheme as written. Barratt's concerns are more appropriately ***158 brought to the attention of the Legislature.[FN3]

FN3. Barratt argues that the lack of a refund remedy violates constitutional guarantees of due process. Because the Court of Appeal did not address the due process issue in its opinion and Barratt failed to file a petition for rehearing in that court to bring any deficiency to the court's attention, we do not address that claim. (Cal. Rules of Court, rule 28(c)(2).)

2. Penalty or Offset for Unauthorized Special Taxes Under Section 53728 Is an Inapplicable Remedy

[4][5] Barratt sought declaratory relief under section

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53728, asking the trial court to impose a penalty on the City for collecting and retaining "special taxes" without voter approval. Section 53728-a part of Proposition 62 (§§ 53720-53730)-provides that property tax revenues allocated to the local government be reduced by one dollar for each dollar of revenue attributable to an unauthorized "special tax." FN4 "Special taxes"**727 -those imposed for specific purposes (§ 53721)-must be approved by a two-thirds vote of the voters. (§ 53722.) "In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. [Citations.]" (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 874, 64 Cal.Rptr.2d 447, 937 P.2d 1350 (*Sinclair Paint Co.*).)

FN4. Section 53728 states: "If any local government or district imposes any tax without complying with the requirements of this Article, or in excess of its authority as clarified by Section 53727, whether or not any provision of Section 53727 is held not applicable to such jurisdiction, the amount of property tax revenue allocated to the jurisdiction pursuant to Chapter 6 of part 0.5 of Division 1 of the Revenue and Taxation Code (commencing with Section 95) shall be reduced by one dollar ($1.00) for each one dollar ($1.00) of revenue attributable to such tax for each year that the tax is collected. Nothing in this section shall impair the right of any citizen or taxpayer to maintain any action to invalidate any tax imposed in violation of this Article."

Barratt alleges that the surplus building permit and plan review fees are unauthorized "special taxes," which subject the City to a property tax allocation reduction. However, it provides no authority for the claim that excess regulatory fees constitute taxes. Simply because a fee exceeds the reasonable cost of providing the service or regulatory activity for which it is charged does not transform it into a tax. (See *Alamo Rent-A-Car, Inc. v. Board of Supervisors* (1990) 221 Cal.App.3d 198, 205-206, 272 Cal.Rptr. 19 ["reverse logic" does not compel the conclusion that an allegedly excessive fee was a tax].) The specific statute-section 66016-provides the exclusive remedy for overcharges. If actual revenues exceed actual costs, the City must make a prospective fee adjustment by using that surplus, in lieu of *701 a fee revenue, to cover future expenses. (§ 66016, subd. (a).) It cannot refund the excess or transfer it to the City's general fund to replace or augment tax revenue. (See Health & Saf.Code, §§ 17951, subd. (c) [local permit fees "shall not be levied for general revenue purposes"], 19132.3 [same].)

Accordingly, the dollar-for-dollar penalty or offset allowed by section 53728 does not apply to Barratt's claims. (See *Sinclair Paint Co., supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350 ["special taxes" in article XIII A, section 4, of the California Constitution do not include regulatory fees that do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged *and* that are not levied for unrelated revenue purposes].)

***159 *3. Writ of Mandate to Compel an Annual Fee Revision Is Not an Available Remedy Under Article XIII B of the California Constitution.*

[6] Barratt petitioned for a writ of mandate, alleging that the City caused ongoing injury to Barratt, other builders, and consumers by failing to conduct an annual financial audit and adopt a subsequent fee reduction, in violation of article XIII B, section 1.5, of the California Constitution. It states: "The annual calculation of the appropriations limit *under this article* for each entity of local government shall be reviewed as part of an annual financial audit." (Cal. Const., art. XIII B, § 1.5, italics added.) However, article XIII B expressly governs government *spending,* not taxation and revenues. "While article XIII A was aimed at controlling ad valorem property taxes and imposition of new special taxes [citation], article XIII B is directed at controlling government spending." (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 449, 170 Cal.Rptr. 232.)

Nevertheless, Barratt argues that the City must audit the revenues received from building permit and review fees to determine whether it has any surplus fees that would constitute "proceeds of taxes." Article XIII B of the California Constitution imposes total annual "appropriations subject to limitation" (*id.,* § 1), defining that term as "any authorization to expend during a fiscal year the *proceeds of taxes* levied by or for [the local government] entity." (Cal. Const., art. XIII B, § 8, subd. (b), italics added.) " 'Proceeds of taxes' shall include ... all tax revenues

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and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues." (*Id.*, § 8, subd. (c).)

*702 However, as the City correctly notes, an article XIII B annual financial audit must only *identify* "proceeds of taxes," including regulatory fees that "exceed the costs reasonably borne" in providing regulatory services. (Cal. Const., art. XIII B, § 8, subd. (c).) Neither section 1.5 nor section 8 of article XIII B states that those costs must be actual costs, rather than reasonable estimates, or that the fee-cost relationship must be determined over the course of a single year. In short, those sections do not impose **728 a duty on local government to conduct an annual audit of its " proceeds of taxes."

4. Resolution No. 02-023 Is Subject to Challenge Under Section 66022.

Resolution No. 02-023 establishes, as did the prior two resolutions, a "comprehensive fee schedule" for many municipal services. Most of the fees in resolution No. 02-023 remained the same as in resolution No. 00-268, except for the establishment of some new fees that are not at issue here. It is not contested that Barratt failed to meet section 66022's limitations period regarding the 1999 and 2000 ordinances, but complied with that period regarding the 2002 ordinance.

[7] Nevertheless, the City contends that, despite Barratt's timely challenge to the 2002 ordinance, resolution No. 02-023 is not subject to a validation action because it was not an ordinance or resolution "adopting a new fee or service charge, or modifying or amending an existing fee or service charge" within the meaning of section 66022. Section 66022, subdivision (a), authorizes "[a]ny judicial action or proceeding to attack, review, set aside, void, or annul an ordinance, resolution, or motion adopting a new fee or service charge, or modifying or amending an existing fee ***160 or service charge." The City argues that the permit fees have not changed since June 2000 (when Barratt began construction), and that Barratt should have sued within 120 days of the City's initial July 1999 adoption of its permit fee schedule in resolution No. 99-146. Although Barratt sued within 120 days of the adoption of resolution No. 02-023 (in January 2002), that challenge to the validity of the ordinance was too late.

The Court of Appeal agreed with the City. It found that the 2002 ordinance only reenacted and continued the previous fee ordinance, the 50-cent difference was apparently a typographical error, and a reenactment is not a "new fee or service charge, or modif[ication] or amend[ment of] an existing fee or service charge."(§ 66022, subd. (a).)

Barratt does not contest that the 50-cent difference in the 2002 ordinance was merely a typographical error. But it argues that, even though the building permit and plan review fees essentially remained the same, the legislative *703 action extending the allegedly excessive fees is nonetheless subject to attack under section 66022. As explained below, we agree with Barratt.

The 2002 reenactment of the previous building permit and plan review fees constituted a "modif[ication] or amend[ment of] an existing fee or service charge."(§ 66022, subd. (a).) Although the *amount* of the permit and plan review fees remained the same, resolution No. 02-023 changed the *duration* of the fee by extending its applicability, and by implication its validity. This change is significant when considered with a local agency's statutory duties. Local agencies may not impose fees that exceed the *estimated* reasonable costs of providing the services for which the fees are charged. (§§ 66014, subd. (a), 66016, subd. (a).) "If, however, the fees or service charges create revenues *in excess of actual cost*, those revenues *shall be used* to reduce the fee or service charge creating the excess."(§ 66016, subd. (a), italics added; see *Larson v. State Personnel Bd.* (1994) 28 Cal.App.4th 265, 276, 33 Cal.Rptr.2d 412 ["The ordinary meaning of 'shall' or 'must' is of mandatory effect...."].) However, the applicable statutes do *not* specify how often the local agencies must make the required accounting. As Barratt points out, if a fee was not challenged at its initial enactment, then the validity of all subsequent reenactments would be immune to judicial challenge or review. Thus, there would be no effective enforcement mechanism to ensure that local agencies are complying with their duty to reduce the fees if revenues exceed actual costs. Barratt further argues that this immunity from judicial review creates an incentive for local agencies

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to overvalue the estimated costs of services and then continually readopt that fee.

We find Barratt's arguments to be persuasive, especially in light of the facts in this case. In accordance with section 66016, subdivision (a), the City made public the data supporting its fee calculations before its scheduled public hearing. After a public hearing and adoption of resolution No. 02-023, the City published those fees in its "new **729 comprehensive fee schedule," [FN5] stating it "resolve[d] that the following fees are *established*." (italics added.) When the City adopted that resolution, it implicitly represented that the building ***161 permit and plan review fees continued to be valid. This determination would have or should have required some type of accounting of operating expenses and revenues, resulting in either surplus revenues, a deficit, or no required change in the fees.

FN5. Resolution No. 02-023 contained the following description: "A resolution of the City Council of the City of Rancho Cucamonga, California, establishing a new comprehensive fee schedule for permits and services provided by all city departments, the Rancho Cucamonga Fire Protection District and the Rancho Cucamonga Police Department, by modifying certain fees established in Resolution 00-286."

*704 Here, although the building permit fees remained the same, other fees included in the 2002 comprehensive fee resolution had changed. As Barratt argues, the City's reenactment of its building permit fees as part of a revised comprehensive fee resolution is analogous to legislation at the state level that amends a portion of a statute while leaving the unamended portion unchanged. Under the "reenactment rule" of statutory interpretation, the unamended portion of the statute is reenacted with the enactment of the amendment, so that the statute is deemed to have been acted on as a whole.[FN6] (See *Brown v. Superior Court* (1982) 33 Cal.3d 242, 251-252, 188 Cal.Rptr. 425, 655 P.2d 1260; *People v. Scott* (1987) 194 Cal.App.3d 550, 554-556, 239 Cal.Rptr. 588.) Thus, resolution No. 02-023 reflects the City's judgment that the fees charged do not exceed the estimated reasonable cost of providing the services for which the fee is charged, as those costs were estimated and projected into the future from the date of enactment of resolution 02-023.

FN6. Relying on a different rule of statutory interpretation, the City argues that the reenactment continues the effect of the unmodified portion of a statute unabated and without interruption. (*In re Johnny Dapper* (1969) 71 Cal.2d 184, 189, 77 Cal.Rptr. 897, 454 P.2d 905 [where a statute is repealed and at the same time reenacted without substantial change, there is no break in the continuous operation of the old statute, and no abatement of any legal consequences of acts done under the old statute]; *Orange County Water Dist. v. Farnsworth* (1956) 138 Cal.App.2d 518, 524-525, 292 P.2d 927; *Sobey v. Molony* (1940) 40 Cal.App.2d 381, 385, 104 P.2d 868.) Both rules seek to determine and effectuate legislative purpose and intent and can be reconciled as applied to this case. The reenactment continues the effect of the unmodified portion of the ordinance unabated to the extent that any payment obligations under resolution No. 00-268 continue and are not interrupted even though that resolution had been superseded by resolution No. 02-023.

We conclude that, contrary to the Court of Appeal's holding, Barratt could seek to invalidate the building permit and plan review fees in resolution No. 02-023, and that its challenge was timely as to applicable claims arising after January 16, 2002, the effective date of the resolution.

5. Writ of Mandate Is Not an Available Remedy to Enforce a Local Agency's Duty Under Section 66016 in this Case Because Barratt Has or Had an Adequate Legal Remedy.

[8] Barratt alleges that the City has a "continuing pattern" of refusing to perform its statutory duty to review and adjust building permit fees. Accordingly, Barratt sought a writ of mandate to compel the City to conduct a review and apply any surplus building permit and plan review fees to reduce prospective fees, in compliance with section 66016. The Court of Appeal held that a mandamus action under section 66016 was either untimely under section 66022 or inappropriate. The court concluded that the mandamus cause of action was essentially a facial challenge

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to the building permit fees, and that Barratt failed to seek a validation action in a timely manner. It further *705 concluded that courts cannot command any action under sections 66014 and 66016 because the fees are set and revised by the exercise of legislative discretion. We agree with the Court of Appeal that a writ of mandate is not an available remedy in this case, but for a different reason: Barratt has or had an adequate legal remedy.

***162 As discussed above, the reenactment of the building permit and plan review fees in resolution No. 02-023 constituted a modification or amendment of those fees, which were **730 subject to validation under section 66022. The same holds true for resolutions No. 99-146 and No. 00-268, because the City followed the same public hearing procedures and reestablished a comprehensive fee schedule as it did with resolution No. 02-023. In adopting those resolutions, the City implicitly represented it had complied with section 66016. That is, resolutions No. 99-146, No. 00-268, and No. 02-023 represented, as of their effective dates, reasonable estimates of costs and revenues, including proper adjustments for over- or under-recovery under previous fee structures. In other words, the City presumably performed the very same financial analysis under section 66016 that Barratt's mandamus cause of action demanded. Thus, Barratt's allegation in its mandamus action that the City had continually refused to perform its statutory duty to review and adjust building permit fees is inconsistent with its assertion in its validation action that the City conducted a review, but reenacted invalid new and amended permit fees.

[9] The fact that Barratt is time-barred from challenging the facial validity of the fee schedules in resolutions No. 99-146 and No. 00-268 does not change the result. Where the Legislature has provided for a validation action to review government actions, mandamus is unavailable to bypass the statutory remedy after the limitations period has expired. (*Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 789-793, 107 Cal.Rptr.2d 6; *Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 467-468, 164 Cal.Rptr. 420.) As for resolution No. 02-023, because we find that Barratt may facially challenge the permit fees therein, a parallel mandate action would be unnecessary and inappropriate. (See Code Civ. Proc., § 1086 [writ of mandate must be issued where there is *not* a plain, speedy, and adequate remedy in the ordinary course of law.].) In light of this disposition, we need not determine whether the Court of Appeal correctly held that courts cannot enforce a local agency's section 66016 duty to review and adjust building permit fees by way of a writ of mandate.

*706 III. DISPOSITION

We reverse the judgment of the Court of Appeal relating to the dismissal of the resolution No. 02-023 validation action (fifth cause of action) and affirm its judgment in all other respects. The matter is remanded to the Court of Appeal with directions to modify the judgment of the trial court and order reinstatement of the validation action challenging resolution No. 02-023, and to affirm the judgment as amended.

WE CONCUR: GEORGE, C.J., KENNARD, BAXTER, WERDEGAR, MORENO and COFFEE, JJ.[FN*]

FN* Associate Justice of the Court of Appeal, Second Appellate District, Division Six, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Cal.,2005.
Barratt American Inc. v. City of Rancho Cucamonga
37 Cal.4th 685, 124 P.3d 719, 37 Cal.Rptr.3d 149, 2005 Daily Journal D.A.R. 14,715

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H KERN COUNTY FARM BUREAU et al., Plaintiffs and Respondents,
v.
COUNTY OF KERN, Defendant and Appellant.
No. F017067.

Court of Appeal, Fifth District, California.
Oct 29, 1993.

SUMMARY

In an action by agricultural landowners challenging a county landfill assessment ordinance as imposing a special tax in violation of Cal. Const., art. XIII A, § 4 (special tax must be approved by two-thirds of voters), the trial court declared the ordinance invalid. The county had followed the procedures of Health & Saf. Code, § 5470 et seq. (fees for water, sanitation, or sewerage services), in enacting the ordinance. (Superior Court of Kern County, No. 212605, Roger D. Randall, Judge.)

The Court of Appeal reversed, holding that a two-thirds approval by the voters was not required since the charges constituted a service or user fee and served the regulatory or police power function of encouraging proper waste disposal and reducing illegal dumping. The court also held that the charges were exempt from the Cal. Const., art. XIII A, § 4, requirements because they constituted a benefit assessment, which is a valid device to fund improvements pursuant to Health & Saf. Code, § 5471. The court further held that since the charge was not a tax, it could not violate Cal. Const., art. XIII, § 1, prohibiting double taxation. (Opinion by Vartabedian, J., with Stone (W. A.), Acting P. J., and Ardaiz, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes:Words, Phrases, and Maxims--Special Tax.
Although Cal. Const., art. XIII A, § 4 (cities and counties may impose special taxes by two-thirds vote), uses permissive language, the supermajority voter approval requirement was intended to restrict the taxing power of local government. A special tax, for purposes of that provision, is a tax levied to fund a specific governmental project or program. As with any tax, a special tax may be imposed on individuals who will enjoy no peculiar benefit from its expenditure and who are not responsible for the condition to be corrected. Special taxes must be distinguished from regulatory fees imposed under the police power, which are not subject to the constitutional provision since they are not taxes at all. Special taxes do not encompass fees charged to particular individuals in connection with regulatory activities or services when those fees do not exceed the reasonable cost of providing the service or activity for which the fee is charged, and are not levied for unrelated revenue pruposes.

(2) Property Taxes § 3--Definitions and Distinctions--Special Assessments:Words, Phrases, and Maxims--Special Assessment.
The tax limitations of Cal. Const., art. XIII A, § 4 (city and county special taxes require two-thirds voter approval), are not violated by legitimate special assessments. A special assessment is a compulsory charge placed on real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein. It is levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.

(3) Property Taxes § 4--Power to Tax--Classification of Revenue-producing Device.
Although the classification of a revenue-producing device can be determinative of the lawfulness of the device, courts look to the actual attributes of the device as enacted in order to arrive at the proper classification; the label attached to the device by the local government is not determinative. Any particular revenue measure may have attributes of more than one of the traditional revenue devices, and may be valid despite the measure's "hybrid" nature. Thus, a particular exaction need not be only a fee or only a benefit assessment. Case law clearly permits a local government to seek to justify a revenue device under

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alternative classifications.

(4a, 4b) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes--Landfill Assessment Ordinance.
In an action challenging a county landfill assessment ordinance as imposing a special tax violating Cal. Const., art. XIII A, § 4 (two-thirds voter approval required for special tax), the trial court erred in declaring the ordinance invalid, since two-thirds voter approval was not required. The county followed the procedures of Health & Saf. Code, § 5471 (two-thirds approval by legislative body required for water, sanitation, or sewerage charges), in enacting the ordinance. This was a service or user fee, serving a regulatory or police power function to encourage proper waste disposal. The evidence indicated that the fee was rationally related to agricultural use of the county's landfills, and the fee was not arbitrary or discriminatory. Also, it was not a tax, double or otherwise, for purposes of Cal. Const., art. XIII, § 1, prohibiting double taxation. Although there is no requirement that a property owner be able to avoid a fee in order for the fee to be valid, plaintiffs could have avoided it by refraining from engaging in agriculture.
[See 9 **Witkin,** Summary of Cal. Law (9th ed. 1989) Taxation, § 109.]
(5) Property Taxes § 7.8--Real Property Tax Limitation--Exemptions and Special Taxes--Landfill Assessment Ordinance--Benefit Assessment.
In an action challenging a county landfill assessment as imposing a special tax in violation of Cal. Const., art. XIII A, § 4 (two-thirds voter approval required for special tax), the trial court erred in declaring the ordinance invalid, since the charges constituted a benefit assessment, exempt from the two-thirds voter requirement. The county had followed the procedures of Health & Saf. Code, § 5471 (two-thirds approval by legislative body required for water, sanitation, or sewerage charges), in enacting its ordinance. This was a valid special assessment; such benefit assessments are valid devices to fund improvements pursuant to Health & Saf. Code, § 5471, which permits special assessments to fund landfill improvements. The landfill assessment represented a clear environmental improvement; the uncontradicted evidence indicated that the disposal of pesticide containers in county landfills, as well as reduction in illegal dumping as a result of the assessment system, would produce a particular benefit to agricultural land.

COUNSEL

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Stradling, Yocca, Carlson & Rauth, Robert J. Whalen and David H. Mann as Amici Curiae on behalf of Defendant and Appellant.

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***1419**

VARTABEDIAN, J.

Kern County (the county) appeals from a judgment declaring its landfill assessment ordinance a "special tax" invalidly adopted in violation of article XIII A, section 4 of the California Constitution (section 4). [FN1] We find the landfill assessment is not a "special tax" and is valid, whether characterized as a regulatory/service fee or as a benefit assessment. Accordingly, we reverse the judgment.

FN1 Section 4 provides: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district."

Factual and Procedural Background

Between 1986 and 1990, the annual cost of operating the county's landfills rose from $2.98 million to $17.6 million. This increase resulted largely from state legislation requiring various measures to reduce the environmental impact of landfills. [FN2]

FN2 The county summarizes these requirements in its opening brief: "In the last decade, the Legislature has passed numerous

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laws which mandate new programs and requirements for County landfills. In 1984, the Legislature enacted AB 3525 (Stats. 1984, ch. 1532), which requires solid waste disposal sites to perform detailed 'solid waste water quality assessment tests' to determine whether hazardous wastes are leaking and/or affecting the water supply. *Id.* § [*sic*] 6 (adding Water Code § 13273 (1984)). In 1987, the Legislature enacted AB 2448 (Stats. 1987, ch. 1319, which requires landfill operators to submit closure and post-closure maintenance plans and to set aside sufficient funds to implement the plans. Stats. 1987, ch. 1319, § 2 (adding Gov't Code § 66796.22 (1987) (repealed in 1989; *see now*Pub. Res. Code §§ 43600-06)). And in 1989, the Legislature passed AB 939 (Stats. 1989, ch. 1095), which requires counties to adopt 'integrated waste management plans,' describing how 25% of the solid waste stream will be recycled, reduced, or composted by 1995 and 50% by 2000. Stats. 1989, ch. 1095, § 22 (adding new Pub. Res. Code § 41780); *see Review of Selected 1989 Legislation*, 21 Pacific L.J. 331, 503 (1990)."

The county decided it could no longer fund its landfills from general revenues. It sought a method to obtain additional funding from fees. After an advisory election in 1988, the county resolved to impose fees based upon generation of landfill refuse, instead of requiring a gate fee on the actual deposit of such refuse. The county ascertained that gate fees would likely create a serious problem with illegal dumping of waste at locations other than the landfills, and that the costs of collecting gate fees would significantly increase the overall level of funding necessary to operate the landfills.

The county determined that different types of land use produced different types and amounts of refuse. Consequently, the initial ordinance directing establishment of landfill charges required the charges be based on "the ***1420** amount of solid waste occurring from the various land uses." Agricultural land was originally assessed at 27 cents per acre, with a $27.50 maximum per parcel.

After the first two years of collecting the landfill charges, the county ascertained that agricultural land assessments were contributing 2.4 percent of landfill revenue. The Kern County Public Works Department determined that 5 to 8 percent of landfill waste was from agricultural land. This translated into approximately 49,500 tons of waste per year.

The county convened a committee to further study the allocation of agricultural waste. The committee included farmers, ranchers and a representative of respondent Kern County Farm Bureau. As a result of further study and consultation with the committee, the agricultural land-use fee was raised to 87 cents per acre, with no maximum. The Kern County Board of Supervisors adopted the new fee structure as ordinance No. G-5316. [FN3]

FN3 As noted in the county's brief: "The County's 1990 increase in the parcel charge for agricultural property was not an isolated event. At the same time that the County raised the parcel charge for agricultural property, it also more than doubled the charge for single family dwellings (from $27.50 to $57.00), small stores or shops (from $55.00 to $114.00), and light manufacturing (from $82.50 to $171.00). Nor was agricultural property the only category of use where the County eliminated a maximum charge. In [Fiscal Year] 1989/90, for example, food and beverage establishments (restaurants, cafes, coffee shops, bars, etc.) were assessed a flat fee of $110.00; in FY 1990/91, the charge was levied on a square foot basis, with the applicable rates ranging from $.19/sq. ft. to $.77/sq. ft."

As a result of the increased landfill fees, respondent Ronald Lehr's assessment for his 255 acres of agricultural land went from $27.50 to $221.85. The fee for respondent Vido Fabbri went from $27.50 to $2,505.60 for his 2,880 acres. Members of the two respondent organizations were also assessed the landfill fee.

Respondents filed suit, seeking a declaratory judgment that ordinance No. G-5316 imposed a special tax in violation of section 4 and that the ordinance constituted an unlawful double tax in violation of article XIII, section 1 of the California Constitution. The county answered, denying the landfill fees vio-

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lated the Constitution.

Not long after the answer was filed, respondents moved for summary judgment. The superior court eventually granted the motion for summary judgment, filing a statement of decision.

The court determined the fee was not a service fee because it was calculated on the basis of potential or permissible use, not upon actual use of ***1421** the landfills. The court concluded the fee was not a benefit assessment because the county had not shown a special benefit to the properties subjected to the fee, and the county had not established that it had statutory authority to make a benefit assessment for landfill purposes. The court's judgment declared, in part, "[T]he Kern County Landfill Service Charge as applied to agricultural land in fiscal year 1990-1991 under Kern County Ordinance G-5316 is invalid as a special tax imposed in violation of California Constitution Article XIIIA, Section 4."

Discussion

I. *Overview*

(1) "Article XIII A, section 4 of the California Constitution, enacted in June 1978 as part of Proposition 13, provides in relevant part that cities and counties may impose 'special taxes by a two-thirds vote of their qualified electors.' Although the section uses permissive language, the supermajority voter approval requirement was intended to restrict the taxing power of local government. [Citation.] A special tax, for purposes of that provision, is a tax levied to fund a specific governmental project or program. [Citation.] As with any tax, a special tax may be imposed upon individuals who will enjoy no peculiar benefit from its expenditure and who are not responsible for the condition to be corrected. [Citation.]

"Special taxes must be distinguished from regulatory fees imposed under the police power, which are not subject to the constitutional provision [since they are not taxes at all]. [Citation.] Special taxes do not encompass fees charged to particular individuals in connection with regulatory activities or services when those fees do not exceed the reasonable cost of providing the service or activity for which the fee is charged, and are not levied for unrelated revenue purposes." (*City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280-281 [17 Cal.Rptr.2d 845].)

(2) Similarly, section 4's "tax limitations are not violated by legitimate special assessments." (*Knox v. City of Orland* (1992) 4 Cal.4th 132, 141 [14 Cal.Rptr.2d 159, 841 P.2d 144].)

"A special assessment is a ' " 'compulsory charge placed by the state upon real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein ....' " [Citation.]' [Citation.] In this regard, a special assessment is 'levied against real property particularly and directly benefited by a local improvement in order to pay the cost of that improvement.' [Citation.]" (4 Cal.4th at pp. 141-142.) ***1422**

(3) Although the classification of a revenue-producing device can be determinative of the lawfulness of the device, courts look to the actual attributes of the device as enacted in order to arrive at the proper classification; the label attached to the device by the local government is not determinative. (*Rider v. County of San Diego* (1991) 1 Cal.4th 1, 14-15 [2 Cal.Rptr.2d 490, 820 P.2d 1000].)

Any particular revenue measure may have attributes of more than one of the traditional revenue devices, and may be valid despite the measure's "hybrid" nature. (See, e.g., *San Marcos Water Dist. v. San Marcos Unified School Dist. (1986) 42 Cal.3d 154, 162-163 [228 Cal.Rptr. 47, 720 P.2d 9355] [service fee v. special assessment]; City of Glendale v. Trondsen (1957) 48 Cal.2d 93 [308 P.2d 1] [service fee v. excise tax].) Thus, we reject respondents' threshold contention that "One need read no further to realize that this exaction may be alleged to be a fee or a benefit assessment, but it cannot be both at the* same time." Case law clearly permits a local government to seek to justify a revenue device under alternative classifications, and the county's effort to do so in this case does not undermine the force of its arguments.

II. *Service Fees Measured by Broad Classification*

We first consider whether the landfill charges in this case are valid service/regulatory fees. Respondents concede that "If the county is willing to settle on the exaction being an alleged 'fee' or 'charge,' as opposed

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to an alleged 'benefit assessment,' [respondents] are willing to look at Health and Safety Code § 5471 as providing statuary [*sic*] authority for a properly calculated fee or service charge." [FN4]Further, respondents "do not dispute that the county followed the procedures of Health and Safety Code § 5470, *et *1423 seq.*" in enacting the landfill assessment ordinance. Therefore, the remaining question is: May the county assess the fees based on broad classifications such as "agricultural" or "residential" use, even though the actual production of waste differs among individuals or subclasses within each category?

> FN4 Health and Safety Code section 5471 provides: "In addition to the powers granted in the principal act, any entity shall have power, by an ordinance approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges, including water, sewer standby or immediate availability charges, for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system. However, the entity may provide that the charge for the service shall be collected with the rates, tolls, and charges for any other utility, and that any or all of these charges may be billed upon the same bill. Where the charge is to be collected with the charges for any other utility service furnished by a department or agency of the entity and over which its legislative body does not exercise control, the consent of the department or agency shall be obtained prior to collecting water, sanitation, storm drainage, or sewerage charges with the charges for any other utility. Revenues derived under the provisions in this section, shall be used only for the acquisition, construction, reconstruction, maintenance, and operation of water systems and sanitation, storm drainage, or sewerage facilities, to repay principal and interest on bonds issued for the construction or reconstruction of these water systems and sanitary, storm drainage, or sewerage facilities and to repay federal or state loans or advances made to the entity for the construction or reconstruction of water systems and sanitary, storm drainage, or sewerage facilities. However, the revenue shall not be used for the acquisition or construction of new local street sewers or laterals as distinguished from main trunk, interceptor and outfall sewers."

Respondents state several bases for their argument that the broad classifications used in the ordinance render the assessment a special tax. None of the bases supports the argument.

First, respondents argue that a necessary attribute of a service or regulatory fee is that anyone has "the ability to avoid paying the fee by not using the service." Respondents cite *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496 [246 Cal.Rptr. 21] in support of this contention.

Russ involved a city ordinance imposing a "transit fee" of up to $5 per square foot for new buildings, due as a condition of issuance of the certificate of occupancy for the building. (199 Cal.App.3d at p. 1503.) After noting that the transit fee was "limited to the estimated costs involved to serve the increased ridership" that could be expected as a result of the new office space, the court further distinguished the fee from a special tax: "Further, unlike most taxes, the fees imposed by this Ordinance are not compulsory but are exacted only if the developer voluntarily chooses to create new office space." (*Id.* at p. 1505.)

Thus in *Russ* the property owner had a choice to undertake new development or not; he did not have the choice to use the bus or not. Even if the employees in and visitors to the new office space uniformly arrived by private transportation, nonuse of the *funded service* had nothing to do with exemption from assessment of the fee. Only by refraining from the underlying activity that had the *potential* for generating a demand on public transportation (i.e., development of office space) could the owner avoid the fee.

(4a) In the present case, respondents contend even if they decline to put any waste whatsoever in the landfill, they still are assessed landfill charges. The point made by *Russ*, however, is that by refraining from using their property for agricultural purposes-and thereby avoiding the potential for generating landfill waste-the owner may be exempt from the fee. Indeed, the ordinance provides for an administrative hearing for property owners who contend property classified

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as agricultural is not actually being used in ***1424** that manner. Further, in the present scheme, "unused" land is not assessed any fee at all.

More fundamentally, however, there is no requirement that a property owner be able to avoid the fee in order for the fee to be valid. Thus in *City of Glendale v. Trondsen, supra*, 48 Cal.2d at pages 101-103, a mandatory fee for rubbish collection was upheld despite the property owner's claim that he did not use the service. Similarly, in *Pennell v. City of San Jose* (1986) 42 Cal.3d 365 [228 Cal.Rptr. 726, 721 P.2d 1111] the city adopted a per-rental-unit annual assessment to help defray the costs of a rent control mediation process. The court rejected the landlords' claim that the fee charged them for a service they did not want: "Contrary to plaintiffs' view, the fact that landlords may not believe they 'benefit' from the rental unit fee does not transform a regulatory fee into a 'special tax.' " (*Id.* at p. 375, fn. 11.)

We further note that even though the charges at issue here are based on affirmative use of the landfills, and as such properly are viewed as constituting a service or user fee, the charges additionally serve a regulatory or police power function. As part of its policy to control and deter illegal dumping of refuse, the county has rationally determined that operation of landfills without a gate fee will encourage proper disposal of waste. Not only is the control of illegal dumping clearly within the police power, but common experience tells us that much of the illegal waste is dumped onto rural and agricultural lands. The indirect benefit of reducing such dumping through a landfill assessment system is inestimable, but is nonetheless real. (Cf. *Knox v. City of Orland, supra*, 4 Cal.4th at p. 149.)

Respondents also assert the fee charged is not rationally related to agricultural use of the county's landfills. To the contrary, ample evidence supports the assessment against agricultural land.

Given the county's rational rejection of gate fees (as causing illegal dumping), we understand that landfill usage "is not susceptible of mathematical calculation." (*Boynton v. City of Lakeport Mun. Sewer Dist.* (1972) 28 Cal.App.3d 91, 96 [104 Cal.Rptr. 409, 61 A.L.R.3d 1228].) The county evaluated various landfill sites to determine the gross percentage of agricultural waste produced. [FN5] The county collected data from neighboring counties ***1425** and from the state. [FN6] The county modified its initial presumptions concerning agricultural waste in light of its continuing review of landfill use. Recognizing this reasonably complete empirical basis for the county's landfill fees for agricultural land, we conclude the agricultural land fees are neither arbitrary nor do they discriminate against agricultural land. (See *id.* at p. 94; see also *Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 331-332 [4 Cal.Rptr.2d 897].) The fees established by ordinance No. G-5316 are valid as service and regulatory fees; as such, two-thirds voter approval of the fees pursuant to section 4 was not required.

FN5 Where unknown or unpredictable factors were identified, the county consistently employed assumptions that produced a low agricultural usage fee. Thus, in the case of ranch headquarters buildings located on agricultural land, which are offices producing waste just like any other commercial office, the county elected not to surcharge the agricultural land for the nonagricultural waste the headquarters would produce. Similarly, the volume of agricultural waste itself varied by season and weather conditions. When cold weather destroyed a fruit crop, for example, a massive amount of damaged fruit was deposited at the landfills. Nevertheless, the county adopted a "normal year" impact on the landfills as the basis for the fee, thereby understating the actual impact. Finally, even though some agricultural waste must be specially treated before it can be accepted at a landfill, the county elected not to impose a higher fee to cover the relevant costs.

FN6 We note this study states only gross waste per acre for various crops. The county estimates that only 1 percent of agricultural waste is landfilled, with the remainder recycled in various ways. Nothing in the record gives any reason to believe that the 1 percent of total waste is produced uniformly as a portion of gross waste per crop-type.

III. *The Landfill Charges as Special Assessments*

(5) Independent of our analysis of the landfill charges

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as service or regulatory fees, we conclude that the charges constitute a valid special assessment. The county asserts that special assessments are authorized "other charges" pursuant to Health and Safety Code section 5471. The county argues that the charges meet the legal requirements for special assessments, namely that they particularly benefit the assessed property, and that the charges are in proportion to the benefit received.

Respondents initially argued that special assessments were not authorized under Health and Safety Code section 5471, that landfills were not an "improvement" that "benefited" the property, and that any imagined benefit was not proportional to the assessment. In arguing that *Knox v. City of Orland, supra,* 4 Cal.4th 132, should not apply to the present case, respondents assert that there is no express legislative authorization of the benefit assessment claimed here. FN7

FN7 The parties submitted supplemental briefing after *Knox* was filed. Respondents' only argument presented was the statutory-authorization argument.

Benefit assessments are a valid device for funding improvements under Health and Safety Code section 5471. In *San Marcos Water Dist. v. San Marcos Unified School Dist., supra,* 42 Cal.3d 154 the district assessed a sewer capacity fee against sewer system users to fund capital improvements for the system. The Court of Appeal held that benefit assessments were not authorized by Health and Safety Code section 5471 because (as respondents ***1426** argue in the present case) "assessment" is not one of the listed "charges" authorized by that section. On review, the Supreme Court rejected the appeal court's conclusion and found that the charge was an authorized benefit assessment: "We do not find the absence of the word 'assessments' to be convincing evidence that the Legislature would not consider the fees for capital improvements to be special assessments." (42 Cal.3d at pp. 162-163.) Accordingly, we conclude Health and Safety Code section 5471 permits special assessments for the funding of improvements to landfills.

Knox v. City of Orland, supra, 4 Cal.4th 132 rejects respondents' remaining contentions. Contrary to respondents' claim that maintaining an existing level of service is not an "improvement" susceptible to benefit assessments, *Knox* held that mere maintenance of existing public facilities is a valid basis for special assessments. (*Id.* at p. 145.)Moreover, the landfill changes represent a clear environmental "improvement."

Respondents also argued that an assessment "exacted from every person or parcel within the county service area regardless of the use of the service and irrespective of the benefit to the land" would constitute a tax, not a benefit assessment. The Supreme Court expressly rejected this argument in *Knox.* (See 4 Cal.4th at pp. 148-149.)

Finally, respondents argue that the use of the county tax assessor's codes to classify the property as "agricultural" is impermissible even if it is conceded that "agricultural land" benefits from operation of the landfills. "The use codes were not created to determine the benefit to land (as measured by its increased value) by continued operation and maintenance of county landfills."

As noted above, the ordinance contains a reclassification mechanism for owners whose property is not in fact in agricultural production. As to the parcels that are in agricultural production, the record contains uncontradicted evidence that disposal of pesticide containers in county landfills, as well as the reduction in illegal dumping as a result of the assessment system, produces a particular benefit to agricultural land. (Cf. *Knox, supra,* 4 Cal.4th at pp. 148-149.) Thus, the county's landfill charges are exempt from California Constitution article XIII A as a benefit assessment. (4 Cal.4th at pp. 142-143.) FN8***1427**

FN8 We note from the record that public entities have received charges pursuant to ordinance No. G-5316. We express no opinion whether the charges are service/regulatory fees or are benefit assessments as that dichotomy is discussed in *San Marcos Water Dist. v. San Marcos Unified School Dist., supra,* 42 Cal.3d 154 (public entities exempt from benefit assessments but must pay service/regulatory fees). (See also *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 905-906 [223 Cal.Rptr. 379].)

IV. *Not Double Taxation*

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(4b) Respondents' remaining argument is that if the landfill charges constitute a tax, then that tax violates the prohibition on double taxation embodied in California Constitution article XIII, section 1. (See *Flynn v. San Francisco* (1941) 18 Cal.2d 210, 215 [115 P.2d 3].) However, based on the above discussion, the charge is not a tax, double or otherwise. Accordingly, assessment of the charges cannot constitute double taxation. (See *Associated Home Builders, Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 642 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847] ["Double taxation occurs only when 'two taxes of the same character are imposed ....' " (Italics added.)].)

Disposition

The judgment is reversed. The county is awarded costs.

Stone (W. A.), Acting P. J., and Ardaiz, J., concurred.

Respondents' petition for review by the Supreme Court was denied January 27, 1994. Kennard, J., and Baxter, J., were of the opinion that the petition should be granted. ***1428**

Cal.App.5.Dist.
Kern County Farm Bureau v. County of Kern
19 Cal.App.4th 1416, 23 Cal.Rptr.2d 910

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CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS et al., Plaintiffs and Respondents,
v.
DEPARTMENT OF FISH AND GAME et al., Defendants and Respondents; ALBERT W. MILLS et al., Interveners and Appellants.
ALBERT W. MILLS, Plaintiff and Appellant,
v.
DEPARTMENT OF FISH AND GAME et al., Defendants and Appellants.
No. C023075., No. C023184.

Court of Appeal, Third District, California.
Apr. 10, 2000.

[Opinion certified for partial publication. FN*]

FN* Pursuant to California Rules of Court, rule 976.1, this opinion is certified for publication with the exception of part I.

SUMMARY

An individual filed a declaratory relief action challenging the constitutionality of a flat fee imposed by the Legislature pursuant to Fish & G. Code, § 711.4, on those submitting project proposals to the Department of Fish and Game for environmental review. Plaintiff alleged the fee constituted a tax that was not passed by a two-thirds majority as required under Cal. Const., art. XIII A (Prop. 13). The trial court found that although the statute was not unconstitutional on its face, it was unconstitutional as applied to plaintiff. Before entry of judgment, however, the parties settled the matter, with the department agreeing to refund plaintiff's fees and to stop collecting the fees statewide. Employees of the department then filed a petition for a writ of mandate to compel the department to resume collection of the fees and to pursue retroactive collection. The writ proceeding and the declaratory relief action were consolidated. The trial court again ruled that the statute was unconstitutional as applied, but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to the individual plaintiff. The trial court ordered the department to reinstate enforcement and to retroactively collect the fees, and the settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. (Superior Court of Sacramento County, Nos. 95CS02523 and CV529928, Jeffrey L. Gunther, Judge.)

The Court of Appeal affirmed in part and reversed in part the judgment entered in the declaratory relief action, and, since the court concluded that the statute was a valid regulatory fee, and was therefore constitutionally enacted, plaintiff's appeal from the judgment entered in the writ proceedings was dismissed as moot. The court held that the Legislature did not violate the supermajority requirement of Cal. Const., art. XIII A, by imposing the flat fee pursuant to Fish & G. Code, § 711.4, with less than a two-thirds vote, since the exaction was a regulatory fee rather than a tax. The department met its burden of showing that the amount of fees generated by Fish & G. Code, § 711.4, was far less than the cost of the environmental reviews provided. Thus, the fees were not revenue raising. Although a flat fee will seldom represent the exact cost of providing a service, the evidence was sufficient to sustain the legislative determination that a flat fee system was a reasonable means to allocate the costs of environmental review. It was reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eased the administrative burden of collection and provided certainty to those submitting project proposals. The court further held that there was sufficient evidence to show that there was a reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report. (Opinion by Raye, J., with Sims, Acting P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Property Taxes § 7.6--Constitutional Provisions-- Proposition 13--Assessments as Fees or Taxes--Flat Fee for Environmental Review by Department of Fish and Game:Taxation § 3--

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Construction of Legislation.
The Legislature did not violate the super-majority requirement of Cal. Const., art. XIII A (Prop. 13) by imposing a flat fee pursuant to Fish & G. Code, § 711.4, with less than a two-thirds vote, on those who submit project proposals to the Department of Fish and Game for the environmental review necessary to protect fish and wildlife, since the exaction was a regulatory fee rather than a tax. The department met its burden of showing that the amount of fees generated by Fish & G. Code, § 711.4, was far less than the cost of the environmental reviews provided. Thus, the fees were not revenue raising. Although a flat fee will seldom represent the exact cost of providing a service, the evidence was sufficient to sustain the legislative determination that a flat fee system was a reasonable means to allocate the costs of environmental review. It was reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eased the administrative burden of collection and provided certainty to those submitting project proposals.
[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 107 et seq.]
(2) Property Taxes § 7.6--Constitutional Provisions--Proposition 13-- Assessments as Fees or Taxes:Taxation § 3--Construction of Legislation.
The determination under Prop. 13 (Cal. Const., art. XIII A, §§ 3, 4) whether impositions are taxes or fees is a question of law for the appellate courts to decide on independent review of the facts. Ordinarily, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted, and most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges.

(3a, 3b) Property Taxes § 7.8--Constitutional Provisions--Proposition 13--Regulatory Fees--Special Taxes.
Fees charged for the costs of regulatory activities are not special taxes under a Cal. Const., art. XIII A, § 4 (Prop. 13) analysis if the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and they are not levied for unrelated revenue purposes. A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. The regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. Legislators need only apply sound judgment and consider probabilities according to the best honest viewpoint of informed officials in determining the amount of the fee. The government bears the burden of proof. It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. The record need only demonstrate a reasonable relationship between the fees to be charged and the estimated cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs.

(4) Fish and Game § 3--Regulation--Fee for Environmental Review with Department of Fish and Game--Validity of Higher Fee for Review of Negative Declaration.
In proceedings to challenge the validity of a flat fee (Fish & G. Code, § 711.4) on those submitting project proposals to the Department of Fish and Game for environmental review, there was sufficient evidence to show that there was a reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report. A senior environmental specialist supervisor for the department testified at trial that the standard for a negative declaration is that a project must have no adverse impact on the environment. Thus, the department must ensure that the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and the department staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spent more time on the review of a negative declaration than the review of an equivalent size project with environmental impact report documentation. Hence, due to project information collection costs and the time spent negotiating mitigation measures, the department's costs were generally higher for negative declarations.

COUNSEL

McNeill & Belton and Walter P. O'Neill for Plaintiff

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and Appellant and for Interveners and Appellants.

Robin L. Rivett, Sharon L. Browne and Anne M. Hawkins for Pacific Legal Foundation as Amicus Curiae on behalf of Plaintiff and Appellant.

Daniel E. Lungren and Bill Lockyer, Attorneys General, Roderick E. Walston, Chief Assistant Attorney General, Charles W. Getz IV and Marian E. Moe, Deputy Attorneys General, for Defendants and Appellants and for Defendants and Respondents.

Dennis F. Moss for Plaintiffs and Respondents.

RAYE, J.

In this appeal we consider whether the Legislature ran afoul of the supermajority requirement of article XIII A of the California Constitution when it imposed a flat fee per environmental review by the Department ***939** of Fish and Game (Fish and Game). More precisely, we must determine whether the exactions imposed by section 711.4 of the Fish and Game Code [FN1] constitute a regulatory fee or a tax.

FN1 Further statutory references to sections of an undesignated code are to this code.

Determining whether an exaction is a fee or a tax has been a recurring chore since 1978 when the voters in California enacted comprehensive and constitutional tax reform. (Cal. Const., art. XIII A (the Jarvis-Gann Property Tax Initiative or Proposition 13).) An act to increase state taxes must be passed by two-thirds of the members of the Legislature and an increase in local taxes must be passed by a two-thirds vote of the qualified electors. (Cal. Const., art. XIII A, §§ 3 & 4.) Fees, by contrast, are not subject to the supermajority limitation of article XIII A. Albert Mills, an appellant in both cases, insists the environmental review fees charged by Fish and Game pursuant to section 711.4 constitute a tax and, therefore, are unconstitutional because the statute was passed by slightly less than a two-thirds majority.

It is well established that the amount of fees collected must not surpass the cost of the regulatory services or programs they are designed to support. We must decide whether there must be a direct correlation between the amount of a fee imposed on a specific payor and the benefits received or burdens imposed by the payor's activity. More to the point, is a flat regulatory fee in legal effect a tax subject to the supermajority requirement of California Constitution, article XIII A?

We conclude that as long as the cumulative amount of the fees does not surpass the cost of the regulatory program or service and the record discloses a reasonable basis to justify distributing the cost among payors, a fee does not become a tax simply because each payor is required to pay a predetermined fixed amount. Flat fees are not in legal effect taxes. Based on the evidentiary record before us, we find that the Legislature did not violate California Constitution, article XIII A by imposing a flat regulatory fee on those who submit project proposals to Fish and Game for the environmental review necessary to protect fish and wildlife. The consequences of our ruling to the multiple parties in these consolidated cases are explained below.

Procedural Background

Section 711.4, enacted by the Legislature in 1990, set a fee schedule to defray a portion of the costs incurred by Fish and Game in meeting its environmental review obligations under the California Environmental Quality Act and the Z'Berg-Nejedly Forest Practice Act of 1973. (§ 711.4, ***940** subds. (a), (b), (c) & (d); Pub. Resources Code, §§ 4511, 21000 et seq.) Section 711.4 states in relevant part: "(a) The department shall impose and collect a filing fee in the amount prescribed in subdivision (d) to defray the costs of managing and protecting fish and wildlife trust resources, including, but not limited to, consulting with other public agencies, reviewing environmental documents, recommending mitigation measures, developing monitoring requirements for purposes of the California Environmental Quality Act ..., consulting pursuant to Section 21104.2 of the Public Resources Code, and other activities protecting those trust resources identified in the review pursuant to the California Environmental Quality Act. [ ] (b) The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified." For projects for which a negative declaration has been prepared, the filing fee set by the Legislature is $1,250 and for projects for

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which an environmental impact report has been prepared, the filing fee is $850. (§ 711.4, subd. (d)(3) & (4).) "The county clerk may charge a documentary handling fee of twenty-five dollars ($25) per filing in addition to the filing fee specified in subdivision (d)." (§ 711.4, subd. (e).)

Albert W. Mills challenged the constitutionality of section 711.4 in a declaratory relief action he filed in July 1991. He sought declaratory and injunctive relief in a first cause of action and a refund of his fees in a second cause of action. A demurrer was sustained without leave to amend to the second cause of action. Fish and Game sought a writ of mandate to compel the trial court to dismiss the entire complaint because Mills had not filed a claim for a tax refund. We summarily denied the petition for the writ. The trial court denied a subsequent motion for judgment on the pleadings on the same ground asserted in the writ petition.

In 1992 the Legislature amended the statute to expand the exemptions for projects for which no fees were required. The amendment passed by a two-thirds majority vote.

The case was tried in the summer of 1994 and the following spring the trial court issued a statement of decision. The court found that although the statute was not unconstitutional on its face, on the evidence received by the court, it was unconstitutionally applied. Before the statement of decision was filed and a judgment was entered, the parties settled the lawsuit. Fish and Game agreed to refund Mills's fees, to pay his attorney fees, and to cease collection of the fees statewide.

Employees of Fish and Game, however, filed a petition for a writ of mandate to compel Fish and Game to resume collection of the fees and to ***941** pursue retroactive collection. Mills intervened in the writ proceedings, which were then consolidated with the declaratory relief action.

The trial court again ruled that section 711.4 was unconstitutional as applied but that, in the absence of an appellate finding that the statute was unconstitutional, the ruling could only be applied to Mills. (Cal. Const., art. III, § 3.5.)The court ordered Fish and Game to reinstate enforcement and to retroactively collect the fees. The settlement order in the declaratory relief action was modified to conform to the judgment in the writ proceedings. The settlement order provides in pertinent part that section 711.4 is not unconstitutional on its face but is unconstitutional as applied to Mills; Fish and Game is enjoined from collecting fees from Mills but is not otherwise prohibited from collecting fees.

Mills appeals both judgments. On appeal from the judgment in the declaratory relief action, he maintains section 711.4 is unconstitutional on its face and, consequently, Fish and Game must be enjoined from collecting all fees. Fish and Game urges us to dismiss the appeal on multiple grounds: Mills lacks standing because, under the terms of the settlement, he is not aggrieved; the constitutionality of section 711.4 is moot because it was amended by a two-thirds majority; and the trial court lacked jurisdiction because Mills failed to exhaust his administrative remedies by filing a claim for a tax refund. Fish and Game also appeals. We granted the Pacific Legal Foundation's request to file an amicus curiae brief echoing Mills's constitutional attack on the statute.

For the reasons discussed herein, we affirm in part and reverse in part the judgment entered in the declaratory relief action. Because we have concluded that section 711.4 is a valid regulatory fee, and was therefore constitutionally enacted, Mills's appeal from the judgment entered in the writ proceedings is moot. That appeal is dismissed.

Discussion

I [FN*]

FN* See footnote, *ante*, page 935.

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II

Before we apply the ever-growing body of case law involving post-Proposition 13 fees and taxes, it is essential to understand the statutory world ***942** in which Fish and Game lives and section 711.4 was born. The language of these statutes resolves some of the issues raised by Mills and provides the necessary background to analyze others.

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(1a) Mills argues that Fish and Game does not operate a regulatory program and, therefore, the fee is not regulatory in nature. We disagree. Fish and Game is only one small part of a huge regulatory system in place in this state to protect and sustain the environment, but it plays a vital regulatory role under the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.) CEQA guidelines specifically list Fish and Game as a trustee agency, a status which imposes certain obligations. Fish and Game must be consulted before a determination is made as to whether a negative declaration or an environmental impact report is required for a particular project. (Pub. Resources Code, § 21080.3, subd. (a).) If an environmental impact report is required, Fish and Game must comment as to the scope and contents of this document. (Pub. Resources Code, § 21080.4, subd. (a).) Later in the process, Fish and Game may be required to submit a proposed program to monitor the mitigation measures. (Pub. Resources Code, § 21081.6.)The same obligations are imposed by documents which function as environmental assessment documents such as timber harvest plans. (*Environmental Protection Information Center, Inc. v. Johnson (1985) 170 Cal.App.3d 604, 626 [216 Cal.Rptr. 502].)Fish and Game Code section 1802 also requires Fish and Game to consult with lead and responsible agencies.*

Fish and Game also has comparable obligations under the Forest Practice Act. (Pub. Resources Code, § 4511 et seq.) Like the responsibility conferred on it under CEQA, Fish and Game must review the impact of a timber harvest plan on fish and wildlife. The Department of Forestry and Fire Protection cannot approve a timber harvest plan until it has consulted with Fish and Game. (Pub. Resources Code, § 4582.6.)

Under both CEQA and the Forest Practice Act, Fish and Game is an essential link in a comprehensive attempt to safeguard the environment. The fact that Fish and Game does not operate an independent regulatory program with a correlative accounting system does not detract from its regulatory role. The law is not so narrowly drawn. In a similar vein, the court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 [64 Cal.Rptr.2d 447, 937 P.2d 1350] observed: "From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less 'regulatory' in nature than the initial *943 permit or licensing programs that allowed them to operate. Moreover, imposition of 'mitigating effects' fees in a substantial amount ... also 'regulates' future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products." (*Id.* at p. 877.)

Having charged Fish and Game with the responsibility to manage and protect fish and wildlife through the environmental review process, the Legislature enacted a fee statute to fund Fish and Game's review functions. There are two parts of section 711.4 which are germane to the constitutional question before us.

The Legislature expressly addressed proportionality. Section 711.4, subdivision (b) states: "The filing fees shall be proportional to the cost incurred by the department and shall be annually reviewed and adjustments recommended to the Legislature in an amount necessary to pay the full costs of department programs as specified."

Although the Legislature mandated a flat fee financing mechanism, it also provided an exemption for those projects with a de minimis impact on fish and wildlife. Section 711.4, subdivision (d)(1) provides: "For a project which is found by the lead or certified regulatory agency to be de minimis in its effect on fish and wildlife, no filing fee shall be paid, whether or not a negative declaration or an environmental impact report is prepared pursuant to the California Environmental Quality Act." In fact, 68 percent of the projects are found to be de minimis and a fee is not required.

In sum, the Legislature has given Fish and Game a critical regulatory role in the complex regulatory structure created to safeguard precious environmental resources. At the same time, the Legislature created a flat fee system to finance Fish and Game's environmental review. That system, by statute, must be proportional to the overall cost of environmental review, but only those who propose development projects which have more than a de minimis impact upon fish and wildlife are required to bear the cost of review. We must determine whether the Legislature violated the Constitution by establishing such a fee system

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with less than a two-thirds vote.

III

In 1991 the Legislature enacted the Childhood Lead Poisoning Prevention Act to provide evaluation, screening, and follow-up services for children who were at risk of suffering lead poisoning. The program of screening and treatment under the act was to be paid entirely by fees paid by those who **944 contributed to lead contamination. In *Sinclair Paint Co.v.State Bd. ofEqualization, supra,* 15 Cal.4th 866, the Supreme Court concluded the act imposed bona fide regulatory fees, not taxes.

Sinclair is the first published case in the post-Proposition 13 era to consider whether a state, rather than a local, fee is in legal effect a tax. "Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: 'From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at pp. 872-873.)By contrast, there have been an abundance of cases in which courts have struggled to characterize a local exaction as a fee or a "special tax" under California Constitution, article XIII A, section 4. In *Sinclair*, the Supreme Court announced that "[b]ecause of the close, 'interlocking' relationship between the various sections of article XIII A" the section 4 cases "may be helpful, though not conclusive" in deciding cases under section 3. (15 Cal.4th at p. 873.)

(2) The court also reiterated the fundamental principle that "whether impositions are 'taxes' or 'fees' is a question of law for the appellate courts to decide on independent review of the facts." (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at p. 874.)Ordinarily, "taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted" and "[m]ost taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges." (*Id.* at pp. 873-874.)

Sinclair was particularly helpful in identifying three very different kinds of fees or assessments, viz. special assessments, development fees and regulatory fees. (See also *Isaac v. City of Los Angeles* (1998) 66 Cal.App.4th 586, 596 [77 Cal.Rptr.2d 752].) As the court pointed out, special assessments are based on the value of benefits conferred on property, and development fees are exacted in return for permits or other government privileges. Regulatory fees, enacted under the police power, are an entirely different animal. The parties have failed to distinguish between these types of fees and, consequently, have extracted general principles from cases involving one type of fee and applied them to cases involving a completely different type of fee. We have focused our research on those cases, like *Sinclair*, involving regulatory fees. **945

(3a) General principles have emerged. Fees charged for the associated costs of regulatory activities are not special taxes under an article XIII A, section 4 analysis if the " ' "fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and [they] are not levied for unrelated revenue purposes." ' " (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at p. 876; *Townzen v. County of El Dorado* (1998) 64 Cal.App.4th 1350, 1359 [76 Cal.Rptr.2d 281].) "A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation." (*San Diego Gas &Electric Co.v.San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1146, fn. 18 [250 Cal.Rptr. 420].) "Such costs ... include all those incident to the issuance of the license or permit, investigation, inspection, administration, maintenance of a system of supervision and enforcement." (*United BusinessCom.v. City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263].) Regulatory fees are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Pennellv.City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111], affd. on other grounds *sub nom. Pennell v. City of San Jose* (1988) 485 U.S. 1 [108 S.Ct. 849, 99 L.Ed.2d 1].) Legislators "need only apply sound judgment and consider 'probabilities according to the best honest viewpoint of informed officials' in determining the amount of the regulatory fee." (*United Business Com.v.City ofSan Diego, supra,* 91

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Cal.App.3d at p. 166.)

The government bears the burden of proof. (*Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235 [211 Cal.Rptr. 567].) It must establish (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. (*Id.* at pp. 234-235.)"Courts [look] to a variety of evidence in determining whether the agency has satisfied that burden, not all of it prepared before the adoption of the ordinance." (*City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 282 [17 Cal.Rptr.2d 845].)

City of Dublin v. County of Alameda, supra, 14 Cal.App.4th 264, provides guidance on the quantum of proof necessary to establish the requisite fee-cost ratio. By initiative, the voters in Alameda County enacted a comprehensive recycling plan. Under the law, the plan was to be funded from a recycling fund created by a $6 per ton surcharge on materials dumped in the county landfills. The issue presented was whether the evidence before the trial court established that the surcharge would not exceed the reasonably ***946** necessary costs of the programs it would fund. The Court of Appeal considered both the estimated costs of the programs and the basis for determining the apportionment of those costs.

The court wrote: "The trial court concluded that the requisite fee-cost relationship was not established because Measure D's programs are not yet developed and their costs cannot presently be calculated with certainty, but such specificity is not required. Instead, the record need only demonstrate a reasonable relationship between the fees to be charged and the *estimated* cost of the service or program to be provided; that requirement may be satisfied by evidence showing only that the fees will generate substantially less than the anticipated costs." (*City of Dublin v. County of Alameda, supra,* 14 Cal.App.4th at p. 283, original italics.)

In a similar case, the Court of Appeal addressed the quantum of proof and proportionality. "Plaintiffs fault the report for failing to include 'site-specific' data showing a 'close connection' between new development and the fees to be imposed. However, their citation to 'taking' cases shows that they are blurring legal principles. [Citation.] The fee at issue here is a general one applied to all new residential development and valid if supported by a reasonable relationship between the amount of the fee and estimated cost of services. Site-specific review is neither available nor needed." (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 333-334 [4 Cal.Rptr.2d 897].)

(1b) Fish and Game met its burden of showing that the amount of fees generated by section 711.4 was far less than the cost of the environmental reviews provided. There was evidence that $11 million had been collected in fees, but the cost of the reviews was in excess of $20 million. Thus, the fees were not revenue raising in that they did not generate income which surpassed the cost of the services provided.

The more difficult issue is determining what latitude the Legislature has in establishing the amount of a fee imposed on an individual payor. Fish and Game argues the fees have no indicia of a tax. Since there is sufficient evidence to demonstrate that collectively the amount of the fees do not exceed the cost of the regulatory program they are collected to support, they urge us to uphold the constitutionality of section 711.4. Mills, on the other hand, insists Fish and Game failed to prove the more specific requirement that the fees are proportionate to the service provided or the burden imposed. He insists the flat fee is a tax because there is no individual correlation between the amount of the fee and the cost of the benefit or burden. Whether the Legislature retains the flexibility to mandate a flat fee by a simple majority vote is the crux of this case. ***947**

Sinclair is noteworthy for its expansive legitimation of regulatory fees. Under the formula approved by the Supreme Court, paint manufacturers are assessed fees based on their market share or their past and present responsibility for environmental lead contamination. (*Sinclair Paint Co. v. State Bd. of Equalization, supra,* 15 Cal.4th at p. 872.)Market share is a novel methodology for assessing fees. Nevertheless, the court permitted present fees to be determined on the basis of past conduct when not only were fees nonexistent, but the dangers of lead-based paint were unknown.

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As broad as the implications of *Sinclair* are, the Supreme Court did not have to reach the troublesome issue of proportionality, because paint manufacturers were assessed fees in proportion to their share of the market. Moreover, Sinclair, in moving for summary judgment, did not seek to establish that the amount of the fees bore no reasonable relationship to the social or economic burdens its operations generated. The court noted that Sinclair would have the opportunity at trial "to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic 'burdens' its operations generated." (*Sinclair Paint Co. v. State Bd. of Equalization, supra*, 15 Cal. 4th at p. 881.)

Close to 20 years ago, we articulated the same rule to Mills in his earlier constitutional challenge to fees charged for processing land use applications. In *Millsv. County of Trinity* (1980) 108 Cal.App.3d 656 [166 Cal.Rptr. 674], we stated: " '[T]he special tax' referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." (*Id.* at pp. 659-660.)In *Mills* as in *Sinclair*, however, the case was remanded "for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities." (*Mills*, at p. 660.)

Flat regulatory fees were upheld in *Pennellv.City of SanJose, supra*, 42 Cal.3d 365.In *Pennell*, a rent control ordinance imposed a flat annual fee on each rental unit. It was "designed to defray the costs of providing and administering the hearing process prescribed in the ordinance, not to pay general revenue to the local government." (*Id.* at p. 375.)The court concluded: "It is well settled that a municipality under the police power may impose a regulatory fee when, as here, the fee constitutes an amount necessary to carry out the purpose and provisions of the regulation." (*Id.* at p. 375, fn. 11.)*948

The court in *Pennell* appeared satisfied that the cumulative amount of the fee would support the administration and implementation of the hearing process without an examination of the benefits to be derived by individual lessees. Many lessors would never avail themselves of the hearing process at all and yet under the rent control ordinance, they, like the lessees who would petition for hearing, were required to pay the fee. *Pennell* does not require the government to prove proportionality on an individual basis. Under *Pennell*, the significant inquiry is whether the amount of the fees collected under the ordinance exceed the cost of the regulatory program they are collected to support. Proportionality is measured collectively to assure that the fee is indeed regulatory and not revenue raising.

While Mills cites many cases for the general proposition that fees must be apportioned according to some formula for ascertaining the benefits received or the burdens imposed by the payor's activity, he fails to cite a single regulatory fee case in which a fee was found to be a tax because the government failed to sustain its burden of proving a reasonable apportionment. On this pivotal point, the cases require close examination for what they require and for what they do not.

Two cases involve regulatory fees, like those before us, enacted to defray the costs of programs to mitigate damage to the environment. In *San Diego Gas & Electric Co.v.San Diego CountyAir Pollution Control Dist., supra*, 203 Cal.App.3d 1132(*San Diego Gas & Electric Co.*), and *Brydonv. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178 [29 Cal.Rptr.2d 128], the Courts of Appeal upheld fee structures against challenges they constituted special taxes. Both cases discuss the apportionment issue at some length.

In *San Diego Gas & Electric Co., supra*, a utility company challenged an air pollution district's method of apportioning the costs of its permit programs by apportioning them among all monitored polluters according to a formula based on the amount of emissions discharged by a stationary pollution source. The emissions-based formula allowed the district to charge additional renewal permit fees based on the average pollution generated by a facility within a specific industry. The court wrote: "SDG&E argues the district has not specifically shown how the amount of emissions generated by a pollution source increase the district's indirect costs .... There is no reason to require the district to show precisely how more emissions generate more costs to justify the emission-based apportionment formula. The purpose

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for the district's existence is to achieve and maintain air quality standards (§ 40001), thus from an overall perspective it is reasonable to allocate costs based on a premise that the more emissions generated by a *949 pollution source, the greater the regulatory job of the district." (203 Cal.App.3d at pp. 1147-1148, fn. omitted.)

In rejecting *San Diego Gas & Electric Co.*'s argument that the emissions-based formula eroded the intent of the voters in enacting California Constitution, article XIII A, the court explained that "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves, an accomplishment of the 1982 amendments to [Health and Safety Code] section 42311 and the emissions-based fee schedule." (*San Diego Gas & Electric Co., supra,* 203 Cal.App.3d at pp. 1148-1149.)

In *Brydon,* water customers challenged a new rate structure as a special tax. The inclined rate structure increased price per cubic foot for increased usage. The Court of Appeal found *San Diego Gas & Electric Co.* "a sustainable analogy." "Just as the regulatory scheme set forth by the [air pollution control district] was designed to achieve a legislatively mandated ecological objective, so is the inclined block rate structure of the District a response to state-mandated water-resource conservation requirements." (*Brydonv.East BayMun. Utility Dist., supra,* 24 Cal.App.4th at p. 192.)The court emphasized the latitude necessary to set the amount of fees to meet the regulatory objectives. "In pursuing a constitutionally and statutorily mandated conservation program, cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity. [Citation.] [ ] ... [ ] ... In short, California Constitution, article XIII A does not apply to every regulatory fee simply because, as applied to one or another of the payor class, the fee is disproportionate to the service rendered." (*Id.* at pp. 193-194.)

Hence, both cases narrow the breadth of California Constitution, article XIII A as applied to regulatory fees. Both suggest a flexible assessment of proportionality within a broad range of reasonableness in setting fees. In *San Diego Gas & Electric Co.*, the use of a formula to distribute indirect costs was sustained, while in *Brydon* an inclined block rate schedule allowed the water district to discourage water consumption. Neither relied on the kind of exact apportionment calculation urged by Mills.

Still, *San Diego Gas & Electric Co.* and *Brydon*, unlike *Pennell*, did not involve flat fees. While the formula or rate structure may not have been exact, each bore some relationship to the benefit reaped or the burden *950 imposed by the payor. Put another way, the payors had some control over the amount of the regulatory fee they were compelled to pay by the degree to which their respective activities impacted the environment. The more they polluted the air and consumed the water, the more they paid.

We acknowledge that in this case Mills had no comparable control over the amount of the fees he was charged to review his timber harvest plan. The amount of the fees is expressly set forth in section 711.4. (3b) Nevertheless, we hold that a regulatory fee, to survive as a fee, does not require a precise cost-fee ratio. A regulatory fee is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public. The legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion the costs of regulatory programs in a variety of reasonable financing schemes. An inherent component of reasonableness in this context is flexibility. We agree with the notion that shifting the costs of environmental protection to those who seek to impact our natural resources does not subvert the objectives embodied in Proposition 13. Hence, a regulatory fee does not violate California Constitution, article XIII A when the fees collected do not surpass the costs of the regulatory programs they support and the cost allocations to individual payors have a reasonable basis in the record.

IV

(1c) The record before us is a vivid illustration of the need for flexibility in establishing the amount of regulatory fees. Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost. This may be due to the complexity

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of the regulatory scheme and the multifaceted responsibilities of the department or agency charged with implementing or enforcing the applicable regulations; the multifaceted responsibilities of each of the employees who are charged with implementing or enforcing the regulations; the intermingled functions of various departments as well as intermingled funding sources; and expansive accounting systems which are not designed to track specific tasks.

Mills asserts that these problems preclude a finding of a fee. He points out that Fish and Game did not conduct the kind of study now accepted within the expert field of user fee analysis to ascertain with precision the justifiable amount of a proposed fee based on the costs involved in providing the service. He criticizes the change in accounting systems in July 1991 which obfuscates the data necessary to make credible calculations, and he bemoans *951 the incomprehensibility of the new CALSTARS accounting system as it relates to a user fee analysis. He insists that depositing the fees into Fish and Game's preservation fund is tantamount to a tax since the preservation fund operates as a general fund for Fish and Game. And he provides many examples of how disproportionate the fees are as to certain payors. Although most projects only receive a cursory review, there is a substantial variance in the amount of time spent on more in-depth reviews, varying from a few minutes to a few weeks, with the burden falling most heavily on small timberland owners.

This evidence is undisputed. There is no question that a flat fee will seldom represent the exact cost of providing a service. Fish and Game does not pretend such a correlation exists. Since we have determined that state regulatory fees are different from other user fees, the question presented is whether the evidence in this record is sufficient to sustain the legislative determination that a flat fee system is a reasonable means to allocate the costs of environmental review. FN3

FN3 Evidence of the legislative history of section 711.4 was admitted at trial. Legislative history can be relevant to a determination whether an exaction is a fee or a tax. (*CentexReal Estate Corp.v. City of Vallejo* (1993) 19 Cal.App.4th 1358, 1362 [24 Cal.Rptr.2d 48].) Here, the trial court found the costs of environmental review exceeded the amount of the fees, but it found imposition of a flat fee arbitrary. Without the benefit of the Supreme Court's holding in *Sinclair* and the broad analysis of regulatory fees, the trial court narrowly construed section 711.4 as a user fee requiring the amount of the fees to reflect the cost of the service provided the payor. Because we have decided that a flat fee may be a reasonable allocation of the costs of a regulatory fee and the trial court found Fish and Game had met its burden of proof on this issue, the legislative history cited by the trial court is unnecessary.

Mills fails to appreciate the difference between regulatory fees and more typical user fees. At trial, he offered an expert from the new cottage industry of analysts and advisers to local governments on how to legitimize their fees in the litigious climate spawned by Proposition 13. That expert's testimony reflects his misguided assumption that all fees are created equal and that, to survive constitutional attack, they must be supported by exhaustive studies, unassailable time keeping, and a precise cost-fee analysis.

He insisted that a cost analysis study was not only advisable, but necessary. "So that is why I am saying it is possible for Fish and Game to do a kind of cost analysis study. My question then would be, secondly, do they now have that in place? Have they kept track? Have they required their staff to fill in reports? I mean, they might be able to do it starting now. But have they done it? Nothing has been submitted to me showing a tracking process of the steps taken and breaking down the specific tasks and functions.

"I recall this being referenced to the fact the administrative or bookkeeping costs were too high to do that. Frankly, my judgment is that becomes a *952 cop-out. It is not too difficult. You can organize and set up, especially in today's computerized world with P.C.'s on half the staff desks.

"Attorneys have to bill by the minutes. They have to keep track of their time.

"It is perfectly possible to keep track of time. And I think, frankly, my judgment might be that if it is difficult, if your staff are not now doing those things systematically, it needs a whole retraining and re-

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gearing."

He opined that absent retraining, regearing, studies, and analysis, a fee could not survive a constitutional challenge. He went on to suggest a rather unique correlation between the time spent and the benefits achieved. Having testified he could not find a direct relationship between payment of a fee and providing any service, he stated: "There is no discussion of what happens as a result of the reviews. You know, do more spotted owls get saved? More fish saved? Or what. There is no functional relationship." Again he opined that in order to sustain the constitutionality of the fee, Fish and Game must document how a forest was saved or how many spotted owls were saved by the staff.

Fish and Game urges us to dismiss his opinion for several reasons: He had never reviewed the data supporting imposition of a state fee, he did not conduct any study to determine whether the section 711.4 flat fees were reasonable or proportional, and he had no familiarity with CEQA or the regulatory landscape in which Fish and Game must operate, not to mention that his proffered opinion constituted an inadmissible conclusion of law.

We need not address these specific deficiencies because we believe his testimony serves to highlight the fundamental distinction between a user fee and a regulatory fee. His testimony is predicated on many faulty assumptions based on user fees when there is an obvious correlation between cost and benefit. Moreover, in many cases, a statute demands that the amount of a fee be commensurate with the value of a service provided or the cost of a burden imposed. (See, e.g., Gov. Code, §§ 50076, 66001.) No comparable statutes apply to this state-imposed regulatory fee.

From the vantage point of one who earns a living studying user fees and counseling local governments on how to insulate their fees from constitutional attack, it is not surprising he would overlook the vast discrepancy between a fee imposed or a privilege accorded an individual and a fee that apportions and distributes the collective costs of a regulation. In the latter case, the many factors this expert described as deficiencies become the *953 reasonable justification for imposing a flat fee. That is, the Legislature may have determined that the administrative cost and burden of a statewide fee, including expensive studies and accounting, was too high when a simpler, flat fee could be imposed. Moreover, often, as here, measuring the benefits is amorphous. The Legislature could reasonably eschew a graduated fee structure based on an accounting of owls that were spared and forests that survived. He failed to understand that a legislative body in determining the amount of a regulatory fee is legitimately hampered by the many factors he describes as necessary to support a user fee.

The Legislature determined that the fee must be paid when a notice of determination is entered. Mills argues the timing of the exaction is unfair and unreasonable because many payors pay for reviews they never receive and others receive a bargain price for an extensive and time-consuming study. It is not our role to assess the wisdom of legislation from either a public policy or public relations perspective. We are asked only to determine whether section 711.4 imposes a fee or a tax. The record discloses several reasonable justifications for imposing a flat fee.

Fish and Game offered testimony that the imposition of an hourly fee for any environmental review would discourage early consultation. Often developers contact Fish and Game to discuss potential adverse impacts of a proposed project before any plans are submitted. Fish and Game then has the opportunity to engage in a collaborative process to eliminate or mitigate impacts on fish and wildlife before resources have been committed to a particular development plan.

The record also discloses that the environmental review process for a CEQA project or a timber harvest plan can involve various biologists at the regional level, consultation with biologists at headquarters and review of various data bases. Moreover, the biologists often work on several projects simultaneously and perform work which benefits all the projects. Consequently, the evidence suggests it would be cumbersome and expensive to account for multiple biologists' time, from multiple regions, working multiple projects.

The evidentiary thrust to Fish and Game's argument is that the cost of performing its duties under CEQA and the Forest Practice Act far exceeds the revenue generated under section 711.4. (*City ofDublinv.County of Alameda, supra,* 14 Cal.App.4th at p.

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282.)Under the accounting system dismantled in 1991, Fish and Game employees recorded their time and charged the time to various codes. Before changing to a new system, the *954 employees' time sheets were surveyed and analyzed. A new coding system was predicated on these surveys and analyses. Mills complains that the new system camouflages and inflates the true costs of environmental review.

The trial court found Fish and Game met its burden of proving the cost of its environmental review programs. The court wrote, "While Plaintiff attacks the Department's method of converting its costs under its old accounting system to the new accounting program, the authorities do not require absolute precision. Rather, as long as the estimate of costs is a reasonable one, it will be upheld."

We need not perform an appellate audit of Fish and Game's accounting systems. Having reviewed the entire record, we are satisfied there is sufficient evidence to support the trial court's finding that the cost of comprehensive environmental review far surpasses the amount of fees generated under section 711.4. " '[W]e would be demanding the impossible by insisting on rigorously supported findings.' [Citation.] All that our review requires is that we are able to determine that the [Legislature] acted after finding a reasonable relationship between the fee and the need to which the development contributes." (*Shapell Industries, Inc.v. Governing Board* (1991) 1 Cal.App.4th 218, 247 [1 Cal.Rptr.2d 818].) Mills squabbles about the costs associated with the review of Fish and Game's own projects, the preparation of resource databases, and a few other relatively small items. His argument, like his expert's testimony, proves the point. Complex regulatory programs involve complex accounting methodologies which render a more conventional "user fee" assessment impractical or expensive.

There is also evidence that the administrative costs to implement an extensive and comprehensive time-reporting system would be high. The evidence shows that biologists often simultaneously perform the preliminary work establishing resource data for several projects and consult and research issues relating to many different projects. It is reasonable to assess a flat fee and thereby reduce the cost and administrative difficulty of accounting for the services provided for each individual project. Moreover, collection of a flat fee at a uniform time eases the administrative burden of collection and provides certainty to those who submit project proposals.

Fish and Game provides an apt analogy to demonstrate the reasonableness of flat fees. The Legislature has adopted a flat filing fee for filing an action in superior court whether the matter is a simple case requiring little time and attention or a complex case requiring intensive judicial resources from pretrial motions through a lengthy trial. By statute, statewide judicial fees *955 cannot be increased or decreased by counties to provide any kind of graduated structure. (Gov. Code, § 54985, subd. (c)(1).) The fees imposed by section 711.4 are quite similar. Like a civil action, the environmental review may be time and staff intensive or it may be summarily handled. In neither case does the fee operate as a tax just because a prescribed amount is charged to all who avail themselves of the opportunity to obtain discretionary government services.

(4) Finally, plaintiff also challenges the Legislature's decision to charge a higher fee for the filing of a negative declaration than for other environmental documents. As explained by a Fish and Game senior environmental specialist supervisor at trial, the standard for a negative declaration is that a project have no adverse impact on the environment. Thus, Fish and Game has the responsibility to make sure the disclosure of the possible impacts is complete and to assure any mitigation measures are adequate. Often, the proposed mitigation measures are inadequate, and Fish and Game staff must work with the lead agency and with the project proponent to develop an acceptable negative declaration document. The supervisor testified that his staff probably spends more time on the review of a negative declaration than for the review of an equivalent size project with EIR (environmental impact report) documentation. Hence, because of project information collection cost and the time spent negotiating mitigation measures, Fish and Game's costs are generally higher for negative declarations. There is a sufficient reasonable basis for the legislative decision to charge more for the review of a negative declaration than for the review of an environmental impact report.

V

We need not address the many other issues raised by

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the parties in these consolidated cases rendered moot by our finding that section 711.4 does constitute a regulatory fee. Moreover, we dismiss Mills's second appeal because it too is rendered moot by our finding. In the underlying case, the California Association of Professional Scientists sought to enjoin the settlement entered into by Mills and Fish and Game in the original action. The crux of the appeal is whether the trial court properly restricted its constitutional ruling to Mills alone. Since we have upheld the constitutionality of section 711.4, we need not decide whether the trial court erred by invoking article III, section 3.5 of the California Constitution to limit the scope of its constitutional ruling.

Many of the arguments raised by Mills, and echoed by his expert at trial, are rooted in the perception that a flat fee is unfair. They object vociferously ***956** to the disparity between the amount of the fee and the services provided for different projects. This may be so. The scope of our inquiry, however, is not whether the fee is fair but whether the fee is, in legal effect, a tax. This case is not a challenge to the legislative power to enact a fee, nor is it a substantive constitutional challenge to the fee. We were asked to make the legal determination as to whether it is a fee exclusively for the purpose of determining whether it was properly enacted by a majority vote. Constrained by the limited scope of appellate review, we have concluded the Legislature did not violate California Constitution, article XIII A by enacting the section 711.4 fees by a simple majority vote. Any further challenge to the equity of a flat fee structure must be presented to the Legislature for the issue is political, not constitutional.

Disposition

The appeal in case No. C023075 is dismissed. The judgment in case No. C023184 is affirmed in part and reversed in part as explained above. In both cases, Mills shall pay the costs on appeal.

Sims, Acting P. J., and Nicholson, J., concurred.
The petition of appellant Albert W. Mills for review by the Supreme Court was denied July 12, 2000.
*957

Cal.App.3.Dist.
California Assn. of Professional Scientists v. Department of Fish & Game

79 Cal.App.4th 935, 94 Cal.Rptr.2d 535, 00 Cal. Daily Op. Serv. 2760, 2000 Daily Journal D.A.R. 3719

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H

Court of Appeal, First District, Division 3, California.
Stephen COLLIER, Plaintiff and Appellant,
v.
CITY AND COUNTY OF SAN FRANCISCO et al., Defendants and Respondents.
No. A113171.

June 12, 2007.
Review Denied Sept. 19, 2007.

Background: Taxpayer brought action against city, mayor, controller, and county board of supervisors to challenge transfer of building permit revenues from department of building inspection to planning and fire departments. The Superior Court, San Francisco County, No. 04433241, James I. Warren, J., entered summary judgment in favor of defendants. Taxpayer appealed.

Holdings: The Court of Appeal, Parrilli, Acting P.J., held that:
(1) the transfers did not create a "special tax" in violation of Proposition 13 requiring two-thirds vote of qualified electors to impose special tax, and
(2) the transfers did not violate city charter.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ⚷842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(1) k. In General. Most Cited Cases

Taxpayer's contentions that building inspection fund revenue transfers were a special tax requiring approval from two-thirds of qualified voters and that the transfers violated limitations imposed on the use of the revenues under city charter raised questions of law to be reviewed independently by Court of Appeal along with the ancillary issues relating to the proper interpretation and application of statutory and constitutional provisions. West's Ann.Cal. Const. Art. 13A, § 4; West's Ann.Cal.Gov.Code § 50076.

[2] Appeal and Error 30 ⚷863

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In General. Most Cited Cases

Appeal and Error 30 ⚷934(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In General. Most Cited Cases

The appellate court reviews independently the legal effect of facts presented to the trial court on a motion for summary judgment or adjudication; however, it liberally construes the evidence in support of the party opposing summary judgment and resolves doubts concerning the evidence in favor of that party.

[3] Municipal Corporations 268 ⚷957(4)

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k957 Constitutional Requirements and Restrictions
268k957(4) k. Submission to Voters, and Levy, Assessment, and Collection. Most Cited Cases

The language of Proposition XIII section requiring two-thirds vote for special taxes imposed by cities, counties, and special districts must be strictly construed, and ambiguities in the provision must be re-

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solved so as to limit the measures to which the two-thirds requirement applies. West's Ann.Cal. Const. Art. 13A, § 4.

[4] **Municipal Corporations 268 957(4)**

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k957 Constitutional Requirements and Restrictions
268k957(4) k. Submission to Voters, and Levy, Assessment, and Collection. Most Cited Cases
City's decision to permit planning and fire departments to spend building inspection fund revenues from building permits and inspections did not create a "special tax" in violation of Proposition 13 requiring two-thirds vote of qualified electors to impose special tax; department of building inspection and **planning** and fire departments shared responsibility for reviewing applications and building **plans** and ensuring code compliance, **planning** department used the **fees** to prepare and implement **general plan and** cover overhead and other administrative costs of the department's **long-range planning** division, fire department used the **fees** for building fire safety activities, these uses were reasonably related to the regulatory purposes for which the building permit **fees** were assessed, and the **fees** were permissibly proportional to the reasonable costs to provide services necessary to the building permit process. West's Ann.Cal. Const. Art. 13A, § 4; West's Ann.Cal.Gov.Code § 50076.
See 9 Witkin, Summary of Cal. Law (10th ed. 2005) Taxation, § 125 et seq.; Cal. Jur. 3d, Property Taxes, § 9 et seq.

[5] **Municipal Corporations 268 867(2)**

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(A) Power to Incur Indebtedness and Expenditures
268k867 Submission of Question of Expenditure to Popular Vote
268k867(2) k. Debts and Expenditures Which Must Be Submitted. Most Cited Cases
Statutory requirement that regulatory fees not be levied for unrelated revenue purposes applies where the issue is whether regulatory fees were spent for unrelated revenue purposes; thus, a regulatory fee spent for unrelated revenue purpose is special tax requiring two-thirds vote of qualified electors under Proposition 13. West's Ann.Cal. Const. Art. 13A, § 4; West's Ann.Cal.Gov.Code § 50076.

[6] **Municipal Corporations 268 867(2)**

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(A) Power to Incur Indebtedness and Expenditures
268k867 Submission of Question of Expenditure to Popular Vote
268k867(2) k. Debts and Expenditures Which Must Be Submitted. Most Cited Cases
A municipality may, under its police powers, spend regulatory fee revenues for the purpose of legitimate regulation so long as those revenues do not exceed the reasonably necessary expense of the regulatory effort; doing so does not impose special tax requiring two-thirds vote of qualified electors under Proposition 13. West's Ann.Cal. Const. Art. 13A, § 4; West's Ann.Cal.Gov.Code § 50076.

[7] **Zoning and Planning 414 378.1**

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k378 Grounds for Grant or Denial
414k378.1 k. In General. Most Cited Cases
A building permit for a proposed project may not be approved unless it complies with the Planning Code and the general plan. West's Ann.Cal.Gov.Code §§ 65300, 65860.

[8] **Health 198H 401**

198H Health
198HII Public Health
198Hk401 k. Charges for Inspection and Permits. Most Cited Cases
Statutory requirements for municipality when enacting a regulatory fee did not apply to city's decision to transfer to the planning and fire departments building inspection fund revenues from building permits. West's Ann.Cal.Gov.Code 66016(a).

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[9] **Health 198H ⚷401**

198H Health
198HII Public Health
198Hk401 k. Charges for Inspection and Permits. Most Cited Cases
City was not statutorily required to reduce building permit fees, rather than transferring building inspection fund revenues to planning and fire departments; although statute required any revenues in excess of actual cost to be used to reduce the fee or service charge creating the excess, city, in exercising its legislative discretion, determined the transfers were necessary to cover actual costs incurred by the planning and fire departments in connection with the city's building permit activities-activities related to the purposes for which the building permit fees were assessed. West's Ann.Cal.Gov.Code 66016(a).

[10] **Taxation 371 ⚷2002**

371 Taxation
371I In General
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases
To show a fee is a regulatory fee and not a special tax within the meaning of Proposition 13's supermajority requirement for imposing special taxes, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. West's Ann.Cal. Const. Art. 13A, § 4; West's Ann.Cal.Gov.Code § 50076.

[11] **Licenses 238 ⚷7(9)**

238 Licenses
238I For Occupations and Privileges
238k7 Constitutionality and Validity of Acts and Ordinances
238k7(9) k. Reasonableness of Fees. Most Cited Cases
Regulatory fees in amounts necessary to carry out a regulation's purpose are valid despite the absence of any perceived benefit accruing to the fee payors. West's Ann.Cal. Const. Art. 13A, § 4; West's Ann.Cal.Gov.Code § 50076.

[12] **Municipal Corporations 268 ⚷887**

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(B) Administration in General, Appropriations, Warrants, and Payment
268k887 k. Special Funds. Most Cited Cases
Transferring to the planning and fire departments building inspection fund revenues from building permits did not violate city charter provision requiring city at close of fiscal year to retain money required by law to be held in specific funds or to be devoted exclusively to specified purposes other than annual appropriations; although city's administrative code required unexpended and unencumbered balance remaining at the close of any fiscal year to be accumulated in the fund, city effectively amended those provisions by enacting inconsistent budget ordinances authorizing the transfers, and the fund was not subject to continuous or automatic appropriation and was not a trust fund governed by the trust fund doctrine.

[13] **Municipal Corporations 268 ⚷44**

268 Municipal Corporations
268I Creation, Alteration, Existence, and Dissolution
268I(C) Amendment, Repeal, or Forfeiture of Charter, and Dissolution
268k44 k. Power to Amend Charter or Statute. Most Cited Cases

Municipal Corporations 268 ⚷49

268 Municipal Corporations
268I Creation, Alteration, Existence, and Dissolution
268I(C) Amendment, Repeal, or Forfeiture of Charter, and Dissolution
268k49 k. Repeal of Charter or Act of Incorporation. Most Cited Cases
A municipality may not amend or repeal its charter by ordinance.

[14] **Municipal Corporations 268 ⚷887**

268 Municipal Corporations

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268XIII Fiscal Matters
268XIII(B) Administration in General, Appropriations, Warrants, and Payment
268k887 k. Special Funds. Most Cited Cases
The trust fund doctrine requiring local and state governments to hold in trust certain regulatory fees collected and placed in dedicated, special-use funds applies only where a special-use fund is subject to continuous or automatic appropriation.
**701 Mark A. White, Carol D. Quackenbos, Chapman, Popik & White, San Francisco, for Appellant Stephen Collier.

Dennis J. Herrera, City Attorney, Wayne Snodgrass, Deputy City Attorney, for Respondent City and County of San Francisco, et al.

PARRILLI, Acting P.J.

*1330 In this appeal, we consider whether the transfer of certain building permit fee revenues from the San Francisco Department of Building Inspection to the San Francisco Planning and Fire Departments violated California Constitution article XIII A, section 4 (article XIII A, section 4); Government Code section 50076 (Gov.Code, § 50076); and the City and County of San Francisco Charter, article IX: Financial Provisions, section 9.113 General Fiscal Provisions (charter section 9.113).[FN1] Appellant Stephen Collier seeks a taxpayer's injunction, mandamus and other declaratory relief against respondents City and County of San Francisco, its Mayor, Controller and Board of Supervisors (collectively, San Francisco) based on those allegedly improper building permit fee revenue transfers. Both parties filed motions for summary judgment. The trial court granted summary judgment to San Francisco, prompting this appeal.

FN1. For ease of reference, the City and County of San Francisco Charter and Codes can be found at *http:// www. municode. com/ Resources/.*

FACTUAL AND PROCEDURAL BACKGROUND

The following facts are taken from the record before the trial court when it ruled on the parties' motions for summary judgment. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 99 Cal.Rptr.2d 316, 5 P.3d 874.) We consider all the evidence set forth in the parties' moving and opposition papers except that to which objections were made and sustained. (*Id.* at pp. 65-66, 99 Cal.Rptr.2d 316, 5 P.3d 874; Code Civ. Proc., § 437c, subd. (c).)

*1331 San Francisco has a complex regulatory framework that governs building construction. The Department of Building Inspection (DBI), a chartered department of San Francisco, is central to that regulatory framework. Additionally, the Planning Department and Fire Department play important roles. The interplay of these departments in relation to the building construction process in San Francisco is discussed below.

The Department of Building Inspection.

All persons interested in obtaining a San Francisco building permit must submit an application to DBI. DBI is charged with enforcing the San Francisco Building Codes, which include the Housing, Mechanical, Electrical, and Plumbing Codes, to ensure safety in the construction and maintenance of San Francisco buildings. It also enforces state building requirements set forth in the Health and Safety Code. (E.g. Health & Saf.Code, §§ 17960, 19120.) Consistent with those enforcement duties, DBI issues building permits only after reviewing the permit applications and performing necessary inspections to ensure the proposed projects are in compliance with the relevant code requirements.

DBI also works with other departments, including the Planning and Fire Departments, to enforce building-related requirements set forth in the various state and local codes. In most cases, after DBI has reviewed and processed a building permit **702 application and conducted any necessary inspections of the building site, DBI routes the application to other departments to conduct their own review of the proposed project. Afterwards, the application is returned to DBI for final approval.

DBI collects regulatory fees from building permit applicants to cover the costs of providing services related to the building permit and inspection process. DBI will not issue a building permit unless the applicant pays the regulatory fee. The fee amount varies depending on the value of the proposed building project.[FN2] The building permit fee revenues, along

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with revenues DBI collects in the form of fines and other penalties charged for code violations, *1332 are placed in the Building Inspection Fund (BIF). The BIF is a creation of the San Francisco Administrative Code, which provides in relevant part: "(a) Establishment of Fund. The Building Inspection Fund is established as a category four fund to receive all revenues collected by the Department of Building Inspection, including, but not limited to, application fees, permit fees, plan check fees, the Apartment and Hotel License Fee, and reproduction fees, but excluding Fire Department plan check fees, and Department of City Planning fees shall be deposited into this fund. "(b) Use of the Fund. This fund shall be used by the Department of Building Inspection, subject to the approval of the Building Inspection Commission exclusively to defray the costs of the Bureau of Building Inspection in processing and reviewing permit applications and plans, field inspections, code enforcement and reproduction of documents." (San Francisco Administrative Code, Chapter 10: Finance, Taxation and Other Fiscal Matters, article XIII: Funds, section 10.100-45 Building Inspection Fund (S.F.Admin.Code, § 10.100-45).)

FN2. For example, the building permit fee for a new construction project valued between $501 and $2,000 is "$20.50 for the first $500.00 plus $3.00 for each additional $100.00 or fraction thereof, to and including $2,000." For a project valued between $50,001 and $100,000, the fee is "$573.00 for the first $50,000.00 plus $6.00 for each additional $1,000.00 or fraction thereof, to and including $100,000." (S.F. Building Code, Chapter 1: Administration, § 110 Schedule of Fee Tables, "Table 1-A Building Permit Fees.")

Use of fee revenues in the BIF is controlled by the Mayor and Board of Supervisors as part of San Francisco's annual budget process. As a "category four fund" (S.F.Admin.Code, § 10.100-45), the BIF fee revenues are not automatically appropriated for DBI's use; rather, each year the Mayor and Board of Supervisors must make an appropriation of the funds, as directed by San Francisco Administrative Code, Chapter 10: Finance Taxation and Other Fiscal Matters, article XIII: Funds, section 10.100-1 Administration of Special Funds (S.F.Admin.Code, § 10.100-1). Since 1995, the BIF has entirely supported DBI's operations. As such, DBI has received no financial support from San Francisco's general fund or any other source.

The Planning Department.

The Planning Department is charged with enforcing the San Francisco Planning Code, which regulates, among other things, the city's land use and zoning practices. As enforcer of the Planning Code, the Planning Department is also responsible for formulating and implementing San Francisco's state-mandated "general plan." (Gov.Code, § 65300 [requiring each city to adopt a "comprehensive long-term general plan for [its] physical development"].) A general plan is designed to promote and enforce responsible future growth and development. (*Ibid.*) To that **703 end, the Planning Department's long-range planning division is involved in such activities as preparing and revising the general plan, preparing environmental impact reviews, and updating zoning ordinances.

*1333 All land use decisions, including building construction decisions, must be consistent with a city's general plan. (Gov.Code, § 65860, subd. (a)(2); *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 355, 110 Cal.Rptr.2d 579.) As such, no city, including San Francisco, may issue a building permit for a project inconsistent with the general plan. (*Land Waste Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 957-958, 271 Cal.Rptr. 909 ["[i]ssuance of a permit inconsistent with zoning ordinances or the general plan may be set aside and invalidated as ultra vires"]; San Francisco Planning Code, article 1.7: Compliance, section 175 Approval of Permits [S.F. Planning Code, § 175].)

Consistent with its enforcement duties, the Planning Department reviews most building permit applications submitted to DBI to ensure compliance with the San Francisco Planning Code, and, in particular, with the general plan. Building permit applications subject to Planning Department review cover projects involving new construction, demolition, or changes to a building's exterior appearance, i.e. projects most likely to implicate the Planning Department's concern for land use and long-term planning. Under section 175, subdivision (a) of the S.F. Planning Code: "No application for a building permit ... shall be approved

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by the Department of City Planning, and no permit or license shall be issued by any City department, which would authorize a new use, a change of use or maintenance of an existing use of any land or structure contrary to the provisions of this Code."

The Fire Department.

The Fire Department is charged with enforcing the San Francisco Fire Code, as well as ensuring San Francisco residential buildings and other structures meet certain state-mandated fire safety standards set forth in the Health and Safety Code. (E.g. Health & Saf.Code, §§ 13146, 13143.5, 13217.) Consistent with those responsibilities, the Fire Department may review a building permit application and perform necessary inspections to ensure a proposed project complies with local and state fire standards.

Additionally, the Fire Department works with DBI to enforce San Francisco's Sprinkler Ordinance, which was enacted in 2002 under the San Francisco Housing and Fire Codes and creates requirements for multi-tenant single resident occupancy (SRO) hotels.

The BIF Surplus and San Francisco's Budget Crisis.

Throughout the last decade, revenues held in the BIF have exceeded DBI's general operating costs nearly every year. As such, the BIF has ended every *1334 fiscal year this decade with a net cumulative surplus. At the end of fiscal year (FY) 1994-1995, the BIF surplus was approximately $2.2 million. By the end of FY 1998-1999, the BIF surplus reached $10.6 million. Then, after dropping to $.03 million at the end of FY 2000-2001 due to an economic downturn, the surplus grew again to approximately $11.5 million at the end of FY 2002-2003.

The director of DBI explained that maintaining a BIF surplus is important so DBI can guard against future contingencies, including fluctuations in the business cycle. Building construction projects, he explained, are uniquely affected by market conditions, as evidenced by the BIF's steep drop in revenues for FY 2001-2002.

**704 While the BIF has enjoyed a comfortable surplus for most of the past decade, San Francisco, to the contrary, has experienced periods of precarious fiscal health. In FY 2002-2003, San Francisco faced a $175 million general fund deficit in balancing the budget. And in preparing the budget for FY 2003-2004, San Francisco projected a gap between revenues and expenses of $347 million. For FY 2004-2005, the gap was projected to reach $352 million.

To address the financial crises of those years, the Mayor's Budget Office examined the propriety of transferring building permit fee revenues in the BIF to other city departments that regulate building construction, to reduce the other departments' reliance on the general fund. In particular, the Budget Office explored the possibility of transferring BIF fee revenues to the Planning Department to cover its long-range planning costs, which amounted to millions of dollars annually. The Budget Office reasoned that a logical link existed between long-term planning and the issuance of building permits, and that the Planning Department did not at the time impose fees to cover the costs of long-term planning.

DBI opposed transferring the BIF fee revenues to other departments. DBI pointed out that, in generating a BIF surplus, it had taken steps to eliminate economic waste and improve efficiency, steps other departments may not have taken. DBI also feared reducing the BIF's surplus would interfere with the department's need to prepare for possible revenue losses during economic downturns.

The BIF Fee Revenue Transfers and Subsequent Expenditures.

FY 2003-2004

In July 2003, **San Francisco** adopted the FY 2003-2004 Annual Appropriations Ordinance (FY 2003-2004 budget ordinance). The FY 2003-2004 *1335 budget ordinance authorized, among other things, transfers from the BIF of $2,298,225 to the **Planning** Department; $250,000 to the Board of Supervisors, to be passed through to the **Planning** Department via a work order; and $250,000 to the Fire Department. The FY 2003-2004 budget ordinance was not unusual. In any given fiscal year, **San Francisco's** budget ordinance authorizes inter-fund revenue transfers to reduce pressure on the **general** fund and to balance out fund surpluses and shortfalls.

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The approximately $2.6 million transferred from the BIF to the **Planning** Department accounted for less than 53 percent of the building permit **fee** revenues DBI was budgeted to earn in FY 2003-2004, and about 18 percent of the $14.1 million in **fee** revenues DBI ultimately earned that year. The **Planning** Department used the transferred **fee** revenues to finance **long-range planning** activities, including operation costs of its **long-range planning** division, on which it spends millions annually but does not directly charge **fees**.

The Fire Department used the transferred BIF **fee** revenues to cover costs, including operational and administrative costs, incurred in activities related to building and fire safety and code compliance. Among other things, the Fire Department spent the **fee** revenues on implementing the Sprinkler Ordinance, inspecting thousands of residential buildings with three or more units (R-1 buildings), and promoting safety in single room occupancy (SRO) hotels. The Fire Department at that time did not impose **fees** to cover costs incurred in connection with those activities.

FY 2004-2005

In July 2004, **San Francisco** adopted the FY 2004-2005 Annual Appropriations Ordinance**705 (FY 2004-2005 budget ordinance). The FY 2004-2005 budget ordinance authorized, among other things, transfers from the BIF of $5,340,952 to the **Planning** Department; $481,325 to the Board of Supervisors, to be passed through to the **Planning** Department via a work order; and $250,000 to the Fire Department.[FN3] Even with the proposed **fee** transfers, DBI was projected to end the year with a BIF surplus exceeding $4 million.

FN3. The **Planning** Department did not undertake the project for which the $250,000 transfer was passed through the Board of Supervisors in FY 2003-2004. Accordingly, the $250,000 amount was counted as a credit earmarked for the same purpose in FY 2004-2005.

The approximately $5.8 million transferred from the BIF to the Planning Department represented less than 52 percent of the building permit fee *1336 revenues DBI was budgeted to earn in FY 2004-2005. The Planning Department expected to again spend the transferred fee revenues on long-range planning activities. The Fire Department expected to spend the transferred fee revenues on building and fire safety and code compliance, covering activities such as implementing the Sprinkler Ordinance, inspecting R-1 buildings, and promoting building safety in SRO hotels.

This Lawsuit.

In July 2004, Collier and two other individuals filed this lawsuit, alleging San Francisco's transfers of the BIF fee revenues from DBI to other city departments violated (1) article XIII A, section 4 of the California Constitution and its implementing statute, Government Code section 50076, by creating a special tax unapproved by two-thirds of qualified voters, and (2) section 9.113 of the San Francisco Charter and section 10.100-45 of the S.F. Administrative Code, by disregarding the BIF's status as a category four special fund whose revenues must be spent solely to defray DBI's building permit-related costs.[FN4]

FN4. Before plaintiffs filed this case, DBI requested the San Francisco City Attorney hire outside counsel to bring the lawsuit on its behalf, but the City Attorney denied DBI's request. Plaintiffs, in filing this lawsuit, initially also challenged transfers of BIF fee revenues to the Environment and Public Health Departments, but withdrew their complaint as to those departments in March 2005.

On March 25, 2005, the parties filed cross-motions for summary judgment or adjudication. Following a June 2, 2005 hearing on the cross-motions, two individual plaintiffs dismissed all claims without prejudice, leaving Collier as the sole remaining plaintiff. On November 7, 2005, the trial court issued an order granting San Francisco's motion and denying Collier's motion.

In so ruling, the trial court found the BIF fee revenue transfers did not amount to improper special taxes under article XIII A, section 4 of the California Constitution because the revenue was not spent on general governmental costs, but rather on regulatory services that benefit or are necessitated by the activities of the class of building permit fee payers. The trial

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court further found the BIF fee revenue transfers did not violate charter section 9.113, subdivision (a) because that provision created no legal duty on San Francisco to hold the unspent revenues in a specific fund, it merely acknowledged some other law-which plaintiff failed to identify-may create such a duty.[FN5] This appeal followed.

FN5. The trial court had previously sustained without leave to amend San Francisco's demurrer to plaintiffs' claim that the transfers violated S.F. Administrative Code section 10.100-45.

****706 *1337 DISCUSSION**

[1] Collier contends San Francisco's BIF fee revenue transfers constituted a "special tax," prohibited under article XIII A, section 4 and its implementing statute, Government Code section 50076, absent approval from two-thirds of qualified voters.[FN6] Collier further contends the BIF fee revenue transfers violated limitations imposed on the use of the revenues under charter section 9.113. Both issues are questions of law, as are the ancillary issues relating to the proper interpretation and application of statutory and constitutional provisions. (*Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1216, 265 Cal.Rptr. 347.) These matters are uniquely within the province of the appellate court, and thus are reviewed independently. (*Ibid.*; *Sinclair Paint Co. v. State Bd. of Equalization* [*Sinclair Paint*] (1997) 15 Cal.4th 866, 874, 64 Cal.Rptr.2d 447, 937 P.2d 1350 [whether a particular assessment constitutes a special tax under article XIII A, section 4 and Government Code section 50076 is a question of law].)

FN6. Undisputedly, the BIF fee revenue transfers were implemented without two-thirds voter approval.

[2] The appellate court likewise reviews independently the legal effect of facts presented to the trial court on a motion for summary judgment or adjudication. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, 32 Cal.Rptr.3d 436, 116 P.3d 1123.) However, we liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party. (*Ibid.*)

California Constitution Article XIII A and Government Code Section 50076.

Article XIII A, commonly known as Proposition 13, was enacted by California voters in 1978 to enssure effective real property tax relief. (*Sinclair Paint, supra*, 15 Cal.4th at p. 872, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) It consists of four major parts: a real property tax rate limitation (§ 1); a real property assessment limitation (§ 2); a restriction on state taxes (§ 3); and a restriction on local taxes (§ 4). We are concerned here with section 4, which provides: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." [FN7]

FN7. Section 4 of article XIII A reflects the fact that any tax savings effectuated by operation of sections 1 and 2 could be withdrawn or depleted should local entities be permitted to enact additional taxes or increase existing taxes unrelated to property. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231, 149 Cal.Rptr. 239, 583 P.2d 1281.)

[3] ***1338** According to our California Supreme Court, because article XIII A's two-thirds vote requirement is inherently undemocratic, "the language of section 4 must be strictly construed and ambiguities therein resolved so as to limit the measures to which the two-thirds requirement applies." (*City & County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 52, 184 Cal.Rptr. 713, 648 P.2d 935.) Article XIII A, section 4 must also be construed in light of its underlying rationale: to shift costs away from the taxpaying public towards the class of individuals that benefits from or necessitates those costs. (*San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1148-1149, 250 Cal.Rptr. 420.)

****707** After voters passed article XIII A, the California Legislature enacted enabling legislation found at Government Code section 50075 et seq. Section 50076, our focus here, contains the following limita-

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tion on the term "special tax": "As used in this article, 'special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes."

California courts have subsequently clarified that, based on Government Code section 50076's limitation, "the term 'special taxes' in article XIII A, section 4, ' "does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes."' [Citations.]." FN8 (*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) On the other hand, the term "special taxes" does embrace "tax [es] collected and earmarked for a special purpose, rather than being deposited in a general fund." (*City & County of San Francisco v. Farrell, supra,* 32 Cal.3d at p. 53, 184 Cal.Rptr. 713, 648 P.2d 935; *Trent Meredith Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 323, 170 Cal.Rptr. 685; see also **1339 *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal.4th 685, 700, 37 Cal.Rptr.3d 149, 124 P.3d 719 ["[i]n general, taxes are imposed for revenue purposes rather than in return for a specific benefit conferred or privilege granted"].)

FN8. The "special tax" cases under article XIII A, section 4 have generally involved three categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges, and (3) regulatory fees, imposed under the police power. (*Sinclair Paint, supra,* 15 Cal.4th at pp. 874-875, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) California law treats these categories somewhat differently. For example, "*special assessments* on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not 'special taxes' under article XIII A, section 4." (*Id.* at p. 874, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) Similarly, "*development fees* exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer." (*Id.* at p. 875, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) Although the three categories can overlap in some cases, it is undisputed we are concerned here only with regulatory fees.

[4] Here, Collier contends the BIF fee revenue transfers constituted a special tax in violation of article XIII A, section 4 because the revenues, once collected by DBI for the purpose of funding its building permit activities, were diverted to "fund the unrelated operations of ... other departments." According to Collier, the revenues were thus used by other departments for unrelated revenue purposes, which Government Code section 50076 precludes. Had the Planning and Fire Departments needed additional revenues to fund their unrelated operations, Collier continues, they should have assessed their own regulatory fees rather than taken regulatory fees collected by DBI.

We consider Collier's arguments within the context of Government Code section 50076, which precludes a finding of special tax under article XIII A, section 4 where the regulatory fees at issue are: (1) "charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged," and (2) "are not levied for unrelated revenue purposes." **708(*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.)

The Regulatory Fees Were Not Spent for Unrelated Revenue Purposes.

[5][6] As an initial matter, we must determine whether to interpret Government Code section 50076's requirement-that regulatory fees not be "levied for unrelated revenue purposes"-to cover this situation, where the issue is whether regulatory fees were *spent* for unrelated revenue purposes. (*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) We conclude such interpretation is appropriate. Underlying article XIII A and Government Code section 50076 is the principle that, "under the police power, municipalities may impose fees for the purpose of legitimate regulation, and not

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mere revenue raising, if the fees do not exceed the reasonably necessary expense of the regulatory effort." (*Sinclair Paint, supra,* at p. 879, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) This principle would lose meaning were we to apply it to the act of imposing regulatory fees, but not to the act of spending the revenues once the fees have been collected. We thus slightly broaden the import of *Sinclair Paint* by holding that a municipality may, under its police powers, spend regulatory fee revenues for the purpose of legitimate regulation so long as those revenues do not exceed the reasonably necessary expense of the regulatory effort. We thus turn to the facts of this case.

*1340 The parties agree as a general matter that, under Government Code section 50076, regulatory fees may not be spent for purposes unrelated to the specific regulatory activities for which they were assessed. They disagree, however, on whether the revenues transferred from the BIF, a fund established to receive all revenues collected by DBI, were spent by the Planning and Fire Departments for purposes related to the regulatory activities for which those fees were assessed. Arguing in the negative, Collier narrowly defines the relevant regulatory activities as "DBI's regulatory enforcement of the building codes." Arguing in the affirmative, San Francisco more broadly defines the relevant activities as "the issuance of building permits and ... building construction."

In weighing the parties' positions, we note that, were we to adopt a too narrow definition of "regulatory activities" in applying Government Code section 50076, we would risk depriving municipalities of a reasonable degree of flexibility to determine whether regulatory fee revenues collected by their agencies are being spent in furtherance of the purpose for which those fees were assessed. (*Sinclair Paint, supra,* 15 Cal.4th at pp. 876-877, 64 Cal.Rptr.2d 447, 937 P.2d 1350; *California Assn. of Prof. Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 950, 94 Cal.Rptr.2d 535 ["[t]he legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion the costs of regulatory programs in a variety of reasonable financing schemes ... [and] [a]n inherent component of reasonableness in this context is flexibility"]; *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 193, 29 Cal.Rptr.2d 128 ["cost allocations for services provided are to be judged by a standard of reasonableness with some flexibility permitted to account for system-wide complexity"].) That, in turn, could hinder a municipality's ability to address burdens placed on the community by the activities of certain classes of individuals. A regulatory fee, after all, "is enacted for purposes broader than the privilege to use a service or to obtain a permit. Rather, the regulatory program is for the protection of the health and safety of the public."**709 (*California Assn. of Prof. Scientists, supra,* 79 Cal.App.4th at p. 950, 94 Cal.Rptr.2d 535.) With this in mind, we consider the regulatory activities relevant to this case.

The regulatory fees at issue are those assessed against persons engaged in building construction in San Francisco to cover services related to building permits and inspections. When those persons submit building permit applications, San Francisco officials must process and review their applications and their building plans, perform all necessary field inspections, ensure compliance with all relevant code provisions, and prepare and reproduce all necessary documents. According to the undisputed evidence produced below, these tasks are the joint responsibility of several departments, including DBI and the Planning and Fire Departments.

*1341 For example, while DBI ultimately approves all building permit applications, they do so only if an applicant's proposed building construction project complies with a number of different state and municipal codes, including San Francisco's Building, Planning and Fire Codes. Because DBI is not charged with enforcing the Planning or Fire Codes, the Planning and Fire Departments often must review a building permit application and conduct necessary inspections to independently confirm the project's compliance.[FN9] As a class, the building permit applicants' activities "increase the need for [regulatory] services" from not just DBI, but from other city departments as well, including the Fire and Planning Departments. (See *Russ Building Partnership v. City & County of San Francisco* (1987) 199 Cal.App.3d 1496, 1506, 246 Cal.Rptr. 21.)

FN9. DBI's acting director explained, "[DBI's] inspector really becomes a catchall for a number of departments who have stamped the drawings as they've gone

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through the process to make sure a lot of loose ends get wrapped up before we issue a final certificate of completeness."

Given these facts, we agree with **San Francisco** the relevant regulatory activities for which building permit **fees** are assessed go beyond DBI's enforcement of the building codes to cover activities performed by the **Planning** and Fire Departments in conjunction with the building permit process. The question thus becomes whether the BIF **fee** revenues that were transferred from DBI to the Fire and **Planning** Departments were used for purposes related to those activities. We conclude they were.

The Planning Department's Expenditures.

[7] The **Planning** Department used the transferred BIF **fee** revenues to pay for **long-range planning** activities, including preparing and implementing the **general plan** and covering overhead and other administrative costs of the department's **long-range planning** division.[FN10] The **general plan** is **San Francisco's blueprint** for future growth and development. California law requires all cities, including **San Francisco**, to have and maintain a **general plan**. (Gov.Code, § 65300.) Moreover, under **San Francisco** and California law, a proposed building construction project complies with the **Planning** Code only so long as it is consistent with the **general plan**. (See S.F. **Planning** Code, art. I: **General** Zoning Provisions, § 101.1 Master **Plan** Consistency and Implementation, subd. (d) and S.F. **Planning** Code, art. I: **General** Zoning Provisions, § 108 New **710 Names ["all references in this Code to the 'Master **Plan**' shall mean ' **General Plan**' ..." and requiring consistency between zoning ordinances and the **general plan**]; Gov.Code § 65860 [requiring consistency between city and county zoning ordinances and the **general plan**].) As such, a building permit for a proposed project may not be approved unless it complies with the **Planning** Code *and* the **general plan**. (*Ibid.;* S.F. **Planning** Code, § 175; see also *1342 *Land Waste Management v. Contra Costa County Bd. of Supervisors, supra,* 222 Cal.App.3d at pp. 957-958, 271 Cal.Rptr. 909 ["[i]ssuance of a permit inconsistent with zoning ordinances or the **general plan** may be set aside and invalidated as ultra vires"].) Given this connection between the **Planning** Department's **long-range planning** activities and the building permit approval process, we conclude the **Planning** Department spent the transferred BIF **fee** revenues for purposes related to the regulatory activities for which those building permit **fees** were assessed. (*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.)

FN10. The **Planning** Department spends millions of dollars annually on **long-range planning** activities related to the **general plan**, but does not itself assess **fees** to finance them.

In so concluding, we acknowledge, as Collier points out, that aspects of the **general plan** relate to the **long-range planning** needs of specific neighborhoods, rather than of the city as a whole. That fact, however, does not destroy the nexus between **long-range planning** and the building permit process. The California Legislature has itself acknowledged the link between the **general plan** and the issuance of building permits. Government Code section 66014, subdivision (b), added by amendment in 2002, expressly provides that "costs to prepare and maintain a **general plan** are part of the reasonable costs of providing the services for which the [building permit] **fees** are charged." In drafting this provision, the California Legislature nowhere distinguished between costs to prepare and maintain those aspects of the **general plan** that affect the city as a whole and those that affect only certain neighborhoods. Where our Legislature declined to make such distinction, we see no reason to make it.[FN11]

FN11. In 2002, the California Legislature adopted Assembly Bill 2936 (AB 2936), which amended Government Code section 66014, subdivision (a), and added subdivision (b). In recommending adoption of AB 2936, the Governor's Office explained some local governments already used building permit fees to cover the costs of preparing and revising their general plans, and that the practice was proper:

"Local governments charge fees to make zoning changes, issue building permits etc., because there is a legitimate cost to provide these services. Part of that cost is in preparing and maintaining a general plan that provides the basis upon which the decisions related to these services

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should be made. If a local government does not have the funds to keep its general plan up to date, it will be paralyzed in its ability to make development-related decisions." (Governor's Office of Planning & Research, Enrolled Bill Report, AB 2936, pp. 1-3 (Sept. 16, 2002).)

Collier complains that Government Code section 66014, subdivision (b) did not become effective until January 2003, after San Francisco had collected nearly all of the BIF fee revenues that were later transferred to the Planning and Fire Departments. We afford no significance to that fact. The legislative history of AB 2936 shows Government Code section 66014, subdivision (b) was intended to clarify the legality of the practice of using building permit fees to finance activities related to the general plan; the legislation did not make legal a practice that had previously been illegal. (Governor's Office of Planning & Research, Enrolled Bill Report, AB 2936, pp. 1-3 (Sept. 16, 2002).)

***1343 The Fire Department's Expenditures.**

The Fire Department used fee revenues transferred from the BIF to pay for its building fire safety activities, including inspecting R-1 buildings to ensure code compliance, promoting fire safety in SRO **711 hotels, and implementing and enforcing San Francisco's Sprinkler Ordinance. Collier argues those activities were unrelated to the purposes for which the building permit fees were assessed. He reasons that R-1 buildings and SRO hotels are *existing* buildings, and that building permit fees are assessed in connection with *new* construction.

We conclude the evidence proves otherwise. In particular, it was undisputed DBI regularly uses BIF fee revenues for purposes related to existing buildings, including inspecting existing residential tenancies to enforce the Building Codes. Where DBI uses the BIF fee revenues to enforce code compliance in existing buildings, we see no basis for precluding the Fire Department from doing the same.

In addition, DBI and the Fire Department share responsibility for conducting inspections to ensure compliance with the Sprinkler Ordinance. Both departments used BIF fee revenues to finance those activities.[FN12] The trial court found that practice consistent with California law, particularly in light of the flexibility permitted local governments in making certain budgetary decisions. (See *Brydon, supra,* 24 Cal.App.4th at p. 193, 29 Cal.Rptr.2d 128; *California Assn. of Prof. Scientists, supra,* 79 Cal.App.4th at p. 950, 94 Cal.Rptr.2d 535.) We agree.

FN12. The Fire Department imposes a fee, which DBI collects on its behalf, to cover costs incurred in reviewing sprinkler installation plans submitted as part of the sprinkler permit application process and inspecting sprinkler systems installed pursuant to already approved sprinkler plans. However, this fee does not cover pre-application costs the Fire Department incurs in implementing the Sprinkler Ordinance, including reviewing SROs' proposed plans for sprinkler installations and inspecting the SROs to ensure compliance.

Specifically, Health & Safety Code section 17951, subdivision (b) authorizes cities to prescribe permit fees "to defray the costs of enforcement required by this part to be carried out by local enforcement agencies." "Local enforcement agencies" includes local fire departments, which "shall enforce in their respective areas all those provisions of this part, the building standards published in the State Building Standards Code relating to fire and panic safety, and those rules and regulations promulgated pursuant to the provisions of this part pertaining to fire prevention, fire protection, the control of the spread of fire, and safety from fire or panic." (Health & Saf.Code, § 17962.) Those "rules and regulations" include local amendments to California building standards (*id.* at § 17958.5), and "rules and regulations for fire and *1344 panic safety in all hotels, motels, lodging houses, apartment houses and dwellings, buildings, and structures accessory thereto" (*id.* at § 17921, suBD. (b)). given these linkS between the building permit process and fire safety, we conclude the Fire Department's expenditures of the BIF fee revenues on fire safety-related activities were reasonably related to the regulatory purposes for which the building permit fees were assessed.

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Government Code Section 66016, Subdivision (a) Is Irrelevant.

Government Code section 66016, subdivision (a) sets forth strict procedural guidelines, including public notice and open meeting requirements, that municipalities must adhere to when enacting certain planning and land use fees, including building permit fees.[FN13] Collier did not **712 plead any violation of Government Code section 66016, subdivision (a) below. He relies on that provision here, however, as "[a]dditional reinforcement" for his claim that San Francisco violated Government Code section 50076's requirement "that regulatory fees must be spent for the purpose assessed ..." Specifically, Collier claims San Francisco's failure to follow the procedural requirements of Government Code section 66016, subdivision (a) when transferring the BIF fee revenues to the Planning and Fire Departments constituted an improper "back-door creation of new regulatory fees." We disagree.

FN13. Government Code section 66016, subdivision (a) provides:

"Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. *At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues.*

Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. *If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.*" (Emphasis added.)

[8] As an initial matter, we note Government Code section 66016, subdivision (a) requires a municipality to adhere to certain procedures when *enacting* a regulatory fee. Here, to the contrary, we are concerned with **1345 whether San Francisco created a special tax in violation of article XIII A and Government Code section 50076 when it permitted the Planning and Fire Departments to *spend* the BIF fee revenues. As we have already held, the proper limits placed on a municipality's authority under article XIII A and Government Code section 50076 to spend revenues raised from fees on related regulatory activities are those set forth in *Sinclair Paint, supra,* 15 Cal.4th 866, 64 Cal.Rptr.2d 447, 937 P.2d 1350.

Moreover, as San Francisco points out, the BIF fee revenue transfers were made in connection with the city's enactment of the FY 2003-2004 and FY 2004-2005 budget ordinances. Under local law, budget ordinances are enacted only after at least two public hearings and several Board of Supervisors meetings, which are generally open to the public, have been held. Collier makes no claim, and the evidence does not show, that San Francisco failed to follow those procedures in enacting the FY 2003-2004 and FY 2004-2005 budget ordinances. Nor does he claim San Francisco violated Government Code section 66016, subdivision (a) in enacting the building permit fees. As such, his suggestion that San Francisco violated democratic procedures in transferring the BIF fee revenues pursuant to the budget ordinances is mis-

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placed. (*California Assn. of Prof. Scientists, supra,* 79 Cal.App.4th at p. 950, 94 Cal.Rptr.2d 535 ["legislative body charged with enacting laws pursuant to the police power retains the discretion to apportion **713 the costs of regulatory programs in a variety of reasonable financing schemes"].)

[9] Collier relies on Government Code section 66016, subdivision (a) for another reason. Quoting the statutory language, he claims San Francisco was required to use any "revenues [in the BIF] in excess of actual cost ... to reduce the fee or service charge creating the excess." (Gov.Code, § 66016, subd. (a).) We again disagree. As evidence we have already discussed demonstrates, San Francisco, in exercising its legislative discretion, determined the BIF fee revenue transfers were necessary to cover actual costs incurred by the Planning and Fire Departments in connection with the city's building permit activities-activities related to the purposes for which the building permit fees were assessed. As such, San Francisco did not deem the transferred BIF fee revenues as "revenues in excess of actual cost" within the language of Government Code section 66016, subdivision (a) in weighing the budgetary needs of its various departments. We decline to interfere with San Francisco's judgment. (*County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699, 222 Cal.Rptr. 429 ["it is, and indeed must be, the responsibility of the legislative body to weigh [budgetary] needs and set priorities for the utilization of the limited revenues available"].) Indeed, Collier himself accepts that, without violating Government Code section 66016, subdivision (a), San Francisco could have decided to retain unused fee revenues in the BIF to protect DBI against future economic downturns, rather than used it to reduce building permit fees.

***1346 The Fees Were in Amounts Necessary to Accomplish the Regulatory Purpose.**

Having concluded the transferred BIF fee revenues were used by the Planning and Fire Departments for purposes related to the regulatory activities for which the fees were assessed, we now must determine whether the fees were in amounts necessary to accomplish those purposes. (*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.)

[10][11] "[T]o show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist., supra,* 203 Cal.App.3d at p. 1146, 250 Cal.Rptr. 420, fn. omitted.) "[R]egulatory fees in amounts necessary to carry out [a] regulation's purpose are valid despite the absence of any perceived 'benefit' accruing to the fee payers." (*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.)

Here, **San Francisco** transferred $2,298,225 in FY 2003-2004 and $5,340,952 in FY 2004-2005 from the BIF to the **Planning** Department, and $250,000 in both FY 2003-2004 and FY 2004-2005 from the BIF to the Fire Department.

With respect to the **Planning** Department transfers, **San Francisco** submitted a declaration from the Chief Administrative Officer of the **Planning** Department detailing the costs incurred by the department in connection with **long-range planning**. **Long-range planning** consists of all the activities necessary to prepare, adopt and maintain the **general plan**, as well as the zoning laws that implement the **general plan**. As we have already discussed, "costs to prepare and maintain a **general plan** are part of the reasonable costs of providing the services for which the [building** permit] fees are charged." (Gov.Code, § 66014, subd. (b).)

Specifically, this declaration proved the **Planning** Department incurred costs of at least $2,438,085 for **long-range planning** activities in FY 2003-2004, including paying salary and fringe benefits to the **long-range planning** staff and hiring outside contractors. The declaration further proved the **Planning** Department expected to incur costs of approximately $4,929,380 for **long-range planning** activities in FY 2004-2005, including paying salary * and fringe benefits to the **long-range planning** staff, hiring outside contractors, and paying administrative overhead costs.[FN14]

FN14. By the end of February 2005, the **Planning** Department had already incurred costs of approximately $1,435,775 for long-

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range planning activities, including paying salary and fringe benefits to the long-range planning staff, hiring outside contractors, and paying administrative overhead costs. During the same time period, the department incurred approximately $876,206 in administrative overhead costs attributable to its long-range planning activities.

San Francisco also submitted a declaration from the Planning Department's Chief of Comprehensive Planning that detailed the long-range planning process and its link to the building permit process. In particular, the declaration explained San Francisco's general plan and zoning ordinances, both of which are the result of the long-range planning process, "together constitute the policies and standards that are intended to guide and control the City's future construction and development activity." The declaration also confirmed the Planning Department at the relevant time imposed no fees to cover the considerable costs it incurred conducting long-range planning activities.

San Francisco Mayor's Office also provided two detailed analyses to explain why the amounts transferred to the Planning Department were appropriate. The first analysis estimated at least 53 percent of all building permit fee revenues received in a 3-month period in FY 2002-2003 were generated from permit applications that had been routed from DBI to the Planning Department for review to ensure compliance with the Planning Code and general plan. The applications routed to the Planning Department involved construction projects, for example, that altered a building's exterior, and thus were most likely to implicate the city's long-range planning concerns.[FN15] The Mayor's Office multiplied 53 percent by $14.1 million, the total amount of building permit fee revenues earned in FY 2003-2004, to determine the amount of revenues that could be attributed to the Planning Department's regulatory activities. That figure, approximately $7.5 million, far exceeded the approximately $2.6 million, or 18 percent of the total amount, that was transferred from the BIF to the Planning Department for FY 2003-2004.

FN15. In fact, the Planning Department reviews certain building permit applications that do not involve projects that alter a building's exterior, but nonetheless somehow implicate the city's long-range planning concerns. As such, the Mayor's Office used a conservative figure to represent the percentage of applications routed to the Planning Department.

The second analysis followed a somewhat different methodology. The Mayor's Office identified all building permits issued in a 9-month period in FY 2002-2003 involving projects with an assessed valuation of at least *1348 $300,000. The Mayor's Office assumed those projects accounted for the majority of DBI's surplus building permit fee revenues. The Mayor's Office then calculated that 77 percent of the building permit fee revenues from the sample came from projects whose permit applications **715 had been routed to the Planning Department for review to ensure compliance with the Planning Code. To be safe, however, the Planning Department reviewed each of those permits to identify which ones involved projects that altered the exterior of a building, and thus had the strongest nexus to long-range planning. The Mayor's Office then calculated 83 percent of the permits involving large projects involved exterior alterations. Multiplying 77 percent by 83 percent, the Mayor's Office thus estimated that 64 percent of the total amount of building permit fee revenues could be attributed to the Planning Department's regulatory activities.[FN16] Based on that figure, it thus concluded the amount transferred to the Planning Department, $5.8 million, was permissible, as it represented less than 52 percent of the $11.1 million in building permit fee revenues DBI was budgeted to collect in FY 2004-2005.

FN16. Again, the Mayor's Office used a conservative figure because it excluded building permit applications that may have been reviewed by the Planning Department even though the proposed projects did not involve altering a building's exterior.

With respect to the Fire Department transfers, San Francisco Mayor's Office provided no such detailed analyses. Nonetheless, evidence, in the form of a declaration from the Fire Department's Deputy Chief of Administration, proved the amounts transferred, $250,000 in both FY 2003-2004 and FY 2004-2005, were used to cover the Fire Department's direct and indirect costs incurred performing regulatory activities that we have already concluded were

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related to the building permit process. (Health & Saf.Code, § 17951, subd. (b), § 17962, § 17958.5, § 17921, subd. (b).) The evidence proved, for example, the Fire Department (1) incurred costs of approximately $110,000 in FY 2003-2004 and expected to incur costs of $74,400 in FY 2004-2005 enforcing the Sprinkler Ordinance; (2) incurred costs of at least $686,000 in FY 2003-2004 and expected to incur costs of $579,000 in FY 2004-2005 ensuring the fire safety and code compliance of R-1 residential buildings; and (3) incurred costs of approximately $43,120 in FY 2003-2004 and expected to incur costs of $48,480 in FY 2004-2005 promoting building safety in SRO hotels.

Collier makes much of the fact that the BIF fee revenues transferred to the Planning and Fire Departments were untraceable to any individual building permit applicant, and thus to any benefit or burden resulting from an applicant's project. In reviewing challenges under ***1349**Government Code section 50076, however, California courts have not required governments to prove a link between their expenditure of fee revenues and their receipt of those revenues from particular fee payers. Rather, California courts have required only that, measured collectively, the regulatory fees received from a class of fee payers are proportional to the costs of the regulatory services necessitated by the activities of that class of fee payers.[FN17] (*California Assn. of Prof. Scientists, supra,* 79 Cal.App.4th at p. 948, 94 Cal.Rptr.2d 535 [in proving a fee is regulatory rather than ****716** revenue raising, the government need not "prove proportionality on an individual basis"]; *id.* at p. 951, 94 Cal.Rptr.2d 535 [upholding a flat environmental review fee despite concluding "[t]here is no question that a flat fee will seldom represent the exact costs of providing a service"].)

FN17. In a related argument, Collier contends (again) the Planning and Fire Departments may have used the transferred BIF fee revenues for activities unrelated to fee payers' building construction projects, such as for specific neighborhood planning projects, fire safety in SRO hotels, and safety planning for natural disasters. For reasons we have already discussed, however, we conclude a sufficient nexus exists between the Planning and Fire Departments' expenditures of the building permit fee revenues on those activities and the purposes for which those fees were assessed.

Moreover, to the extent the amounts transferred were not directly correlated to specific, ascertainable costs incurred by the Planning and Fire Departments in connection with the building permit process, they were reasonable estimations of such costs, and thus were sufficient for our purposes:

"Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost. This may be due to the complexity of the regulatory scheme and the multifaceted responsibilities of the department or agency charged with implementing or enforcing the applicable regulations; the multifaceted responsibilities of each of the employees who are charged with implementing or enforcing the regulations; the intermingled functions of various departments as well as intermingled funding sources; and expansive accounting systems which are not designed to track specific tasks." (*California Assn. of Prof. Scientists, supra,* 79 Cal.App.4th at p. 950, 94 Cal.Rptr.2d 535.)

We conclude San Francisco imposed fees on building permit applicants in amounts permissibly proportional to the reasonable costs incurred by DBI, as well as the Planning and Fire Departments, in providing services necessary to the building permit process. As such, we conclude no basis exists for Collier's claim that San Francisco established a special tax in violation of article XIII A, section 4 and Government Code section 50076 by transferring the BIF fee revenues to the Planning and Fire Departments. (*Sinclair Paint, supra,* 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.)

***1350 San Francisco Charter Section 9.113.**

[12] Collier further contends transferring the BIF fee revenues to the Planning and Fire Departments violated section 9.113, subdivision (a) of the San Francisco Charter, which provides:

"Unused and unencumbered appropriations or unencumbered balances existing at the close of any fiscal year in revenue or expense appropriations of the City and County for any such fiscal year, but exclusive of revenue or money required by law to be held in school, bond, bond interest, bond re-

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demption, pension, trust, utility or other specific funds, or to be devoted exclusively to specified purposes other than annual appropriations, ... shall be transferred by the Controller, at the closing of such fiscal year, to the General Fund."

Collier reasons that, under charter section 9.113, subdivision (a), San Francisco is required to retain any unused and unencumbered fund balances in the BIF at the close of the fiscal year because those funds are "money required by law to be held in ... specific funds, or to be devoted exclusively to specified purposes other than annual appropriations." The trial court rejected Collier's reasoning:

"Charter section 9.113(a) does not itself create a legal duty to hold any unspent monies in particular funds, or even to devote such monies to specific purposes. It simply acknowledges that some other, unspecified laws might create such duties. [Collier] ha[s] not shown, and cannot show, any 'other law' that gives rise to such a duty here."

Collier disagrees, and identifies the "other law[s]" giving rise to a legal duty to retain the unused fee revenues in the BIF as S.F. Administrative Code sections **717 10.100-1 and 10.100-45.[FN18] S.F. Administrative Code section 10.100-45 labels the BIF as a "category four" fund. S.F. Administrative Code section 10.100-1 provides that "[a]ny unexpended and unencumbered balance remaining at the close of any fiscal year in fund categor[y] ... four ... shall be deemed to have been provided for a specific purpose within the meaning of [former] [s]ection 6.306 [now charter section 9.113] of the Charter and shall be accumulated in the fund." [FN19]

FN18. As previously mentioned, the trial court sustained without leave to amend San Francisco's demurrer to Collier's claim that the BIF fee revenue transfers independently violated S.F. Administrative Code section 10.100-45.

FN19. Charter section 6.306 is the predecessor version of charter section 9.113, and contains language nearly identical to that in charter section 9.113, subdivision (a) which Collier claims San Francisco has violated.

Collier's reliance on S.F. Administrative Code sections 10.100-1 and 10.100-45 is misplaced. It disregards that San Francisco effectively amended those provisions by enacting inconsistent budget ordinances in FY 2003-2004 and FY 2004-2005. Those budget ordinances, enacted by San Francisco's *1351 Board of Supervisors, authorized the transfer of unused BIF fee revenues to the Planning and Fire Departments, irrespective of any requirement in S.F. Administrative Code sections 10.100-1 and 10.100-45 to retain them. In doing so, San Francisco acted consistently with its legislative authority. (*Blotter v. Farrell* (1954) 42 Cal.2d 804, 811, 270 P.2d 481 ["the power [of a municipality] to legislate generally includes, by necessary implication, the power to amend or repeal existing legislation"]; see also *California Assn. of Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1282, 36 Cal.Rptr.2d 404["[a]n appropriation is a legislative act setting aside 'a certain sum of money for a specified object in such manner that the executive officers are authorized to use that money and no more for such specified purpose' "].) "[A]lthough repeals by implication are not favored [citation], when, as here, a subsequently enacted specific statute directly conflicts with an earlier, more general provision, it is settled that the subsequent legislation effects a limited repeal of the former statute to the extent that the two are irreconcilable." (*Governing Board v. Mann* (1977) 18 Cal.3d 819, 828, 135 Cal.Rptr. 526, 558 P.2d 1.)

Collier appears to accept, as a general matter, San Francisco's authority to amend or repeal ordinances by enacting subsequent, inconsistent ordinances. Nonetheless, Collier presents three arguments why he claims San Francisco lacked authority to repeal or amend S.F. Administrative Code sections 10.100-1 and 10.100-45. We address each argument in turn.

First, Collier claims San Francisco lacked authority to repeal or amend S.F. Administrative Code sections 10.100-1 and 10.100-45 because section 10.100-1 cross-references charter section 9.113, a charter provision which by law cannot be repealed or amended by ordinance.

[13] True, a municipality may not amend or repeal its charter by ordinance. (*Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1034, 2 Cal.Rptr.2d 648 ["a charter bears the same relationship to ordinances as the state Constitution does to statutes"]; *Lucchesi v. City of San Jose*

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(1980) 104 Cal.App.3d 323, 328, 163 Cal.Rptr. 700 [a city charter may be amended by the majority vote of the electorate but not by ordinance]; *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171, 36 Cal.Rptr.2d 521, 885 P.2d 934 ["it is well **718 settled that a charter city may not act in conflict with its charter"].) However, as the trial court found here, charter section 9.113, subdivision (a) imposes no legal duty on San Francisco with respect to revenues held in the BIF. As such, the budget ordinances San Francisco enacted to authorize the transfers of BIF fee *1352 revenues did not purport to amend or repeal charter section 9.113, subdivision (a). Rather, the budget ordinances impliedly amended S.F. Administrative Code sections 10.100-1 and 10.100-45, which, for reasons already discussed, were permissible legislative acts. (*Governing Board v. Mann, supra,* 18 Cal.3d at p. 828, 135 Cal.Rptr. 526, 558 P.2d 1.)

Collier next points to San Francisco Administrative Code, Chapter 10: Finance, Taxation, and Other Fiscal Matters, article I: In General, section 10.02 Cash Reserve Fund and Supplemental Appropriations (S.F. Administrative Code section 10.02) as authority for why San Francisco lacked authority to repeal or amend S.F. Administrative Code sections 10.100-1 and 10.100-45.[FN20] S.F. Administrative Code section 10.02 contains language nearly identical to that upon which Collier relies in charter section 9.113, subdivision (a). And as Collier points out, under another provision of the San Francisco Administrative Code, "all ordinances passed ... contrary to the provisions of Section 10.02... shall be void." (San Francisco Administrative Code, Chapter 10: Finance, Taxation and Other Fiscal Matters, article I: In General, section 10.08-1 Invalidity of Improper Acts.)

FN20. S.F. Administrative Code section 10.02, provides in relevant part:

> "Unused and unencumbered appropriations or unencumbered balances existing at the close of any fiscal year in revenue or expense appropriations of the City and County for any such fiscal year, ...*but exclusive of revenue or money required by law to be held in school, bond, bond interest, bond redemption, pension, trust, utility or other specific funds, or to be devoted exclusively to specified purposes other than annual appropriations,...* shall be transferred by the Controller, at the closing of such fiscal year, to a 'cash reserve fund' which is hereby created and which may be used only in the manner authorized by Section 10.08...." (Emphasis added.)

Collier's argument based on S.F. Administrative Code section 10.02 fails for the same reason his argument based on charter section 9.113 fails: section 10.02, like charter section 9.113, subdivision (a), imposes no legal duty on San Francisco with respect to revenues held in the BIF. As such, S.F. Administrative Code section 10.02 had no effect on San Francisco's authority to repeal or amend S.F. Administrative Code sections 10.100-1 and 10.100-45 by enacting the subsequent inconsistent budget ordinances. (*Governing Board v. Mann, supra,* 18 Cal.3d at p. 828, 135 Cal.Rptr. 526, 558 P.2d 1.)

Finally, Collier points to a line of California cases requiring local and state governments to hold in "trust" certain regulatory fees collected and placed in dedicated, special-use funds. According to Collier, these "trust fund cases" preclude any finding that a budget ordinance can impliedly repeal or amend a statute establishing dedicated funds by directing the transfer of regulatory fees held in those funds to the state treasury. (E.g., *Riley v. Thompson* (1924) 193 Cal. 773, 776, 227 P. 772 [barring the transfer of harbor pilot fee revenues from a dedicated regulatory fund to the treasury]; *Board etc. Commrs. v. Riley* (1924) 194 Cal. 37, 39, 227 P. 775 [barring the transfer of fishing and hunting permit fee revenues from a dedicated regulatory fund to the general fund].)

**719 [14] *1353 Collier's authority is inapposite. The "trust fund doctrine" applies only where a special-use fund is subject to continuous or automatic appropriation. (*California Assn. for Safety Education v. Brown, supra,* 30 Cal.App.4th at p. 1285, 36 Cal.Rptr.2d 404.) Continuous or automatic appropriation exists where the regulatory agency in charge of the fund is "authorized to collect and immediately spend the money they collect," and thus is not dependent on annual appropriations from the Legislature. (*Ibid.*) Here, S.F. Administrative Code section 10.100-1 expressly provides that the BIF, as a category four fund, is not subject to continuous or "automatic" appropriation. As such, the BIF is not a trust

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fund, nor governed by the trust fund doctrine. (*California Assn. for Safety Education v. Brown, supra,* 30 Cal.App.4th at p. 1285, 36 Cal.Rptr.2d 404.)

We thus conclude Collier's claim under charter section 9.113, subdivision (a) fails. As discussed, the BIF is a category four fund specially dedicated for the purpose of receiving revenues collected by DBI. As enacted, S.F. Administrative Code section 10.100-45 required BIF fee revenues to be used exclusively by DBI to defray certain of its costs. (*Ibid.*) S.F. Administrative Code section 10.100-45, read together with S.F. Administrative Code section 10.100-1, required San Francisco to carry forward any fund balance remaining in the BIF at the close of the fiscal year. San Francisco partially amended S.F. Administrative Code sections 10.100-1 and 10.100-45 by enacting inconsistent budget ordinances in FY 2003-2004 and FY 2004-2005. Under those budget ordinances, a portion of the BIF's unused fund balances remaining at the close of FY 2003-2004 and FY 2004-2005 was transferred to the Planning and Fire Departments. For reasons set forth above, those transfers were within San Francisco's authority.

* * * * * *

In summary, we conclude San Francisco properly transferred the BIF fee revenues, monies collected from building permit applicants, from DBI to the Planning and Fire Departments to cover actual costs incurred by those departments in performing regulatory activities related to the building permit process. (*Sinclair Paint, supra,* 15 Cal.4th at p. 879, 64 Cal.Rptr.2d 447, 937 P.2d 1350 [where " 'an unusual burden [is imposed] on city services, a municipality may properly impose fees pursuant to its police powers' to assure that the persons responsible 'pay their fair share of the cost of government' "].) We thus affirm the judgment entered by the trial court.

***1354 DISPOSITION**

The judgment is affirmed.

POLLAK and SIGGINS, JJ., concur.
Cal.App. 1 Dist.,2007.
Collier v. City and County of San Francisco
151 Cal.App.4th 1326, 60 Cal.Rptr.3d 698, 07 Cal. Daily Op. Serv. 6730, 2007 Daily Journal D.A.R. 8661

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KATHLEEN CONNELL, as Controller, etc., et al., Petitioners,
v.
THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; SANTA MARGARITA WATER DISTRICT et al., Real Parties in Interest.
No. C024295.

Court of Appeal, Third District, California.
Nov. 20, 1997.

SUMMARY

Several Water districts brought mandamus proceedings against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. The trial court entered a judgment that the state mandate was a program for which reimbursement was due, and it directed the Controller to determine the amounts of reimbursement. (Superior Court of Sacramento County, Nos. CV347181, CV357155, CV357156 and CV357950, James Timothy Ford, Judge.)

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its judgment and enter a new judgment denying the petitions for a writ of mandate. The court held that because the judgment plainly left matters undecided, the judgment was interlocutory and therefore was not appealable; however, the court treated the appeal as a writ petition. On the merits, the court held that the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. The court further held that even if the amendment constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the board shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances. The court also held that the public interest exception to the doctrine of administrative collateral estoppel permitted the Controller to raise that issue in the trial court. (Opinion by Sims, J., with Puglia, P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Appellate Review § 17--Decisions Appealable--Final Judgment-- Necessity For Further Orders.
A judgment entered in litigation to determine whether a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, was not a final judgment and thus was not appealable. The challenging parties' petition sought an order directing the State Controller to issue a warrant and the State Treasurer to pay a warrant, but the judgment merely ordered the Controller to determine amounts without disposing of those matters. The record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget, but the necessary evidentiary hearing on that issue was not held. Because the judgment plainly left matters undecided, the judgment was interlocutory and therefore not appealable.

(2) Appellate Review § 10--Jurisdiction--Appealable Judgment.
An appealable judgment or order is a jurisdictional prerequisite to an appeal.
[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14.]
(3) Appellate Review § 17--Decisions Appealable--

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Interlocutory Judgment.
An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties.

(4) Mandamus and Prohibition § 44--Mandamus--To Courts--Appeal--Scope of Review.
In reviewing a trial court's ruling on a petition for a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination.

(5) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Board of Control Decision.
In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel precluded application of the doctrine to the legal issues raised by defendant. The issues presented were not limited to the validity of any finally adjudicated individual claim, but encompassed the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the board's decision was wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts.
[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 339.]
(6a, 6b) State of California § 11--Fiscal Matters--Reimbursement for State-mandated Costs--Standards for Reclaimed Wastewater--Authority of Water Districts to Levy Fees.
Even if a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a new program for state-mandated costs purposes, the costs are not reimbursable, since the water districts have the authority to levy fees to pay for the program (Wat. Code, § 35470). Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program. The plain language of the statute precludes a construction of "authority" to mean a practical ability in light of surrounding economic circumstances.

(7) Statutes § 29--Construction--Language--Legislative Intent.
In construing statutes, a court's primary task is to determine the lawmakers' intent. To determine intent, the court looks first to the words themselves. If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature.

(8) Judgments § 81--Res Judicata--Administrative Collateral Estoppel-- Public Interest Exception--Legal Issue.
In litigation by several water districts against the State Controller to enforce a State Board of Control decision that a statewide regulatory amendment, which increases the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state, the public interest exception to the doctrine of administrative collateral estoppel permitted defendant to raise the purely legal issue that Rev. & Tax. Code, former § 2253.2 (now Gov. Code, § 17556), precluded reimbursement. The statute provides that the Board of Control shall not find a reimbursable cost if the local agency has the "authority," i.e., the right or power, to levy service charges, fees, or assessments sufficient to pay for the mandated program, and plaintiffs have such authority. The board's finding to the contrary was thus not binding.

COUNSEL

Daniel E. Lungren, Attorney General, Floyd D. Shimomura, Assistant Attorney General, Linda A. Cabatic and Susan R. Oie, Deputy Attorneys General, for Petitioners.

No appearance for Respondent.

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James A. Curtis for Real Parties in Interest.

SIMS, J.

This case involves a dispute as to whether a statewide regulatory amendment, increasing the level of purity required when reclaimed wastewater is used for certain types of irrigation, constitutes a state-mandated program for which water districts are entitled to reimbursement from the state. (Cal. Const., art. XIII B, § 6 (hereafter, section 6); [FN1] Gov. Code, § 17500 et seq.; former Rev. & Tax. Code, § 2201 et seq.) The State Controller and State Treasurer appeal from a trial court judgment granting *386 petitions for writ of mandate brought by Santa Margarita Water District (SMWD), Marin Municipal Water District, Irvine Ranch Water District and Santa Clara Valley Water District (the Districts), seeking to enforce a State Board of Control (the Board) decision which found the regulatory amendment constituted a reimbursable state mandate. [FN2] Appellants contend the trial court erred because (1) the amendment did not constitute a new program or higher level of service in an existing program; (2) the Districts' claim was abolished when the statutory basis for their claim-former Revenue and Taxation Code section 2207-was repealed before their rights were reduced to final judgment, and (3) the Districts' authority to levy fees to pay for the increased costs defeats their claim of a reimbursable mandate. Appellants also challenge the trial court's determination that they were collaterally estopped from challenging the Board's decision (finding a reimbursable state mandate) by their failure timely to seek judicial review of the administrative decision. We shall conclude the Districts' authority to levy fees defeats their claim of a reimbursable mandate, and appellants are not collaterally estopped from raising this matter. We therefore need not address the other contentions. Treating this appeal from a nonappealable judgment as an extraordinary writ petition, we shall direct the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions.

FN1 Section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

FN2 The trial court first held proceedings in the matter of the petition filed by the SMWD. The other three water districts had filed petitions, which were consolidated and awaiting hearing. The parties to the consolidated case filed a stipulation indicating they did not wish to relitigate the entitlement issues already decided by Judge Ford in the SMWD case, and they stipulated to assignment of their cases to Judge Ford pursuant to California Rules of Court, rule 213 (assignment to one judge for all or limited purposes), for determination of amounts as to each district. The judgment expressly covers the petitions of all four districts.

Factual and Procedural Background

In 1975, the State Department of Health Services (DHS) adopted regulations (Cal. Code Regs., tit. 22, §§ 60301-60357) implementing Water Code section 13521, which provides: "The State Department of Health Services shall establish uniform statewide recycling criteria for each varying type of use of recycled water where the use involves the protection of public health." Section 60313 [FN3] of title 22 of the California Code of Regulations prescribed the level of purity required for reclaimed water to be used for landscape irrigation. *387

FN3 California Code of Regulations, title 22, section 60313, initially provided: "Landscape Irrigation. Reclaimed water used for the irrigation of golf courses, cemeteries, lawns, parks, playgrounds, freeway landscapes, and landscapes in other areas where the public has access shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered ade-

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quately disinfected if at some location in the treatment process the median number of coliform organisms does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed." (Former § 60313, Cal. Code Regs., tit. 22, Register 75. No. 14 (Apr. 5, 1975).)

In May 1976, SMWD adopted a plan to develop a wastewater reclamation system. In August 1976, SMWD filed an application with the responsible regional water quality control board (Water Control Board) for a permit to discharge wastewater from the proposed reclamation system. SMWD also planned to provide reclaimed water for irrigation, potentially to 2,173 acres of land.

In February 1977, the Water Control Board issued SMWD a permit for operation of a reclamation system-the Oso Creek facility. The permit required SMWD to comply with all applicable wastewater reclamation regulations then in effect.

In late 1977, SMWD learned DHS might be considering modifications to the California Code of Regulations, title 22 regulations.

In August 1978, SMWD completed construction of the Oso Creek facility, at a cost of $17 million.

In September 1978, DHS amended the regulations. The amendment to California Code of Regulations, title 22, section 60313 [FN4] increased the level of purity required before reclaimed wastewater could be used for the irrigation of parks, playgrounds and school yards. It is this amendment which allegedly constituted a state-mandated cost. SMWD modified its facility to comply with the amended regulations, completing the modifications in 1983. *388

FN4 Section 60313 of California Code of Regulations, title 22, as amended, provides: "(a) Reclaimed water used for the irrigation of golf courses, cemeteries, freeway landscapes, and landscapes in other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized wastewater. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 23 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 240 per 100 milliliters in any two consecutive samples.

"(b) Reclaimed water used for the irrigation of parks, playgrounds, schoolyards, and other areas where the public has similar access or exposure shall be at all times an adequately disinfected, oxidized, coagulated, clarified, filtered wastewater or a wastewater treated by a sequence of unit processes that will assure an equivalent degree of treatment and reliability. The wastewater shall be considered adequately disinfected if the median number of coliform organisms in the effluent does not exceed 2.2 per 100 milliliters, as determined from the bacteriological results of the last 7 days for which analyses have been completed, and the number of coliform organisms does not exceed 23 per 100 milliliters in any sample."

On October 1, 1982, SMWD filed a "test claim" [FN5] with the Board, alleging the regulatory amendment relating to the use of reclaimed wastewater constituted a new program or higher level of service. The test claim was made pursuant to former Revenue and Taxation Code section 2231, [FN6] which required reimbursement to local agencies for costs mandated by the state (see now Gov. Code, § 17561 [FN7]), and former Revenue and Taxation Code section 2207, subdivisions (a) and (b) [FN8] defining "costs mandated by the state." (See now Gov. Code, § 17514. [FN9]) The test claim also cited section 6 (fn. 1, *ante*).*389

FN5 At the time in question, "test claim" meant "the first claim filed with the State Board of Control alleging that a particular statute or executive order imposes a mandated cost on such local agency or school district." (Former Rev. & Tax. Code, § 2218; Stats. 1980, ch. 1256, § 7, p. 4249.) "Estimated claims" and "reimbursement claims" were used to make specific demand against an appropriation made for the purpose of paying such claims. (*Ibid.*)

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A similar structure, distinguishing between "test claims" and various "reimbursement claims" or "entitlement claims" continues presently in Government Code sections 17521-17522.

At the time in question, the statutory procedure provided that if the Board found a mandate, it did not determine the amount to be reimbursed to the test claimant; rather, the Board then adopted a statewide cost estimate which was reported to the Legislature. (Stats. 1980, ch. 1256, p. 4246 et seq.; Stats. 1982, ch. 734, p. 2911 et seq.) It was the State Controller who determined specific amounts to be reimbursed, after the Legislature appropriated funds for that purpose. (*Ibid.*)

FN6 Former Revenue and Taxation Code section 2231 provided in part: "(a) The state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207...." (Stats. 1982, ch. 1586, § 3, p. 6264.)

FN7 Government Code section 17561 provides in part: "(a) The state shall reimburse each local agency and school district for all 'costs mandated by the state,' as defined in Section 17514...."

FN8 Former Revenue and Taxation Code section 2207 provided in part: " 'Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program ...." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.)

The test claim did *not* invoke other subdivisions of former Revenue and Taxation Code section 2207, concerning "(c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973. [¶] ... [¶] ... (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program." (Stats. 1980, ch. 1256, § 4, pp. 4247-4248.) Since these subdivisions were not invoked, we have no need to consider them.

FN9 Government Code section 17514 provides: " 'Costs mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 ...."

On July 28, 1983, the Board determined the amended regulations imposed state mandated costs. In so doing, the Board rejected the position of state agencies seeking denial of the claim on the ground that local agencies are not mandated to use reclaimed water and because, if local agencies do choose to use it, they can recover the cost in charges made to purchasers of the water.

On January 19, 1984, the Board adopted "Parameters and Guidelines" establishing criteria for payment of claims to water districts pursuant to this mandate. (Former Rev. & Tax. Code, § 2253.2; Stats. 1982, ch. 734, § 10, pp. 2916-2917; Gov. Code, § 17557.)

On May 31, 1984, the Board amended its Parameters and Guidelines to provide for reimbursement of SMWD's cost of preparing and presenting the test claim.

In June 1984, the Board, pursuant to former Revenue and Taxation Code section 2255, [FN10] submitted to the Legislature a statewide cost estimate of $14 million for this mandate. The Legislature did not appropriate any funds for the mandate in 1984.

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FN10 Former Revenue and Taxation Code section 2255 provided: "At least twice each calendar year the Board of Control shall report to the Legislature on the number of mandates it has found and the estimated statewide costs of such mandates. Such report shall identify the statewide costs estimated for each such mandate and the reasons for recommending reimbursement.... Immediately on receipt of such report a local governmental claims bill shall be introduced in the Legislature. The local government claims bill, at the time of its introduction, shall provide for an appropriation sufficient to pay the estimated costs of such mandates, pursuant to the provisions of this article." (Stats. 1980, ch. 1256, § 20, p. 4255.)

The current provision is contained in Government Code section 17600, which provides: "At least twice each calendar year the commission shall report to the Legislature on the number of mandates it has found pursuant to Article 1 (commencing with Section 17550) and the estimated statewide costs of these mandates. This report shall identify the statewide costs estimated for each mandate and the reasons for recommending reimbursement."

In 1985, the Legislature included an appropriation of almost $14 million for this state-mandated cost in the budget, but the Governor vetoed the appropriation.

In 1986, a bill including $945,000 for the subject mandate was introduced, but the bill was not enacted.

On January 27, 1987, SMWD filed in the trial court a petition for writ of mandate pursuant to Code of Civil Procedure section 1085. The petition sought an order directing (1) the State Controller to issue a warrant "to pay the State's obligation to SMWD for its 'costs mandated by the state' " and (2) the State Treasurer to pay the Controller's warrant. *390

At a hearing, the trial court upheld the Board's decision that the amended regulations required a higher level of service and held the doctrines of waiver and collateral estoppel applied to that decision, such that the state, by failing to challenge the Board's decision within the three-year statute of limitations, was barred from challenging it now. However, the trial court did allow the state to argue that the amended regulations did not come within the definition of "program," as that word had recently been defined in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202].

The trial court recognized that, since there was no appropriation for this mandate in the state budget, the court could not grant the relief sought by SMWD (an order directing the Controller to issue a warrant and the Treasurer to pay it) unless the court found the existence of funds reasonably available in the state budget which could be tapped for this purpose. The trial court stated it was not prepared to find the existence of funds reasonably available without a full evidentiary hearing. Rather than use the Board's statewide estimate, the court believed it needed to know the amount to which each water district would be entitled before it could determine whether there were funds reasonably available in the budget. The trial court ruled the exact amount of money to be reimbursed to the Districts had never been determined and referred the matter to a referee to make that determination.

In February 1989, a court-appointed referee began evidentiary hearings to determine the amount of reimbursement for each water district.

In 1989, the Legislature repealed former Revenue and Taxation Code section 2207 (fn. 8, *ante*), defining "costs mandated by the state." (Stats. 1989, ch. 589, § 7, p. 1978.)

On July 29, 1994, appellants filed in the trial court a motion for judgment on the pleadings/motion to dismiss, arguing repeal of former Revenue and Taxation Code section 2207 destroyed any right to reimbursement and divested the court of jurisdiction to proceed. The motion also revisited the issue presented to and rejected by the Board, that the water districts' authority to levy fees defeated a finding that the costs were reimbursable.

In February 1995, the trial court issued its ruling denying appellants' motion for judgment on the pleadings and for dismissal. The court in its minute order determined repeal of former Revenue and Taxation Code section 2207 in 1989 had not destroyed the Districts' right to reimbursement pursuant to the

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Board's decision, because the Board's decision was reduced to "final judgment" before the statutory repeal. The court said the Board's *391 decision on July 28, 1983, became final in July 1986, when the applicable three-year statute of limitations for seeking judicial review lapsed. The Board's decision therefore conclusively established the Districts' right to reimbursement, and appellants were collaterally estopped from challenging the Board's decision. The court further said no discernible injustice or public interest precluded this application of collateral estoppel; rather, justice would be furthered by allowing the Districts to enforce their right to reimbursement as established by the Board.

The trial court further said the statutory authority of the Districts to levy service charges and assessments (Former Rev. & Tax. Code, § 2253.2, subd. (b)(4); [FN11] Stats. 1982, ch. 734, § 10, p. 2916; Gov. Code, § 17556 [FN12]) did not bar reimbursement for state-mandated costs. "When the Board determined that the 1978 amendment of the regulations establishing reclamation criteria imposed reimbursable state-mandated costs, it rejected the argument of the State Departments of Health Services and Finance that the costs were not reimbursable pursuant to former Revenue and Taxation Code section 2253(b)(4) and implicitly determined, in accordance with the presentation of [Santa Margarita Water District] that [the Districts] did not have sufficient authority to levy service charges and assessments to pay for the increased level of service mandated by the 1978 regulatory amendment. This implicit determination, resolving a mixture of legal and factual issues, became final and binding on respondents under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

FN11 At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part: "(b) The Board of Control shall not find a reimbursable mandate ... in any claim submitted by a local agency ... if, after a hearing, the board finds that: [¶] ... [¶] (4) The local agency ... has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." (Stats. 1982, ch. 734, § 10, p. 2916.)

FN12 Government Code section 17556 provides in part: "The [Commission on State Mandates (formerly the Board of Control)] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

At a further hearing concerning the amount owed to each water district, the trial court stated it had erred in referring the matter to a referee and should have rendered a judgment directing the Controller to determine the amounts owed.

On June 3, 1996, the trial court entered a judgment stating (1) the Board's decision was final at the time the petitions were filed in the trial court; (2) *392 the state mandate is a program for which reimbursement is due under *County of Los Angeles v. State of California, supra*, 43 Cal.3d 46; (3) the court having concluded it was inappropriate for the court to determine amounts of reimbursement, the Controller was directed to make that determination. The court directed issuance of a writ commanding the Controller to determine the amounts due to the Districts.

Appellants appeal from the judgment.

The Districts filed a cross-appeal, but we dismissed the cross-appeal pursuant to stipulation of the parties.

Discussion

1. *Appealability*

(1a) Because the petition sought an order directing the Controller to issue a warrant and the Treasurer to pay a warrant but the judgment merely ordered the Controller to determine amounts without disposing of those matters, and because the record reflected the trial court's recognition that it could not order issuance or payment of warrants unless it determined appropriated funds for such expenditures were reasonably available in the state budget. [FN13] (*Carmel Valley Fire Protection Dist. v. State of California*

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(1987) 190 Cal.App.3d 521, 538-541 [234 Cal.Rptr. 795])-a determination requiring an evidentiary hearing which was not held-we requested supplemental briefing on the question whether the judgment was a final appealable judgment, as opposed to an interlocutory judgment.

FN13 The petition for writ of mandate alleged there was a continuously appropriated State Mandates Claims Fund upon which the Legislature had placed restrictions which on their face made the fund inapplicable to the mandate at issue in this case. The petition further alleged these restrictions were unconstitutional, such that upon a judicial declaration of their unconstitutionality, there would exist funds reasonably available to pay SMWD. The trial court made no ruling on these matters. In this appeal, we need not and do not decide the propriety of the remedy sought by the Districts.

(2) An appealable judgment or order is a jurisdictional prerequisite to an appeal. (Code Civ. Proc., § 904.1; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, §§ 13-14, pp. 72-73.)

(3) An interlocutory judgment is not appealable; generally, a judgment is interlocutory if anything further in the nature of judicial action on the part of the trial court is essential to a final determination of the rights of the parties. (*Lyon v. Goss* (1942) 19 Cal.2d 659, 669-670 [123 P.2d 11].)

(1b) In their supplemental briefs, both sides maintain the judgment is a final appealable judgment but for different reasons. Both sides are wrong. *393

Appellants assert the judgment is final because nothing further remains to be done by the trial court. According to appellants, the Controller, after determining what amounts are due, is supposed to submit that amount to the Legislature to appropriate the funds (though the judgment contains no such direction). Appellants assert that, if the Legislature does not appropriate the funds, the Districts' remedy would be to file a new action in the superior court to enforce the court's prior order, and to compel payment out of funds already appropriated and reasonably available for the expenditures. Appellants assert it is thus premature to consider whether appropriated funds are reasonably available to pay any reimbursement due.

The Districts' supplemental brief, while agreeing the judgment is a final appealable judgment, disputes appellants' view of what happens after the Controller determines the amounts. The Districts maintain the trial court intended for appellants to pay the amounts determined by the Controller, despite the judgment's failure so to state. The Districts claim the unresolved factual question of the existence of available appropriated funds in the budget is merely "an administrative detail" which need not be addressed by the court except in a proceeding to enforce the judgment in the event appellants refuse to pay.

Both sides are wrong. Nothing in the judgment requires the Controller to submit an appropriations bill to the Legislature, and appellants cite no authority that would require such a procedure-which would duplicate steps previously undertaken in this case without success. Nor does anything in the judgment call for issuance or payment of warrants. *Carmel Valley Fire Protection Dist. v. State of California, supra,* 190 Cal.App.3d 521-a case discussed in the trial court and on appeal-recognized that a court violates the separation of powers doctrine if it purports to compel the Legislature to appropriate funds, but no such violation occurs if the court orders payment from an existing appropriation. (*Id.* at pp. 538-539.)Thus, the Districts' view of this matter as an administrative detail for a later postjudgment enforcement proceeding is unsupported.

We recognize this litigation arises from a "test claim," which merely determines whether a state-mandated cost exists. (See fn. 5, *ante.*)Perhaps no issue of payment should arise at all at the test claim stage, though neither side so argues.

In any event, the judgment plainly leaves matters undecided.

We conclude the judgment is interlocutory and therefore not appealable.

Nevertheless, on our own motion, we shall exercise our discretion to treat the appeal as a writ petition and shall grant review on that basis. (*394*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743-744 [29 Cal.Rptr.2d 804, 872 P.2d 143] [treating appeal as writ petition is authorized means for obtain-

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ing review of interlocutory judgments].) We shall exercise our discretion to treat the appeal as a writ petition in the interest of justice and judicial economy, because the merits of the dispositive issues have been fully briefed, both sides urge review, and the judgment compels the Controller to engage in complex factfinding determinations which may be moot if the trial court erred on the merits of the mandate issues. Given the difficulties in discerning how the former statutory process of test claims was supposed to work in practice, we believe the interests of justice and judicial economy are best served by reviewing the judgment rather than dismissing the appeal.

We stress, however, that our review is limited to contentions raised in the briefs-which do not raise issues of the propriety of the remedy sought by the Districts. We express no view on whether the remedy sought by the Districts was an available or appropriate remedy.

II. *Standard of Review*

(4) In reviewing the trial court's ruling on a writ of mandate, the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. (*Evans v. Unemployment Ins. Appeals Bd.* (1985) 39 Cal.3d 398, 407 [216 Cal.Rptr. 782, 703 P.2d 122].) However, where the facts are undisputed and the issues present questions of law, the appellate court is not bound by the trial court's decision but may make its own determination. (*Ibid.*)

III. *Collateral Estoppel*

We first address the trial court's determination that appellants were collaterally estopped from challenging the Board's determination of state-mandated cost (except for the ability to address the effect of a new Supreme Court case defining "program"). The trial court stated the Board's decision became final for collateral estoppel purposes in July 1986, when the statute of limitations for judicial review expired.

Appellants contend the trial court erred in applying collateral estoppel, because there was no "final judgment" for collateral estoppel purposes, since the amount of reimbursement had yet to be determined.

(5) We conclude it is not necessary to decide the parties' dispute as to whether the requirements of administrative collateral estoppel are met, because even assuming the elements are met, the doctrine of collateral estoppel should be disregarded pursuant to the public interest exception. *395

Thus, our Supreme Court declined to apply collateral estoppel in a state-mandated costs case in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64-65 [266 Cal.Rptr. 139, 785 P.2d 522] (*Sacramento II*). There, a city and a county filed claims with the Board seeking subvention of costs imposed by a statute (Stats. 1978, ch. 2, p. 6 et seq., referred to in *SacramentoII* as "chapter 2/78") which extended mandatory coverage under the state unemployment insurance law to include state and local governments. The Board found there was no state-mandated program and denied the claims. On mandamus, the trial court overruled the Board and found the costs reimbursable. We affirmed the trial court in a published opinion. (*City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258](*Sacramento I*).) On remand, the Board determined the amounts due on the claims, but the Legislature refused to appropriate the necessary funds. The city filed a class action seeking among other things payment of the state-mandated costs. The trial court granted summary judgment for the state on the grounds the statute did not impose state-mandated costs. The Supreme Court upheld the trial court's decision.

The Supreme Court in *Sacramento II* rejected the local agencies' argument that the state was collaterally estopped from relitigating the issue whether a state-mandated cost existed, because *Sacramento I* "finally" decided the matter. (*Sacramento II, supra,* 50 Cal.3d at p. 64.) The Supreme Court said: "Generally, collateral estoppel bars the party to a prior action, or one in privity with him, from relitigating issues finally decided against him in the earlier action. [Citation.] '... But when the issue is a question of law rather than of fact, the prior determination is not conclusive either if injustice would result or if the public interest requires that relitigation not be foreclosed....' [Citation.]

"Even if the formal prerequisites for collateral estoppel are present here, the public-interest exception governs. Whether chapter 2/78 costs are reimbursable

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under article XIII B and parallel statutes constitutes a pure question of law. The *state* was the losing party in *Sacramento I*, and also the only entity legally affected by that decision. Thus, strict application of collateral estoppel would foreclose any reexamination of the holding of that case. The state would remain bound, and no other person would have occasion to challenge the precedent.

"Yet the consequences of any error transcend those which would apply to mere private parties. If the result of *Sacramento I* is wrong but unimpeachable, taxpayers statewide will suffer unjustly the consequences of the state's continuing obligation to fund the chapter 2/78 costs of local agencies...." (*Sacramento II, supra*, 50 Cal.3d at p. 64, original italics.) *396

The Supreme Court also rejected the argument that res judicata applied. "Of course, res judicata and the rule of final judgments bar us from disturbing individual claims or causes of action, on behalf of specific agencies, which have been finally adjudicated and are no longer subject to review. [Citations.] However, the issues presented in the current action are not limited to the validity of any such finally adjudicated individual claims. Rather, they encompass the question of defendants' subvention obligations *in general* under chapter 2/78." (*Sacramento II, supra*, 50 Cal.3d at p. 65, original italics.)

If this court's opinion finding a reimbursable mandate in *Sacramento I* did not constitute a final adjudication precluding further consideration of the matter, a fortiori the Board's decision in the instant case does not constitute a final adjudication precluding further consideration. Thus, here, as in *Sacramento II*, the issues presented are not limited to the validity of any finally adjudicated individual claim, but encompass the question of subvention obligations in general under the regulatory amendment of wastewater purification standards. If the Board's decision is wrong but unimpeachable, taxpayers statewide would suffer unjustly the consequences of a continuing obligation to fund the costs of local water districts. We reject the Districts' argument that no public interest exists in this case because only a few local entities are involved.

The Districts suggest application of the public interest exception to collateral estoppel would nullify the legislative intent to avoid multiple proceedings by creating a comprehensive and exclusive procedure for handling state mandated costs issues in the administrative forum. (E.g., Gov. Code, § 17500. [FN14]) However, we are bound by Supreme Court authority applying the public interest exception in a state-mandated costs case. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450 [*39720 Cal.Rptr. 321, 369 P.2d 937].) Moreover, contrary to the Districts' implication, the administrative decision is not the final word; the statutory scheme authorizes judicial review of the administrative decision. (Gov. Code, § 17559; former Rev. & Tax. Code, § 2253.5; Stats. 1977, ch. 1135, § 12, p. 3650.) Additionally, the instant judicial proceeding was initiated by the Districts, not by appellants. Thus, in this case application of the public interest exception to collateral estoppel is not creating multiple proceedings.

FN14 Government Code section 17500 provides in part: "The Legislature finds and declares that the existing system for reimbursing local agencies ... for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 .... The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs. [¶] It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 ... and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. Further, the Legislature intends that the Commission on State Mandates, as a quasi-judicial body, will act in a deliberative manner in accordance with the requirements of Section 6 ...."

In light of the Supreme Court's decision in *Sacra-*

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mento II, we disregard earlier authority of an intermediate appellate court which applied administrative collateral estoppel to a question of law in a state-mandated costs case without express discussion of the public interest exception. (*Carmel Valley Fire Protection Dist. v. State of California, supra*, 190 Cal.App.3d at p. 536.)

We conclude that, insofar as appellants' contentions present questions of law, the public interest exception to administrative collateral estoppel governs, and we shall therefore address the legal arguments raised in appellants' brief.

IV. *Authority to Levy Fees*

(6a) Appellants contend that, even if the regulatory amendment is a new program for state mandated costs purposes, the Districts' authority to levy fees defeats a determination that the costs are reimbursable. We agree.

At the time SMWD filed its test claim, former Revenue and Taxation Code section 2253.2 provided in part:

"(b) The Board of Control shall not find a reimbursable mandate, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, in any claim submitted by a local agency or school district, pursuant to subdivision (a) of Section 2218, if, after a hearing, the board finds that:

. . . . . .

"(4) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or level of service." [FN15](Stats. 1982, ch. 734, § 10, p. 2917; Stats. 1980, ch. 1256, § 15, pp. 4253-4254.) *398

FN15 This case presents no issue concerning any distinction between "service charges, fees or assessment," as used in the statute. The parties on appeal frame the issue in terms of the authority to levy "fees." We adopt their usage for the sake of simplicity.

The same provision is currently contained in Government Code section 17556. [FN16]

FN16 Government Code section 17556 provides in part: "The commission [formerly the Board] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶] ... [¶] (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service...."

The facial constitutionality of this provision was upheld in *County of Fresno v. State of California* (1991) 53 Cal.3d 482 [280 Cal.Rptr. 92, 808 P.2d 235]. The *Fresno* court rejected an argument that the statute was facially unconstitutional as conflicting with section 6 (fn. 1, *ante*), which contains no exclusion of reimbursement where the local agency has authority to levy fees. Section 6 requires subvention only when the costs in question can be recovered solely from tax revenues. (53 Cal.3d at p. 487.) Government Code section 17556, subdivision (d), "effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound." (*County of Fresno v. State of California, supra*, 53 Cal.3d at p. 487.)

Here, appellants contend that, at all pertinent times, the water districts have had *authority* to levy fees to cover the costs at issue in this case. They cite provisions such as Water Code section 35470, which provides: "Any district formed on or after July 30, 1917, may, in lieu in whole or in part of raising money for district purposes by assessment, make water available to the holders of title to land or the occupants thereon, and may fix and collect charges therefor. The charges may include standby charges to holders of title to land to which water may be made available, whether the water is actually used or not. The charges may vary in different months and in different localities of the district to correspond to the cost and value of the service, and the district may use so much of the proceeds of the charges as may be necessary to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose."

We agree this statute on its face authorizes the Dis-

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tricts to levy fees sufficient to pay the costs involved with the regulatory amendment. We thus shall conclude the Board erred in finding a right to reimbursement despite this authority to levy fees, and we shall conclude appellants are not collaterally estopped from pressing this point.

The Districts do not dispute they have authority to levy fees for the costs involved in this case. Instead they argue the real issue is whether they had *399 "sufficient" authority. They claim this issue was a mixed question of law and fact, and appellants should be collaterally estopped from raising it. [FN17]

FN17 The Districts assert appellants are relying on evidence that was not before the Board. However, they do not explain what they mean or give us any reference to appellants' brief. We therefore disregard the assertion.

We agree with appellants that the public interest exception to collateral estoppel should be applied here, because the issue presents a pure question of law. The Districts tried to make it a factual issue, but we shall explain why the facts presented by the District were immaterial.

Thus, in proceedings before the Board (where Water Code section 35470 was cited to the Board by state agencies), SMWD did not argue it lacked "authority" to levy fees for this purpose. Instead, SMWD argued and presented evidence that it would not be economically desirable to do so. SMWD submitted declarations stating that rates necessary to cover the increased costs would render the reclaimed water unmarketable and would encourage users to switch to potable water. SMWD maintained that imposition of higher fees on users would contravene the legislative policy expressed in Water Code section 13512, which directs the state to undertake all possible steps to encourage development of wastewater reclamation facilities.

The Board made no express finding concerning this issue. The record contains only the Board minutes, which reflect a motion was made "To find a mandate and continue the issue regarding the claimant's ability to levy a service charge, to the parameters and guidelines process." There was no second to the motion. A motion was then made to find the regulatory amendment contained a reimbursable mandate. The motion carried. The minutes then state: "Discussion: Chairperson Yost disagreed with the motion as she felt the claimant could recover their costs by levying a service charge ...." The Board's Parameters and Guidelines stated in part: "If service charges or assessments were levied to defray the cost of the new criteria, the claim must be reduced by the amount received from such charges or assessment."

In proceedings before the trial court, SMWD admitted the district had the authority to levy fees but argued existence of authority was not enough, and the real question was whether it was economically feasible to levy fees sufficient to pay the mandated costs. Thus, SMWD's counsel stated at the hearing in the trial court: "The state keeps focusing on the question of whether the authority to issue, to assess fees and charges exists, and we have never contested that it didn't.

"But the statute which says that the Board cannot find the existence of a mandate if there's authority to assess fees and charges, and then the critical *400 phrase, 'sufficient to pay for the mandated costs,' that's the condition with [*sic*] which they cannot satisfy.

"We proved that, the Board of Control hearing, through economic evidence. We proved it through testimony that the market was absolutely inelastic in terms of reclaimed water and potable water, that if you raise the price of reclaimed water over the potable water, that people would then buy the potable water, and that's all in the record.

"And so we showed that even though we have the authority, it was not sufficient to pay ...."

We note the record also reflects comments by SMWD's counsel to the trial court, that its customers were paying the increased costs as an "advance" against the state's obligation. The court pointed out users' payment of increased costs disproved the economic evidence SMWD had presented to the Board, that it could not raise its prices without losing its customers. The record also contains indications that the Districts funded the increased costs by diverting money from other sources. As will appear, we need not address this evidence, because it is not relevant to the question of authority to levy fees sufficient to

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fund the increased costs imposed by the regulatory amendment, which is a question of law in this case.

The trial court's minute order stated the districts' authority to levy fees did not bar reimbursement for state-mandated costs, because the Board "implicitly determined" the districts did not have "sufficient" authority to levy fees to pay for the increased service mandated by the 1978 regulatory amendment, and this "implicit determination, resolving a mixture of legal and factual issues, became final and binding on [appellants] under the doctrine of collateral estoppel when they failed to seek judicial review of the Board's decision within the three-year limitations period."

On appeal, appellants argue the sole inquiry is whether the local agency has "authority" to levy fees sufficient to pay the costs, and it does not matter whether the local agency, for economic reasons, finds it undesirable to exercise that authority. Appellants argue this presents a question of law, such that the public interest exception to collateral estoppel would apply (assuming the requirements of collateral estoppel are otherwise met).

We agree with appellants. (7) In construing statutes, our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) To determine intent, we look first to the words themselves. (*Ibid.*) "If the language is clear *401 and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature ...." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(6b) Here, the statute is clear and unambiguous. On its face the statute precludes reimbursement where the local agency has "authority" to levy fees sufficient to pay for the mandated program or level of service. The legal meaning of "authority" includes the "Right to exercise powers; ..." (Black's Law Dict. (6th ed. 1990) p. 133, col. 1.) The lay meaning of "authority" includes "the power or right to give commands [or] take action ...." (Webster's New World Dict. (3d college ed. 1988) p. 92.) Thus, when we commonly ask whether a police officer has the "authority" to arrest a suspect, we want to know whether the officer has the legal sanction to effect the arrest, not whether the arrest can be effected as a practical matter.

Thus, the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program.

The Districts in effect ask us to construe "authority," as used in the statute, as a practical ability in light of surrounding economic circumstances. However, this construction cannot be reconciled with the plain language of the statute and would create a vague standard not capable of reasonable adjudication. Had the Legislature wanted to adopt the position advanced by the Districts, it would have used "reasonable ability" in the statute rather than "authority."

The question is whether the Districts have authority, i.e., the right or power, to levy fees sufficient to cover the costs. The Districts clearly have authority to levy fees sufficient to cover the costs at issue in this case. Water Code section 35470 authorizes the levy of fees to "correspond to the cost and value of the service," and the fees may be used "to defray the ordinary operation or maintenance expenses of the district and for any other lawful district purpose." The Districts do not demonstrate that anything in Water Code section 35470 limits the authority of the Districts to levy fees "sufficient" to cover their costs.

Thus, the economic evidence presented by SMWD to the Board was irrelevant and injected improper factual questions into the inquiry.

On appeal, the Districts briefly argue economic undesirability of levying fees constitutes a lack of authority to levy fees sufficient to cover costs. They claim the evidence before the Board showed SMWD "could not" *402 increase its fees because it was already charging as much for reclaimed as it was for potable water. However, the cited portion of the record does not show SMWD "could not" increase its fees but only that an increase would render reclaimed water unmarketable and encourage users to switch to potable water. The Districts cite no authority supporting their construction of former Revenue and Taxation Code section 2253.2 (now Gov. Code, § 17556) that *authority* to levy fees sufficient to cover costs turns on economic feasibility. We have seen the plain language of the statute defeats the Districts' position.

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(8) Since the issue in this case presented a question of law, we conclude the public interest exception to collateral estoppel applies. (*Sacramento II, supra*, 50 Cal.3d at p. 64.)

The Districts argue application of the public interest exception in this case raises policy concerns about the finality of administrative decisions on state-mandated costs, because if collateral estoppel does not apply in this case, it will never apply. However, we merely hold, in accordance with Supreme Court pronouncement, that the public interest exception to collateral estoppel applies under the circumstances of this case to this state-mandated cost issue which presents solely a question of law.

The Districts argue any fees levied by the districts "cannot exceed the cost to the local agency to provide such service," because such excessive fees would constitute a special tax. However, the districts fail to explain how this is an issue. No one is suggesting the districts levy fees that exceed their costs.

The Districts cite evidence presented to the referee in the aborted hearing to determine amounts owed to each District, that SMWD's director of finance testified SMWD has other sources of revenue from other services it provides (such as sewer service), maintains separate accounts, and borrowed funds internally from other accounts to cover costs incurred as a result of the subject mandate. The Districts assert this testimony reflects that SMWD "recognized the legal limitations on its authority to impose fees for the services that it provides." However, nothing in this evidence demonstrates any legal limitations on the authority to levy the necessary fees.

The Districts say appellants appear to believe the Districts should require users of other services to subsidize the Districts' cost of reclaiming and selling wastewater, through excessive user fees. However, we do not read appellants' brief as presenting any such argument and in any event do not base our decision on that ground. ***403**

In a footnote, the Districts make the passing comment: "In light of the adoption of Proposition 218, which added Articles XIII C and XIII D to the California Constitution this past November [1996], the authority of local agencies to recover costs for many services will be impacted by the requirement to secure the approval by majority vote of the property owners voting, to levy or to increase property related fees. See Section 6, Article XIII D." The Districts do not contend that the services at issue in this appeal are among the "many services" impacted by Proposition 218. We therefore have no need to consider what effect, if any, Proposition 218 might have on the issues in this case.

We conclude the Districts were not entitled to reimbursement of state-mandated costs, because they had authority to levy fees sufficient to pay for the level of service mandated by the 1978 regulatory amendment. Appellants were not collaterally estopped from raising this issue in the trial court. We thus conclude the Districts' mandamus petitions should have been denied. We therefore need not address appellants' contentions that (1) the regulatory amendment did not constitute a new program or higher level of service, or (2) any right to reimbursement was abolished upon repeal of former Revenue and Taxation Code section 2207.

Disposition

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

Puglia, P. J., and Nicholson, J., concurred.
The petition of real parties in interest for review by the Supreme Court was denied February 25, 1998.
***404**

Cal.App.3.Dist.
Connell v. Superior Court
59 Cal.App.4th 382, 69 Cal.Rptr.2d 231, 97 Cal. Daily Op. Serv. 8821, 97 Daily Journal D.A.R. 14,255

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SEAN PATRICK DELANEY et al., Petitioners,
v.
THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; ROXANA KOPETMAN et al., Real Parties in Interest
No. S006866.

Supreme Court of California
May 3, 1990.

SUMMARY

Defendant, who was charged in a misdemeanor complaint with possession of brass knuckles in violation of Pen. Code, § 12020, subd. (a), moved to suppress evidence of the brass knuckles on the ground that he had not consented to the patdown search of his jacket that led to the seizure of the knuckles. Two reporters had been accompanying the members of a police task force who had seized the knuckles, and defendant subpoenaed them to testify at the suppression hearing. The reporters moved to quash the subpoenas, contending that their eyewitness observations constituted "unpublished information" protected by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070). The municipal court denied the motions, and the reporters refused to testify as to whether defendant had consented to the search. The municipal court concluded that the shield law did not apply to the reporters' eyewitness observations and that, even if it did apply, the need for the reporters' presumably disinterested testimony outweighed their claim of immunity. The court cited both reporters for contempt. The reporters filed petitions for writs of habeas corpus in the superior court, and that court granted their petitions, finding that the shield law provided them with immunity from contempt. (Superior Court of Los Angeles County, Nos. HC206320 and HC206321, Aurelio Munoz, Judge.) Both defendant and the People then filed a joint petition in the Court of Appeal seeking to vacate the orders of the superior court granting the habeas corpus petitions. The Court of Appeal, Second Dist., Div. One, No. B032695, found that the shield law does not give a newsperson the right to refuse to testify as to his observations of a public event and ordered the superior court to vacate its orders granting the petitions for writs of habeas corpus.

The Supreme Court affirmed the judgment of the Court of Appeal and directed the Court of Appeal to issue a peremptory writ of mandate compelling the superior court to vacate its orders granting the habeas corpus petitions and to make new and different orders denying the habeas corpus petitions. The court held that the definition of "unpublished information" in the shield law includes a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place. It held that the municipal court struck the proper balance in determining that if the shield law did apply, the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity. It also held that defendant met and surpassed the required threshold showing for disclosure, since there was not just a reasonable possibility, but rather a substantial certainty, that the testimony would assist him in his defense. Further, the reporters' observations were not made in confidence and were not sensitive, their testimony would not impinge on their future newsgathering ability, and they were the only two possible disinterested witnesses. (Opinion by Eagleson, J., with Lucas, C. J. (as to part III), Panelli, Kennard, JJ., and Kremer (Daniel J.), J., [FN*] concurring. Separate concurring opinions by Mosk, J., and by Broussard, J., with Lucas, C. J., concurring as to part I only.)

FN* Presiding Justice, Court of Appeal, Fourth Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Nature of Protection.
Cal. Const., art. I, § 2, subd. (b), and Evid. Code, § 1070, California's shield law, protects a newsperson from being adjudged in contempt for refusing to disclose either (1) unpublished information, or (2) the source of information, whether published or unpublished. The protection provided by these provisions is

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not a privilege but only an immunity. (Disapproving, to the extent they suggest the contrary, *Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388 [153 Cal.Rptr. 608], and *CBS, Inc. v. Superior Court* (1978) 85 Cal.App.3d 241 [149 Cal.Rptr. 421].) The shield law prohibits only a judgment of contempt and, unlike a privilege, it does not protect against other sanctions.

[Privilege of news-gatherer against disclosure of confidential sources or information, note, 99 A.L.R.3d 37. See also **Cal.Jur.3d**, Evidence, § 473; **Am.Jur.2d**, Witnesses, § 297.]

(2a, 2b, 2c, 2d, 2e, 2f, 2g) Witnesses § 11--Privileged Relationships and Communications--Newsperson's Shield Law--Unpublished Information as Including Reporter's Eyewitness Observations.

In the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), the definition of "unpublished information" includes a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place. The shield law states plainly that a newsperson is not to be adjudged in contempt for refusing to disclose any unpublished information. In the context of the shield law, "any" means without limit and no matter what kind. Nowhere in the definition of unpublished information is there an explicit or implied restriction to confidential information. Although a possible inference from the ballot argument in favor of Proposition 5 in 1980, the measure that adopted the constitutional provision, was that only confidential information was meant to be protected, a possible inference in an extrinsic source may not be given more weight than a clear statement in the Constitution itself. (Disapproving, to the extent that they hold or suggest that the shield law protects only confidential information, *CBS, Inc. v. Superior Court* (1978) 85 Cal.App.3d 241 [149 Cal.Rptr. 421], and *Liggett v. Superior Court* (1989) 211 Cal.App.3d 1461 [260 Cal.Rptr. 161], review granted Oct. 12, 1989 (S011581).)

(3) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Nature of Protection--Information Gathered Outside Scope of Employment as Reporter.

The newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), provides no protection for information obtained by a journalist not directly engaged in gathering, receiving, or processing news.

(4) Statutes § 21--Construction--Legislative Intent.

In construing a law, a court's primary task is to determine the lawmakers' intent. In the case of a constitutional provision enacted by the voters, their intent governs. To determine intent, the court turns first to the words themselves for the answer. If the language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters).

(5) Constitutional Law § 13--Construction of Constitutions--Ordinary Meaning.

Words used in a constitutional provision should be given the meaning they bear in ordinary use.

(6) Statutes § 38--Construction--Giving Effect to Statute--Construing Every Word.

In construing a statute, significance should be given, if possible, to every word of the act. Conversely, a construction that renders a word surplusage should be avoided.

(7) Constitutional Law § 13--Construction of Constitutions--Language of Enactment.

The Constitution is to interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.

(8) Words, Phrases, and Maxims--Information.

"Information" includes "reception of knowledge" and "knowledge obtained from reading, observation, or instruction."

(9) Constitutional Law § 24--Constitutionality of Legislation--Rules of Interpretation--Conflict Between Statute and Constitution.

Wherever statutes conflict with constitutional provisions, the constitutional provisions must prevail.

(10) Constitutional Law § 12--Construction of Constitutions--Background, Purpose, and Intent of Enactment--Legislative Materials Not Before Voters.

In construing constitutional language, legislative materials not before the voters are not relevant to determining the voters' intent.

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(11) Statutes § 42--Construction--Aids--Motives or Understandings of Author.
In construing legislation, the motives or understandings of an individual legislator are not considered, even if he or she authored the statute.

(12) Constitutional Law § 12--Construction of Constitutions--Background, Purpose, and Intent of Enactment--Ballot Arguments.
Ballot arguments are accepted sources from which to ascertain the voters' intent in adopting a constitutional provision. As with the legislative history of a statute, however, a court need not look beyond the language of the enactment when the language is unambiguous.

(13) Statutes § 31--Construction--Language--Definitions.
If the lawmaker has provided an express definition, the courts must take it as they find it.

(14) Constitutional Law § 10--Construction of Constitutions--Inconveniences Involved in Application.
Courts, in construing the Constitution, are bound to suppose that any inconveniences involved in the application of its provisions, according to their plain terms and import, were considered in its formation, and voluntarily accepted as less intolerable than those which are thereby avoided, or as fully compensated by countervailing advantages.

(15) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings.
The protection of the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), is overcome in a criminal proceeding on a showing that nondisclosure would deprive the defendant of his federal constitutional right to a fair trial. The incorporation of the shield law into the California Constitution cannot restrict a criminal defendant's federal constitutional right to a fair trial. Such a result would violate the supremacy clauses of the federal and state Constitutions (U.S. Const., art. VI, cl. 2; Cal. Const., art. III, § 1).

(16) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Burden of Proof.
A person claiming a privilege bears the burden of proving he is entitled to the privilege. Pursuant to its terms, the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070) provides only an immunity from contempt, not a privilege. This distinction, however, is not relevant to assigning the burden. Regardless of the label used, the purpose of the shield law is the same-to protect a newsperson's ability to gather and report the news. The newsperson seeking immunity must prove all the requirements of the shield law have been met. The burden then shifts to the criminal defendant seeking discovery to make the showing required to overcome the shield law.

(17a, 17b, 17c) Witnesses § 11--Privileged Relationships and Communications--Newsperson's Shield Law--Application in Criminal Proceedings-- Procedure for Overcoming Immunity.
To overcome a claim of immunity under the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), a criminal defendant must make a threshold showing that there exists a reasonable possibility that the information will materially assist his defense. The court must then consider the defendant's and newsperson's respective, and perhaps conflicting, interests, taking into account: whether the unpublished information is confidential or sensitive; whether the policy of the shield law will be thwarted by disclosure (if the defendant is himself the source of the information, it cannot seriously be argued that the source will feel that his confidence has been breached); the importance of the evidence to the defendant's case; and, in the appropriate case, whether there is an alternative source for the unpublished information. The court must then balance these factors. An in camera hearing will not be required in every case. The court has discretion in the first instance to determine whether a newsperson's claim of confidentiality or sensitivity is colorable. If the court determines the claim is colorable, it must then receive the newsperson's testimony in camera. (Disapproving *Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038 [248 Cal.Rptr. 635], to the extent it did not consider the fact that the party seeking disclosure was the source of the unpublished information.)

(18) Criminal Law § 140--Discovery--Right to Compulsory Process.
A criminal defendant's constitutional right to compulsory process was intended to permit him to request governmental assistance in obtaining likely helpful evidence, not just evidence that he can show beforehand will go to the heart of his case. The need to de-

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velop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.

(19a, 19b) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Procedure for Overcoming Immunity--Nature of Threshold Showing.
A criminal defendant, in order to overcome the immunity created by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), must make a threshold showing. This showing need not be detailed or specific, but it must rest on more than mere speculation. The defendant need not show a reasonable possibility that the information sought will lead to his exoneration; he need only show a reasonable possibility that the information will materially assist his defense. Evidence may be critical to a defense even if it will not lead to exoneration. For example, evidence may establish an "imperfect defense," a lesser included offense, a lesser related offense, or a lesser degree of the same crime; impeach the credibility of a prosecution witness; or, as in capital cases, establish mitigating circumstances relevant to the penalty determination. A criminal defendant's constitutional right to a fair trial includes these aspects of his defense.

(20) Words, Phrases, and Maxims--Exoneration.
"Exoneration" means "the removal of a burden, charge, responsibility, or duty." Stated more simply, in criminal proceedings, "exoneration" is generally understood to mean an acquittal or dismissal of charges.

(21) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Procedure for Overcoming Immunity--Alternative-source Requirement.
In a proceeding in which a criminal defendant attempts to overcome the immunity provided by the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070), a universal and inflexible requirement, that the defendant show that he has no alternative source for the information sought, is inappropriate. In considering whether the requirement is appropriate in a given case, the trial court should consider the type of information being sought (e.g., names of potential witnesses, documents, a reporter's eyewitness observations), the quality of the alternative source, and the practicality of obtaining the information from the alternative source. The trial court must also consider whether the information is confidential or sensitive, the interest sought to be protected by the shield law, and the importance of the information to the criminal defendant. (Disapproving, to the extent they suggest that a criminal defendant must in every case show the lack of an alternative source regardless of the circumstances, *Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388 [153 Cal.Rptr. 608], and *Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038 [248 Cal.Rptr. 635].)

(22) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Reporters' Eyewitness Observations of Search and Seizure.
In a prosecution for possession of brass knuckles (Pen. Code, § 12020, subd. (a)), in which defendant moved to suppress evidence of the brass knuckles on the ground that he had not consented to the patdown search of his jacket that led to the seizure of the knuckles, the municipal court did not err in determining that if the newsperson's shield law (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070) applied to the eyewitness observations by two reporters of the nonconfidential, public circumstances of the search and seizure, the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity. The reporters had been accompanying members of the police task force that encountered defendant and seized the knuckles. Defendant met and surpassed the required threshold showing for disclosure, since there was not just a reasonable possibility, but rather a substantial certainty, that the reporter's testimony would assist him in his defense. Further, the reporters' observations were not made in confidence and were not sensitive, their testimony would not impinge on their future news-gathering ability, and they were the only two possible disinterested witnesses.

(23) Witnesses § 11--Privileged Relationships and Communications-- Newsperson's Shield Law--Application in Criminal Proceedings--Reporters'

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Eyewitness Observations of Search and Seizure--Sufficiency of Evidence to Support Finding.
In a prosecution for possession of brass knuckles (Pen. Code, § 12020, subd. (a)), in which defendant moved to suppress evidence of the brass knuckles on the ground that he had not consented to the patdown search of his jacket that led to the seizure of the knuckles, the municipal court's order citing two reporters for contempt, on the ground of their refusal to testify as to their observations of the search and seizure incident, was supported by substantial evidence. The reporters had been accompanying members of a police task force at the time of the encounter. They contended that they were entitled to the immunity provided by the newsperson's shield law (Cal. Const., art. 1, § 2, subd. (b); Evid. Code, § 1070). However, the trial court correctly determined that if the law applied, the need for the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity under the shield law.

COUNSEL
Wilbur F. Littlefield, Public Defender, Laurence M. Sarnoff, Michael Updike and Albert J. Menaster, Deputy Public Defenders, John A. Vander Lans, City Prosecutor, Robert R. Recknagel, Assistant City Prosecutor, Steven Shaw and Gerry L. Ensley, Deputy City Prosecutors, for Petitioners.
No appearance for Respondent.
Gibson, Dunn & Crutcher, Rex S. Heinke, Kelli L. Sager, Sheila R. Caudle, William A. Niese and Glen A. Smith for Real Parties in Interest.

EAGLESON, J.
The issues in this case are: (1) whether the term "unpublished information" in the California newsperson's shield law (Cal. Const., art. 1, § 2, subd. (b); Evid. Code, § 1070) includes a newsperson's nonconfidential, eyewitness observations of an occurrence in a public place; and, (2) if so, whether a newsperson can nevertheless be held in contempt for refusing to disclose such information in a criminal proceeding. *793

As we shall explain, we hold the shield law's broad definition of "unpublished information" does not require a showing by the newsperson that the information was obtained in confidence. We further hold, however, that a newsperson's protection under the shield law must yield to a criminal defendant's constitutional right to a fair trial when the newsperson's refusal to disclose information would unduly infringe on that right. In this case, the trial court correctly determined that the balance between the rights of the newspersons and the defendant weighs in favor of compelled disclosure. We affirm the judgment of the Court of Appeal.

Facts

Underlying Facts

Real parties in interest, Los Angeles Times reporter Roxana Kopetman and photographer Roberto Santiago Bertero, were accompanying members of a Long Beach Police Department task force on patrol. (For convenience we will sometimes refer collectively to Kopetman and Bertero as the reporters.) The officers observed Sean Patrick Delaney and a companion seated on a bench in the Long Beach Plaza Mall. A plastic bag of a type often used to store narcotics was protruding from Delaney's shirt pocket. The officers inquired about the contents of the bag, and Delaney removed it from his pocket to show that it contained a piece of gold and a piece of jewelry. He told the officers he intended to pawn the items at the mall. Because no pawnshops were in the mall, the officers became suspicious and asked Delaney for his identification. Delaney reached for a jacket lying next to him on the bench as if to get his wallet. According to the officers, they asked Delaney before he picked up the jacket if they could check it for weapons. *He allegedly consented to the search.* An officer ran his fingers along the outside of the jacket and felt a hard object in its pocket. He reached inside and retrieved a set of brass knuckles, which Delaney claimed was a key chain.

Four days later, the Los Angeles Times (hereafter the Times) published an article about the police task force. The article included information regarding the police contact with Delaney but did not refer to whether he had consented to the search of his jacket pocket.

Procedural History

Delaney was charged in a misdemeanor complaint with possession of brass knuckles in violation of Penal Code section 12020, subdivision (a). He moved to suppress evidence of the brass knuckles, arguing that he had not consented to the patdown search of

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his jacket and that the resulting seizure *794 of the brass knuckles was therefore illegal because the officers had lacked a reasonable suspicion that he was armed. Delaney subpoenaed the reporters to testify at the suppression hearing in municipal court. The reporters moved to quash the subpoenas, contending they could not be compelled to testify because their eyewitness observations of the public search and seizure constituted "unpublished information" protected by the newspersons' shield law from disclosure. The motions were denied.

Following testimony by the officers at the suppression hearing, the reporters were called to testify by the prosecution to demonstrate the legality of the seizure. Their testimony established that each of them observed the events leading to the seizure and that each was situated in a position to observe whether Delaney had consented to the search of his jacket. The reporters, however, refused to answer any questions relating to whether Delaney had consented. The municipal court concluded that the shield law did not apply to the reporters' eyewitness observations of the nonconfidential, public circumstances of the search and seizure. The court further found that, even if the shield law applied, the need for the reporters' presumably disinterested testimony on the consent issue outweighed their claim of immunity under the shield law. The court cited both reporters for contempt.

The reporters filed petitions for writs of habeas corpus in the superior court. That court found the shield law provided the reporters with immunity from contempt and granted their petitions.

Delaney and the People of the State of California (through the Long Beach City Prosecutor) filed a joint petition in the Court of Appeal seeking to vacate the orders of the superior court that granted the reporters' habeas corpus petitions. (Delaney's misdemeanor prosecution has been suspended pending final resolution of the reporters' contempt citations.) The Court of Appeal held the shield law does not give a newsperson the right to refuse to testify as to his observations of a public event and ordered the superior court to vacate its orders granting the petitions for writs of habeas corpus. The Court of Appeal's decision was initially unanimous but, after real parties petitioned for rehearing, one justice changed her position and filed a dissenting opinion.

Discussion

I. *History of California's Shield Law*

Newspersons had no privilege or immunity under common law to refuse to disclose the identity of their confidential sources. (*Ex Parte* *795*Lawrence and Levings* (1897) 116 Cal. 298, 300 [48 P. 124] [upholding contempt citations issued to a newspaper reporter and editor for refusing to disclose confidential sources to the state Senate]; *Mitchell v. Superior Court* (1984) 37 Cal.3d 268, 274, fn. 3 [208 Cal.Rptr. 152, 690 P.2d 625] [noting prohibition in Evidence Code section 911 of common law privileges]; Tent. Recommendation and Study Relating to the Uniform Rules of Evidence, art. V, Privileges (Feb. 1964) 6 Cal. Law Revision Com. Rep. (1964) p. 488 [noting that "the newsmen's privilege is entirely alien to the common law"].) [FN1]

FN1 We use the term "newsperson" for convenience to refer to all the categories of persons identified in the shield law. (Cal. Const., art. I, § 2, subd. (b); Evid. Code, § 1070.)

In 1935 the Legislature passed the first shield law. (Stats. 1935, ch. 532, § 1, pp. 1608-1610.) The statute, which was codified as Code of Civil Procedure section 1881, subdivision 6, provided that newspaper employees could not be adjudged in contempt for refusal to disclose their sources to courts or legislative or administrative bodies. Subsequent amendments extended the immunity to employees of radio and television stations, press associations, and wire services. (Stats. 1961, ch. 629, § 1, pp. 1797-1798.) In 1965 the Legislature transferred these statutory provisions to Evidence Code section 1070, which became effective in 1967. (Stats. 1965, ch. 299, § 2, pp. 1297, 1323-1335; Evid. Code, § 12.) [FN2]

FN2 In the remainder of this opinion we refer to Evidence Code section 1070 for convenience merely as section 1070.

In 1972, a plurality of the United States Supreme Court concluded that the First Amendment to the federal Constitution does not provide newspersons with even a qualified privilege against appearing before a grand jury and being compelled to answer questions as to either the identity of news sources or

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information received from those sources. (*Branzburg v. Hayes* (1972) 408 U.S. 665 [33 L.Ed.2d 626, 92 S.Ct. 2646].) The high court made clear, however, that state legislatures are "free, within First Amendment limits, to fashion their own standards." (*Id.*, at p. 706.) [FN3] *796

FN3 There has been considerable debate as to whether the court as a whole in *Branzburg v. Hayes, supra*, 408 U.S. 665, recognized a qualified privilege. Four justices dissented from the plurality opinion. Three of them (Justices Brennan, Marshall, and Stewart) would have recognized a qualified privilege; the fourth (Justice Douglas) advocated an absolute privilege. Justice Powell joined the plurality in finding no privilege on the facts before the court but stated his view that the question of privilege should be determined on a case-by-case basis. Justice Stewart subsequently observed that, in light of Justice Powell's concurring opinion, the decision was "perhaps by a vote of four and a half to four and a half." (Stewart, *Or of the Press* (1975) 26 Hastings L.J. 631, 635.)Similarly, counsel for the New York Times in one of the consolidated cases decided in *Branzburg* later acknowledged that "... Justice Powell's opinion is singularly opaque ...." (Goodale, *Branzburg v. Hayes and the Developing Qualified Privilege for Newsmen* (1975) 26 Hastings L.J. 709.)Despite this lack of clear guidance, "... lower federal courts have consistently read the case to support some kind of qualified privilege for reporters." (Tribe, American Constitutional Law (2d ed. 1988) § 12-22, p. 972.) Several state courts have done likewise. In *Mitchell v. Superior Court, supra*, 37 Cal.3d 268, 277, we concurred in the observation by some other courts that Justice Powell's position was the "minimum common denominator" of *Branzburg* and that the decision therefore does not *preclude* a qualified privilege. We did not decide the question of whether *Branzburg requires* a privilege in some cases. Because *Branzburg* is not dispositive of the present case, we need not linger over the troublesome question of its scope and meaning.

In 1974 the California Legislature amended section 1070 to its present form, apparently in response to *Branzburg, supra*, 408 U.S. 665.(Stats. 1974, ch. 1323, § 1, p. 2877; Stats. 1974, ch. 1456, § 2, p. 3184.) That amendment expanded the scope of the shield law to protect against the compelled disclosure of "unpublished information" as well as sources.

In June 1980, California voters approved Proposition 5, a state constitutional amendment proposed by the Assembly. (Assem. Const. Amend. No. 4, Stats. 1978 (1977-1978 Reg. Sess.) res. ch. 77, pp. 4819-4820.) The proposition incorporated language virtually identical to section 1070 into the California Constitution, as article I, section 2, subdivision (b). [FN4]

FN4 For convenience and brevity we refer in the remainder of this opinion to the constitutional provision as article I, section 2(b). It states in its entirety: "A publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt by a judicial, legislative, or administrative body, or any other body having the power to issue subpoenas, for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

"Nor shall a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public.

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"As used in this subdivision, 'unpublished information' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated."

II. *Scope of the Shield Law*

Article I, section 2(b) provides that a newsperson "shall not be adjudged in contempt ... for refusing to disclose the *source of any information* procured while so connected or employed [as a newsperson] ... *or* for refusing to disclose *any unpublished information* obtained or prepared in gathering, receiving or processing of information for communication to the public." (Italics added.) [FN5](1) Stated more simply, article I, section 2(b)*797 protects a newsperson from being adjudged in contempt for refusing to disclose either: (1) unpublished information, or (2) the source of information, whether published or unpublished. [FN6]

FN5 Because section 1070 and article I, section 2(b) are identical except for minor and insignificant differences in wording, we will discuss only the constitutional provision. Our discussion of article I, section 2(b), however, applies with equal force to section 1070. (*Union Pacific R.R. Co. v. State Bd. of Equalization* (1989) 49 Cal.3d 138, 146, fn. 4 [260 Cal.Rptr. 565, 776 P.2d 267] [noting that our discussion of a state constitutional provision applied with equal force to its substantially identical statutory counterpart].)

FN6 As a preliminary matter, we think it necessary to note the occasional mischaracterization of the shield law by the Courts of Appeal. More specifically, the protection provided by the shield law has sometimes been referred to as a privilege. Article I, section 2(b), however, states only that newspersons "shall not be adjudged in contempt." On its face, the shield law does no more than prohibit a newsperson from being held in contempt. Moreover, the Legislature has stressed in reference to identical language in section 1070 that, "It should be noted that Section 1070, like the existing law, provides an immunity from being adjudged in contempt; *it does not create a privilege*." (Assem. Committee on Judiciary com., 29B West's Annot. Evid. Code (1966 ed.) § 1070, p. 655, italics added.) The California Law Revision Commission has also characterized section 1070 as creating only an immunity, not a privilege. (7 Cal. Law Revision Com. Rep. (Jan. 1965) p. 208.) Likewise, we have recognized that the shield law prohibits only a judgment of contempt and that, unlike a privilege, the shield law does not protect against other sanctions. (*Mitchell v. Superior Court, supra*, 37 Cal.3d 268, 274.)

The immunity-privilege distinction has been observed in most cases. For example, in *KSDO v. Superior Court* (1982) 136 Cal.App.3d 375 [186 Cal.Rptr. 211], the court stated, "The California shield law ... is unique in that it affords only limited protection. *It does not create a privilege* for newspeople, rather it provides an immunity from being adjudged in contempt. This rather basic distinction has been misstated and apparently misunderstood by members of the news media and our courts as well." (*Id.*, at pp. 379-380, italics added.) We agree with the *KSDO* court and the others who have correctly noted that the shield law provides only an immunity from contempt, not a privilege. (*Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038, 1045 [248 Cal.Rptr. 635]; *Playboy Enterprises, Inc. v. Superior Court* (1984) 154 Cal.App.3d 14, 26 [201 Cal.Rptr. 207].) We disapprove of occasional suggestions, perhaps inadvertent, to the contrary. (*Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388, 396-398 [153 Cal.Rptr. 608]; *CBS, Inc. v. Superior Court* (1978) 85 Cal.App.3d 241, 250 [149 Cal.Rptr. 421].)

The parties agree there is no attempt to compel the reporters to reveal the identity of a source. Delaney

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was the source of whatever information the reporters may have as to whether he consented to the police search of his jacket, and his identity is of course already known. [FN7]Rather, Delaney seeks only the reporters' testimony as to whether he consented to the search. The reporters do not contend they promised to keep confidential any information they obtained or observations they made while preparing their article on the Long Beach Police Department's task force. (2a) The question therefore is whether the shield law's definition of "unpublished information" includes a newsperson's unpublished, nonconfidential eyewitness observations of an occurrence in a public place. (3) (See fn. 8.) We conclude that it does. [FN8]*798

FN7 One might also view the police as being a source of this information, but, as with Delaney, their identities are already known.

FN8 There is no dispute in this case that the reporters were acting as newspersons and were directly engaged in the process of "gathering, receiving or processing of information for communication to the public" within the meaning of the shield law when they observed the events as to which their testimony is sought. We emphasize, however, the importance of this requirement. As the Times itself recently recognized, the shield law provides no protection for information obtained by a journalist not directly engaged in "gathering, receiving or processing" news. In an editorial criticizing the Court of Appeal decision in this case, the Times correctly observed that "A reporter who, say, wanders into a liquor store on his way home from work and witnesses a holdup could not invoke the shield law and refuse to testify. *Off the job, a journalist is no different from any other citizen.*" (*Breaking the Shield*, L.A. Times (July 20, 1988) Metro Section, pt. 2, p. 6, col. 1, italics added.) We agree.

A. *Language of the shield law*

(4) We begin with the fundamental rule that our primary task is to determine the lawmakers' intent. (*Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) In the case of a constitutional provision adopted by the voters, their intent governs. (*Kaiser v. Hopkins* (1936) 6 Cal.2d 537, 538 [58 P.2d 1278]; *Armstrong v. County of San Mateo* (1983) 146 Cal.App.3d 597, 618 [194 Cal.Rptr. 294].) To determine intent, "'The court turns first to the words themselves for the answer.'" (*Brown v. Kelly Broadcasting Co., supra*, 48 Cal.3d 711, 724, quoting *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].)

(2b) The language of article I, section 2(b) is clear and unambiguous as to the question presented in this case. The section states plainly that a newsperson shall not be adjudged in contempt for "refusing to disclose *any* unpublished information." (Italics added.) The parties seeking discovery in this case (Delaney and the prosecutor) contend article I, section 2(b) applies only to unpublished information obtained *in confidence* by a newsperson. Such a construction might be possible if the voters had used the phrase "unpublished information" without the modifier "any." They did not do so. The use of the word "any" makes clear that article I, section 2(b) applies to all information, regardless of whether it was obtained in confidence. (5) Words used in a constitutional provision "should be given the meaning they bear in ordinary use." (*Lungren v. Deukmejian, supra*, 45 Cal.3d 727, 735; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal. Rptr. 239, 583 P.2d 1281].) (2c) In the context of article I, section 2(b), the word "any" means without limit and no matter what kind. (Webster's New World Dict. (2d college ed. 1982) p. 62.) To restrict the scope of article I, section 2(b) to confidential information would be to read the word "any" out of the section. We decline to do so. (6) Significance should be given, if possible, to every word of an act.*799 (*Mercer v. Perez* (1968) 68 Cal.2d 104, 112 [65 Cal.Rptr. 315, 436 P.2d 315].) Conversely, a construction that renders a word surplusage should be avoided. (*City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54 [184 Cal.Rptr. 713, 648 P.2d 935]; *California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836].) [FN9]

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FN9 Faced with statutes that, like our shield law, protect against forced disclosure of "any information," a clear majority of other states' appellate courts have also found such language to be unambiguous and have held the statutes apply to nonconfidential information. (*Austin* v. *Memphis Pub. Co.* (Tenn. 1983) 655 S.W.2d 146, 149-150 [court declined to insert the word "confidential" into the statute]; *Grand Forks Herald v. District Court, etc.*(N.D. 1982) 322 N.W.2d 850, 854 [court found no intent in the the wording of the statute that it be limited to confidential sources]; *Lightman v. State* (1972) 15 Md.App. 713 [294 A.2d 149, 156],affd. (Md. 1972) 295 A.2d 212 [language broad enough to emcompass all sources of information].) Although we are not bound by those cases, they do reflect that our decision is in the mainstream of statutory construction. Two state high court decisions to the contrary are plainly distinguishable. (*Knight-Ridder v. Greenberg* (1987) 70 N.Y.2d 151 [518 N.Y.S.2d 595, 598-599, 511 N.E.2d 1116] [decision based not on statute's language but on long history of contrary interpretation by the state's lower courts and the state Legislature's not having amended the statute to supersede the lower courts' view]; *Hatchard* v. *Westinghouse Broadcasting* (1987) 516 Pa. 184 [532 A.2d 346, 348-351] [stressing the need for narrow privilege in defamation actions so as not to restrict unduly the plaintiff's ability to recover].)

(2d) We need not rely solely on the voters' use of the word "any." Article I, section 2(b) further states: "As used in this subdivision, 'unpublished information' includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated." Nowhere in this broad definition is there an explicit or implied restriction of article I, section 2(b) to confidential information. (7) To so limit the section, we would have to insert into it the word "confidential" and thus violate the cardinal rule that "The constitution is to be interpreted by the language in which it is written, and courts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions." (*People v. Campbell* (1902) 138 Cal. 11, 15 [70 P. 918]; *Ross v. City of Long Beach* (1944) 24 Cal.2d 258, 260 [148 P.2d 649].)

Delaney contends a reporter's percipient observations of a nonconfidential occurrence are not "information" within the meaning of shield law. This attempted distinction between observations and information is unpersuasive. Under Delaney's strained interpretation, a reporter or any other eyewitness to an automobile accident would have no "information" as ***800** to the accident. This flies in the face of reason and plain English. (8) "Information" includes "reception of knowledge" and "knowledge obtained from reading, *observation*, or instruction." (Webster's New Internat. Dict. (2d ed. 1958) p. 1276, italics added.) When a reporter or other person is called on to testify as to his observations of an event, he is being asked to disclose information. Moreover, if the distinction between observations and information were logical, the result would be that even a newsperson's *confidential* observations would not be protected. That result would be contrary to the manifest purpose and language of article I, section 2(b).

(2e) In short, the plain language of article I, section 2(b) leads to only one tenable conclusion. We hold that the shield law's definition of "unpublished information" is not restricted to information obtained in confidence by a newsperson.

B. *Legislative and constitutional history*

The reporters rely on the legislative history of section 1070 to support their view. Delaney and the prosecutor disagree with the reporters' interpretation of that history. It is, however, beside the point for two reasons. First, as we have explained, article I, section 2(b) and section 1070 are virtually identical. In light of our determination that the language of article I, section 2(b) is unambiguous, simple logic compels the same conclusion as to the statute. Thus, we need not go beyond the words of the statute to extrinsic aids such as legislative history. (*Lungren v. Deuk-*

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mejian, supra, 45 Cal.3d 727, 735.) To do so would violate the principle that, "When statutory language is thus clear and unambiguous there is no need for construction, and *courts should not indulge in it.*" (Solberg v. Superior Court (1977) 19 Cal.3d 182, 198 [137 Cal.Rptr. 460, 561 P.2d 1148], italics added.) This rule is deeply rooted in our jurisprudence. (Sturges v. Crowninshield (1819) 17 U.S. 122, 202 [4 L.Ed. 529, 550].) FN10

FN10 The dissenting Court of Appeal justice in this case also noted the well-established principle of not going beyond clear and unambiguous language to determine the intent of the Legislature or voters.

(9)(**See fn. 11.**)Second, in light of the voters' incorporation of the statutory language into the California Constitution, we need construe only article I, section 2(b). FN11 The legislative history of section 1070 would be ***801** relevant only if it shed some light on the meaning of its constitutional counterpart, article I, section 2(b). The history, however, is of no help in that regard. Article I, section 2(b) is plain on its face, and we need not - indeed, should not - search for external indicia of the voters' intent. (Lungren v. Deukmejian, supra, 45 Cal.3d 727, 735.) Moreover, the *legislative* history of section 1070 could, as a matter of logic, reflect only the *Legislature's* intent. (10, 11) (**See fn. 12.**)That history would not provide us with any guidance as to *the voters'* subsequent intent because none of the indicia of the Legislature's possible intent (committee analysis and digest and letters from the statute's author) were before the voters. (People v. Castro (1985) 38 Cal.3d 301, 311-312 [211 Cal.Rptr. 719, 696 P.2d 111]; Lungren v. Deukmejian, supra, 45 Cal.3d 727, 742.) FN12

FN11 There are only three possible conclusions as to the relationship between section 1070 and article I, section 2(b): (1) they have the same scope; (2) the statute is narrower; or (3) the statute is broader. Each conclusion effectively moots the statute. If section 1070 and article I, section 2(b) have the same scope, the statute serves no practical purpose. If section 1070 were *narrower* than article I, section 2(b) - that is, if the statute applied only to confidential information - the statute would have to yield to the broader constitutional provision. The Legislature could not restrict the shield law placed by the voters into the Constitution because, "Wherever statutes conflict with constitutional provisions, the latter must prevail." (People v. Navarro (1972) 7 Cal.3d 248, 260 [102 Cal.Rptr. 137, 497 P.2d 481].) The third conclusion - that the statute is *broader* than the Constitution - is not a logical possibility. Because we construe article I, section 2(b) as applying to both confidential and nonconfidential information, there is nothing more the statute could include. In short, the result mandated by article I, section 2(b) renders moot the scope of section 1070. Use of legislative history to determine the scope of the statute would therefore serve no purpose.

FN12 Justice Broussard's concurring opinion contends we should rely on the legislative history of section 1070 to find the meaning of its constitutional counterpart, article I, section 2(b). The concurrence does not take issue, however, with our explanation that such history could have no practical effect on our decision. Moreover, the concurrence's reliance on County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 847-851 [59 Cal.Rptr. 609, 428 P.2d 593], is misplaced. In that case, we considered a lengthy history of judicial decisions consistently construing the statutory (and virtually identical) predecessor of a constitutional provision. There is no similar history for section 1070. Indeed, we have never before construed the substantive scope of section 1070. (*Post*, at p. 803, fn. 16.)

The concurrence does not identify any sources of legislative history. The only sources we know are an analysis by the Senate Committee on the Judiciary of a 1974 amendment (Sen. Bill No. 1858) to section 1070, a digest of the amendment by the Assembly Committee on the Judiciary, and letters written by Senator Al Song, the amendment's sponsor. In *City of Sacramento v. State of California, ante*, 51 [266 Cal.Rptr. 139, 785 P.2d 522], on which the concurrence also relies, we noted a prior decision in which we had relied on the history

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of the statutory forerunner of a constitutional provision. (*Id.*, at p. 67, fn. 11.)In that prior decision - County of Los Angeles v. State of California (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] - we made clear, as we do in the present case, that legislative materials not before the voters are not relevant to determining *the voters'* intent. (*Id.*, at p. 54, fn. 6 and p. 56.)We also explained that the constitutional language before us was quite vague. (*Id.*, at p. 57.)Resort to extrinsic sources of meaning was thus appropriate. Justice Broussard agrees that article I, section 2(b) is unambiguous.

To the extent the concurrence suggests we should rely on letters from Senator Song, we decline for the further reason that we do not consider the motives or understandings of an individual legislator even if he or she authored the statute. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589 [128 Cal.Rptr. 427, 546 P.2d 1371].)

Delaney also relies on the ballot argument in favor of Proposition 5 in 1980, the measure that created article I, section 2(b). (12) Ballot arguments are accepted sources from which to ascertain the voters' intent. (*In* ***802** *re Lance W.* (1985) 37 Cal.3d 873, 888, fn. 8 [210 Cal.Rptr. 631, 694 P.2d 744]; *White v. Davis* (1975) 13 Cal.3d 757, 775, fn. 11 [120 Cal.Rptr. 94, 533 P.2d 222].) As with the legislative history of section 1070, however, we need not look beyond the language of the enactment (article I, section 2(b)) when its language is unambiguous. (*Lungren v. Deukmejian, supra*, 45 Cal.3d 727, 735.) The ballot argument (unlike the legislative history) is, however, at least relevant to determining *the voters'* intent. (2f) We therefore consider the ballot argument (set forth in full in the margin) to determine if it demonstrates the voters did not mean what they said. [FN13]The repeated references in the argument to confidentiality and the like permit the inference the proponents of the measure intended to protect only confidential information. The same inference may be drawn from the Legislative Analyst's statement. [FN14]The inference, however, is far from compelling. The ballot materials emphasized the need for confidentiality but did not state that *only* confidential matters would be protected. The most reasonable inference is that the proponents chose to emphasize (in the limited space available for ballot arguments) what they perceived as the greatest need. We cannot conclude that, by emphasizing one purpose, perhaps the primary purpose of the measure, the argument misled voters into thinking confidentiality was ***803** the only purpose, especially when the measure itself made clear that all unpublished information would be protected. Moreover, a possible inference based on the ballot argument is an insufficient basis on which to ignore the unrestricted and unambiguous language of the measure itself. It would be a strained approach to constitutional analysis if we were to give more weight to a possible inference in an extrinsic source (a ballot argument) than to a clear statement in the Constitution itself. We decline to do so. [FN15]

FN13 The ballot argument stated: "The free flow of information to the public is one of the most fundamental cornerstones assuring freedom in America. Guarantees must be provided so that information to the people is not inhibited. However, that flow is currently being threatened by actions of some members of the California Judiciary. They have created exceptions to the current Newsman's Shield Law, which protects the confidentiality of reporters' news sources. And the use of confidential sources is critical to the gathering of news. *Unfortunately, if this right is not protected, the real losers will be all Californians who rely on the unrestrained dissemination of information by the news media.* [¶] This amendment merely places into the state's Constitution protection already afforded journalists by statute. That law [section 1070], enacted in 1935, in clear and straightforward language, provides that reporters cannot be held in contempt of court for refusing to reveal confidential sources of information. At least six reporters in California in recent years have spent time in jail rather than disclose their sources to a judge. By giving existing law constitutional status, judges will have to give the protection greater weight before attempting to compel reporters to breach their pledges of confidentiality. [¶] A reporter's job, of course, is not to withhold information, but to convey it to the public. In most cases, a reporter is able to reveal corruption and malfeasance within government only with the help of an honest employee. If such an indi-

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vidual feels that a reporter's pledge of confidentiality may be broken under the threat of jail, that person simply will not come forward with his or her information. [¶] If our democratic form of government - of the people, by the people, for the people - is to survive, citizens must be informed. *A free press protects our basic liberties by serving as the watchdogs of our nation.* Citizens may agree or disagree with reports in the media, but they have been informed, and the final choice is made by the individual. [¶] To jail a journalist because he protected his source is an assault not only on the press but on all Californians as well." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec. (June 3, 1980) p. 19, italics in original.)

FN14 The Legislative Analyst's statement read: "Since 1935, laws enacted by the California Legislature have protected the confidential information sources of persons employed by or connected with the news media .... [¶] This measure would place in the California Constitution provisions of existing law enacted by the Legislature to protect news sources ...." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec., *supra*, p. 18.)

FN15 We requested the parties to submit supplemental briefs on the issue of whether section 1070 is an unconstitutional usurpation of the California judiciary's inherent power to punish contempt. Because the scope of section 1070 is rendered moot as a practical matter by our construction of article I, section 2(b) (*ante*, pp. 800-801, fn. 11), we need not and do not decide this issue, which would arise only if section 1070 were amended so that it were somehow broader than article I, section 2(b).

C. *Prior California decisions*

Although the relevant amendment to section 1070 was enacted in 1974 and article I, section 2(b) was adopted in 1980, this court has never determined the substantive scope of either provision. [FN16]The Courts of Appeal, however, have often done so. Initially, the clear majority view in published decisions was that the shield law applies equally to nonconfidential as well as confidential information. (*Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 395-398; *Playboy Enterprises, Inc. v. Superior Court, supra*, 154 Cal.App.3d 14, 20-22; *Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038.) Only one court had restricted the shield law's application to confidential information. (*CBS, Inc. v. Superior Court, supra*, 85 Cal.App.3d 241, 250.)

FN16 Indeed, we have never construed the substantive scope of section 1070 in any of its previous forms, even though it was enacted more than 50 years ago. We briefly considered the procedural scope of section 1070 and article I, section 2(b) in *Mitchell v. Superior Court, supra*, 37 Cal.3d 268, 274, in which we observed that neither provision protects a newsperson who is a party to an action from sanctions other than contempt.

More recently, however, the conflict began to sharpen. In an opinion certified for publication, the Court of Appeal in this case held the shield law applies only to confidential information. Only two weeks earlier, however, a different division of the same district reached a contrary conclusion in an opinion also certified for publication, holding that the shield law protects against the compelled disclosure of any unpublished information, regardless of whether it is confidential. (*New York Times Co. v. Superior Court* (1988) 215 Cal.App.3d 672 [248 Cal.Rptr. 426], review granted Oct. 27, 1988 (S006709).) We granted review in both cases to resolve the growing conflict. A third Court of Appeal panel thereafter certified for publication an opinion noting the conflict and agreeing with the Court of Appeal decision in this case, holding that a reporter's eyewitness observations of a public event are *804 not protected by the shield law. (*Liggett* v. *Superior Court* (1989) 211 Cal.App.3d 1461 [260 Cal.Rptr. 161], review granted Oct. 12, 1989 (S011581).)

In light of the conflict that has emerged, the Court of Appeal decisions provide little clear guidance for our decision, and little would be gained by our reviewing them in detail. We note, however, two general themes that appear in the conflict. As we have done in this case, the courts that have applied the shield law to all information have relied on the explicit language of

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the shield law. (*Playboy Enterprises, Inc.* v. *Superior Court, supra,* 154 Cal.App.3d 14, 20-22; *Hammarley* v. *Superior Court, supra,* 89 Cal.App.3d 388, 395-398.)

By contrast, the courts that have restricted the shield law to confidential information have paid insufficient attention to the shield law's language. For example, in *CBS, Inc. v. Superior Court, supra,* 85 Cal.App.3d 241, 250, the court seemed to conclude that no purpose would be served by protecting nonconfidential information. The court did not explain how it found in the shield law a purpose to protect only confidential information. In this case and in *Liggett v. Superior Court, supra,* 211 Cal.App.3d 1461, review granted October 12, 1989 (S011581), the courts relied extensively on the legislative history of section 1070 and the ballot argument for article I, section 2(b). As we have already explained (*ante,* pp. 800-803), there is no need to resort to extrinsic aids when a provision is unambiguous and, in any event, the ballot argument and legislative history in this case are too equivocal to overcome the clear definition of "unpublished information" in article I, section 2(b)'s language. We disapprove of those Court of Appeal decisions that hold or suggest the shield law protects only confidential information.

D. *Public policy*

The parties correctly approach this case as being one of application of a specific constitutional provision. Implicit in their respective arguments, however, are conflicting notions as to appropriate public policy in protecting a newsperson's unpublished information. We need not consider this issue. As we have explained, article I, section 2(b) contains an unambiguous definition of "unpublished information." (13) It is bedrock law that if "the law-maker gives us an express definition, we must take it as we find it ...." (*Bird v. Dennison* (1857) 7 Cal. 297, 307.) (14) "[C]ourts, in construing the constitution, are bound to suppose that any inconveniences involved in the application of its provisions, according to their plain terms and import, were considered in its formation, and voluntarily accepted as less intolerable than those which are thereby avoided, or as fully compensated by countervailing advantages." (***805***People v. Pendegast* (1892) 96 Cal. 289, 294 [31 P. 103]; *Sturges v. Crowninshield, supra,* 17 U.S. 122, 202 [4 L.Ed. 529, 550].) Our proper function is not to judge the wisdom of article I, section 2(b) or the way in which it is written.

E. *Conclusion as to scope of shield law*

(2g) We hold that article I, section 2(b) is not contingent on a showing that a newsperson's unpublished information was obtained in confidence.Article I, section 2(b)'s definition of "unpublished information" includes a newsperson's nonconfidential, eyewitness observations of an occurrence in a public place. [FN17]

FN17 Of course, a person claiming the protection of the shield law must meet all its other requirements. He must show that he is one of the types of persons enumerated in the law, that the information was "obtained or prepared in gathering, receiving or processing of information for communication to the public," and that the information has not been "disseminated to the public by the person from whom disclosure is sought." (Art. I, § 2(b).)

III. *Delaney's Constitutional Rights*

Our determination that the reporters' observations of the police search are "unpublished information" within the scope of article I, section 2(b) does not decide the issue of whether the municipal court properly held the reporters in contempt for refusing to disclose that information. (15) The reporters themselves concede, as they must, that the shield law's protection is overcome in a criminal proceeding on a showing that nondisclosure would deprive the defendant of his federal constitutional right to a fair trial. Although this court has not decided a case involving the application of the shield law in a criminal prosecution, the principle is beyond question. (*CBS, Inc. v. Superior Court, supra,* 85 Cal.App.3d 241, 251; *Hallissy v. Superior Court, supra,* 200 Cal.App.3d 1038; *Playboy Enterprises, Inc. v. Superior Court, supra,* 154 Cal.App.3d 14, 24-25; *Hammarley v. Superior Court, supra,* 89 Cal.App.3d 388, 402; cf. *People v. Borunda* (1974) 11 Cal.3d 523, 527 [113 Cal.Rptr. 825, 522 P.2d 1] [defendant seeking identity of anonymous informant].) [FN18] The incorporation of the shield law into the California ***806** Constitution cannot restrict a criminal defendant's *federal* constitutional right to a fair trial. (*Mulkey v. Reitman* (1966) 64 Cal.2d 529,

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533 [50 Cal.Rptr. 881, 413 P.2d 825],affd. (1967) 387 U.S. 369 [18 L.Ed.2d 830, 87 S.Ct. 1627] [explaining that California constitutional amendment adopted by ballot must conform to the United States Constitution].) Such result would violate the supremacy clauses of the federal and state Constitutions. (U.S. Const., art. VI, cl. 2; Cal. Const., art. III, § 1; *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 399, fn. 4.) [FN19]

FN18 Courts have stated almost without exception that a criminal defendant's right to information arises at least in part from the Sixth Amendment to the United States Constitution. (See, e.g., *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 398.) For the most part, they explicitly or implicitly refer to the compulsory process and confrontation clauses. In light of recent Supreme Court authority, the reference to the Sixth Amendment may be incorrect in a couple of respects. In *Pennsylvania v. Ritchie* (1987) 480 U.S. 39 [94 L.Ed.2d 40, 107 S.Ct. 989], the Pennsylvania Supreme Court had ruled that a lower court's refusal to order the disclosure of a state agency's confidential files in a child abuse investigation violated the confrontation and compulsory process clauses of the Sixth Amendment. A plurality of the high court concluded that the confrontation clause does not apply to pretrial discovery. (*Id.*, at pp. 52-53 [94 L.Ed.2d at pp. 54-55].) As in this case, the shield law is often raised as a pretrial issue, e.g., at a preliminary hearing. Under *Ritchie*, it may no longer be accurate to refer to a defendant's Sixth Amendment right in such circumstances. (But see *Kentucky v. Stincer* (1987) 482 U.S. 730, 738-739, fn. 9 [96 L.Ed.2d 631, 642-644; 107 S.Ct. 2658] [suggesting in dictum that confrontation clause might in some cases apply to pretrial discovery].) The better practice may be to refer to the right as arising under the due process clause of the Fourteenth Amendment. Similarly, a majority of the *Ritchie* court also found considerable doubt as to whether the compulsory process clause gives a defendant a right to discover the identity of witnesses or to require the state to produce exculpatory evidence. (480 U.S. at p. 56 [94 L.Ed.2d at pp. 56-57].) The court concluded that the better analysis is under the due process clause of the Fourteenth Amendment. Although we note the high court's distinctions for the purpose of accuracy, we find no suggestion in *Ritchie* that the scope of a defendant's right to a fair trial is affected by the label attached to it.

FN19 We need not and do not decide whether a newsperson's rights under article 1, section 2(b) could be outweighed by a criminal defendant's rights under article 1, section 15 of the California Constitution.

(16)(**See fn. 20.**), (17a) The parties disagree, however, as to the nature of the showing a criminal defendant must make to overcome a claim of immunity under the shield law. [FN20]Delaney contends he need establish only a reasonable possibility that the evidence sought to be discovered might result in his exoneration. The reporters propose a more complex, four-part test under which a defendant would have to show the following: (1) The information must go to the heart of defendant's case. (2) The information must have a significant effect on the outcome of the case. (This proposed element seems to be the same as the "heart-of-the-case" element.) (3) The information is not available from alternative sources. (4) The infringement on the defendant's rights caused by nondisclosure must outweigh the newsperson's interests. (This element seems to be the conclusion a court would reach under the test rather than an element of the test.) As we will ***807** explain, precedent and principle lead us to conclude that neither test is entirely warranted.

FN20 We think it helpful to note the proper procedure for resolving a claim of immunity under the shield law. It is hornbook law that a person claiming a privilege bears the burden of proving he is entitled to the privilege. (*Sharon* v. *Sharon* (1889) 79 Cal. 633, 677-678 [22 P. 26]; *Mahoney v. Superior Court* (1983) 142 Cal.App.3d 937, 940-941 [191 Cal.Rptr. 425]; 2 Witkin, Cal. Evidence (2d ed. 1986) § 1086, pp. 1030-1031.) Pursuant to its terms, the shield law provides only an immunity from contempt, not a privilege. (*Ante*, at p. 797, fn. 6.) This distinction, however, is not relevant to assigning the burden. Regardless of the label used (privilege or

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immunity), the shield law's purpose is the same - to protect a newsperson's ability to gather and report the news. The newsperson seeking immunity must prove all the requirements of the shield law have been met. The burden then shifts to the criminal defendant seeking discovery to make the showing required to overcome the shield law. (Hammarley v. Superior Court, supra, 89 Cal.App.3d 388, 399.) It is the nature of a defendant's showing that we address in the remainder of this opinion.

A. *The proper test for accommodating conflicting constitutional rights*

To formulate the proper test we begin with our decision in Mitchell v. Superior Court, supra, 37 Cal.3d 268, in which we set forth a balancing test to determine when a reporter must disclose confidential information. We identified four relevant factors for a trial court to consider when making that determination. First, we noted the nature of the proceeding and observed that, "In general, disclosure is appropriate in civil cases, especially when a reporter is a party to the litigation." (*Id.*, at p. 279.)Second, the *Mitchell* court stated the information must be more than merely relevant and that it must go to "the heart of the case" for the party seeking discovery.(*Id.*, at pp. 280-282.)Third, the court stated that discovery should generally be denied unless it is shown that all alternative sources of the information have been exhausted. (*Id.*, at p. 282.)Fourth, *Mitchell* stated that the trial court should consider the importance of protecting confidentiality in the case at hand. (*Id.*, at pp. 282-283.)

Although *Mitchell*, a defamation action, helps to illustrate the competing concerns that arise when a litigant seeks information from a newsperson, an identical approach is not entirely appropriate in a criminal proceeding. We were careful to emphasize in *Mitchell* that "In criminal proceedings, both the interest of the state in law enforcement, recognized as a compelling interest in *Branzburg* (see 408 U.S. 665, 700[33 L.Ed.2d 626, 650]), and the interest of the defendant in discovering exonerating evidence outweigh any interest asserted in ordinary civil litigation." (Mitchell, supra, 37 Cal.3d at p. 278.) We did not consider the factors a court should consider in a criminal case:

1. *Threshold showing required*

In now deciding the issue, we must first consider the threshold showing a criminal defendant must make. The reporters claim Delaney must show their testimony would go to the "heart of his case." He contends he need show only a reasonable possibility the evidence might result in his exoneration. On this point, Delaney has the better view. In CBS, Inc. v. Superior Court, supra, 85 Cal.App.3d 241, the court explained, "Against this right [of a free press] we are obliged to measure the threat to defendants' right to a fair trial. The existence of such a right is clear .... [I]t has resulted in the rule that, where a criminal defendant has demonstrated a *reasonable possibility* that evidence sought to be discovered might result in his exoneration, ***808** he is entitled to its discovery." (*Id.*, at p. 251, italics in original; Hallissy v. Superior Court, supra, 200 Cal.App.3d 1038, 1045.) Similarly, in Hammarley v. Superior Court, supra, 89 Cal.App.3d 388, the court stated, "'Allowing an accused the right to discover is based on the fundamental proposition that he is entitled to a fair trial and an intelligent defense in light of *all relevant* and reasonably accessible information.'" (*Id.*, at pp. 398-399, quoting Pitchess v. Superior Court (1974) 11 Cal.3d 531, 535 [113 Cal.Rptr. 897, 522 P.2d 305], italics added.)

We hold that, to overcome a prima facie showing by a newsperson that he is entitled to withhold information under the shield law, a criminal defendant must show a *reasonable possibility* the information will materially assist his defense. A criminal defendant is not required to show that the information goes to the heart of his case. [FN21]

FN21 It has been stated that the information must be relevant. (Hallissy v. Superior Court, supra, 200 Cal.App.3d 1038, 1046.) This observation is correct but potentially misleading to the extent it suggests the relevancy requirement arises from the shield law. It does not. The requirement applies to all evidence, whatever its source. (Evid. Code, § 350.)Thus, it is superfluous to state that relevancy is required in shield law cases.

(18) A criminal defendant's constitutional right to

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compulsory process was intended to permit him to request governmental assistance in obtaining likely helpful evidence, not just evidence that he can show beforehand will go to the heart of his case. "The need to develop *all relevant facts* in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of *all the facts*, within the framework of the rules of evidence." (United States v. Nixon (1974) 418 U.S. 683, 709 [41 L.Ed.2d 1039, 1064, 94 S.Ct. 3090], italics added [claim of presidential privilege].) [FN22]

FN22 In Hammarley v. Superior Court, supra, 89 Cal.App.3d 388, 399, and Hallissy v. Superior Court, supra, 200 Cal.App.3d 1038, 1045-1046, the Courts of Appeal stated that a criminal defendant must also show the evidence is "necessary" to his defense. This restriction might appear to be inconsistent with those courts' concurrent observations that a defendant is entitled to all relevant evidence. Properly understood, however, there is no inconsistency. The *Hammarley* and *Hallissy* courts were referring to two separate factors - the threshold showing required and whether the reporter's information was necessary in the sense that it was unobtainable from another source. Those courts' references to "necessary" information cannot be fairly read to mean information that goes to the heart of a criminal defendant's case, especially in light of their observations as to the need for all relevant evidence. Indeed, neither court determined that the information at issue went to the "heart of the case." Nor did they even use the term. As to the threshold showing required, the decisions are consistent with the test we adopt in this case.

The "reasonable possibility" requirement is also far more workable than the "heart of the case" test proposed by the reporters. It would be impractical ***809** to require a trial court to attempt to divine whether the evidence sought from the newsperson would cause a jury to exonerate a criminal defendant. A court cannot be expected to have that degree of prescience. Moreover, if applied literally, the "heart of the case" requirement would allow a defendant to obtain only evidence that would support a directed verdict in his favor.

(19a) To provide guidance to the trial courts, we believe it helpful to make clear how the threshold requirement must be applied in practice. First, the burden is on the criminal defendant to make the required showing. (Hallissy v. Superior Court, supra, 200 Cal.App.3d 1038, 1045.) Second, the defendant's showing need not be detailed or specific, but it must rest on more than mere speculation. Third, the defendant need not show a reasonable possibility the information will lead *to his exoneration*. He need show only a reasonable possibility the information will materially *assist his defense*. The distinction between exoneration and assisting the defense is significant. (20) "Exoneration" means "the removal of a burden, charge, responsibility, or duty." (Black's Law Dict. (5th ed. 1979) p. 516, col. 2.) Stated more simply, in criminal proceedings, "exoneration" is generally understood to mean an acquittal or dismissal of charges. (19b) Evidence, however, may be critical to a defense even if it will not lead to exoneration. For example, evidence may establish an "imperfect defense," a lesser included offense, a lesser related offense, or a lesser degree of the same crime; impeach the credibility of a prosecution witness; or, as in capital cases, establish mitigating circumstances relevant to the penalty determination. A criminal defendant's constitutional right to a fair trial includes these aspects of his defense. [FN23]

FN23 We need not and do not in this case attempt to enumerate all the ways in which evidence might materially assist a defense. We also need not and do not decide or suggest that traditional testimonial privileges (e.g., attorney-client privilege) should in some circumstances yield to a criminal defendant's federal constitutional right to a fair trial. As Justice Mosk's concurring opinion notes, such privileges may be entitled to greater deference than a newsperson's immunity. (Conc. opn., *post*, at p. 819, fn. 2.)

2. *Factors to consider*

(17b) By meeting the threshold requirement, a defendant is not necessarily entitled to a newsperson's un-

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published information. The trial court must then consider the importance of protecting the unpublished information. (*Mitchell, supra,* 37 Cal.3d at pp. 282-283.) This determination may properly be characterized as a balancing of the defendant's and newsperson's respective, perhaps conflicting, interests. [FN24]The factors to be considered in making this determination are as follows: *810

FN24 Justice Mosk's concurrence rejects a balancing approach in favor of a rigid two-part determination. (Conc. opn., *post*, at p. 818.)He agrees a defendant must show a reasonable possibility the information will materially assist his defense. The concurrence, however, states that, once this showing has been made, the defendant is absolutely entitled to the information if there are no "alternative sources of substantially similar information." This approach would provide scant protection to the newsperson, certainly far less than provided by the balancing approach. Under the concurrence, a newsperson could be compelled to disclose highly confidential information, e.g., the name of a witness whose life would be endangered by disclosure. Our balancing approach, however, allows the trial court to consider the importance of keeping information confidential. The concurrence would mandate disclosure no matter how harmful it would be. The concurrence also considers only the defendant's federal constitutional rights and ignores the newsperson's state constitutional rights under the shield law. Rather than merely ignoring our shield law, we think it appropriate to attempt to apply it consistently with the federal Constitution.

(a) *Whether the unpublished information is confidential or sensitive*

If the information is not confidential, the court should consider whether it is nevertheless sensitive, that is, whether its disclosure would somehow unduly restrict the newsperson's access to future sources and information. (We hereafter refer to this type of nonconfidential information as "sensitive information.") [FN25] Generally, nonconfidential or nonsensitive information will be less worthy of protection than confidential or sensitive information. Disclosure of the latter types of information will more likely have a significant effect on the newsperson's future ability to gather news. (*U.S. v. LaRouche Campaign* (1st Cir. 1988) 841 F.2d 1176, 1180-1182 [noting slight deference due nonconfidential information].) The protection of that ability is the primary purpose of the shield law. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec., *supra*, p. 19; see *ante*, at p. 802, fn. 13.) [FN26]

FN25 To illustrate this type of nonconfidential but sensitive information, we use an example. Assume a reporter is investigating corruption in city government. He obtains information from a city employee who agrees to be quoted and identified. Even so, disclosure of this information in some circumstances might unduly restrict the reporter's ability to complete the story. If he were forced to disclose the source's identity before the articles were published and the source's employment was terminated as a result, other sources might cease to cooperate. That the information sought is not confidential does not necessarily mean it is not sensitive and equally worthy of protection from disclosure.

FN26 By emphasizing the need to be especially cautious in ordering disclosure of confidential or sensitive information, we do not suggest that nonconfidential information is entitled to no protection. As we have held above (*ante*, at p. 805), the plain language of the shield law includes nonconfidential information.

(b) *The interests sought to be protected by the shield law*

Even if the information was sensitive or obtained in confidence, other circumstances may, as a practical matter, render moot the need to avoid disclosure. If, as in this case, the criminal defendant seeking disclosure is himself the source of the information, it cannot be seriously argued that the source (the defendant) will feel that his confidence has been breached. [FN27]The *811 reporter's news-gathering ability will not be prejudiced. Other circumstances may also mitigate or eliminate the adverse consequences of disclosure. We do not purport to decide the signifi-

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cance to be given to any future set of facts before a trial court. The point is simply that a trial court must determine whether the policy of the shield law will in fact be thwarted by disclosure.

FN27 Such was the situation in *Hallissy v. Superior Court, supra,* 200 Cal.App.3d 1038. A reporter published a story based on an interview with a criminal defendant that led to additional charges being filed against him. He sought to question the reporter to show the published statements were inconsistent with other statements the defendant had made to the reporter. The trial court correctly noted that "The source of the information is the very person who is seeking the full disclosure." (*Id.*, at p. 1042.)The Court of Appeal, however, paid no heed to this circumstance in reversing an order of contempt against the reporter. As explained above, such circumstance is significant. We disapprove of *Hallissy* to the extent it did not consider the fact that the party seeking disclosure was the source of the unpublished information.

(c) *The importance of the information to the criminal defendant*

A defendant in a given case may be able not only to meet but to exceed the threshold "reasonable possibility" requirement. For example, he may be able to show that the evidence would be dispositive in his favor, i.e., to use the reporters' phrase, that it goes to "the heart of defendant's case." If so, the balance will weigh more heavily in favor of disclosure than if he could show only a reasonable possibility the evidence would assist his defense.

(d) *Whether there is an alternative source for the unpublished information*

We stated in *Mitchell, supra,* 37 Cal.3d 268, 282, that discovery of a reporter's confidential information should be denied unless the party seeking it "has exhausted all alternative sources of obtaining the needed information." This requirement has also been imposed on criminal defendants. (*Hammarley v. Superior Court, supra,* 89 Cal.App.3d 388, 399; *Hallissy v. Superior Court, supra,* 200 Cal.App.3d 1038, 1045-1046.) Whether there is an alternative source is indeed a factor for the trial court to consider in a criminal proceeding. In light of a defendant's constitutional right to a fair trial, however, *Mitchell*, a civil case, does not mandate a rigid alternative-source requirement in criminal proceedings. .

The facts in *Mitchell, supra,* 37 Cal.3d 268, also suggest the alternative-source requirement may not always be appropriate. In *Mitchell*, the plaintiff sought documents that would reveal confidential sources of information.(*Id.*, at p. 272.) [FN28]The obvious purpose of the alternative-source requirement ***812** is to protect against unnecessary disclosure of a newsperson's confidential or sensitive information. Where the information is shown to be not confidential or sensitive, the primary basis for the requirement is not present and imposing a rigid requirement would be to sustain a rule without a reason. As we have explained above, the proper balancing in a criminal case must take into account whether the unpublished information is confidential or sensitive and, if so, the importance of protecting the information in a given case. (*Ante,* at pp. 810-811.) For the same reason, a trial court should consider the nature of the information in determining whether to impose an absolute alternative-source requirement in a given case.

FN28 In the other cases cited by the reporters as support for a rigid alternative-source requirement, there was no indication that the information was not confidential. (*United States v. Burke* (2d Cir. 1983) 700 F.2d 70, 76-77; *United States v. Hubbard* (D.D.C. 1979) 493 F.Supp. 202, 205; *State v. Boiardo* (1980) 82 N.J. 446 [414 A.2d 14, 18-19].)

We also note that in *Mitchell, supra,* 37 Cal.3d 268, the information request was for documents that would reveal the identity of possible witnesses. We noted that the names of these persons likely could be obtained from sources other than the newsperson. Objective evidence of that nature is likely unaffected by its source. The contents of a document do not depend on the source of the document (assuming no alteration). Similarly, the name of a witness is the same regardless of who provides the name. The evidence sought by Delaney in this case, however, is qualitatively different from that sought in *Mitchell.*Delaney seeks the reporters' testimony as to

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their percipient observations of the events leading to his search and arrest. Two witnesses to an act may - indeed, likely do - see it differently, and even when their perceptions are substantially the same, their recollection of the event may differ. Moreover, even if their testimony is substantively similar, one witness may have more credibility with a jury. Likewise, two witnesses may convince the jury of a fact where one witness by himself would not do so.

Finally, we note a significant practical difference between this case and *Mitchell, supra*, 37 Cal.3d 268. That case arose out of a pretrial discovery order in a civil case. In light of the wide range of procedures available for pretrial discovery in civil litigation, it is not unreasonable to require a party seeking information from a newsperson to look elsewhere first. There are no similar procedures available to a criminal defendant. For example, he cannot compel a witness's attendance at a deposition and, if unsuccessful in obtaining information, subpoena a different witness. Moreover, the economic reality of the criminal justice system is such that a criminal defendant will generally have less opportunity than a civil litigant to obtain information before trial.

(21) For all the foregoing reasons, we conclude that a universal and inflexible alternative-source requirement is inappropriate in a criminal proceeding. In considering whether the requirement is appropriate in a given case, the trial court should consider the type of information being sought ***813** (e.g., names of potential witnesses, documents, a reporter's eyewitness observations), the quality of the alternative source, and the practicality of obtaining the information from the alternative source. The trial court must also consider the other balancing factors set forth above: whether the information is confidential or sensitive, the interests sought to be protected by the shield law, and the importance of the information to the criminal defendant. In short, whether an alternative-source requirement applies will depend on the facts of each case. [FN29]

FN29 We disapprove of suggestions by the Courts of Appeal that a criminal defendant must in every case show the lack of an alternative source regardless of the circumstances. (*Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, 399; *Hallissy v. Superior Court, supra*, 200 Cal.App.3d 1038, 1046.)

3. *Balancing the factors*

(17c) Although a trial court must consider the foregoing factors, their relative importance will likely vary from case to case. In some cases, as in the present one, all the factors may weigh strongly in favor of disclosure. In others, the balance may be more even, and in some cases one factor may be so compelling as to outweigh all the others. We decline to hold in the abstract that any factor or combination of factors must be determinative. A mechanistic, checklist approach would not in the long run (nor perhaps even in a particular case) serve the best interests of either newspersons or criminal defendants.

4. *Whether an in camera hearing is required*

The reporters contend an in camera hearing must be held in every case before a newsperson can be forced to disclose unpublished information. The contention is overbroad. The purpose of an in camera hearing is to protect against unnecessary disclosure of confidential or sensitive information. The reporters fail to explain what purpose an in camera hearing would serve when the information, as in this case, is admittedly not confidential or sensitive. [FN30]In the cases cited by the reporters, the information was at least arguably confidential. For example, in *CBS, Inc. v. Superior Court, supra*, 85 Cal.App.3d 241, the Court of Appeal remanded to the trial court for an in camera hearing but noted the newspersons' "claimed pledge of secrecy." (*Id.*, at p. 254.)The reporters' reliance on *Hammarley v. Superior Court, supra*, 89 Cal.App.3d 388, in which the court affirmed a contempt judgment, is even more misplaced. In *Hammarley*, the newsperson argued that the shield law immunity was absolute and that an in camera hearing should ***814** not have been allowed. The Court of Appeal concluded to the contrary. (*Id.*, at pp. 402-403.)The decision in no way supports the view that an in camera hearing is required in every case. [FN31]

FN30 Aside from the lack of a need to protect secrets, there is no practical difference in terms of inconvenience to the newsperson. Whether he testifies in open court or in camera, the same amount of his time ordinarily will be required.

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FN31 In the other decisions on which the reporters rely, the information also appears to have been confidential. The precise nature of the information is not explained in each of those decisions, but the courts emphasized the need to protect confidential information, and there were no allegations that the information was not confidential. (*United States v. Cuthbertson* (3d Cir. 1981) 651 F.2d 189, 195-196; *United States v. Burke, supra*, 700 F.2d 70, 76-77; *United States* v. *Hubbard, supra*, 493 F.Supp. 202, 205; *Green Bay Newspaper v. Circuit Court* (1983) 113 Wis.2d 411 [335 N.W.2d 367].)

When a criminal defendant, however, seeks confidential or sensitive information, the practical need for an in camera hearing is obvious. The shield law would be illusory if a reporter had to publicly disclose confidential or sensitive information in order for a court to determine whether it should remain confidential or sensitive. We emphasize, however, that a trial court need not waste its valuable resources for an in camera hearing based on a specious claim of confidentiality or sensitivity. [FN32]The court has discretion in the first instance to determine whether a newsperson's claim of confidentiality or sensitivity is colorable. If the court determines the claim is colorable, it must then receive the newsperson's testimony in camera.

FN32 For example, a newsperson cannot create confidentiality or sensitivity where there is none. Assume that a reporter covering a hockey game witnesses, together with everyone else present, a brawl on the ice that results in criminal charges against a player. If the shield law applied in such circumstance, a trial court would not be required to proceed in camera based on the reporter's assertion that he viewed the game or the fight in confidence.

B. *Application of the proper test to this case*

(22) Under the proper balancing test set forth above, Delaney was clearly entitled to the reporters' testimony as to whether he consented to the police search of his jacket.

Threshold showing - Even under the test advocated by the reporters (heart of the case), Delaney would be entitled to their testimony. The municipal court explained to the reporters' counsel the lack of probable cause for the search: "If there were probable cause for the search, I guarantee you the prosecutor would not be introducing the matter of [Delaney's] consent." The court explained that if there was no consent the search was therefore illegal, and the charge against Delaney would have to be dismissed. Conversely, if he consented to the search, it was legal, the brass knuckles would be admitted into evidence, and Delaney would have little chance of an acquittal. As the court put it, the case "will rise or fall on the admission or not of those metal knuckles." We agree. It is an understatement to say, in the words of the test we adopt, that there is a reasonable ***815** possibility the reporters' testimony will assist Delaney in his defense. There is a substantial certainty that the reporters' testimony will materially affect the outcome of the criminal proceeding. Delaney has met and surpassed the required threshold showing.

Balancing factors - The balance weighs overwhelmingly in favor of requiring the reporters to testify. A brief review of the factors to be balanced makes this clear.

(1) Whether the unpublished information is confidential or senstitive - As we have already noted, the reporters do not claim their percipient observations of Delaney's search and arrest in a public place were made in confidence or were sensitive.

(2) The interests sought to be protected by the shield law - There is not even a suggestion in this case that the reporters' testimony would impinge on their future news-gathering ability or other interest, if any, sought to be protected by the shield law. Both parties who were observed by the reporters (Delaney and the police) are seeking their testimony. Thus, it cannot be said the parties or anyone else would be reluctant to provide these reporters with future information based on a belief that the reporters had breached a confidence or divulged sensitive information.

(3) The importance of the information to the criminal defendant - As explained above, the reporters' testimony will likely be determinative of the outcome of this case.

(4) Whether there is an alternative source for the unpublished information - We have explained that a

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criminal defendant need not always show the lack of an alternative source for a newsperson's unpublished information. We need not consider whether such a showing was required in this case because the municipal court implicitly assumed that it was required, and Delaney made a satisfactory showing. At the hearing on the motion to suppress, the reporters' counsel suggested that Delaney be required to take the stand and testify as to whether he had consented to the search. The court promptly advised counsel as to a defendant's constitutional right not to do so. [FN33]Counsel also urged as alternative sources Delaney's companion, who was present at the time of the search, and four other officers who might have been within hearing distance of the search. The court correctly explained that neither the companion nor the other officers would be *disinterested* witnesses. The *only* two persons fitting that description are the two *816 reporters. Thus, contrary to their assertion, their testimony would not be merely cumulative to that of the other potential witnesses. We concur in the municipal court's determination that there was no meaningful alternative source for the reporters' testimony.

FN33 The reporters' appellate counsel also incorrectly suggest in their brief to this court that Delaney should be required to testify.

In short, the court struck the correct balance. Delaney's personal liberty is at stake. The reporters are not being asked to breach a confidence or to disclose sensitive information that would in any way even remotely restrict their news-gathering ability. All that is being required of them is to accept the civic responsibility imposed on all persons who witness alleged criminal conduct.

C. *Standard of appellate review*

(23) Finally, the reporters contend almost in passing that we are not bound by the municipal court's decision, which they characterize as being comprised of legal conclusions rather than factual findings. The reporters attack the decision on two grounds. First, they contend it is not supported by substantial evidence. We disagree. We have reviewed the record and, as set forth above, we find the municipal court's decision to be amply supported.

Second, the reporters contend we are required to exercise our independent judgment as to the correctness of the municipal court's order of contempt because important constitutional interests are at stake. Apparently, the reporters would have us hold that independent appellate judgment is mandated in all cases under the shield law. Article I, section 2(b) makes no provision for such a standard of review. Nor do the reporters cite authority from any jurisdiction requiring such review under a shield law. We need not and do not decide the issue, however, because, as noted above, we have reviewed the record, and we independently conclude without difficulty that it fully supports the municipal court's thoughtful decision. [FN34]*817

FN34 This case is somewhat unusual in that both Delaney and the prosecutor are seeking the reporters' testimony. (This fact further supports the municipal court's decision that the testimony is pivotal.) Although the reporters concede that a criminal defendant has a constitutional right to a fair trial, they contend, without citing any authority, that the prosecution does not have a similar right to obtain information subject to the shield law. Of course, the prosecutor vigorously disagrees. There is authority which *suggests* that a state may have a right sufficient to overcome a claim of immunity under the shield law. (*Mitchell, supra*, 37 Cal.3d 268, 278; *Branzburg, supra*, 408 U.S. 665, 700 [33 L.Ed.2d 626, 650-651]; *United States v. Nixon, supra*, 418 U.S. 683, 709 [41 L.Ed.2d 1039, 1064-1065].) In light of our determination, however, that Delaney is entitled to the reporters' testimony, the question as to the state's right to the same evidence is rendered moot. We therefore need not, and do not, decide whether the prosecution in a criminal proceeding can have a constitutional interest sufficient to require the disclosure of information otherwise protected by the shield law.

Disposition

The judgment of the Court of Appeal is affirmed. The Court of Appeal is directed to issue a peremptory writ of mandate compelling respondent Los Angeles Superior Court: (1) to vacate its orders entered December 16, 1987, in case numbers HC 206320 and HC

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206321, entitled In re Roxana Kopetman and In re Roberto Santiago Bertero, respectively, which orders granted their petitions for writs of habeas corpus; and (2) to simultaneously make new and different orders denying the petitions for writs of habeas corpus.

Lucas, C. J. (as to part III), Panelli, J., Kennard, J., and Kremer (Daniel J.), J., [FN*] concurred.

FN* Presiding Justice, Court of Appeal, Fourth Appellate District, Division One, assigned by the Chairperson of the Judicial Council.

MOSK, J.,
Concurring.

While I concur that Sean Patrick Delaney is entitled to the reporters' testimony concerning their eyewitness observations of the police search of his jacket, I do not agree with the balancing test proposed by the majority. Since federal constitutional rights are supreme, and since the reporter's constitutional immunity is absolute on its face in protecting *all* unpublished information obtained during the course of news gathering, it is not for us to balance competing state and federal interests. Rather, our sole task is to determine how far the state constitutional immunity can be extended before it trespasses on the Fifth and Sixth Amendment rights of criminal defendants. If invocation of the constitutional immunity deprives the defendant of information necessary to exercise those rights, then he is entitled to that information in spite of the reporter's constitutional immunity. If the information is not necessary to exercise those rights, he is not so entitled.

Instead, the majority propose a complicated four-factor test to be used by courts in weighing the relative merits of reporters' and defendants' claims. Two of the factors - (a) and (b) - consider the importance of the information from the reporter's viewpoint. Factor (c) would consider the information's importance to the defendant. The fourth factor allows the trial court to consider the ease of obtaining the information from alternative sources. No single factor is to be determinative.

This balancing test harbors a basic conceptual flaw. [FN1] If our role is to determine whether the defendant can obtain a fair trial when confronted *818 with the reporter's claim of immunity, then the significance of the information from the reporter's viewpoint is irrelevant. All that matters is the importance of the information from the *defendant's* viewpoint. Instead of delineating the boundary of the defendant's rights and permitting the reporter's immunity to apply to all information outside that boundary, as the federal and state Constitutions dictate, the majority substitute their concept of the optimal balancing of reporters' and defendants' interests. Thus, the majority favor confidential and "sensitive" information over non-confidential, nonsensitive information, despite their earlier recognition that article I, section 2(b) makes no such distinctions.

FN1 Part of the problem with a balancing test may stem from the fact that a similar balancing approach is used in the First Amendment qualified-privilege cases, the progeny of *Branzburg v. Hayes* (1972) 408 U.S. 665 [33 L.Ed.2d 626, 92 S.Ct. 2646]. In those cases, courts, following Justice Powell's concurrence in *Branzburg*, have inquired into the impact a disclosure of information will have on the reporter's news-gathering ability. Courts had to determine at the threshold whether revelation of the information would burden reporters sufficiently to raise a First Amendment claim. (See, e.g., *U.S. v. LaRouche Campaign* (1st Cir. 1988) 841 F.2d 1176.)

In this case, the claim is not based on the First Amendment but on a specific state constitutional provision (Cal. Const., art. I, § 2, subd. (b) (hereafter article I, section 2(b)) that covers all unpublished information gathered by journalists in the course of their duties. Inquiry into the importance of the information to the reporter and the burden it would impose on him or her is not needed to determine whether the information falls within the scope of article I, section 2(b). Nor, indeed, does that provision permit such an inquiry.

For the reasons elaborated below, I would require that a defendant make two threshold showings, both of which relate to the defendant's demonstration of need for the information. First, as the majority hold, the defendant must show a reasonable possibility

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exists that the information will assist the truth-seeking process. Second, he must show that alternative sources of substantially similar information are unavailable. Once the defendant carries his burden of making these two showings, he will be entitled to the information. Because I conclude that information obtained by a reporter as a percipient witness of a transitory event is by its very nature unavailable from alternative sources, I concur in the majority's judgment that the defendant in this case is entitled to the reporters' testimony.

I. *The Scope of Fifth and Sixth Amendment Rights and the Alternative-source Rule*

The rights of confrontation and compulsory process under the Sixth Amendment, and the more general right to a fair trial under the Fifth Amendment, are not absolute. Rather, they are exercised in a framework of state law privileges, immunities, and rules of evidence that sometime block access to information needed by the defendant. (See *Chambers* v. *Mississippi* (1973) 410 U.S. 284, 302-303 [35 L.Ed.2d 297, 309, 93 S.Ct. 1038] [a holding that strikes down an unreasonable hearsay rule on due process grounds does not "signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own *819 criminal trial rules and procedures"]; *Washington v. Texas* (1967) 388 U.S. 14, 23, fn. 21 [18 L.Ed.2d 1019, 1025, 87 S.Ct. 1920] [a ruling that strikes down on compulsory process grounds a state law prohibiting coconspirators from testifying on each other's behalf does not invalidate traditional testimonial privileges].) While consistency has not been a hallmark in this area, courts have been extremely reluctant to make incursions into state law testimonial privileges - e.g., the attorney/client, priest/penitent, or marital communications privileges - on Sixth Amendment grounds. (See Note, *Defendant v. Witness: Measuring Confrontation and Compulsory Process Rights Against Statutory Communications Privileges* (1978) 30 Stan.L.Rev. 935 (hereafter *Defendant v. Witness*).)

Recognizing the peaceful coexistence between the Sixth Amendment and traditional testimonial privileges, courts have tended to employ a functional, pragmatic approach in reconciling fair trial rights with the less traditional state law privileges, such as the reporter's privilege. [FN2]Such a functional approach was typified by the New Jersey Supreme Court in *State v. Boiardo* (1980) 82 N.J. 446 [414 A.2d 14]. As the court reasoned, the Sixth Amendment rights of confrontation and compulsory process are necessary to ensure that our adversary system results in "'full disclosure of all the facts and a fair trial, within the framework of the rules of evidence.'" (414 A.2d at p. 19, quoting *United States v. Nixon* (1974) 418 U.S. 683, 709 [41 L.Ed.2d 1039, 1064, 94 S.Ct. 3090].) When full disclosure can be accomplished without interfering with the reporter's privilege, the defendant will be able to receive as fair a trial as the state can ensure, without having to resort to a breach of the reporter's privilege. As Chief Justice Wilentz wrote: "[I]f substantially similar material can be obtained from other sources, both the confidentiality needed by the press and the interests of the defendants are protected." (414 A.2d at p. 21.)

FN2 The majority's holding in this opinion, of course, does not apply to the traditional testimonial privileges. It may be that those privileges should be accorded more protection than the reporter's immunity, because they are consistent with a fair trial as that concept was understood in 1791, when the Fifth and Sixth Amendments were adopted. It may also be that violation of certain privileges implicate federal constitutional rights of their own, such as the right to counsel or the right to free exercise of religion. A more comprehensive treatment of the conflict between testimonial privileges and fair trial rights awaits further development when these matters are properly before us.

Unlike the majority's approach, the court in *Boiardo* did not attempt to balance the respective importance of the information for the reporter and the defendant. Rather, the New Jersey Supreme Court sought to determine, at the threshold, whether defendant would be deprived of a fair trial if information necessary to his defense was withheld. In that case the defendant sought a copy of a letter that a reporter possessed and the defendant believed would assist him in impeaching a key prosecution witness. The *820 court concluded that the defendant had not carried his burden of showing that the information was unavailable from an alternative source, and therefore upheld the reporter's privilege.

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The requirement of a threshold showing that no alternative source of information is available (hereinafter called the alternative-source rule) can, therefore, reconcile reporter's immunity and defendant's rights so as to give effect to both. Unlike the majority's multifactored approach, the alternative-source rule remains focused on the single decisive question: does the defendant need the information to obtain a fair trial? The alternative-source rule also incorporates a functional approach to the defendant's fair trial rights, based on the recognition that these rights exist within a framework of state law privileges and immunities. What one commentator stated of the communications privilege applies at least equally to the reporter's immunity: "A communications privilege would be of little value if a [criminal] defendant could override it whenever its invocation concealed evidence of *some* probative value. Courts must respect the legislative judgment that in some situations the social policy underlying a privilege should require that litigants be denied access to otherwise admissible evidence. The legislative establishment of a privilege should make the privilege-holder a *disfavored source of information*." (*Defendant v. Witness, supra*,30 Stan.L.Rev. at p. 966, italics added.)

It is no surprise that a number of courts, state and federal, have employed an alternative source rule at the threshold when weighing criminal defendants' rights against reporters' statutory or qualified First Amendment privileges. (See *United States v. Burke* (2d Cir. 1983) 700 F.2d 70, 77, fn. 8; *United States v. Cuthbertson* (3d Cir. 1981) 651 F.2d 189, 195-196; *United States v. Hubbard* (D.D.C. 1979) 493 F.Supp. 202, 205;*State* v. *Rinaldo* (1984) 102 Wn.2d 749 [689 P.2d 392, 395-396]; *State v. St. Peter* (1974) 132 Vt. 266 [315 A.2d 254, 256];*Brown* v. *Commonwealth* (1974) 214 Va. 755 [204 S.E.2d 429, 431],cert. den. 419 U.S. 966 [42 L.Ed.2d 182, 95 S.Ct. 229]; *Matter of Farber* (1978) 78 N.J. 259 [394 A.2d 330, 338, 99 A.L.R.3d 1] [interpreting earlier, less comprehensive shield law]; *State v. Boiardo, supra*, 414 A.2d 14, 21 [interpreting recent, more comprehensive shield law]; *Hallissy v. Superior Court* (1988) 200 Cal.App.3d 1038, 1046 [248 Cal.Rptr. 635]; *Hammarley v. Superior Court* (1979) 89 Cal.App.3d 388, 399 [153 Cal.Rptr. 608].)

II. *Policy Considerations: Ensuring Press Autonomy*

The enforcement of an alternative-source rule is desirable for policy as well as doctrinal reasons. A comprehensive reporter's immunity provision, in addition to protecting confidential or sensitive sources, has the effect of ***821** safeguarding "[t]he autonomy of the press." (*O'Neill v. Oakgrove Constr.* (1988) 71 N.Y.2d 521, 526 [528 N.Y.S.2d 1, 3 [523 N.E.2d 277, 279] [construing a similar state constitutional provision].) As the New York Court of Appeals recognized, press autonomy "would be jeopardized if resort to its resource materials by litigants seeking to utilize the news gathering efforts of journalists for their private purposes were routinely permitted [citations] .... The practical burden on time and resources as well as the consequent diversion of journalistic effort and disruption of news gathering activity, would be particularly inimical to the vigor of a free press." (528 N.Y.S.2d at p. 3.)

The threat to press autonomy is particularly clear in light of the press's unique role in society. As the institution that gathers and disseminates information, journalists often serve as the eyes and ears of the public. (See *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 572-573 [65 L.Ed.2d 973, 986-987, 100 S.Ct. 2814]; *Houchins v. KQED, Inc.* (1978) 438 U.S. 1, 17-18 [57 L.Ed.2d 553, 566-567, 98 S.Ct. 2588] (Stewart, J., conc.).) Because journalists not only gather a great deal of information, but publicly identify themselves as possessing it, they are especially prone to be called upon by litigants seeking to minimize the costs of obtaining needed information. Carte blanche access to the journalist's files would give litigants a free ride on news organizations' information-gathering efforts.

To require a threshold showing of no alternative source would discourage this misuse of the press. Our constitutional system does not ensure the exercise of a criminal defendant's rights in the least costly manner. The alternative-source rule would compel litigants to expend a reasonable amount of effort to obtain the information from nonpress sources. Only when a defendant is unable to obtain the information through these means, or when the cost of obtaining the information is prohibitive, would he be able to pierce the shield of journalistic immunity. Such a rule would maximally preserve press autonomy, as the reporter's constitutional immunity is designed to do, while still recognizing that press autonomy must ultimately give way to the criminal defendant's fair trial rights.

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III. *Alternative-source Rule and the Percipient Witness*

I concur, nonetheless, in the court's judgment because I find that the alternative-source rule is inapplicable when the information sought is the reporter's own observations as a percipient witness of a transitory event. The alternative-source rule arose in cases, such as those cited *ante*, in which the information in question had been gathered from documents, interviews, public meetings, and the like. In such cases the content of the information existed in some objective and stable form, capable of independent verification - the documents could be independently inspected, the interviewees ***822** could be contacted, etc. What the defendants in those cases were primarily interested in was not the reporters' perceptions but the content of these independent information sources.

In the case of eyewitnessed transitory events, however, no such independent, stable information source exists. Equally significant is the well-established fact that there are often major discrepancies between different eyewitness accounts of the same event, owing to distortions and biases in both perception and memory. (See *People* v. *McDonald* (1984) 37 Cal.3d 351, 363-365 [208 Cal.Rptr. 236, 690 P.2d 709, 46 A.L.R.4th 1011], and authorities cited; Note, *Did Your Eyes Deceive You: Expert Psychological Testimony on the Unreliability of Eyewitness Identification* (1977) 29 Stan.L.Rev. 969, 971-989.)Thus, two percipient witnesses of the same event are not in any sense fungible. And unlike the document or the interview, the transitory unrecorded event is not subject to subsequent independent verification.

Accordingly, the reporter as a percipient witness is not an "exception" to the alternative-source rule. Rather, in such situations the rule simply does not apply: in a real sense, two eyewitnesses to the same event are not alternative sources of the same information, but sources of *different* information.

In the present case, defendant was able to show a reasonable possibility that the information would assist in ascertaining the truth. Because the information he seeks from the reporters is their contemporaneous observations of a transitory event, he has met the second threshold by showing that no real alternative source of the information exists. He is therefore entitled to the reporters' testimony.

BROUSSARD, J.,
Concurring.

I.

I agree with the majority opinion's conclusion that the information that defendant sought to elicit from the reporters in this case was "unpublished information" within the meaning of the California reporter's shield provision. (Cal. Const., art. I, § 2, subd. (b).) I cannot join, however, in the opinion's suggestion that it is either necessary or appropriate for the court, in reaching this conclusion, to rely solely on the "plain language" of the constitutional provision, without reference to the background or history of the constitutional provision or to the legislative history of the preceding statutory shield provision on which the constitutional provision was deliberately modeled. ***823**

In *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841 [59 Cal.Rptr. 609, 428 P.2d 593], the defendant relied on an argument virtually identical to that embraced by the majority opinion, asserting that because the constitutional provision at issue in that case was "clear and unambiguous," the court was required to confine itself to the "plain language" of the provision and could not consider the legislative history or judicial interpretation of a related statutory provision. (*Id.* at pp. 846-847.)In *Hickman*, this court - in a unanimous opinion - explicitly rejected the argument (*id.* at pp. 847-851), explaining that "'[i]n the absence of contrary indication in a constitutional amendment, terms used therein must be construed in light of their statutory meaning or interpretation in effect at the time of its adoption.'" (*Id.* at p. 850 [quoting *Michels v. Watson* (1964) 229 Cal.App.2d 404 (40 Cal.Rptr. 464)].) Thus, contrary to the suggestion of the majority opinion, *Hickman* as well as many other, more recent, cases (see, e.g., *City of Sacramento* v. *State of California, ante*, 51, 67, fn. 11 [266 Cal.Rptr. 139, 785 P.2d 522]) make it clear that a court, in interpreting an initiative measure, may properly consider the statutory antecedents of the measure for any guidance those statutes may shed on the proper interpretation of the initiative provision.

In light of these authorities, I believe that it is clearly appropriate, in interpreting the constitutional re-

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porter's shield provision, to consider the entire background of the provision, including the legislative history and judicial interpretation of Evidence Code section 1070, the statutory provision on which the constitutional shield provision was based. In my view, both the language and history of the shield provision fully support the conclusion that the provision is not limited to an undefined category of "confidential" information, but rather applies to all "unpublished information."

II.

Although the state constitutional shield provision extends to the information elicited from the reporters in this case, I agree with all of my colleagues that, under the facts of this case, application of the shield provision to afford the reporters a state-granted immunity from contempt would improperly infringe on the defendant's federal constitutional rights. In light of the different approaches to the federal constitutional issue reflected in the majority opinion and Justice Mosk's concurring opinion, however, I thought it appropriate briefly to explain my own views on this point.

The majority opinion and Justice Mosk's concurring opinion are on common ground in concluding that, in a criminal case, a defendant's federal constitutional right to a fair trial is implicated whenever a defendant demonstrates ***824** that there is a reasonable possibility that information that would assist his defense is being withheld by a reporter under the aegis of the shield provision. I, too, agree with that proposition.

The majority opinion and Justice Mosk's concurring opinion diverge, however, with respect to the proper constitutional analysis that follows such a showing by the defendant. Justice Mosk's concurring opinion concludes that once a defendant makes such a showing and demonstrates that no alternative sources for the information are available, the federal Constitution always requires the state shield provision to give way. The majority opinion, by contrast, concludes that when a defendant makes the threshold showing, the federal Constitution calls for a case-by-case weighing of the defendant's relative need for disclosure of the information, on the one hand, against the relative strength of the state's interest in permitting the reporter to withhold the information, on the other.

In general, I agree with the majority's conclusion that, in determining whether the California shield provision may be constitutionally applied in a given case, it is appropriate to weigh a defendant's relative need for the information in the particular case against the relative strength of the state's interest in affording immunity under the circumstances of that case. [FN1] In determining the proper scope of federal constitutional rights in other contexts, numerous cases establish that federal constitutional guaranties are generally not absolute, and may, in appropriate circumstances, accommodate state laws which further a sufficiently compelling or important state interest. (See, e.g., *Chambers v. Mississippi* (1973) 410 U.S. 284, 295 [35 L.Ed.2d 297, 309, 93 S.Ct. 1038] ["Of course, the right to confront ... is not absolute and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process."]; *Konigsberg v. State Bar* (1961) 366 U.S. 36, 49-51 [6 L.Ed.2d 105, 116-117, 81 S.Ct. 997] ["[W]e reject the view that freedom of speech and association ... as protected by the First and Fourteenth Amendments, are 'absolutes' .... [G]eneral regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved. ..."].) Particularly in view of a state's traditional authority to establish evidentiary privileges ***825** to serve interests external to the adjudicatory process, it is difficult for me to see why the general principle permitting consideration of compelling state interests in the application of federal constitutional safeguards should not apply in this context as well. (Cf., e.g., *United States v. Nixon* (1974) 418 U.S. 683, 711-712 [41 L.Ed.2d 1039, 1066, 94 S.Ct. 3090] ["In this case we must weigh the importance of the general privilege of confidentiality of Presidential communications in performance of the President's responsibilities against the inroads of such a privilege on the fair administration of criminal justice."].)

FN1 Although in my view it would be wiser at this point to refrain from attempting to set forth an exhaustive list of specific "factors" that must be considered by a court in every case (see maj. opn., *ante*, at p. 813), the "factors" discussed in the majority opinion

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> appear broad enough to permit a court to take into account all relevant considerations in "balancing ... the defendant's and newsperson's respective ... interests." (See maj. opn., *ante*, at p. 809.)

Accordingly, in light of the important role a reporter shield provision may play in furthering a state's compelling interest in fostering and preserving a free and vigilant press, I believe that even if a reporter's "unpublished information" in a particular case may be of some assistance to the defense and there are no available alternative sources of the information, if a court finds that the defendant's need for the information is not particularly great while the state's interest in affording a reporter immunity under the circumstances is compelling, the court could properly conclude that the defendant's federal constitutional right to a fair trial would not require the state shield provision to give way.

As the majority opinion demonstrates, however, on the facts of the present case it is clear that no such overriding, compelling state interest is present. Consequently, I concur fully in the majority opinion's affirmance of the Court of Appeal judgment.

Lucas, J., concurred as to part I only.
The petition of real parties in interest for a rehearing was denied July 11, 1990. *826

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Delaney v. Superior Court
50 Cal.3d 785, 789 P.2d 934, 268 Cal.Rptr. 753, 58 USLW 2670, 17 Media L. Rep. 1817

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FREEDOM NEWSPAPERS, INC., Plaintiff and Appellant,
v.
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM BOARD OF DIRECTORS, Defendant and Respondent.
No. S029178.

Supreme Court of California
Dec 23, 1993.

SUMMARY

A newspaper publisher sought a writ of mandate to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory in nature and was composed of four members of the nine-member board. The trial court denied the petition and entered judgment in favor of the board. (Superior Court of Orange County, No. 660703, Greer Stroud, Referee.) The Court of Appeal, Fourth Dist., Div. Three, No. G011490, reversed.

The Supreme Court reversed the judgment of the Court of Appeal. The court held that, since the operations committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" pursuant to the provisions of Gov. Code, § 54952.3, and was therefore excluded from the open meeting requirements of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.). (Opinion by Panelli, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate concurring and dissenting opinion by Mosk, J. Separate dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Counties § 1--Open Meeting Requirements--Advisory Committee of County Employees Retirement System Board--Committee Composed of Less Than Quorum of Board:Pensions and Retirement Systems § 3--Administration.
The trial court did not err in denying a petition for a writ of mandate brought by a newspaper publisher that was seeking to compel a county employees retirement system board of directors to allow the public to attend meetings of the board's operations committee. The committee was advisory and was composed of four members of the nine-member board. Gov. Code, § 54952.3, exempts from the definition of "legislative bodies" that are subject to the open meeting requirements of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.) advisory committees composed of less than a quorum of the governing body. Although Gov. Code, § 54952.3, could be read to mean that less-than-quorum committees are merely exempt from the formal requirements of that specific statute, the legislative history of the act, including the Legislature's response to court decisions, demonstrates an intent to exempt less-than-quorum advisory committees from all open meeting requirements. Since the committee was an advisory committee composed solely of board members numbering less than a quorum of the board, the committee was not a "legislative body" and was therefore excluded from the open meeting requirements of the act.
[Validity, construction, and application of statutes making public proceedings open to the public, note, 38 A.L.R.3d 1070. See also 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 579.]
(2) State of California § 10--Attorney General--Opinions.
While the opinions of the Attorney General are not binding on the courts, they are entitled to great weight.

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PANELLI, J.

The Ralph M. Brown Act (Stats. 1953, ch. 1588, § 1, p. 3269, codified as Gov. Code, § 54950 et seq. [hereafter the Brown Act or the Act]) [FN1] provides that all meetings of "the legislative body of a local agency shall be open and public," except as otherwise provided in the Act. (§ 54953.) At all times relevant to this case the Act contained four separate definitions of "legislative body." [FN2]We granted review to determine whether the Operations Committee of the Retirement Board of Orange County Employees Retirement System (hereafter Board) is a "legislative body" within the meaning of the Brown Act and, therefore, subject to the Act's *824 open meeting requirements. Because the Operations Committee is an advisory committee composed solely of Board members numbering less than a quorum of the Board, we hold that the committee is not a "legislative body" pursuant to the provisions of section 54952.3 and is thereby excluded from the open meeting requirements of the Act.

FN1 All statutory references are to the Government Code unless otherwise noted.

A new law changing the relevant provisions of the Government Code was enacted while this case was pending. (Sen. Bill No. 1140 (1993-1994 Reg. Sess.), Stats. 1993, ch. 1138, eff. Apr. 1, 1994.) The impact of the new law is addressed in footnote 11, *post*. Except in that footnote, all references to the Government Code in this opinion are to the current version, i.e., the law as it will be until Senate Bill No. 1140 takes effect on April 1, 1994.

FN2 Section 54952: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation."

Section 54952.2: "As used in this chapter, 'legislative body' also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body."

Section 54952.3: "As used in this chapter[,] 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. [¶] Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. [¶] If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required. [¶] 'Legislative body' as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body. [¶] The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section."

Section 54952.5: "As used in this chapter[,] 'legislative body' also includes, but is not limited to, planning commissions, library

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boards, recreation commissions, and other permanent boards or commissions of a local agency."

I. Facts

The Orange County Employees Retirement System is governed by a nine-member Board. Five members of the Board constitute a quorum. The Board is a "local agency" and a "legislative body" under sections 54951 and 54952 respectively. The Board is therefore subject to the open meeting requirements of the Brown Act. The chairman of the Board has created five advisory [FN3] committees-operations, benefit, investment, real estate, and liaison-each composed of four members of the Board. Some members serve on more than one committee. The committees' function is to review various matters related to the business of the Board and to make recommendations to the full Board for action. The Board considers the committees' recommendations in public meetings, at which time there is an opportunity for full public discussion and debate. The committees do not have any decisionmaking authority and act only in an "advisory" capacity. [FN4]

FN3 The parties do not dispute that these committees are properly described as "advisory."

FN4 The only evidence concerning the composition and function of the committees is a declaration by the administrator of the retirement system. The declaration states:

"[¶] 4.... All of the committees of the Board of Retirement, including the Operations Committee, are comprised solely of members of the Board of Retirement. The Board of Retirement has nine members, and a quorum is five. However, none of the committees of the Board of Retirement are comprised of more than four members, and all committee members are also members of the Board of Retirement.... [¶] 5. The function of such committees is to review various matters related to the business of the Board of Retirement, and make recommendations to the full Board for action. The committees have not been delegated any decisionmaking authority. The committees act in an advisory capacity, and make recommendations to the full Board of Retirement. The full Board considers those recommendations in public meetings, at which time there is an opportunity for full public discussion and debate on those recommendations. [¶] 6. The committees are formed by the Chairman of the Board of Retirement. The Chairman determines what committees shall operate, and which members of the Board of Retirement shall serve on such committees. The Chairman has the authority to form new committees, abolish existing committees, or combine existing committees. There is no Board rule or regulation which prescribes the number of Board committees, or the duties of any such committee; it is up to the Chairman of the Board of Retirement to decide what committees shall be formed, and who will serve on them."

On June 18, 1991, the Operations Committee met to formulate a list of recommended changes to the Board's travel policy. Freedom Newspapers sought to attend the meeting but the committee denied permission on the ground that it was not subject to the open meeting requirements of the ***825** Brown Act. The next day, June 19, the full Board met in a public session at which the chairman of the Operations Committee read and explained the committee's recommendations. The press was in attendance, and there was public discussion among the Board's members about the recommendations. The Board ultimately voted eight to one in public session to accept the recommendations.

On the same day, Freedom Newspapers petitioned the trial court for a writ of mandate alleging that the Operations Committee is subject to the open meeting requirements of the Brown Act. The trial court denied the petition and entered judgment in favor of the Board. Freedom Newspapers appealed from that judgment, and the Court of Appeal reversed. We granted the Board's petition for review.

II. Discussion

The Brown Act was adopted to ensure the public's right to attend the meetings of public agencies. (§ 54950.) [FN5]5 The Act provides that "[a]ll meetings of the legislative body of a local agency shall be open

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and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter." (§ 54953.) As already noted, "legislative body" is defined in four sections of the Act, two of which pertain to the case before us. (§§ 54952, 54952.3.)Section 54952 provides that any committee or body on which officers of a local agency serve in their official capacity and which is supported by its appointing local agency is a "legislative body." (§ 54952.) [FN6]6Section 54952.3 more specifically addresses "advisory" bodies: "As used in this chapter[,] 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency. [¶] ... [¶] *'Legislative body' as defined in this section does not include a committee composed solely of members of the governing body of *826 a local agency which are less than aquorum of such governing body.*" (§ 54952.3, [FN7]7 italics added.)

FN5 Section 54950 provides: "In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

FN6 For the full text of section 54952, see *ante*, footnote 2.

FN7 For the full text of section 54952.3, see *ante*, footnote 2.

(1a) The parties in this case disagree over the meaning of the explicit less-than-a-quorum exception contained in section 54952.3. The Board and its amici curiae, including the Attorney General, argue that an advisory committee that is excluded from the definition of "legislative body" under the exception is completely exempt from the open meeting requirements of the Act. [FN8]

FN8 Like the Brown Act, the 1972 Federal Advisory Committee Act generally subjects advisory committees to open meeting requirements. (86 Stat. 770, as amended, 5 U.S.C.S. Appen. §§ 1-15.) However, the same act, as amended, also specifically exempts "any [advisory] committee which is composed wholly of full-time officers or employees of the Federal Government" from the open meeting requirements. (5 U.S.C.S. Appen. § 3(2)(C)(iii).)

In opposition, Freedom Newspapers and its amici curiae contend that the less-than-a-quorum exception in section 54952.3 merely exempts less-than-a-quorum committees from the special, relaxed procedural requirements of section 54952.3. According to Freedom, such committees remain subject to the stricter open meeting requirements that are generally applicable to "legislative bodies" under section 54952.

When interpreting a statute our primary task is to determine the Legislature's intent. (*Brown v. KellyBroadcasting Co.* (1989) 48 Cal.3d 711, 724 [257 Cal.Rptr. 708, 771 P.2d 406].) In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

Each party asserts that the language of section 54952.3 supports its view. Freedom reasons that, had the Legislature intended to exempt less-than-a-quorum advisory committees from the Act's open meeting requirements, it would have used language such as this: " 'legislative bodies' as defined in *this chapter* shall not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body." Because the Legislature used the words "in this section," instead of "in this chapter," the effect of the less-than-a-quorum exception, according to Freedom, is simply to exclude less-than-a-quorum committees from the terms of section 54952.3 rather than from other definitions of "legislative body"

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within the Act.

In contrast, the Board argues that, because section 54952.3 specifically refers to "any ... advisory committee," that section alone governs advisory *827 committees for the purposes of the Act. To support its interpretation the Board relies, in part, on the traditional rules of statutory construction that specific statutes govern general statutes (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 [7 Cal.Rptr.2d 245, 828 P.2d 147]; see also *Yoffie v. Marin Hospital Dist.* (1987) 193 Cal.App.3d 743, 750-753 [238 Cal.Rptr. 502]; *Kennedy v. City of Ukiah* (1977) 69 Cal.App.3d 545, 552 [138 Cal.Rptr. 207]) and that, to the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443 [261 Cal.Rptr. 574, 777 P.2d 610]; *Yoffie v. Marin Hospital Dist., supra*, 193 Cal.App.3d at p. 751). According to the Board, an advisory committee that is excluded from the definition of "legislative body" contained in section 54952.3 is not subject to the Act's open meeting requirements, even if it might otherwise satisfy the more general definition of "legislative body" contained in section 54952.

The Board also argues that Freedom's interpretation of section 54952 would deprive sections 54952.2 and 54952.5, as well as the less-than-a-quorum exception in 54952.3, of meaning. To explain, sections 54952.2 and 54952.5 purport to include only certain bodies within the definition of "legislative body." For the Legislature to have enacted those statutes would have made no sense if the governmental bodies described therein had already been included in the more general definition of "legislative body" contained in section 54952.

To be sure, one could argue that section 54952.3 might still have some meaning under Freedom's interpretation. Because section 54952.3 gives certain advisory bodies the benefit of procedural requirements that are less stringent than the requirements applicable to "legislative bodies" under section 54952, under Freedom's interpretation the exception contained in section 54952.3 for less-than-a-quorum advisory committees would have the effect of subjecting such committees to the stricter, generally applicable procedural requirements.

But Freedom's interpretation of section 54952.3 would also result in absurdity. If we construed section 54952.3 merely as exempting less-than-a-quorum advisory committees from the less rigid procedural requirements in that section, even a temporary, ad hoc advisory committee composed solely of less than a quorum of the governing body would be subject to all of the Brown Act's generally applicable procedural requirements, including the requirement that committees hold "regular" meetings. (§ 54954.) Yet a *828 temporary, ad hoc committee, by definition, does not hold "regular" meetings. We will not give a statute an absurd interpretation. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]; *Gage v. Jordan* (1944) 23 Cal.2d 794, 800 [147 P.2d 387]; *Lynch v. State Bd. of Equalization* (1985) 164 Cal.App.3d 94, 114 [210 Cal.Rptr. 335].)

Freedom attempts to avoid the absurdity by characterizing the Operations Committee as a standing committee. However, neither section 54952 nor section 54952.3 distinguishes between ad hoc advisory committees and standing advisory committees. We will not add to a statute a distinction that has been omitted. (Code Civ. Proc., § 1858; see, e.g., *Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998 [275 Cal.Rptr. 201, 800 P.2d 557].)

When a statute is ambiguous, as in this case, we typically consider evidence of the Legislature's intent beyond the words of the statute (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323]) and look both to the legislative history of the statute and to the wider historical circumstances of its enactment (*ibid.*). An examination of the history of the Brown Act, both prior to and after the enactment of section 54952.3, shows that committees comprised of less than a quorum of the legislative body have generally been considered exempt from the Act's open meeting requirements.

In 1958 the Attorney General, interpreting the original version of section 54952, [FN9] concluded that "meetings of committees of local agencies where such committees consist of less than a quorum of the legislative body are not covered by the act." (*Secret Meeting Law*, 32 Ops.Cal.Atty.Gen. 240, 242

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(1958).) The Attorney General reasoned that, "[i]n those cases the findings of such a committee have not been deliberated upon by a quorum of the legislative body and the necessity, as well as the opportunity, for full public deliberation by the legislative body still remains." (*Ibid.*)

FN9 In 1958 section 54952 provided: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board or commission thereof." (Stats. 1953, ch. 1588, § 1, p. 3270.)

Successive Attorneys General have consistently adhered to the view stated in the 1958 opinion. In 1968 the Attorney General wrote that "[w]e have consistently concluded that committees composed of less than a quorum of the legislative body creating them and not established on a permanent basis for a continuing function are not subject to the open meeting requirements of *829 that Act. In view of the lack of any pronouncements on the parts of either the courts or the Legislature which would compel a different conclusion, our opinion remains unchanged." (Cal. Atty. Gen., Indexed Letter No. IL 68-106 (Apr. 29, 1968).)

More specifically, since the enactment of section 54952.3 the Attorney General has continuously recognized that advisory committees falling within the express less-than-a-quorum exception in section 54952.3 are not "legislative bodies" within the meaning of the Brown Act. (See, e.g., Cal. Atty. Gen., Indexed Letter No. IL 69-131 (June 30, 1969); Secret Meetings Laws Applicable to Public Agencies (Cal.Atty.Gen., 1972) pp. 6-8; *Closed Meetings*, 63 Ops.Cal.Atty.Gen. 820, 823 (1980); *Open Meeting Requirements*, 64 Ops.Cal.Atty.Gen. 856, 857 (1981).) The Attorney General's brief in this case supports the long-standing view of his office. (2) While the Attorney General's views do not bind us (*Unger v. Superior Court* (1980) 102 Cal.App.3d 681, 688 [162 Cal.Rptr. 611]), they are entitled to considerable weight (*Meyer v. Board of Trustees* (1961) 195 Cal.App.2d 420, 431 [15 Cal.Rptr. 717]). (1b) This is especially true here since the Attorney General regularly advises many local agencies about the meaning of the Brown Act and publishes a manual designed to assist local governmental agencies in complying with the Act's open meeting requirements. (See, e.g., Open Meeting Laws (Cal.Atty.Gen., 1989).)

In 1961 the Legislature amended the Brown Act, not in response to the Attorney General's recognition of an implicit less-than-a-quorum exception, but in response to a judicial opinion that essentially eviscerated the Act by restrictively defining the terms "meeting" and "legislative body." The court in *Adler v. City Council* (1960) 184 Cal.App.2d 763 [7 Cal.Rptr. 805] (*Adler*) held that a city's planning commission did not violate the Brown Act when all but one of its members attended a dinner given a few days before the host's application to the commission for an amendment to the zoning law. The court held that "the Brown Act was not directed at anything less than a formal meeting of a city council or one of the city's subordinate agencies." (*Id.* at p. 770.)Misconstruing the Attorney General's 1958 opinion (*Secret Meeting Law*, *supra*, 32 Ops.Cal.Atty.Gen. 240), which addressed committees composed of less than a quorum of the governing body, the court also held that the Act did not apply to any committee of an advisory nature, whether or not composed of a quorum of the governing body. (*Adler*, *supra*, 184 Cal.App.2d at p. 771.)

In response to the *Adler* decision, the Legislature broadened the scope of the Brown Act the very next year. (Stats. 1961, ch. 1671, § 1, p. 3637, *830 amending §§ 54952 and 54957, and adding §§ 54952.5, 54952.6, and 54960.) Shortly after the 1961 amendments took effect, the Attorney General construed them as disapproving *Adler* on several points. (*Secret Meeting Law*, 42 Ops.Cal.Atty.Gen. 61 (1963).) Specifically, the Attorney General concluded that the 1961 amendments "disapproved *Adler's* restrictive interpretation of the word 'meeting' by recognizing that criminally prohibited legislative action may be taken at gatherings that fall far short of the ' " formal assemblages of the council sitting as a joint deliberative body " ' " and "repudiated that portion of the *Adler* decision which held that the act was not meant to apply to planning commissions or other bodies of an 'advisory' nature." (*Secret Meeting Law*, *supra*, 42 Ops.Cal.Atty.Gen., at pp. 64-65.)

In addition to the history set out above, the history of the Brown Act in the Legislature reflects a recognition of the implicit less-than-a-quorum exception and, after the consistent failure of proposals to abolish it,

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the codification of a limited version of that exception.

A 1963 bill would have abolished the exception by providing that "[a]ll meetings of any committee or subcommittee of a legislative body, *whether or not composedof a quorum of the members of the legislative body*, shall be open and public, and all persons shall be permitted to attend any meeting of such committee or subcommittee, except during consideration of the matters set forth in Section 54957." (Assem. Bill No. 2334 (1963 Reg. Sess.) § 2, italics added.) The bill did not pass.

The legislative history of section 54952.3, the provision at issue in this case, reveals another unsuccessful attempt to abolish the implicit less-than-a-quorum exception. Section 54952.3, enacted in 1968 (Stats. 1968, ch. 1297, § 1, p. 2444), extended the coverage of the Brown Act to certain advisory committees that were not previously covered. However, at the same time the Legislature rejected an alternative bill that would have abolished the implicit less-than-a-quorum exception by making all advisory committees subject to the full procedural requirements applicable to governing bodies. (Sen. Bill No. 717 (1968 Reg. Sess.).) [FN10] The bill that did pass (Assem. Bill No. 202 (1968 Reg. Sess.), codified as § 54952.3) thus appears to be a compromise, incorporating into the open meeting requirements of the Brown ***831** Act advisory committees that were not previously included within the Act, but relaxing the procedural requirements applicable to those committees and codifying a limited version of the implicit less-than-a-quorum exception.

FN10 Senate Bill No. 717 would have amended section 54952 by adding the italicized words: "As used in this chapter, 'legislative body' means the governing board, commission, directors or body of a local agency, or any board, commission, *committee, advisory committee, or subcommittee* thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation." (Sen. Bill No. 717 (1968 Reg. Sess.), italics in original.)

To support its view that the committees excluded from the definition of "legislative body" in section 54952.3 were included in another definition of "legislative body," Freedom Newspapers relies on a communication by Assemblyman Hayes to the members of the Assembly discussing his reasons for drafting the less-than-a-quorum exception. Assemblyman Hayes claimed that " '[t]he reason [for enacting the less-than-a-quorum exception in section 54952.3] was that such committees of the governing body of a local agency are covered by another section of the Ralph M. Brown Act, Government Code Sec. 54952.' " (4 Assem. J. (1968 Reg. Sess.) p. 7163.) However, these comments offer little assistance in the interpretation of section 54952.3 because they do not necessarily reflect the views of other members of the assembly who voted for section 54952.3. (Cf. *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 801, fn. 12 [268 Cal.Rptr. 753, 789 P.2d 934]; see also *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 700-701 [170 Cal.Rptr. 817, 621 P.2d 856]; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589-590 [128 Cal.Rptr. 427, 546 P.2d 1371].)

Indeed, the Legislature's action in two respects since the 1968 enactment of section 54952.3 indicates its continuing understanding that advisory committees comprised solely of less than a quorum of the governing body are exempt from the open meeting requirements of the Act.

First, although legislative acquiescence is a weak indication of legislative intent (*People v. Escobar* (1992) 3 Cal.4th 740, 751 [12 Cal.Rptr.2d 586, 837 P.2d 1100]), we note that the Legislature has allowed the Court of Appeal's opinion in *Henderson v. Board of Education* (1978) 78 Cal.App.3d 875 [144 Cal.Rptr. 568] to govern meetings of less-than-a-quorum advisory committees for the past 14 years.

The *Henderson* court squarely addressed the issue of whether an advisory committee consisting solely of governing board members, constituting less than a quorum of the board, was exempt from the open meeting requirements of the Act. (78 Cal.App.3d at pp. 880-883.) In *Henderson*, ad hoc advisory committees had been created for the purpose of advising the board of education about the qualifications of candidates for appointment to a vacant position. Each

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of the advisory committees was composed solely of members *832 of the governing body of the school district numbering less than a quorum of the governing body. The court considered whether the advisory committees had violated the Brown Act when they evaluated the candidates' qualifications and interviewed candidates in private sessions. (*Id.* at p. 877.)Finding that section 54952.3 provided an express exemption from the open meeting requirements of the Brown Act for advisory committees comprised solely of less than a quorum of the governing body, the *Henderson* court held that the advisory committees in that case were not subject to the Act. (78 Cal.App.3d at pp. 880-881.)

Secondly, and more importantly, the Legislature in 1992 attempted to extend the coverage of the Brown Act by limiting the coverage of the express less-than-a-quorum exception in section 54952.3 to ad hoc advisory committees. This legislation is the strongest indication that the current version of section 54952.3 excludes less-than-a-quorum advisory committees from the Act's open meeting requirements, rather than merely from the less-stringent procedural requirements in section 54952.3. On August 31, 1992, the California Legislature passed and sent to the Governor a bill amending the explicit less-than-a-quorum exception as follows: " 'Legislative body' as defined in this section does not include a *limited duration ad hoc committee* composed solely of members of the governing body of a local agency which are less than a quorum of the governing body *but does include any standing committee* of a governing body irrespective of its composition. For purposes of this section, 'standing committee' means a permanent body created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency and which holds regularly scheduled meetings." (Assem. Bill. No. 3476 (1991-92 Reg. Sess.) § 3, italics added.) The Governor vetoed this bill, reasoning that its economic impact would be too great in view of the state's fiscal outlook. In his veto message the Governor stated: "This bill would make a number of changes in the Ralph M. Brown Act relating to open meetings. It would *expand the number of local agencies subject to the law*, and expand notice, recordation, and recordkeeping requirements.... [¶] I cannot approve mandating expensive new requirements while we are unable to afford the ones on the books today." (Governor's veto message to Assem. on Assem. Bill No. 3476 (Sept. 20, 1992) Recess J. No. 24 (1991-1992 Reg. Sess.) p. 10271, italics added.) [FN11]

FN11 On October 10, 1993, the Governor signed into law Senate Bill No. 1140 (Stats. 1993, ch. 1138), which changes, as of April 1, 1994, the Brown Act's definition of "legislative body." Among other things, the new law amends section 54952 and repeals sections 54952.2, 54952.3, and 54952.5.

The newly amended section 54952 codifies an exception for less-than-a-quorum advisory committees in these words: "[A]dvisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter." (§ 54952, subd. (b), as amended by Sen. Bill No. 1140 (1993-1994 Reg. Sess.), 1993 Stats., ch. 1138, eff. Apr. 1, 1994.)

This case does not present the issue whether the Operations Committee would be a "legislative body" under the new law. Accordingly, we express no opinion on the issue.

The Legislature's adoption of subsequent, amending legislation that is ultimately vetoed may be considered as evidence of the Legislature's understanding of the unamended, existing statute. (See *833*Eu v. Chacon* (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289]; see also *Irvine v. California Emp. Com.* (1946) 27 Cal.2d 570, 578 [165 P.2d 908].) The 1992 legislation reflects the Legislature's understanding that the current version of the explicit less-than-a-quorum exception in section 54952.3 excludes advisory committees, whether ad hoc or standing, composed solely of less than a quorum of the members of the governing body from the open meeting requirements of the Act.

The 1992 legislation "would [have] exclude[d] a limited duration ad hoc committee from the definition of legislative body but would [have] include[d] any

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standing committee, as defined, of a governing body irrespective of its composition." (See Legis. Counsel's Dig., Assem. Bill No. 3476 (1991-1992 Reg. Sess.).) Because the 1992 legislation retained the "in this section" language (§ 54952.3) and made no amendment to the general language in section 54952, the legislation would only make sense if the Legislature gave the words "in this section" the same meaning that the Board attributes to them in the current statute. If the Legislature had intended "in this section" to be interpreted as narrowly as Freedom suggests, the 1992 legislation would have had this bizarre result: Limited duration, ad hoc, advisory committees would have been subject to the full set of procedural requirements applicable to governing bodies, including the requirement of holding "regular meetings," but standing advisory committees would have received the benefit of the relaxed procedural requirements described in section 54952.3. This clearly could not have been the intended effect of the 1992 bill.

In view of these considerations, we find it more consistent with the legislative intent to construe the less-than-a-quorum exception contained in section 54952.3 as an exception to the definition of "legislative body," and thus one of several exceptions to the Brown Act's open meeting requirements, [FN12] rather than merely as an exception to the special procedural requirements of section 54952.3. This interpretation is consistent with the Act's *834 purpose of ensuring that the "actions [of public agencies] be taken openly and that their deliberations be conducted openly." (§ 54950.)By definition, the exception applies only to an advisory committee that consists solely of members of the legislative body that created it but not enough members to constitute a quorum or, thus, to act as the legislative body. Accordingly, before any action can be taken on such a committee's recommendations the entire legislative body, which includes the members of the advisory committee, must conduct further, public deliberations. (§ 54952.)In this way the Act reasonably accommodates the practical needs of governmental organizations while still protecting the public's right to know.

FN12 Compare section 54956.9 (legislative body may hold closed sessions to confer with legal counsel regarding pending litigation); section 54957 (legislative body may hold closed sessions to confer with Attorney General, district attorney, sheriff, chief of police, or their respective deputies, on matters posing a threat to the security of public buildings); section 54957.6 (legislative body may hold closed sessions to discuss matters related to employee compensation and collective bargaining).

III. Disposition

Since the Operations Committee is composed solely of members of the governing body of a local agency numbering less than a quorum of the governing body, the committee's meeting on June 18, 1991, was not subject to the open meeting requirements of the Brown Act. Accordingly, the judgment of the Court of Appeal is reversed.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred.

MOSK, J.,
Concurring and Dissenting.-Although I have no quarrel with the result reached by the majority, I find that virtually all their reasoning has been rendered moot by the enactment of the 1993 legislation quoted in footnote 11 of the majority opinion. (Stats. 1993, ch. 1138.)

That legislation answers the question we took this case to resolve, i.e., whether advisory committees composed solely of members of a legislative body are themselves "legislative bodies" for purposes of the Ralph M. Brown Act. (Gov. Code, § 54950 et seq.) The 1993 legislation plainly declares they are not, unless they qualify as "standing committees" therein defined.

In light of this development the majority opinion has become an anachronism; indeed, the 1993 legislation repeals the very statute discussed by the majority at length. (Gov. Code, § 54952.3.)Because it is not our responsibility to offer advisory opinions on repealed statutes, I would dismiss review in this case as improvidently granted. *835

KENNARD, J.
I dissent.

California's Open Meeting Law [FN1] requires legisla-

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tive bodies to give notice of the time and place of their meetings and to make such meetings open and accessible to the public. The stated purpose of this law is to assure that Californians can be fully informed about the legislative decisionmaking process of elected and appointed officials. Under the majority opinion, however, a legislative body is entirely free to conduct the public's business in private session, shielding its decisionmaking process from scrutiny by the press or public, simply by dividing itself into various "standing committees" whose membership does not comprise a quorum of the full legislative body. [FN2] The majority reaches this result by interpreting the Brown Act to exempt such committees from compliance with *any* of the Act's requirements. The majority's interpretation contorts the statutory language and contravenes the goal of this state's Open Meeting Law.

FN1 This law, which is codified in Government Code section 54950 et seq., is also known as the Ralph M. Brown Act, and will hereafter be referred to alternatively as the "Brown Act" or the "Act."

FN2 Of course, in the case of a "committee" whose members make up a quorum or more-than-a-quorum of the membership of the full governing body, the committee would not be a "committee" at all; it would be *the* governing body.

I

This case arose out of the June 18, 1991, meeting of the "Operations Committee" of the Board of Directors of the Orange County Employees Retirement System. The Board administers $1.5 billion, consisting of moneys derived from the county's general fund as well as those contributed by employees. The "Operations Committee" is one of five standing committees that report to the full Board. The membership of the Operations Committee (and of each of the other standing committees) consists of four of the nine Board members-one person less than a quorum of the Board.

The purpose of the June 18, 1991, meeting was to reevaluate the Board's travel policy-a policy that had engendered substantial controversy after it was reported that some Board members had used public funds to tour Europe, assertedly in connection with Board investments. A reporter for the Orange County Register, a daily newspaper, tried to attend the meeting but was refused entry.

The next day, the newspaper's parent company, Freedom Newspapers, Inc., petitioned the superior court for a writ of mandate, seeking access to future meetings of the Operations Committee. The superior court denied the *836 petition. The Court of Appeal reversed, however, concluding that the Operations Committee was a "legislative body of a local agency" whose meetings were consequently required by the Brown Act to be "open and public." (Gov. Code, § 54953.) [FN3]

FN3 Further undesignated statutory references are to the Government Code.

This court granted the Board's petition for review and now reverses the judgment of the Court of Appeal.

As I shall explain, the Court of Appeal reached the correct result.

II

In the preamble to the Brown Act, the Legislature expressed the intent underlying the Act: "[T]he Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. [¶] The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." (§ 54950.)

Consistent with this stated legislative intent, the Act requires that all meetings of legislative bodies of local agencies "be open and public" and that all persons "be permitted to attend" such meetings. (§ 54953.)The Act does, however, permit legislative bodies to discuss in "closed session" certain sensitive topics, such as pending litigation and personnel mat-

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ters. [FN4]

FN4 The Act permits closed session meetings when an agency discusses a license application by someone with a criminal record (§ 54956.7), or meets with its negotiator regarding the price and terms acceptable to the agency in a real property transaction (§ 54956.8), or discusses pending litigation with legal counsel (§ 54956.9), or participates in a joint agency meeting about insurance pooling, tort liability losses, or workers' compensation liability (§ 54956.95), or discusses employee wages and benefits with its labor negotiator (§ 54957.6), or participates in meetings regarding multijurisdictional drug law enforcement (§ 54957.8).

The Act also requires "legislative bodies" to conduct "regular" meetings (§ 54954) and abide by certain rules pertaining to adjournment or continuance of such meetings (§§ 54955, 54955.1). Additional requirements are posting the agenda of each regular meeting, acting only on items listed on the posted agenda (§ 54954.2), and giving written notice one week before *837 each regular meeting to anyone requesting such notice (§ 54954.1). The Act does allow for special meetings, but only if they are preceded by a 24-hour written notice. (§ 54956.)

The Act defines "legislative bodies" broadly. The term includes "the governing board, commission, directors or body of a local agency, or any board or commission thereof" as well as "any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency ...." (§ 54952.)The term also applies to "any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency" (§ 54952.2), as well as to "planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency" (§ 54952.5).

The "Operations Committee" of the Board of Directors of the Orange County Employees Retirement System, as a "committee ... on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency," qualifies as a "legislative body" within the meaning of section 54952, thus making it subject to the Brown Act's "open meeting" requirements. The issue in this case is whether the Operations Committee is exempted by another, more specific, provision of the Act, section 54952.3, from holding meetings open to the public.

Section 54952.3 provides for less stringent notice requirements for meetings of "any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency." Under this section, an advisory commission, committee or body is a "legislative body" for purposes of the *open meeting* requirements of the Act. Such a legislative body can, however, elect between giving 24-hour written notice of its meetings or providing by rule or bylaw for its meetings to be held at a regular time; "[n]o other notice of regular meetings is required." (§ 54952.3.)

Section 54952.3 further provides that a " '[l]egislative body' as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are *less than a quorum* of such governing body." (Italics added.) It is on this italicized phrase that the majority rests its conclusion that advisory committees made up only of members of the full governing body but "less than a quorum" of that body *838 are exempt from any of the requirements of the Brown Act. Thus, under the majority's interpretation, the Operations Committee was free to conduct its business in private.

I disagree with the majority's interpretation of section 54952.3's "less-than-a-quorum" provision. In my view, this provision by its express terms excludes those advisory committees composed solely of members of the full governing body of the local agency only from the "relaxed" notice requirements of section 54952.3, thereby making such advisory bodies subject to the more rigid requirements that govern legislative bodies generally.

My interpretation of the "less-than-a-quorum" provision is compelled by the plain language of section 54952.3, which must be the starting point for this statutory interpretation. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 826 [4 Cal.Rptr.2d 615, 823

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P.2d 1216].) After specifying that advisory commissions or committees are "legislative bodies" for purposes of the Brown Act, section 54952.3 next describes the less stringent procedural requirements for the meetings of such advisory bodies. It then states that " '[l]egislative body' *as defined in this section* does not include a committee composed solely of members of the governing body of the local agency which are less than of quorum of such governing body." By the limiting language, "as defined in this section," the provision carves out an exception from section 54952.3's definition of "legislative body" (and thus from the section's less stringent notice requirements) for an advisory committee composed solely of members of the governing body of the local agency who comprise less than a quorum of the local agency's full membership.

Therefore, in this case the Operations Committee of the Board of Directors of the Orange County Employees Retirement System, as an advisory committee composed solely of members of the full governing body of the local agency (the Board), is not a "legislative body" for purposes of the relaxed notice requirements of section 54952.3. Rather, as I explained earlier, the Operations Committee meets section 54952's definition of "legislative body" as being a "committee ... on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency ...." As such, the Operations Committee is subject to the full force of the Brown Act. Most important, the committee must conduct its business in public.

To require an advisory committee that, as here, is comprised of individuals who are members of the governing body to which the committee reports to conduct public meetings would further the Legislature's stated intent that ***839** "the people's business" be conducted openly, and that both the "actions" and the "deliberations" of government be open to the press and public. Even though the Operations Committee cannot itself bind the full Board by "actions" such as adopting a proposal or enacting a rule (which would require a majority vote of the full Board), it can and does "deliberate." "Deliberation" is defined as "the process ... of thoughtful and lengthy consideration" or as "formal discussion and debate on all sides of an issue." (American Heritage Dict. of the English Language (1980) p. 349.) Indeed, to best assure that government decisions follow thoughtful and lengthy consideration or debate of all sides of an issue, the Brown Act invites the public to witness that whole process.

A standing committee's reconsideration of a significant policy that affects the public's trust and confidence in its government officials-such as the Board's travel policy here-necessarily involves deliberation. Yet, under the majority's interpretation of section 54952.3, this deliberation can take place in private session outside the scrutiny of the public. And when, as in this case, the makeup of the standing committee recommending a policy change is just one member short of a quorum of the full governing body, and only one additional vote is needed to make the recommended change, there may be little further debate or deliberation on the issue by the full Board. In that event, the public is deprived of its right to witness the deliberative processes of government. Indeed, under the majority's reading of section 54952.3, any local agency wishing to keep its deliberative processes from the public can effectively do so by referring controversial issues to standing committees comprised of one member less than a quorum.

The majority's interpretation of section 54952.3 rests first on its conclusion that construing section 54952.3 to exempt from the less stringent procedural requirements specified by that section *all* less-than-a-quorum advisory committees composed solely of members of the governing body would "result in absurdity" by making even temporary, ad hoc advisory committees subject to the Brown Act's "generally applicable procedural requirements," including that set out in section 54954 of holding "regular" meetings. (Maj. opn., *ante*, at p. 827.) But to require a temporary, ad hoc advisory committee to conduct its meetings at a regular time seems far less absurd than to permit, as the majority does here, a local agency to use standing committees to shield discussion and deliberation on controversial issues from public scrutiny. [FN5]

FN5 Fortunately, the majority's opinion, though misguided, will be short-lived. New legislation (Stats. 1993, ch. 1138), which changes the Brown Act's definition of "legislative body" effective April 1, 1994, draws a distinction between "ad hoc" and "standing" advisory committees, and specifies that

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> the latter, to the extent they "have a continuing subject matter jurisdiction," are covered by the Brown Act's "open meeting" requirements. (§ 54942, subd. (b), as amended by Sen. Bill No. 1140 (1993-1994 Reg. Sess.), Stats. 1993, ch. 1138, § 3, eff. Apr. 1, 1994.)

The majority relies also on opinions by the Attorney General (which the majority admits do not bind this court) and on a series of failed legislative ***840** efforts to amend the Brown Act. But we need not turn to unpassed or vetoed legislation to discern the Legislature's intent. The Legislature has made its intent plain in the preamble to the Brown Act, which expressly states that to ensure that Californians can remain informed and "retain control" over their own government, legislative deliberations must be conducted openly. "Vital" to the functioning of any democratic society is "an informed citizenry." (*John Doe Agency v. John Doe Corp.* (1989) 493 U.S. 146, 152 [107 L.Ed.2d 462, 110 S.Ct. 471].) Consistent with our Legislature's intent, I would affirm the Court of Appeal's judgment directing that the Board allow members of the press and the public to attend "its regular committee meetings," including those of its Operations Committee. ***841**

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GEORGE A. HEAP, Appellant,
v.
CITY OF LOS ANGELES (a Municipal Corporation) et al., Respondents.
L. A. No. 15470.

Supreme Court of California
May 21, 1936.

HEADNOTES

(1) Municipal Corporations--Civil Service--Discharge of Employee-- Reexamination--Jurisdiction.
Under the Los Angeles City charter, providing for an investigation of the grounds for discharge of a civil service employee by the board of civil service commissioners, the jurisdiction of the commission is a special and limited one; and when it has acted upon an application of the discharged employee for investigation of the discharge, and has sustained the discharge, its order therein is final and it has no power thereafter to set aside the order and make a new order.
See 18 **Cal. Jur.** 986.
(2) Municipal Corporations--Petition--Sufficiency of.
In a proceeding for a mandate to compel reinstatement of a discharged civil service employee of a municipality, there is no merit in the point that the petition does not affirmatively allege a prior order of the commission, certified by the board of public works, and that, therefore, it was improper to sustain a demurrer to the petition without leave to amend, where an exhibit to the petition, which is the order under review, expressly refers to the prior action and purports to rescind it.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Emmet H. Wilson, Judge. Affirmed.

The facts are stated in the opinion of the court.

COUNSEL

Leo V. Youngworth and J. Harold Decker for Appellant.

Ray L. Chesebro, City Attorney, Frederick von Schrader, Assistant City Attorney, and Thatcher J. Kemp and Jerrell Babb, Deputies City Attorney, for Respondents.

THE COURT.

A hearing was granted in this case after decision by the District Court of Appeal, Second Appellate District, Division One. After further consideration, we adopt the following opinion of said court as part of the opinion of this court:

(1) "Respondents' demurrer to appellant's petition for a writ of mandate was sustained without leave to amend, and the appeal is from the judgment subsequently entered against petitioner. The petition alleges that the appellant, a civil service employee in the bureau of engineering of respondent city, was discharged from his position, and that he thereupon made written application to the civil service commission for an investigation of the grounds for such discharge and hearing thereon. A certified copy of the findings of the commission, the statutory name of which is 'Board of Civil Service Commissioners', is made a part of the petition. This shows that on November 13, 1931, 'a motion was adopted rescinding the action of the Civil Service Commission on October 20, 1931, sustaining said discharge', and that a second motion was then adopted, finding that the grounds stated for the discharge of the appellant were not sustained and ordering him restored to duty. The only question presented on this appeal is whether or not the civil service commission, after having passed upon the question submitted to it, could thereafter vacate its findings and make another and contrary order. Respondent contends that when the commission acted on the matter it exhausted its jurisdiction, and that the subsequent resolution is void.

"The charter of the respondent city provides that a discharged employee may file an application with the board of civil service commissioners for an investigation of the grounds for his discharge. It further pro-

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vides: 'If after such investigation said board finds, in writing, that the grounds stated for such removal, discharge or suspension were insufficient or were not sustained, and also finds in writing that the person *407 removed, discharged or suspended is a fit and suitable person to fill the position from which he was removed, discharged or suspended, said board shall order said person ... to be reinstated or restored to duty. The order of said board with respect to such removal, discharge or suspension shall be forthwith certified to the appointing board or officer, and shall be final and conclusive; ...' (Sec. 112 [a], Stats. 1925, pp. 1024, 1067.)

"The jurisdiction of the commission is a special and limited one. (*Peterson v. Civil Service Board*, 67 Cal. App. 70 [227 Pac. 238].) The required procedure was followed, and the question of appellant's discharge was determined by the commission when it adopted the first resolution. Its action sustaining his discharge was 'final and conclusive'. (*Krohn v. Board of Water & Power Commissioners*, 95 Cal. App. 289, 296 [272 Pac. 757].) It had no jurisdiction to retry the question and make a different finding at a later time. The charter gives no such grant of power, and it may not be implied. 'A civil service commission has no inherent power after entering a final order dismissing an officer from the service to entertain a motion for new trial or rehearing and review and set aside its prior order.' (43 Cor. Jur. 682. See, also, *Cook v. Civil Service Commission*, 160 Cal. 598, 600 [117 Pac. 662].)"

Petitioner urges that the case of *Lane v. United States*, 241 U. S. 201 [36 Sup. Ct. 599, 60 L. Ed. 956], sustains his position. It was therein held that the secretary of the interior had power to reconsider a prior administrative order as to which persons were heirs of an Indian allottee of land, despite the fact that his order was, under the statute, "final and conclusive". A reading of the opinion, however, discloses that at the time the redetermination was made, title to the land was still in the United States and under the administrative control of the land department. There were undoubtedly several grounds, both of policy and statutory interpretation, for holding that in such a case a high executive officer had power to reconsider his orders.

But the rule stated above, that a civil service commission has no such power in the absence of express authorization, is sound and practical. If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be *408 exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure. Seemingly in recognition of this, the Los Angeles charter expressly provides a procedure for reconsidering orders of suspension or removal of policemen or firemen by a board of inquiry, within three years after the making of an order; but no such procedure is provided in the case of the civil service commission.

(2) Petitioner finally suggests that the petition does not affirmatively allege a prior order of the commission of October 20, 1931, certified to the board of public works, and that therefore it was improper to sustain the demurrer without leave to amend. There is no merit in this point, for the exhibit to the petition, which is the order of November 17th, expressly refers to the prior action of October 20, 1931, and purports to rescind it. The fact of a prior order is thus definitely established, and the demurrer was properly sustained.

The judgment is affirmed.

Cal.
Heap v. City of Los Angeles
6 Cal.2d 405, 57 P.2d 1323

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CALBERT MILLS, Plaintiff and Respondent,
v.
COUNTY OF TRINITY et al., Defendants and Appellants.
Civ. No. 18866.

Court of Appeal, Third District, California.
Jul 28, 1980.

SUMMARY

In an action against Trinity County and its board of supervisors brought by a taxpayer in that county challenging a resolution by the county's board of supervisors providing for both increased and new fees for county services in processing subdivision, zoning, and other land-use applications that had been adopted without the two-thirds affirmative vote of the county electors required for a "special tax" within the meaning of Cal. Const., art. XIIIA, § 4, the court granted summary judgment for plaintiff and issued a writ of mandamus barring enforcement of the resolution's provisions. (Superior Court of Trinity County, No. 7030, Clyde H. Small, Judge. FN*)

The Court of Appeal reversed and remanded with directions for further proceedings consistent with its holdings. The court held that special initiatives should be liberally interpreted to give full effect to the framers' objectives, but that the trial court erred in construing "tax" to include, within the contemplation of the "special tax" referred to in Cal. Const., art. XIIIA, § 4, all charges however labeled, to exact money for the support of government or for public purposes. The court further held that the "special tax" does not embrace fees charged in connection with regulatory activities that do not exceed the reasonable cost of providing services necessary to the activity for which the fees are charged, that the new and increased fees in Trinity County were not, therefore, unconstitutional as a matter of law, and that whether or not those fees were invalid would depend on a factual determination on remand as to whether or not such fees were greater than the reasonable cost of the regulatory activities for which they were imposed,

FN* Deleted on direction of Supreme Court by order dated October 1, 1980. (Opinion by Puglia, P. J., with Reynoso, J., and DeCristoforo, J., FN†]] concurring.) *657

FN† Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 10--Construction of Constitutions--Constitutional Amendment Limiting State and Local Taxing Powers.
The "special tax" referred to in Cal. Const., art. XIIIA, § 4, as being incapable of being legally imposed in a taxing district without a two-thirds vote of the qualified electors of the taxing district, does not embrace, under the established rules of construction applicable to the interpretation of constitutional provisions, fees charged in connection with regulatory activities, where the fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged, and that are not levied for unrelated revenue purposes.
[See Cal.Jur.3d, Constitutional Law, § 167; Am.Jur.2d, State and Local Taxation, § 93.]
(2) Words, Phrases and Maxims--Tax--Definition--Construction Within Context and Purpose in Which Used.
"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is created. In its broadest sense, a tax includes all charges on persons or property for the support of government or for public purposes. In narrower contexts, the word may be construed to exclude charges to particular individuals that do not exceed the value of the governmental benefit conferred on or the service rendered to the individuals, and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities.

(3) Initiative and Referendum § 6--State Elections--Initiative Measures-- Construction.

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Initiative measures should, like other constitutional provisions, be interpreted liberally to give full effect to the framers' objective and the growing needs of the people.

(4) Constitutional Law § 10--Construction of Constitutions--Constitutional Amendment Limiting State and Local Taxing Powers--Regulatory Fees Within Ambit of Special Tax Proscription.
In an action challenging the constitutionality of a resolution by a county board of supervisors providing for both increased and new fees for county services in processing subdivision, zoning, and other land-use applications, the trial court erred in determining that the resolution violated prohibitions of Cal. Const., art. XIIIA, § 4, against a "special tax." In reaching its decision the trial court erred in construing the term, "tax", as used in Cal. Const., art. XIIIA, § 4, to include all charges, however labeled, to exact money for the support of government or for public purposes, and in ruling that the special fees imposed by the county resolution thus constituted, a "special tax" within the prohibitions of Cal. Const., art. XIIIA, § 4. The "special tax" referred to in Cal. Const., art. XIIIA, does not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Whether or not the fees imposed under the resolution were invalid would depend on a factual determination on remand to the trial court as to whether or not such fees were greater than the reasonable cost of the regulatory activities for which they were imposed.

COUNSEL

Ronald Barbatoe, District Attorney, for Defendants and Appellants.

Wells, Wingate & Small, W. Leonard Wingate and Edward A. Shuttle as Amici Curiae on behalf of Defendants and Appellants.

David R. Hammer for Plaintiff and Respondent.

Ronald A. Zumbrun, John H. Findley, Thomas E. Hookano and James L. Meyer as Amici Curiae on behalf of Plaintiff and Respondent.

PUGLIA, P. J.

Following enactment of article XIII A of the California Constitution (Prop. 13 on the June 6, 1978, ballot, commonly known as the Jarvis-Gann initiative), the Trinity County Board of Supervisors adopted resolution No. 73-78 providing both increased and new fees for county services in processing subdivision, zoning, and other *659 land-use applications. Plaintiff Mills then brought this action in the superior court against the county and its board challenging the constitutionality of the resolution and seeking to bar its enforcement through mandate and declaratory and injunctive relief. The trial court sustained plaintiff's claim that as a matter of law the new and increased fees under resolution No. 73-78 constitute a "special tax" within the meaning of article XIII A and thus cannot be imposed without a two-thirds affirmative vote of the electors of Trinity County. Since the board of supervisors had adopted the resolution without submitting it to the county electorate for approval, the court ordered summary judgment in plaintiff's favor and issued a peremptory writ of mandate. The writ ordered defendants to "desist and refrain from enforcing the provisions of Resolution Number 73-78" and further directed defendants to refund any and all monies received pursuant to the provisions of the resolution which exceeded amounts in effect under prior fee schedules.

Defendants appealed and filed an accompanying petition for a writ of supersedeas. We issued the writ, restraining enforcement of the judgment pending disposition of this appeal. (*Mills v. County of Trinity* (1979) 98 Cal.App.3d 859 [159 Cal.Rptr. 679].)

Although in its generality, article XIII A is not fatally vague, "in a number of particulars [it] is imprecise and ambiguous" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245 [149 Cal.Rptr. 239, 583 P.2d 1281]) "and over a period of time will require judicial, legislative and administrative construction" (*id.*, at p. 244). We are now called upon in this appeal to determine whether the new and increased fees exacted by resolution No. 73-78 constitute a "special tax" within the meaning of section 4 of article XIII A. That provision states: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a

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transaction tax or sales tax on the sale of real property within such City, County or special district."

(1)Utilizing the established rules of construction applicable to the interpretation of constitutional provisions (see *Amador Valley, supra.*, 22 Cal.3d at pp. 245-246), we conclude that the "special tax" referred to in section 4 of article XIII A does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.***660** Accordingly, we shall reverse and remand for a factual determination of whether the fees in question are reasonably compensatory for the costs occasioned by the regulated activities.

(2)"Tax" is a term without fixed definition. The word may be construed narrowly or broadly depending on its particular context and the purpose for which the definition is to be used. (See *Crawford v. Herringer* (1978) 85 Cal.App.3d 544, 548-551 [149 Cal.Rptr. 578]; *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 99-100 [308 P.2d 1].) In its broadest sense, a tax includes all charges upon persons or property for the support of government or for public purposes. (*City of Madera v. Black* (1919) 181 Cal. 306, 310-311 [184 P. 397]; Webster's New Internat. Dict. (3d ed. 1971) p. 2345.) In narrower contexts, the word has been construed to exclude charges to particular individuals which do not exceed the value of the governmental benefit conferred upon or the service rendered to the individuals (*County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 984 [156 Cal.Rptr. 777]; *Crawford v. Herringer, supra.*, 85 Cal.App.3d at p. 550), and to exclude charges against particular individuals for governmental regulatory activities where the fees involved do not exceed the reasonable expense of the regulatory activities (*United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165 [154 Cal.Rptr. 263]).

(3)Initiative measures as well as other general constitutional provisions should be interpreted liberally to give full effect to the framers' objective and the growing needs of the people. (*Amador Valley, supra.*, 22 Cal.3d at pp. 244-245.) Animated by the foregoing principle, the trial court construed "tax" in its broadest meaning holding that, as used in section 4 of article XIII A, it "includes all charges, however labeled, which are to exact money for the support of government or for public purposes." (4) However, were we to accept the trial court's broad definition, the initiative measure as so construed would prohibit any increase in fees for governmental activities conferring a direct benefit on the specific individual who is charged for such benefit without the prior approval of two-thirds of the electors. In other words, a county would be powerless to raise charges for proprietary functions such as hospital services, public transportation, and garbage collection without the two-thirds stamp of approval. We do not believe the state electors intended to put local government in such a fiscal straightjacket.

Conceding that such a draconian result was probably never intended by the electorate, plaintiff asserts the interpretation adopted by the trial ***661** court would exclude from the meaning of "special tax" fees charged for governmental activities *primarily* for the benefit of individuals and only incidentally for the benefit of the public. The minor premise of plaintiff's argument is that land-use charges imposed on the developer pursuant to the government's police power are primarily for the benefit of the public at large. Plaintiff thus concludes that such charges constitute taxes within the meaning of section 4 of article XIII A. Defendants, while not disputing the applicability of the "primary purpose" test, contend that it is the developer who is the primary beneficiary of an approval for land subdivision since the value of the land increases; the public, defendants assert, is merely the indirect beneficiary.

We eschew the public versus individual primary purpose test as a solvent of the instant litigation. The trial court also recognized the difficulty of embarking on such "spongy terrain" since all governmental activities by definition serve a public purpose. Under such a test, every charge imposed in connection with land-use activities as well as all other regulatory activities undertaken pursuant to the police power might well be categorized as a "special tax" since the police power is constitutional only if adopted to promote the health, safety, and welfare of the public as a whole. (*Euclid v. Ambler Realty Co.* (1926) 272 U.S. 365, 387 [71 L.Ed. 303, 310, 47 S.Ct. 114, 54 A.L.R. 1016]; *Associated Homebuilders etc. Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 604 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].)

We rely instead on statutory and judicial precedent

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(see County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 850 [59 Cal.Rptr. 609, 428 P.2d 593]) and contemporaneous legislative construction (Amador Valley, supra., 22 Cal.3d at p. 245) in determining that the state electorate did not intend to include within the meaning of "special tax" reasonable costs for processing land-use permits and applications.

Traditionally, courts have determined whether a local governmental charge denominated a regulatory fee is an exercise of the police power or the power to raise revenue by analyzing the use of the fee involved rather than relying on its label. (United States Com. v. City of San Diego, supra., 91 Cal.App.3d at p. 165.) The general rule is that a regulatory fee must not "exceed the sum reasonably necessary to cover the costs of the regulatory purpose sought" in order to be considered as a fee rather than a guise for a tax. (*Ibid.*; see also County of Plumas v. Wheeler (1906) 149 Cal. 758, 763 [87 P. 909]; 5 Witkin, Summary of Cal. Law (8th ed. 1974) Taxation, § 5, pp. 3991-3992; 9 McQuillin, *662 Municipal Corporations (3d ed. 1978) § 26.15, p. 29.) As long as the local enactments are not in conflict with general laws, the power to impose valid regulatory fees is not dependent on any legislatively authorized taxing power but exists pursuant to the direct grant of police power under article XI, section 7, of the California Constitution. (County of Plumas v. Wheeler, supra., 149 Cal. at pp. 761, 763.) Land-use regulations fulfill a legitimate public welfare purpose under the police power. (Associated Homebuilders etc. Inc. v. City of Livermore, supra., 18 Cal.3d at p. 604; Associated Homebuilders etc. Inc. v. City of Walnut Creek (1971) 4 Cal.3d 633, 651 [94 Cal.Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847].) Moreover, with respect to subdivision map activities in particular, Government Code section 66451.2 provides that "... local agenc [ies] may establish *reasonable* fees for the processing of tentative, final and parcel maps and for other procedures required or authorized by [the Subdivision Map Act] or local ordinance." (Italics added.)

Senate Bill No. 785, enacted in September 1979 after the enactment of article XIII A and the county's adoption of resolution No. 73-78, is sufficiently contemporaneous to serve as an interpretive guide. Its purpose is to furnish legislative authorization for counties and general law cities to impose special taxes subject to the two-thirds requirement of article XIII A. Section 50076, added to the Government Code by Senate Bill No. 785, clarifies the meaning of "special tax" as follows: "As used in this article, '*special tax' shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.*" (Italics added.) Where the Legislature has enacted a law in light of a particular constitutional provision, a settled rule of construction is that the Legislature's interpretation of uncertain constitutional terms is entitled to great deference by the courts. (San Francisco v. Industrial Acc. Com. (1920) 183 Cal. 273, 279 [191 P. 26]; Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 692-693 [97 Cal.Rptr. 1, 488 P.2d 161].)

In addition, the "special tax" referred to in section 4 of article XIII A has been judicially construed to exclude special assessments charged for improvements to individual properties which do not exceed the benefits the assessed properties receive from the improvement. (County of Fresno v. Malmstrom, supra., 94 Cal.App.3d at p. 984.) The *Malmstrom* interpretation is consistent with that expressed by the Legislature in Senate Bill No. 785 (Gov. Code, § 50076).*663

Ballot arguments and analyses presented to the electorate may be helpful in determining the probable meaning of an initiative's uncertain language. (Amador Valley, supra., 22 Cal.3d at pp. 245-246.) Here, the arguments in favor of the constitutional initiative "support a conclusion that the article is aimed at *general* taxes and governmental spending." (Original italics; County of Fresno v. Malmstrom, supra., 94 Cal.App.3d at p. 981.) There is nothing in the ballot arguments supporting article XIII A suggesting an intent to prevent local government from exacting fees reasonably commensurate with the cost of regulatory activity from those at whose instance the activity is conducted.

Finally, support for the Legislature's interpretation of "special taxes" is found in an initiative measure subsequently adopted by the California electorate in 1979; the measure placed limitations on governmental spending. (Cal. Const., art. XIII B.) Although applicable only to article XIII B, the phrase, "proceeds of taxes," is defined there as including, but not restricted to "all tax revenues and the proceeds to an

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entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds *exceed* the costs reasonably borne by such entity in providing the regulation, product, or service, ..." (Italics added; Cal. Const., art. XIII B, § 8, subd. (c).)

Informed by those sources recognized as germane to the task of statutory interpretation, we conclude that "special taxes" under article XIII A, section 4 of the California Constitution do not embrace fees for land-use regulatory activities where the fees charged to particular applicants do not exceed the reasonable cost of the regulatory activities and are not levied for unrelated revenue purposes. Since the trial court held the fees imposed by resolution No. 73-78 constitute a "special tax" as a matter of law, the factual question whether or not such fees exceed the reasonable cost of the related regulatory activity has never been litigated. On remand that issue must be tried.

The judgment is reversed and the cause remanded for further proceedings consistent with this opinion.

Reynoso, J., and DeCristoforo, J., [FN*] concurred.

FN* Assigned by the Chairperson of the Judicial Council.

Respondent's petition for a hearing by the Supreme Court was denied September 24, 1980.

Cal.App.3.Dist.
Mills v. County of Trinity
108 Cal.App.3d 656, 166 Cal.Rptr. 674

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H SAN DIEGO GAS & ELECTRIC COMPANY, Plaintiff and Appellant,
v.
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT et al., Defendants and Respondents; INDUSTRIAL ENVIRONMENTAL ASSOCIATION OF SAN DIEGO COUNTY et al., Interveners and Appellants
No. D006647.

Court of Appeal, Fourth District, Division 1, California.
Aug 17, 1988.

SUMMARY

A utility company petitioned the superior court for a writ of mandate challenging a change in the San Diego County Air Pollution Control District's method of apportioning the costs of its permit programs among stationary pollution sources required to obtain operating permits under Health & Saf. Code, § 42311. The superior court denied the writ. The district, after a public hearing and a workshop for permit holders, had implemented a two-tiered system for the recovery of the costs of its permit programs through permit fees. The change was to anticipate decreases in government subvention funding. Direct costs were still covered by fees based on the specific labor costs incurred in the permit programs, but indirect costs (actual costs of operation not reasonably identifiable with specific industrial polluters) were covered by fees apportioned among all monitored polluters by a formula derived from the amount of emissions discharged by a stationary pollution source. (Superior Court of San Diego County, No. 579211, Patricia D. Benke, Judge.)

The Court of Appeal affirmed, holding the emissions-based formula adopted by the district was neither a special tax prohibited by Cal. Const., art. XIII A, § 4, nor beyond the district's statutory authority under Health & Saf. Code, § 42311. Therefore, the court held, the district could recover its indirect costs by apportioning them according to that formula. (Opinion by Work, J., with Wiener, Acting P. J., and Woodworth, J., [FN*] concurring.)

FN* Assigned by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Pollution and Conservation Laws § 4--Air Pollution Control Districts-- Recovery of Indirect Costs--Apportionment--Basis.
In a utility company's mandamus proceeding challenging a change in a county air pollution control district's method of apportioning the costs of its permit programs among stationary pollution sources required to obtain operating permits, the superior court properly denied the writ. The district could recover its indirect costs (actual costs of operation not reasonably identifiable with specific industrial polluters) by apportioning them among all monitored polluters according to a formula based on the amount of emissions by a stationary pollution source, since the formula adopted was neither a prohibited special tax (Cal. Const., art. XIII A, § 4) nor beyond the district's statutory authority under Health & Saf. Code, § 42311.

(2) Pollution and Conservation Laws § 4--Air Pollution Control Districts-- Recovery of Indirect Costs--Apportionment--Statutory Authority.
Air pollution control districts may, under Health & Saf. Code, § 42311, as amended in 1985, use an emissions-based permit fee schedule to support their operations.
[See Am.Jur.2d, Licenses and Permits, §§ 39, 40; Pollution Control, §§ 51, 52.]
(3a, 3b) Pollution and Conservation Laws § 4--Air Pollution Control Districts--Recovery of Indirect Costs--Apportionment--Validity.
An air pollution control district's emissions-based permit fees for indirect cost recovery were regulatory fees and not a special tax prohibited by Cal. Const., art. XIII A, § 4, where they were not unreasonable and the allocation on the basis of emissions fairly related to the permit holder's burden on the district's programs. The district had diligently evaluated various methods of apportioning its indirect costs (actual

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costs of operation not reasonably identifiable with specific industrial polluters), and its use of an emissions-based standard was reasonably justified by its determination that a purely labor-based standard resulted in disproportionately large fees to small polluters. It was not necessary that the district show precisely how more emissions generated more costs to justify the emissions-based apportionment formula.

(4) Property Taxes § 7.5--Constitutional Provisions--Real Property Tax Limitation--Purpose.
Proposition 13 (Cal. Const., art. XIII A) was enacted to give effective property tax relief. Art. XIII A, §§ 3 and 4 (restricting state and local taxes) were included to limit imposition of additional or increased taxes (other than property taxes) that would effectively withdraw or deplete the property tax savings in Art. XIII A, §§ 1 and 2 (limiting realty taxes and assessments).
[See **Cal.Jur.3d**, Property Taxes, § 77.]
(5) Property Taxes § 7.5--Constitutional Provisions--Real Property Tax Limitation--Special Taxes--Regulatory Fees--Proof.
A "special tax" that cities, counties, and special districts may impose by a two-thirds vote of the electors (Cal. Const., art. XIII A, § 4) does not embrace fees charged in connection with regulatory activities that do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purposes. To show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. It is not necessary for the payor to perceive the regulation as a "benefit." A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation.

COUNSEL

Lisa C. Anderson, Timothy W. Tower and Michael R. Weinstein for Plaintiff and Appellant.

Lloyd M. Harmon, Jr., County Counsel, Daniel J. Wallace, Chief Deputy County Counsel, and Barbara Baird, Deputy County Counsel, for Defendants and Respondents.

James L. McBride, County Counsel (Ventura), and James W. Thonis, Assistant County Counsel, as Amici Curiae on behalf of Defendants and Respondents. *1135

Latham & Watkins, David L. Mulliken, Christoper W. Garrett, Timothy C. Stutler, Stephen McConnell, Kristine L. Wilkes and Laurens H. Silver for Interveners and Appellants.

WORK, J.

(1) In this case we hold the San Diego County Air Pollution Control District (district or APCD) may recover actual costs of operation which are not reasonably identifiable with specific industrial polluters (indirect costs) by apportioning them among all monitored polluters according to a formula based on the amount of emissions discharged by a stationary pollution source. In reaching this result, we find the "emissions-based" formula adopted by the district is neither a prohibited "special tax" (see Cal. Const., art. XIII A, § 4 (Prop. 13)) nor beyond the district's statutory authority. For the following reasons we affirm the judgment.

Factual and Procedural Background

San Diego Gas & Electric Company (SDG&E) [FN1] unsuccessfully petitioned for mandate challenging a change in the San Diego County APCD's method of apportioning the costs of its permit programs among stationary sources of pollution required to obtain operating permits under Health and Safety Code [FN2] section 42311. As explained more fully below, section 42311 was amended in 1982 to allow a local air pollution control district to fully (rather than partially) recover the costs of its permit programs through permit fees, with a view to decreasing the district's reliance on government funding. [FN3] The APCD incrementally implemented its expanded authority to cover its costs through fees by phasing in fee increases for permits. In prior years, the district's direct costs were apportioned among the permit holders based on a formula derived from labor costs incurred in the permit programs. After a public hearing and a workshop for permit holders, the district's fee system was changed to a two-tiered system commencing in *1136 fiscal year 1986-1987 - still appor-

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tioning direct costs based on the labor standard, but adding indirect costs to the fees and apportioning them by a formula derived from the amount of emissions discharged by a stationary pollution source. (APCD Rule 40.) The district considered a variety of factors before adopting the new formula. The various types of stationary sources of pollution are divided into separate fee schedules (i.e., abrasive blasting equipment, asphalt roofing kettles, rock drills, brick manufacturing plants, fish canneries, etc.). The permitted sources are charged (1) a fee for a permit to construct and operate, based on time and material charges, and (2) an annual permit renewal fee, to pay for ongoing implementation, enforcement and related activities.

FN1 The Industrial Environmental Association (IEA) of San Diego County participated in the action as an intervener. SDG&E and intervener IEA are referred to collectively in this opinion as SDG&E unless specific reference is made to intervener IEA.

FN2 All subsequent statutory references are to the Health and Safety Code unless otherwise specified.

FN3 The local air pollution control districts are responsible for controlling air pollution from all sources other than vehicular sources, whereas the State Air Resources Board is responsible for controlling vehicular sources. (§ 39002.) Section 42300 authorizes every district board to establish a permit system requiring permits for the operation of equipment which causes air pollution.

APCD costs related to the permitted sources of pollution are separated into three groups: (1) direct (identified with a specific fee schedule); (2) direct add-on (directly related to the permit system but not attributable to a specific fee schedule - i.e., labor tracking, permit coding, permit system related training, etc.); and, (3) indirect (related to the overall program but not directly related to permit activity - i.e., personnel matters, rule development, correspondence, complaint investigations, hearing board participation, consultation with other agencies, etc.).

The fee schedules for the direct costs and direct add-on costs are based on data obtained from a labor-tracking system. Actual labor expended (direct costs) on activities related to a specific fee schedule are charged against that fee schedule. The total labor cost tracked for each fee schedule is then divided by the number of fee units within that schedule to obtain the average labor cost per fee unit. Direct add-on costs, which are directly attributable to the permit system but not to a specific fee schedule, are added to the permit renewal fees based on the ratio of total labor expended within a specific permit renewal fee schedule to the total labor expended within all permit fee schedules. Thus, the higher direct cost permit renewal fee schedules receive a larger share of the direct add-on costs.

Amended Rule 40 permits recouping indirect costs through additional renewal permit fees based on the average pollution generated by a facility within a specific industry, rather than based on the labor-tracking system described above for direct costs. The San Diego County APCD argues an emissions-based fee schedule for indirect costs more equitably distributes permit program costs among large and small polluters. In contrast, if the indirect costs were recovered through the same labor-tracking formula used for direct costs, small polluters would pay more than their proportionate contribution to pollution. *1137

An Emissions-based Fee Schedule Is Within Statutory Guidelines

Original enactments

Sections 42311 and 40510 were enacted in 1975 and 1976.

Section 40510, pertaining to the south coast district board, [FN4] contains specific language authorizing fees to be based on emissions. That section states: "The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the cost of planning, inspection, and monitoring related thereto. ...

FN4 The south coast district board was created to control air pollution in the Counties of Los Angeles, Orange, Riverside, and San Bernardino, in recognition of the critical air pollution problems existing in the South Coast Air Basin. (§§ 40402, 40410, 40412.)

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"*The fees may be varied according to the quantity of emissions and the effect of such emissions on the ambient air quality within the south coast district.*" (§ 40510, italics added.)

In contrast, section 42311, pertaining to local district boards, including San Diego's APCD, does not mention emissions as a basis for charging fees. At the time of its 1975 enactment, the section stated: "'(a) A district board may adopt, by regulation, a schedule of fees not exceeding the estimated cost of issuing permits and inspection pertaining to such issuance to be paid for the issuance of permits. Every person applying for a permit shall pay the fee required by the schedule.'" (41B West's Ann. Health & Saf. Code (1986 ed.) (hereinafter West's) § 42311, p. 320.)

(2) Section 42311 has been amended several times, but still does not specify emissions as a basis for apportioning fees. Thus, SDG&E contends since section 40510 expressly authorizes the south coast district board to base fees on emissions, whereas section 42311 makes no such specification for local districts, the Legislature has shown an intent not to allow local districts to base fees on emissions. An extensive legislative history convinces us the district's emission fee policy is within its statutory powers.

Section 42311 (Assem. Bill No. 1758) and section 40510 (Assem. Bill No. 250) were introduced as bills by Assemblyman Lewis during the 1975-1976 legislative session. Section 42311 was derived from former section 24267, enacted in 1947, utilizing essentially the same language. [FN5] Section 40510 was ***1138** a new statute. Assembly Bill No. 250 was introduced on December 13, 1974, amended to add the emissions language on April 3, 1975, and enacted on July 3, 1976. Assembly Bill No. 1758 was introduced April 14, 1975, and enacted on September 22, 1975.

FN5 Former section 24267 stated: "The air pollution control board may provide by regulation a schedule of fees not exceeding the estimated cost of issuing such permits and inspection pertaining to such issuance to be paid for the issuance of such permits. Every person applying for a permit shall pay the fee required by such schedule." (Stats. 1947, ch. 632, p. 1647.)

After its 1975 enactment, section 42311's fee language was amended several times. In 1979, the section was rewritten to state: "'A district board may adopt, by regulation, a schedule of fees for each fiscal year, commencing with the 1979-80 fiscal year, to be paid for the issuance and renewal of permits. *Such schedule of fees shall not exceed the estimated cost for such fiscal year of (1) evaluation and issuance of permits, (2) inspection*, including source testing and surveillance, of sources for which a permit or permits have been issued, to the extent such inspection is for the purpose of determining whether such sources are in compliance with all applicable permit conditions and all applicable orders, rules, or regulations ... , *and (3) implementation and enforcement of permit terms* and conditions.'" [FN6] (West's, *supra*, § 42311, p. 321, italics added.)

FN6 The 1979 statute (and the current statute) also stated that the estimated costs were not to exceed the estimated costs for the immediately preceding fiscal year, with an adjustment no greater than the change in the California Consumer Price Index, and that any revenues from the fees which exceed the cost of the activities should be carried over in the subsequent fiscal year and the schedule of fees changed to reflect the carryover.

The 1979 amendment also added subdivision (c) (current subdivision (e)) which states that section 42311 does not apply to the south coast district board, which is governed by section 40510. (West's, *supra*, § 42311, p. 321.)

Interpretation of section 42311 before 1982 amendment

The Governor's proposed budget for fiscal year July 1982-June 1983 sought to decrease subvention funding of local districts by 80 percent. Faced with local districts' claims they would not be able to support themselves with such a drastic cut in state funds, the legislative analysis of the budget bill for the fiscal year 1982-1983 deferred recommending what the level of state funding to the local districts should be pending evaluation of how support of the districts could be accomplished. This report stated that to offset the proposed reduction in state support, the administration intended to seek legislation authorizing local districts to charge emission fees to cover operat-

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ing costs noting that under current law only the south coast district had such authority. [FN7]The emissions fees concept had been recommended *1139 in a December 1980 study prepared for the legislative analyst's office which noted emissions fees were advantageous because they imposed a portion of the cost to control pollution on its sources and provided an incentive for emissions reduction. Although observing collection of emissions fees would make most districts self-supporting, the legislative analyst deferred its recommendation on the level of state support until legislation permitting the fees to be levied could be enacted and fee schedules put in place in each district.

FN7 In contrast, in an August 1982 letter, the Counsel for the State Air Resources Board responded to a local district's inquiry, referring to the language of section 42311 as of 1979, and opining a fee schedule which was based on emissions was a permissible method of allocating the district's costs.

1982 amendment of section 42311

Effective October 1, 1982, section 42311 was amended to state: "'A district board may adopt, by regulation, a schedule of annual fees to be paid for the evaluation, issuance, and renewal of permits *to cover the cost of district programs* related to permitted stationary sources authorized or required under the provisions of Division 26 (commencing with Section 39000) that are not otherwise funded. ...'" (West's, *supra*, § 42311, p. 321, italics added.)

The 1982 bills to amend section 42311 (Sen. Bill No. 1326 and Sen. Bill No. 1477) originally included emissions fees language as contained in section 40510 - i.e., a sentence would have been added stating the fees may vary according to the quantity of emissions and according to the effect of the emissions on air quality. In a May 1982 letter from the chairman of the Senate Committee on Local Government (Senator Marks), reference was made to that committee's reasons for recommending deletion of the emissions language. Marks's letter, addressed to the Chairman of the Senate Committee on Finance (Senator Alquist), stated: "When I wrote to you on April 1, regarding the Local Government Committee's recommendations on SB 1326 and SB 1477, I attached a background report comparing the two bills. An ambiguity in that report has caused some local officials and industry representatives to ask for clarification.

"The first sentence of the second paragraph on page six ought to read: 'The Committee agreed to require APCDs to levy fees by ordinance to pay for programs that are not otherwise funded, but deleted language which appeared to limit these fees to emissions fees.' [FN8]The committee's action *1140 neither decreased nor increased APCDs' current ability to use emissions fees.

FN8 The first sentence of the second paragraph on page 6 of the Local Government Committee's background report, dated April 1, 1982, had stated: "The Committee agreed to require APCDs to levy fees by ordinance to pay for programs that are not otherwise funded, but declined to allow emissions fees." Earlier staff analysis reports of the committee, dated March 17 and 31, 1982, respectively, had stated: "Others are also concerned that the ability to vary fees based on quantity and air pollution effects may allow APCDs to require expensive instack monitoring devices. The Committee may wish ... to specifically declare that the bill does not require the installation of measuring units"; and "Some are concerned that the language in both bills that permits APCDs to vary fees based on quantity and air pollution effects may allow districts to require emissions fees. The Committee may wish to delete this language."

"Thank you for your consideration of this clarification." (Fn. added.)

The 1982 amendment also added subdivision (g) (deleted in 1985) requiring the legislative analyst to review the fee systems' capability to finance the activities of local districts, evaluate the overall equity and reasonableness of the fees as they affect segments of industry and agriculture which pay the fees, and report the findings and recommendations to the Legislature by October 1, 1983. (West's, *supra*, § 42311, p. 321.)In the 1982 statute, the Legislature stated its intent was to investigate new opportunities for reducing the costs of administering programs in which the state and counties share responsibility, and the legis-

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lative analyst was requested to work with county officials and estimate the savings to the state and counties if certain proposals were implemented, along with the probable effects on program beneficiaries, and to submit progress reports to the Legislature by January 1, 1983, and July 1, 1983, and a final report by January 1, 1984. (Stats. 1982, ch. 1638, § 11, p. 6665.) [FN9]

FN9 The 1982 amendment also added subdivision (b) (current subd. (c)) providing that the district board could adopt a fee schedule for fiscal years ending before July 1, 1984 (extended to 1986 in a 1984 amendment) to offset loss of state and federal subvention funds (which the legislature found was necessary to provide a transition period to develop an equitable funding mechanism for local districts). The 1982 amendment added subdivision (e) (current subd. (f)) providing that the district board should hold a public meeting before adopting a regulation establishing fees and make information available indicating the amount of cost required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service.

1983 legislative analyst report

The legislative analyst report on "Financing Air Pollution Control" dated October 1983 summarizes past developments, including the proposed (but essentially not enacted) cuts in state funding of local districts for the 1982-1983 fiscal year. The report described the 1982 amendments to section 42311 (ch. 1638), noting that chapter 1638 expanded the purposes for which permit fee revenue may be used. Further, the report observed: "The general understanding of the Legislature and the districts during consideration ***1141** of Chapter 1638 appears to have been that the districts would adopt 'emission' fees. Because the Legislature continued funding for subventions last year, however, only two districts exercised their authority to establish fees. ...

"The type of fees authorized in chapter 1638 is not defined. Moreover, our preliminary work on this report indicated that the nature of emission fees and the role of these fees in financing air pollution activities is not clear from a conceptual standpoint.

"In recognition of this, we have attempted in this report to refine the concept of emission fees and incorporate it in a system for financing state and local air quality activities." [FN10]

FN10 This information is obtained from the introduction to the 1983 legislative analyst's report. The report itself was not included in the record.

The executive summary of the 1983 legislative analyst's report notes that in submitting the 1982-1983 budget, the governor proposed "legislation be enacted authorizing the districts to charge fees for stationary source emissions in order to replace the revenues lost" as a result of the proposed 80 percent reduction in state subventions to local districts. The report characterized the 1982 amendments as "authorizing districts to impose emission fees." [FN11]

FN11 Since the report had already observed that the type of fees authorized in the 1982 amendments were not defined, the legislative analyst was apparently interpreting the 1982 amendments as impliedly authorizing emissions fees.

1985 amendments

In 1985, the Legislature added the last sentence to subdivision (a) of section 42311, stating, "Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources." [FN12]The 1985 amendments also added two new subdivisions, (b) and (h). Subdivision (b) allows the district board to charge a deposit prior to evaluating a ***1142** permit application, and requires that the district refund any significant portion of the deposit which exceeds the actual reasonable cost of evaluating the application. Subdivision (h) allows the district to charge fees for permit holders emitting toxic air contaminants based on the direct and indirect costs of district activities relating to each toxic air contaminant. [FN13]

FN12 Letters, dated March and June 1985, from Santa Barbara's county counsel to legislators urged support of the 1985 amend-

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ments for the following reasons. The amendments were necessary to clarify that a local district is entitled to fully recover its actual costs for the evaluation, issuance and renewal of permits, which was the Legislature's original intention. This intent was not clearly reflected in the existing language of the statute, since it could be interpreted as limiting a local district from recovering its actual costs for permit processing during any year where those costs exceed the prior year's costs plus an increase in the Consumer Price Index. Such an interpretation would cause extreme hardship in Santa Barbara County where the extraordinary rate of growth in the oil and gas industry has caused a corresponding expansion in the effort to evaluate and issue permits.

FN13 A copy of the current language of section 42311 is attached at the end of this opinion, as an appendix.

Our statutory analysis involves two concepts: (1) the extent to which a local district may recoup costs by collecting fees from permit holders (rather than relying on government funds); and, (2) the methods by which a district may allocate program costs between permit holders. As we discuss below, section 42311 has expanded the authority of the district so that it may now recover all costs related to permitted stationary sources through fees. Further, section 42311 now partially addresses the methods by which the district may allocate certain costs among permit holders. That is, subdivision (b) allows a local district to charge a deposit for evaluating a permit application based only on the actual cost of the evaluation. Subdivision (h) allows a district to assess fees against those emitting toxic air contaminants based on the actual costs of programs related to those toxins. Other than these two specific cost items, however, the statute does not address how the remaining costs involved in issuing and renewing permits may be allocated. Moreover, the statute from its inception has been silent as to how the district may allocate among permit holders the indirect costs pertaining to the overall permit program but not attributable to any specific permit activity or permit holder.

As amended in 1979, section 42311 specified the activities for which fees could be charged (i.e., costs of evaluating and issuing permits, of inspecting for compliance with permit conditions and regulations, and of implementing and enforcing permit terms and conditions). The 1982 amendment expanded the language of section 42311, broadly stating fees could be charged for evaluating, issuing and renewing permits to "cover the cost" of the district's programs.

SDG&E and the district do not dispute that under the 1979 statute the district could only charge fees to cover the costs directly pertaining to the permits, whereas under the 1982 statute, the district can now charge fees to cover all costs of its program, including indirect costs not related to a specific permit activity. [FN14]The Legislature indicated its intent in the 1982 ***1143** statute that the government's cost of administering the program be decreased and that systems be studied to determine whether fees could finance the districts. The 1985 amendment, by adding the last sentence to subdivision (a), clarified that all reasonable costs could be recovered through fees.

FN14 Focusing in on subdivision (b) of section 42311, IEA meritlessly argues that the district is only entitled to charge fees to cover the costs of evaluating permit applications. The 1985 amendment to subdivision (a) clarified that the district may charge fees to recover the estimated reasonable costs of its programs.

The legislative history of section 42311 suggests the Legislature, at least by 1982, contemplated the districts should use an emissions-based fee schedule to support their operations. The 1982-1983 legislative analyst's budget report referred to the desirability of emissions fees. The 1983 legislative analyst's report on air pollution control financing explicitly stated the general understanding of the Legislature and the districts during consideration of Chapter 1638 was the districts would adopt emissions fees, and the report characterized the 1982 amendments as authorizing emissions fees.

SDG&E notes the legislative analyst in the 1982-1983 budget report expressed an opinion that under current legislation, only the south coast district, not the local districts, had the authority to base fees on emissions, [FN15] and the 1982 and subsequent amendments did not include a reference to the use of emissions fees. At the time of the 1982-1983 budget re-

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port, the 1979 statute was in effect, which statute was interpreted as not authorizing the recoupment through fees of indirect costs of the permit program. It is these indirect costs, recoverable under the 1982 amendments, which San Diego's APCD has apportioned based on emissions. Thus, even if arguendo the 1979 statute were interpreted as not allowing direct costs to be apportioned based on emissions, [FN16] it does not necessarily follow the 1982 statute does not allow indirect costs to be apportioned based on emissions.

FN15 SDG&E also points to a staff report of the Assembly Subcommittee on Air Quality, dated April 22, 1975, which could arguably (but need not necessarily) be viewed as suggesting the same interpretation. The report states the bill creating the south coast district board gives it all the powers and duties of the county and regional districts, with specified exceptions, and in addition grants it "the following additional powers and duties." The report then proceeds to list 14 features of the bill, one of which is the provision that the south coast district could vary its fees according to emissions.

FN16 Since the 1979 statute was silent as to how the costs should be allocated among the permit holders, the legislative analyst's interpretation was not compelled.

Moreover, the budget report suggests the desirability of a district-implemented fee system based on emissions, and this legislative understanding was again acknowledged in the 1983 legislative analyst's report. Thus, regardless of whether under the 1979 statute the district had authority to base fees on emissions, the 1982 amendment clearly contemplated such authority. Although the 1982 amendment did not expressly authorize the use of ***1144** emissions fees, there is no indication in the legislative history suggesting the Legislature determined, contrary to the legislative analyst's recommendations, that costs-apportionment should *not* be based on emissions.

Given the strong recommendation by the legislative analyst that emissions fees were an appropriate method of paying for the costs of the districts' programs and the lack of a contrary recommendation, the implication urged by SDG&E arising from the failure to include the proposed emissions fees language in the 1982 amendment is not convincing. As suggested in the May 1982 letter from Senator Marks clarifying an ambiguity on the emissions issue, the language appears to have been deleted to ensure the statute was not construed as *requiring* the fees be based on emissions. (*Ravettino v. City of San Diego* (1945) 70 Cal.App.2d 37, 47 [160 P.2d 52] [delegation of power to local government, without providing mode for carrying power into effect, impliedly gives right to select lawful and reasonable means].)

The express reference to the possibility of using emissions as a basis for the south coast district board's fees in section 40510 is not sufficient to overcome the strong indications of legislative intent in the legislative analysts' reports pertaining to section 42311. The general rule that where a statute contains a critical phrase, omission of that phrase from a similar statute on the same subject shows a different legislative intent (see *Craven v. Crout* (1985) 163 Cal.App.3d 779, 783 [209 Cal.Rptr. 649]), cannot be reasonably applied to this statutory scheme. Construing the Legislature's decision not to include the reference to emissions in section 42311 as precluding the use of fees based on emissions, gives undue weight to a rule of legislation by implication and ignores the concrete evidence of intent favoring an emissions-based system in the legislative analyst reports.

Analyzing the various subdivisions of section 42311, intervener IEA argues the Legislature has evinced a general intent that the districts only charge fees to a permit holder for the work related to that permit holder's permit, and not for work done on another's permit. This argument ignores the fact the San Diego district's fee schedule uses an emissions-based, rather than labor-based, apportionment method only for those indirect costs which are related to the overall permit program but which cannot be directly attributed to any specific permit activity or fee schedule. Thus, the emissions-based schedule does not charge a permit holder for work on another's permit, since these indirect costs by definition do not involve a specific permit holder. ***1145**

This Emissions-based Fee Schedule Is Not A Special Tax Under Proposition 13

California Constitution, article XIII A, section 4 (§ 4), enacted in June 1978 as part of Proposition 13,

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provides: "Cities, counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County, or special district."

The parties dispute whether this district is a "special district" within the meaning of Proposition 13 (see *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 206-208 [182 Cal.Rptr. 324, 643 P.2d 941]; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 106-107 [211 Cal.Rptr. 133, 695 P.2d 220]). [FN17] (3a) We need not resolve this issue, because the record readily shows these emissions-based fees are a regulatory fee, not a "special tax," and outside the purview of section 4.

FN17 In *Los Angeles County Transportation Com. v. Richmond, supra*, 31 Cal.3d at pages 207-208, our Supreme Court narrowly defined a "special district" as a local entity empowered to levy *property* taxes. The court held since the Los Angeles County Transportation Commission - which was authorized to adopt a retail transaction and use tax if approved by a majority of the voters - was not authorized to levy property taxes, it was not a special district, and thus a majority, not a two-thirds, vote of the electorate was sufficient to adopt the tax. SDG&E argues, inter alia, that although the district does not have the power to levy property taxes, the emissions-based fee schedule was levied by the board of supervisors (sitting as the district's governing body, the Air Pollution Control Board), and the board of supervisors does have the power to levy property taxes.

(4) Proposition 13 was enacted to give effective property tax relief. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231 [149 Cal.Rptr. 239, 583 P.2d 1281].)Article XIII A of the Constitution consists of four major elements: a real property tax limitation (§ 1), a real property assessment limitation (§ 2), a restriction on state taxes (§ 3), and a restriction on local taxes (§ 4). (*Id.* at pp. 220, 231.) Section 4 is a limitation on the imposition of "special taxes" by local entities because it requires a two-thirds vote of the local electorate. (*Id.* at pp. 220, 231, 242; *Los Angeles County Transportation Com. v. Richmond, supra*, 31 Cal.3d at p. 201.) Sections 3 and 4 were included to restrict imposition of additional or increased state or local taxes other than property taxes which would effectively withdraw or deplete the property tax savings in sections 1 and 2. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d at p. 231; *Huntington Park Redevelopment Agency v. Martin, supra*, 38 Cal.3d at p. 105.)

(5) A "special tax" under section 4 does not embrace fees charged in connection with regulatory activities which do not exceed the reasonable ***1146** cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purposes. (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375 [228 Cal.Rptr. 726, 721 P.2d 1111]; Gov. Code, § 50076; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 661 [166 Cal.Rptr. 674]; see generally, *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 165-167 [154 Cal.Rptr. 263], describing distinctions between regulatory fee and revenue-raising tax.)

As stated in *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235 [211 Cal.Rptr. 567], to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. [FN18]

FN18 To show a regulatory fee is not a special tax, it is not necessary for the payor to perceive the regulation as a "benefit." A regulatory fee may be imposed under the police power when the fee constitutes an amount necessary to carry out the purposes and provisions of the regulation. (See *Pennell v. City of San Jose, supra*, 42 Cal.3d at p. 375; see also *Mills v. County of Trinity, supra*, 108 Cal.App.3d at p. 661.)

(3b) Here, the terms of section 42311 limit the amount of fees which may be charged to the reasonable costs of the district's programs. The mandate

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action did not challenge the reasonableness of the district's costs, but only the method of apportioning those costs based on emissions. [FN19]The record shows the allocation of costs based on emissions fairly relates to the permit holder's burden on the district's programs.

FN19 Intervener IEA's brief at one point vaguely asserts the district took no steps to "determine the precise costs of regulation and the appropriate formula for apportioning those costs." It is clear a challenge to the district's method of estimating its costs was not raised below, and it may not be raised for the first time on appeal. (*San Marcos Water Dist. v. San Marcos Unified School Dist.* (1986) 42 Cal.3d 154, 168 [228 Cal.Rptr. 47, 720 P.2d 935].) In any event, the record indicates indirect costs are estimated based on labor activity reports for the previous fiscal year and adjusted for changes in the Consumer Price Index.

The district's report explains in detail the rationale and method used for apportioning the costs on an emissions-based, rather than labor-based, standard for apportioning indirect costs. If the labor-based standard, already used to apportion direct costs, were also used for indirect costs small polluters would pay fees greater than their proportionate contribution to pollution, whereas large polluters would pay proportionately less. For example, under the labor-based system for direct costs, service stations pay about 34 percent of the total annual permit renewal fees, and emit cumulatively only 1 percent of the industrial pollution. In contrast, the 31 major polluters pay about 13 percent of the fees, but emit 38 percent of the industrial pollution ***1147** and 51 percent of the pollution from permitted facilities. Moreover, using an emissions-based standard for indirect costs would provide an incentive to large polluters to reduce existing emissions to reduce fees. [FN20]

FN20 As explained more specifically, the labor-based standard provides an incentive to maintain ongoing *compliance* with pollution control requirements to keep district enforcement costs, and thereby fees, down. However, it provides no incentive to *lower emissions*. For example, SDG&E can burn oil as well as natural gas in its power plants, both in compliance with requirements, but more pollution is generated when oil is burning. The emissions-based fees would provide an incentive to use natural gas instead of oil.

Although recommending the use of an emissions-based standard for indirect costs, the report also presents alternative methods of allocating the costs. That is, all permit fees (direct and indirect) could be based on the amount of emissions on the premise fees should be based on a facility's share of pollution. The disadvantage to such a system is that small polluters would experience a windfall; for example, the average service station would pay $25 rather than the current $375 annual fee; thereby taking away the incentive for small operators to maintain their equipment. Alternatively, all fees, including indirect costs, could be allocated based on the labor standard used for direct costs. As stated above, the disadvantage would be the inequity of having small polluters paying much more than their proportionate share; for example, service stations would pay about 30 percent of the additional fees while emitting only about 1 percent of the industrial pollution.

The district's determination that a purely labor-based standard results in small polluters paying fees greater than their proportionate share of pollution reasonably justifies using an emissions-based standard to more equitably divide the costs based on the amount of pollution caused.

SDG&E argues the district has not specifically shown how the amount of emissions generated by a pollution source increase the district's indirect costs, citing the *Beaumont* case in support of its argument. In *Beaumont Investors v. Beaumont-Cherry Valley Water Dist., supra*, 165 Cal.App.3d at pages 236-238, the court found no evidence in the record showing how the estimated costs of the anticipated government activity were ascertained or apportioned. In contrast here, the district's method of estimating its costs was not challenged, and the district's report details the apportionment method and its rationale. There is no reason to require the district to show precisely how more emissions generate more costs to justify the emissions-based apportionment formula. The purpose for the district's existence is to achieve and maintain air quality standards (§ 40001), thus from an overall perspective it is reasonable to allo-

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cate costs based on a premise that the ***1148** more emissions generated by a pollution source, the greater the regulatory job of the district. [FN21]

FN21 The district argues major polluters cost the district more because if not for their existence, it would have a reduced need to extensively regulate smaller sources of pollution. SDG&E responds the major source of pollution is from transportation sources, and contrary to the district's assertion, the district would have to regulate small stationary polluters even if the big stationary polluters did not operate. We are not presented here with issues pertaining to the division of responsibility for pollution between transportation and stationary sources of pollution, nor need we rely on the district's analysis of how big polluters require regulation of small polluters. Section 42311 allows the district to impose fees to cover the costs of its programs pertaining to stationary sources of pollution, and for the reasons we state above, the emissions-based formula is a reasonable method of apportionment among the stationary permit holders.

Moreover, the district diligently evaluated the various methods of apportioning costs, and recommended a two-tiered system, utilizing both a labor and emissions apportionment standard, seeking to distribute the financial burden of controlling pollution in proportion to a stationary source's contribution to pollution, and to provide incentives for sources to control their pollution. No further showing is necessary to establish the emissions-based fees are reasonably related to the district's costs of regulating a permit holder's air pollution, and thus are not a special tax. (Cf. *White v. County of San Diego* (1980) 26 Cal.3d 897, 905 [163 Cal.Rptr. 640, 608 P.2d 728]; *J. W. Jones Companies v. City of San Diego* (1984) 157 Cal.App.3d 745, 755, 756, 758 [203 Cal.Rptr. 580].)

SDG&E also argues the emissions-based fees thwart the purpose of Proposition 13 since they are designed to replace lost revenues from Proposition 13 without subjecting them to a two-thirds vote of the electorate. [FN22]The argument is misplaced in the context of this action since it is not the emissions-based formula itself, but rather the 1982 amendment to section 42311 (allowing full cost recovery through fees) which serves to replace lost government funding. The emissions formula is merely a method of allocating the increased fees among the permit holders, and even if only the labor-based formula urged by SDG&E was used, the fees would still be increased to replace public funds. Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves, an accomplishment of the 1982 amendments to section 42311 and the emissions-based ***1149** fee schedule. (See *Mills v. County of Trinity, supra*, 108 Cal.App.3d at p. 663.)

FN22 This assertion is made in connection with the argument that the APCD is a "special district." Although we need not address the special district issue, we respond to the argument pertaining to the circumvention of Proposition 13 since it is an underlying theme used to challenge the validity of the emissions-based fees.

Judgment affirmed.

Wiener, Acting P. J., and Woodworth, J., [FN*] concurred.

FN* Assigned by the Chairperson of the Judicial Council.

The petition of intervenors & appellants for review by the Supreme Court was denied November 10, 1988.

Appendix **§ 42311. Fee schedule**

(a) A district board may adopt, by regulation, a schedule of annual fees for the evaluation, issuance and renewal of permits to cover the cost of district programs related to permitted stationary sources authorized or required under this division that are not otherwise funded. The fees assessed under this section shall not exceed, for any fiscal year, the actual cost of district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price In-

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dex as determined pursuant to Section 2212 of the Revenue and Taxation Code for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover. Every person applying for a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule. Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources.

(b) The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) prior to evaluating a permit application, if the district accounts for the costs of its services and refunds to the applicant any significant portion of the deposit which exceeds the actual, reasonable cost of evaluating the application. ***1150**

(c) In addition to the fees authorized by subdivisions (a) and (b), the district board may adopt, by regulation, a fee schedule for district programs related to permitted stationary sources for fiscal years ending before July 1, 1986, which allows the district to offset the loss of any state and federal subvention funds. The total amount raised by this fee schedule shall not exceed the amount of funds lost from state and federal subventions.

(d) Except as provided in Section 42313, all the fees shall be paid to the district treasurer to the credit of the district.

(e) This section does not apply to the south coast district board which is governed by Section 40510.

(f) In addition to providing notice as otherwise required, before adopting a regulation establishing fees pursuant to this section, the district board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the district board. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the district board shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service. Any costs incurred by the district board in conducting the required meeting may be recovered from fees charged for the programs which were the subject of the meeting.

(g) The Legislature finds and declares that because districts vary greatly in their dependence on state and federal subvention programs, county and district property tax support, and permit fees, it is necessary to provide a transition period to develop an equitable funding mechanism for local districts. Subdivision (c) accordingly authorizes districts to adopt certain fee schedules only for fiscal years ending before July 1, 1986, unless a later enacted statute deletes or extends this date.

(h) In addition to any other fees authorized by this section, a district board may adopt, by regulation, a schedule of annual fees to be assessed against permitted nonvehicular sources emitting toxic air contaminants identified pursuant to the procedure set forth in Sections 39660, 39661, and 39662. A district board shall demonstrate that the fees assessed under this subdivision do not exceed the reasonable, anticipated costs of funding district activities mandated by Section 39666 related to nonvehicular source emissions. In making the demonstration, the district shall account for all direct and indirect costs of district activities related to each toxic air contaminant. If the district does not make this demonstration, it shall make reimbursement for that portion of the fee not determined to be reasonable. ***1151**

Cal.App.4.Dist.
San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.
203 Cal.App.3d 1132, 250 Cal.Rptr. 420

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SAVE OXNARD SHORES et al., Plaintiffs and Appellants,
v.
CALIFORNIA COASTAL COMMISSION, Defendant and Appellant; CITY COUNCIL OF THE CITY OF OXNARD, Real Party in Interest and Respondent; OXNARD SHORES OCEANFRONT LOT OWNERS ASSOCIATION et al., Interveners and Appellants.
No. B003988.

Court of Appeal, Second District, California.
Mar 26, 1986.

SUMMARY

In a proceeding for writ of administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a city's land use plan under which residential construction would be allowed in an oceanfront area, the trial court issued an alternative writ, in compliance with which the commission set aside its original decision and filed a return vacating the conditional certification as to the oceanfront area. On motion of an intervenor, an association of lot owners in the area alleging that its members were permitted by the land use plan to construct residences on their lots and that any action setting aside the commission's decision would deprive them of economic development of their property and constitute a taking without just compensation, the trial court issued an order striking the return and restraining the commission from setting aside its decision pending resolution of the litigation. Subsequently, the court ordered the alternative writ discharged and the petition dismissed, and awarded costs to the intervenor and the city. After judgment, the court denied the intervenor's motion for attorney fees on the private attorney general theory pursuant to Code Civ. Proc., § 1021.5. (Superior Court of Ventura County, No. SP 50444, William L. Peck, Judge.)

The Court of Appeal affirmed in part and reversed in part. It held the trial court's action in ordering the returns stricken and in holding the commission's action to be invalid improper, since the commission's action in compliance with the writ was a valid exercise of its authority, and upon resubmission the portion of the land use plan dealing with the affected area would be treated the same as on original submission, receiving a hearing with public participation and the full panoply of procedural safeguards. The court also held that the award of costs to the intervenor and the city was improper, and that the motion for attorney fees was properly denied, since there had been no showing that the litigation was necessary or that the lawsuit placed a burden on the members of the lot owners' association out of proportion to their individual interests in the matter. On appeal, the court held, the association's claim for attorney fees had become moot, since it was not a successful party as required by § 1021.5. (Opinion by Gilbert, J., with Stone, P. J., and Abbe, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Relation to Traditional Mandamus.
Because Code Civ. Proc., § 1094.5, supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. Administrative mandamus did not, by enactment of that section, acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.
[See Cal.Jur.3d, Administrative Law, § 317.]
(2) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Alternative Writ.
On petition for administrative mandamus, a court will issue an alternative writ when the petition sufficiently alleges a cause of action that, if proven, could lead to the issuance of a final or peremptory writ. Administrative proceedings should be completed before the issuance of the writ. The writ is not a final court adjudication but is merely an order for the agency to show cause or, in the alternative, to comply. The agency is placed on notice that petitioners have made a sufficient showing to cast doubt upon the validity of its decision. Although it may be expected that the agency will file an answer to the writ, compliance is

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among the acceptable responses, and it terminates the litigation.

(3) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--Where Agency Has Complied With Alternative Writ.
Where an agency files a return that indicates compliance with an alternative writ, the petition is subject to dismissal for mootness, since no purpose would be served in directing the doing of that which has already been done.

(4) Administrative Law § 74--Administrative Actions--Adjudication-- Rehearing, Reconsideration, and Modification.
In the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. Thus, at the time a lot owners' association filed a petition for administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the commission lacked authority to modify or revoke its original decision, which had become final.
[See **Am.Jur.2d**, Administrative Law, § 522.]
(5a, 5b, 5c) Pollution and Conservation Laws § 10--Conservation-- Coastal Protection--Power of Coastal Commission to Set Aside Decision.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the court's action was improper in ordering the returns filed by the commission in compliance with the writ stricken pursuant to the motion of an intervenor, an association of lot owners in the affected area, on the ground that the commission lacked the authority to vacate its final decision after 60 days or to set it aside after the lot owners' association intervened, and holding the commission's action to be invalid. The commission's action in compliance with the writ was a valid exercise of its authority, and upon resubmission the portion of the land use plan dealing with the affected area would be treated the same as on original submission, receiving a bearing with public participation and the full panoply of procedural safeguards.

(6) Pollution and Conservation Laws § 10--Conservation--Coastal Protection--Presumption That Coastal Commission Acted in Public Interest.
The presumption that in reaching a decision to approve a land use plan under which residential construction in an oceanfront area would be allowed the California Coastal Commission acted regularly and in the public interest applied equally to its action in complying with an alternative writ directing the commission to set aside its decision or to appear and show cause, and this presumption was not affected by an interim change in the membership on the commission.

(7) Administrative Law § 74--Administrative Actions--Vacating Decision in Compliance With Alternative Writ of Mandate.
Administrative mandamus is a statutory procedure for initiating judicial review of an agency decision that is otherwise accorded a presumption of regularity. Although the agency may defend its decision, neither statutory authority nor judicial precedent requires that response. Further, in the absence of an express requirement that a public hearing be conducted, due process is not violated when an agency obviates judicial review by vacating its decision in voluntary compliance with the writ. Hence, the California Coastal Commission did not violate procedural due process by setting aside a portion of its decision to approve a city's land use plan allowing residential construction in an oceanfront area in compliance with an alternative writ of mandate, notwithstanding that it took such action without notice or a hearing.

(8a, 8b, 8c) Pollution and Conservation Laws § 10--Conservation-- Coastal Protection--Power of Coastal Commission to Set Aside Decision.
In a proceeding for administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the action of the commission in setting aside its prior decision did not deprive an intervenor, a lot owners' association alleging that under the land use plan its members were permitted to construct residences on their oceanfront lots and any action setting aside the commission's decision would deprive them of economic development of their property and constitute a taking without just compensation, of procedural due process; because the mere presence of an intervenor does not stay operation of

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an alternative writ, the commission still retained the option of noncompliance, and after the commission's return was filed, the court had no further authority, the matter was moot, and the intervenor could not compel the court to take further action; further, the commission's original decision did not turn the desire of members of the association to build homes on their oceanfront lots into a constitutional right.

(9) Parties § 10--Intervention--Power of Interveners.
The ability of interveners to control litigation is circumscribed because they are bound by the status of the proceedings at the time of intervention. They may not, therefore, retard the principal suit, delay trial, or change the position of the parties.

(10) Zoning and Planning § 5--Constitutional and Statutory Provisions-- Vested Rights.
A California property owner has no vested right in an existing or anticipated land use plan, designation, or zoning classification. Nor has he a cause of action for unconstitutional taking or damaging of his property due to the adoption of particular conditions for development. An exception may be made for a developer who has acquired a vested interest in completion of a public construction project by a good faith investment of time or money.

(11) Pollution and Conservation Laws § 10--Conservation--Coastal Protection--Statutory Goals.
The paramount concern of the California Coastal Commission is the protection of the coastal area for the benefit of the public. The predominant goal of the Coastal Act (Pub. Resources Code, § 30000 et seq.) is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment.

(12) Costs § 8--Taxation and Award--Mandamus Proceeding--Award to Intervener.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, in which proceeding the court, on motion of an intervener, struck the commission's return as invalid, discharged the alternative writ, and dismissed the petition, petitioner, an association of homeowners in the affected area, was improperly ordered to pay costs to the intervener, which was an unincorporated association of residents in the affected area, and to the city that had formulated the land use plan.

(13) Costs § 7--Amount Items Allowable--Attorney Fees--Private Attorney General Theory.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, and in which the court on motion of an intervenor, an association of lot owners in the affected area, ordered the returns filed by the commission in compliance with the writ stricken and held the commission's action to be invalid, the trial court did not abuse its discretion in denying the intervener's motions to require petitioners and the commission to pay its attorney fees on a private attorney general theory pursuant to Code Civ. Proc., § 1021.5, where there was no showing that the litigation was necessary or that the lawsuit placed a burden on the intervenor's members out of proportion to their individual interests in the matter, and where the public benefit, if any, was incidental by comparison to the purely private advantage for the association's members. Further, on appeal the intervener's claim for attorney fees was moot, in that the intervener was not a successful party as required by § 1021.5.
[Allowance of attorneys' fees in mandamus proceedings, note, 34 A.L.R.4th 457.]
COUNSEL

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Thorpe, Sullivan, Workman & Thorpe, Sullivan, Workman & Dee, Roger M. Sullivan and Henry K. Workman for Interveners and Appellants.

K. D. Lyders, City Attorney, for Real Party in Interest and Respondent.

GILBERT, J.

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Here we hold that an administrative agency, the California Coastal Commission (Commission), may set aside a portion of its previous decision in compliance with an alternative writ of mandamus.

The alternative writ issued on the petition of Save Oxnard Shores, an unincorporated association of property owners, including William Coopman, Robert Hansen and Samuel Goldfarb (collectively SOS). SOS questioned the validity of a Commission decision which conditionally certified the City of Oxnard (Oxnard) land use plan (LUP), permitting residential construction in an area known as Oxnard Shores.

Oxnard Shores Oceanfront Lot Owners Association and property owners Erik Linder and Emanuel Gyler (collectively OSOLOA) intervened before the Commission filed its return setting aside the challenged portion of its decision. Thereafter, on motion by OSOLOA, the trial court struck the Commission's return as invalid, discharged the alternative writ, and dismissed the SOS petition. ***146**

We reverse that portion of the order striking the Commission's return. We affirm the order denying OSOLOA attorney fees on its cross-appeal.

Facts

On May 20, 1980, following public hearings, Oxnard approved a proposed LUP, which permitted residential development in Oxnard Shores, and submitted it to the South Central Regional Coastal Commission (Regional). Regional approved and forwarded the LUP to the Commission on September 19, 1980. On July 21, 1981, the Commission certified the LUP on condition that its provisions be revised to improve public access to the beach in conformity with the California Coastal Act of 1976. (Pub. Resources Code, § 30000 et seq., Coastal Act.)

On September 21, 1981, SOS filed a petition for a writ of administrative mandamus (Code Civ. Proc., § 1094.5) [FN1] directing the Commission to set aside and vacate its decision as to Oxnard Shores. SOS alleged that Oxnard Shores was within 100 year flood and storm wave run-up areas and Commission planners had evidence that the area was likely to suffer additional erosion. Therefore, residential development would be inconsistent with coastal protection policies (Coastal Act, §§ 30253, 30211, 30212). In particular, SOS alleged that: (1) a substantial setback from the mean high tide line was required for new construction in the area which was subject to further beach erosion, and (2) prescriptive easements for public use of the beach might be extinguished because access would be restricted during high tides by beachfront residences.

FN1 All statutory references hereafter are to the Code of Civil Procedure unless otherwise specified.

On October 2, the court issued an alternative writ directing the Commission to set aside its decision or to appear and show cause on November 16, 1981. On October 28, OSOLOA filed a complaint in intervention seeking discharge of the alternative writ and denial of the peremptory writ. OSOLOA alleged that its members were permitted by the LUP to construct single-family residences on their oceanfront lots, and any action setting aside the Commission's decision would deprive them of economic development of their property and constitute a taking without just compensation. (Cal. Const., art. I, § 19.)

On January 8, 1982, the Commission conducted a public hearing on the application of OSOLOA member Emanuel Gyler for a permit to build a single-family home on his oceanfront lot. Following testimony relating to residential construction and public beach access, some commissioners expressed ***147** doubt about allowing beachfront construction on Oxnard Shores. The hearing on the permit application was adjourned. Because of the alternative writ, the Commission convened in executive session to consider its prior decision.

On January 21, 1982, the Commission set aside its original July 1981 decision. On January 22 it filed a return vacating the conditional certification as to Oxnard Shores in compliance with the writ. The return stated: "First, review of the record of the public hearing on that matter, in light of the allegations and arguments contained in the Petition for Writ of Mandate, called into serious question the correctness of the Commission's analysis and application of geological evidence presented at the hearing; second, review of the record also raised substantial questions

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concerning the propriety of the Commission's interpretation and application of the Coastal Act with respect to this evidence." A supplemental return was filed in April stating that a public hearing would be deferred pending Oxnard's resubmission of the LUP.

On May 20, the court granted OSOLOA's motion to strike the return and to restrain the Commission from setting aside its decision pending resolution of the litigation. On July 28, at the Commission's request, the court made a "clarification" order that stated: (1) the returns were stricken because the Commission lacked authority to vacate its final decision after 60 days, or to set it aside after OSOLOA intervened, and (2) although the motion did not raise the issue, the court upon request would hold the Commission's January 1982 action invalid.

On November 23, 1982, OSOLOA accepted this invitation and by way of a supplemental complaint requested a ruling that the Commission's action to reconsider its original decision was invalid. Not surprisingly, the trial court on cross-motions for summary adjudication, ruled that the Commission's action vacating its earlier decision was invalid.

On March 16, 1983, OSOLOA filed a motion to discharge the alternative writ and dismiss the SOS petition because no issues were presented for trial. The court had entered an order October 12, 1982, which required SOS to file the administrative record by January 17, established a briefing schedule beginning February 15, and set trial for April 4. OSOLOA alleged that SOS had not yet either paid for or filed the administrative record and that without the record, SOS could not show the insufficiency of the evidence to support the decision or overcome the presumption that the Commission regularly performed its official duty. SOS argued that the Commission's compliance rendered the administrative record irrelevant. ***148**

On June 22, 1983, the trial court granted OSOLOA's motion. The court stated, inter alia, that while trial was continued pending receipt of the administrative record, the Commission filed a return purporting to vacate its decision without a hearing, solely as to Oxnard Shores, on a "review of the record." The court ordered the return stricken because no record had been prepared and declared the Commission's action invalid. In the absence of the administrative record, the matter was governed by the presumption that the Commission proceedings were "regularly performed" and supported by the evidence (Evid. Code, § 664; *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573-574 [58 Cal.Rptr. 664]) and there was no basis to issue a peremptory writ of mandate. The court therefore discharged the alternative writ, denied the peremptory writ, dismissed the SOS petition, reaffirmed its orders striking the Commission's returns to the alternative writ, and awarded costs to OSOLOA and Oxnard.

After judgment, OSOLOA moved for orders allowing attorney's fees against the Commission and SOS on the "private attorney general" theory. (Code Civ. Proc., § 1021.5.)The court denied both motions.

Discussion

SOS contends that the trial court erred in striking the returns and that the Commission's valid compliance with the alternative writ rendered the peremptory writ proceedings moot.

I

The alternative writ of mandamus issued on SOS' timely verified petition for judicial review under section 1094.5 as authorized by section 30801 of the Coastal Act (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280 [109 P.2d 942, 132 A.L.R. 715].) Administrative mandamus (§ 1094.5) provides for judicial review of an agency decision resulting from a proceeding in which "(1) by law a hearing is required to be given, (2) evidence is required to be taken, and (3) the determination of the facts is the responsibility of the administrative agency." (§ 1094.5, subd. (a); *Gong v. City of Fremont, supra.*, 250 Cal.App.2d 568, 572.)

(1)Because section 1094.5 supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. "... administrative mandamus did not thereby acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations." (*Grant v. Board of Medical Examiners* (1965) 232 Cal.App.2d 820, 826 [43 Cal.Rptr. 270].)***149** "... mandamus pursuant to section 1094.5, commonly denominated 'administrative' mandamus, is manda-

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mus still.... The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute...." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) The established mandamus procedures and rules of pleading (§ 1109) govern proceedings to obtain judicial review of administrative agency actions. (*Felice v. Inglewood* (1948) 84 Cal.App.2d 263, 267 [190 P.2d 317]; *Scannell v. Wolff* (1948) 86 Cal.App.2d 489, 492 [195 P.2d 536].)

(2)The court will issue an alternative writ when the petition sufficiently alleges a cause of action which, if proven, could lead to the issuance of a final or peremptory writ. (*Joerger v. Superior Court* (1934) 2 Cal.App.2d 360, 363 [37 P.2d 1084].) Administrative proceedings should be completed before the issuance of a judicial writ. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d 709, 717 [187 P.2d 116].) The writ is not a final court adjudication but is merely an order for the agency to show cause or, in the "alternative," to comply. The agency is placed on notice that petitioners have made a sufficient showing to cast doubt upon the validity of its decision. Although it may be expected that the agency will file an answer to the writ, compliance is among the acceptable responses (§§ 1087, 1089, 1104, 1109), and it terminates the litigation. (*George v. Beaty* (1927) 85 Cal.App. 525, 529 [260 P. 386].)

(3)When the agency files a return which indicates compliance with the alternative writ, the petition is subject to dismissal for mootness. (*Bruce v. Gregory* (1967) 65 Cal.2d 666 [56 Cal.Rptr. 265, 423 P.2d 193].) "... [I]f the respondent has complied with the petitioner's demands after issuance of the alternative writ, the writ has accomplished the purpose of the mandamus proceedings and the petition should be dismissed as moot. [Citations.] The rationale is, 'No purpose would be served in directing the doing of that which has already been done.' [Citations.] In *George v. Beaty*, 85 Cal.App. 525 [260 P. 386], the court said: '[T]he remedy of *mandamus* will not be employed where the respondents show that they are willing to perform the duty without the coercion of the writ.... '"*Mandamus* will not issue to compel the doing of an act which has already been done, *or which the respondent is willing to do without coercion*'...."' (P. 529.) '[W]here the return to the alternative writ shows a compliance therewith, the petition will be dismissed.' (P. 532.)" (*Id.*, at p. 671.)

(4)It is true, as OSOLOA argues, that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. (*Olive Proration etc. Com. v. Agri. etc.* *150*Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918].) Therefore, at the time the petition was filed the Commission lacked authority to modify or revoke its original decision, which had become final. (5a)It does not follow that the Commission was without power to comply with a judicial alternative writ.

The SOS petition did not incorporate the administrative record, but it alleged with specificity the ways in which the Commission's original decision violated the policies expressed in the Coastal Act. The court determined that a sufficient showing was made and the alternative writ issued 10 days after the petition was served on the Commission and Oxnard. (§§ 1088, 1107.) The writ commands "the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by a court order why he has not done so." (§ 1087.)

The alternative writ of mandamus differs from its counterpart in prohibition, which forecloses all agency action pending hearing to determine the necessity for a permanent injunction. (§ 1104.) To the contrary, the alternative writ of mandamus orders the party to whom it is directed to take action in compliance "or" to show cause. (§ 1087.) The Commission was thereby authorized to determine whether to defend its original decision or comply with the writ until it was quashed or discharged. (6)The presumption that the Commission acted regularly and in the public interest in reaching its original decision applies equally to its action complying with the writ. (Coastal Act, § 30004, subd. (b).) This presumption is not affected by an interim change in the membership on the Commission, as OSOLOA argues.

(7)Oxnard attempts to differentiate administrative mandamus (§ 1094.5) requesting a judicial order to vacate a final administrative decision, from traditional mandamus (§ 1085) seeking a judicial order to compel performance of a ministerial act. Because the Commission here performed an adjudicatory function

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(*Yost v. Thomas* 36 Cal.3d 561 [205 Cal.Rptr. 801, 685 P.2d 1152]), Oxnard argues that procedural due process requires notice and a hearing before its decision can be vacated. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 [156 Cal.Rptr. 718, 596 P.2d 1134].) Administrative mandamus, however, is a statutory procedure for initiating judicial review of an agency decision which is otherwise accorded a presumption of regularity. Although the agency may defend its decision, neither statutory authority nor judicial precedent require that response. Furthermore, in the absence of an express requirement that a public hearing be conducted, due process is not violated when an agency obviates judicial review by vacating its decision in voluntary compliance with the writ. ***151**

(8a)OSOLOA argues, nevertheless, that in view of the constitutional issues affecting the property interests held by the interveners, the Commission was required to extend full procedural due process, including a public hearing, before vacating its decision. The presence of an intervener, however, does not bar agency compliance with a judicial order in the form of an alternative writ.

The allegations of OSOLOA's complaint established that its members were entitled to intervene because their property interests were affected by the Commission's decision. (*Hospital Council of Northern Cal. v. Superior Court* (1973) 30 Cal.App.3d 331, 336 [106 Cal.Rptr. 247]; *Linder v. Vogue Investments, Inc.* (1966) 239 Cal.App.2d 338, 343-344 [48 Cal.Rptr. 633].) (9)The ability of intervenors to control the litigation is, nonetheless, circumscribed because they are bound by the status of the proceedings at the time of intervention. (*Linder v. Vogue Investments, Inc., supra.*, 239 Cal.App.2d at p. 344; *Townsend v. Driver* (1907) 5 Cal.App. 581 [90 P. 1071].) Intervenors, therefore, may not retard the principal suit, delay trial, or change the position of the parties. (*Hibernia etc. Society v. Churchill* (1900) 128 Cal. 633, 636 [61 P. 278].)

(8b)When OSOLOA intervened, the alternative writ had already issued and OSOLOA did not take immediate action to recall, discharge, or otherwise stay operation of the writ. (*Marc Bellaire, Inc. v. Fleischman* (1960) 185 Cal.App.2d 591, 597 [8 Cal.Rptr. 650].) Because the mere presence of an intervener does not stay operation of the alternative writ, the Commission still retained the option of compliance. After the Commission's return was filed, the court had no further authority, the matter was moot, and the third party interveners could not compel the court to take further action. When a return to the writ is filed indicating compliance with the court's order, there is no need for the court to make a further determination concerning the peremptory writ.

Moreover, the desire of the members of OSOLOA to build homes on their oceanfront lots did not turn into a constitutional right because of the Commission's original decision. (Cal. Const., art. I, § 19.)(10)A California property owner has no vested right in an existing or anticipated land use plan, designation or zoning classification. (*HFH, Ltd. v. Superior Court* (1975) 15 Cal.3d 508, 516 [125 Cal.Rptr. 365, 542 P.2d 237],cert. den., 425 U.S. 904 [47 L.Ed.2d 754, 96 S.Ct. 1495]; *Cormier v. County of San Luis Obispo* (1984) 161 Cal.App.3d 850 [207 Cal.Rptr. 880].) Nor has he a cause of action for unconstitutional taking or damaging of his property due to the adoption of particular conditions for development (*Agins v. City of Tiburon* (1979) 24 Cal.3d 266 [157 Cal.Rptr. 372, 598 P.2d 25],affd. (1980) 447 U.S. 255 [65 L.Ed.2d 106, 100 S.Ct. 2138]) or any portion of ***152** an LUP. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 121 [109 Cal.Rptr. 799, 514 P.2d 111].) An exception may be made for a developer who has acquired a vested interest in completion of a public construction project by a good faith investment of time or money. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785 [132 Cal.Rptr. 386, 553 P.2d 546],cert. den., 429 U.S. 1083 [51 L.Ed.2d 529, 97 S.Ct. 1089]; *Transcentury Properties, Inc. v. State of California* (1974) 41 Cal.App.3d 835 [116 Cal.Rptr. 487].)

(11)The paramount concern of the Commission is the protection of the coastal area for the benefit of the public. The predominant goal of the Coastal Act is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment. The objectives of the Coastal Act are succinctly stated by Justice Mosk in *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 162-163 [188 Cal.Rptr. 104, 655 P.2d 306] as follows:

"Growing public consciousness of the finite quantity

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and fragile nature of the coastal environment led to the 1972 passage of ... an initiative measure entitled the California Coastal Zone Conservation Act (the 1972 Coastal Act). (Former Pub. Resources Code, §§ 27000-27650.) [¶] ... [¶] One of the stated purposes of the 1972 Coastal Act was to increase public access to the coast. The 1972 Coastal Act was an interim measure, destined by its own terms to expire at the beginning of 1977. It authorized the interim coastal commission to prepare a study summarizing the progress of planning in the coastal zone and delineating goals and recommendations for the future of California's shoreline for the guidance of the Legislature. The study, labeled the California Coastal Plan, was completed in December 1975 and submitted to the Legislature, which used it as a guide when drafting the California Coastal Act of 1976 (the Coastal Act). (Pub. Resources Code, § 30000 et seq.) The Coastal Act created the California Coastal Commission (the Commission) to succeed the California Coastal Zone Conservation Commission. One of the objectives of the 1976 version of the Coastal Act was to preserve existing public rights of access to the shoreline and to expand public access for the future."

(8c)We presume that the Commission acted in accordance with the Coastal Act objectives when it set aside its prior decision. Because the Commission was not required under the circumstances of this case to conduct a public hearing to determine its response to the writ, its action did not deprive interveners of procedural due process.

(5b)The Coastal Act prescribes procedures for Commission approval and certification of land use plans submitted by local governments of coastal *153 area communities. (Pub. Resources Code, § 30512, subd. (e).) In this case, Oxnard prepared and submitted an original LUP, which Regional had approved, and which was presented for the first time to the Commission for approval and certification. (Pub. Resources Code, §§ 30511, 30513.)The Commission conditionally certified the LUP and returned it to Oxnard with instructions to make the required provisions for public beach access. (Pub. Resources Code, § 30500, subd. (a).)

Coastal Act section 30512, subdivision (d) states: "If the Commission refuses certification, in whole or in part, it shall send a written explanation for such action to the appropriate local government and regional commission. A revised land use plan may be resubmitted directly to the Commission for certification." The Commission's decision notified Oxnard of the modifications that should be made before the LUP was resubmitted to the Commission for certification. The returns filed by the Commission, however, vacated the conditional certification of the LUP as to Oxnard Shores and thus reopened the entire subject of development on oceanfront property. We conclude from our analysis of the Coastal Act that the public hearing process shall be initiated anew as to Oxnard Shores upon resubmission of the LUP.

The Commission adopts its own rules and regulations to carry out the purposes of the Coastal Act. (Pub. Resources Code, § 30333.)The Coastal Act requires the Commission to obtain the full and adequate participation by all interested groups and the public in its works and programs. (Pub. Resources Code, § 30339, subds. (b), (d).) Among other things, the Coastal Act seeks to insure open consideration and effective public participation in Commission proceedings. (Pub. Resources Code, § 30006.)

A public hearing is required at the time the Commission considers an original submission of a land use plan. Although the Coastal Act is not explicit in this regard, the reasonable inference from the statutory scheme is that the portion of the Oxnard LUP dealing with Oxnard Shores must, upon resubmission, be treated the same as an original submission. It will, therefore, receive a hearing with public participation and the full panoply of procedural safeguards. (Pub. Resources Code, § 30512.)

In view of our determination that the Commission's action in compliance with the alternative writ was a valid exercise of its authority, we do not reach the additional issues relating to the Commission's action or OSOLOA's supplemental complaint.

(12)SOS was improperly ordered to pay costs to OSOLOA, which is an "unincorporated association of residents within Oxnard Shores," and to *154 Oxnard pursuant to section 1032. (*City of Long Beach v. Bozek* (1982) 31 Cal.3d 527 [183 Cal.Rptr. 86, 645 P.2d 137], judg. vacated and cause remanded (1983) 459 U.S. 1095 [74 L.Ed.2d 943, 103 S.Ct. 712], reiterated (1983) 33 Cal.3d 727 [190 Cal.Rptr. 918, 661 P.2d 1072].) This order is stricken.

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(5c)The trial court improperly ordered the returns stricken pursuant to OSOLOA's motion on May 20, 1982, and held the Commission's action was invalid on February 23, 1983. The order and judgment are, and each is, reversed.

II

(13)OSOLOA on cross-appeal contends that the trial court abused its discretion in denying motions to require SOS, Samuel Goldfarb or the Commission to pay its attorneys fees on a "private attorney general" theory. (§ 1021.5.)These motions were denied because the court concluded that an order for payment of fees would unconstitutionally infringe the rights of SOS and its individual members to petition a governmental entity for redress of grievances. (Cal. Const., art. 1, § 3; *City of Long Beach v. Bozek, supra.*, 31 Cal.3d 527, 534.) The court further found that OSOLOA did not vindicate or enforce a right which conferred a significant benefit on the general public, since its members merely desired to construct residences on their oceanfront lots. (*Pacific Legal Foundation v. California Coastal Com., supra.*, 33 Cal.3d 158, 167.) The public's interests were represented by Oxnard and the Commission. (See *Grimsley v. Board of Supervisors* (1985) 163 Cal.App.3d 672, 678 [209 Cal.Rptr. 587] and 169 Cal.App.3d 960 [213 Cal.Rptr. 108]; *People* ex rel. *Deukmejian v. Worldwide Church of God* (1981) 127 Cal.App.3d 547, 556 [178 Cal.Rptr. 913].)

There was no showing that the litigation was necessary or that the lawsuit placed a burden on OSOLOA members out of proportion to their individual interests in the matter. (*County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89 [144 Cal.Rptr. 71]; *Woodland Hills Residents Assn. v. City Council* (1979) 23 Cal.3d 917, 941 [154 Cal.Rptr. 503, 593 P.2d 200]; see also 34 A.L.R.4th 457 §§ 12-14.) Here, the public benefit, if any, was incidental by comparison to the purely private advantage for the members of OSOLOA. (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547 [202 Cal.Rptr. 400]; *Beach Colony II v. California Coastal Com.* (1984) 151 Cal.App.3d 1107 [199 Cal.Rptr. 195] and (1985) 166 Cal.App.3d 106 [212 Cal.Rptr. 485].)

On appeal, OSOLOA's claim for attorneys fees has become moot because OSOLOA is not a successful party as required by section 1021.5. The judgment denying attorneys fees is affirmed. *155

The judgment declaring the Commission's action invalid is reversed and the court is instructed to accept the returns to the alternative writ which were improperly stricken.

The judgment in all other respects is affirmed because the Commission's action in compliance with the alternative writ rendered the SOS petition moot.

Each party to bear its own costs on appeal.

Stone, P. J., and Abbe, J., concurred.
Petitions for a rehearing were denied April 23, 1986, and respondent's petition for review by the Supreme Court was denied June 18, 1986. *156

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Save Oxnard Shores v. California Coastal Com.
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Supreme Court of California.
SINCLAIR PAINT COMPANY, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant;
Department of Health Services et al., Interveners and Appellants.
No. S054115.

June 26, 1997.

After State Board of Equalization denied paint manufacturer's refund claim, manufacturer brought action alleging that fees assessed under Childhood Lead Poisoning Prevention Act violated constitutional provision placing restrictions on state and local taxes. Manufacturer moved for summary judgment. The Superior Court, Sacramento County, No. CV541310,Joe S. Gray, J., granted motion. Board and intervenors appealed. The Court of Appeal, Ct.App. 3 C021559, 52 Cal.Rptr.2d 572, Brown, J., affirmed. Board and intervenors appealed. The Supreme Court, S054115, Chin, J., held that fees assessed under Act were regulatory fees, not unconstitutionally imposed taxes.

Reversed.

West Headnotes

[1] Taxation 371 ⚷2002

371 Taxation
3711 In General
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases
(Formerly 371k1)
Fees assessed under Childhood Lead Poisoning Prevention Act on paint manufacturers and other producers contributing to environmental lead contamination constituted "regulatory fees," not taxes for purposes of constitutional provision placing restrictions on state and local taxes, even though Act did not impose further conditions on manufacturers or producers, where fees were used exclusively to mitigate adverse health effects that manufacturers' products created, fees regulated conduct by deterring manufacture and distribution of dangerous products and payment of fees did not entitle manufacturers to operate free of state and federal regulation. West's Ann.Cal. Const. Art. 13A, § 3; West's Ann.Cal.Health & Safety Code § 105275 et seq.

[2] States 360 ⚷4.4(2)

360 States
3601 Political Status and Relations
360I(A) In General
360k4.4 Powers Reserved to States
360k4.4(2) k. Police Power. Most Cited Cases
Police power may include mandatory remedial measures to mitigate past, present, or future adverse impact of fee payer's operations, at least when measure requires causal connection or nexus between product and its adverse effects.

[3] Taxation 371 ⚷2002

371 Taxation
3711 In General
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases
(Formerly 371k1)
Fact that fees are assessed on manufacturer after, rather than before, product's adverse effects are realized is immaterial to question of whether measure imposing fees imposes valid regulatory fees rather than taxes for purposes of constitutional provision placing restrictions on state and local taxes. West's Ann.Cal. Const. Art. 13A, § 3.

[4] Taxation 371 ⚷2002

371 Taxation
3711 In General
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases
(Formerly 371k1)
Fact that fees raise revenue to defray cost of regulatory program does not automatically render those fees "taxes" for purposes of constitutional provision plac-

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ing restrictions on state and local taxes; if regulation is primary purpose of fee measure, mere fact that measure also generates revenue does not make imposition tax. West's Ann.Cal. Const. Art. 13A, § 3.
***448 *869 **1350 Daniel E. Lungren, Attorney General, Timothy G. Laddish, Assistant Attorney General, Lawrence K. Keethe and William L. Carter, Deputy Attorneys General, for Defendant and Appellant and for Interveners and Appellants.

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CHIN, Justice.

In 1991, by simple majority vote, the Legislature enacted the Childhood Lead Poisoning Prevention Act of 1991 (the Act) (Stats.1991, ch. 799, § 3, amended Stats.1995, ch. 415, § 5; see *870Health & Saf.Code, § 105275 et seq.). [FN1] The Act provided evaluation, screening, and medically necessary follow-up services for children who were deemed potential victims of lead poisoning. The Act's program was entirely supported by "fees" assessed on manufacturers or other persons contributing to environmental lead contamination. (See §§ 105305, 105310.) The question arises whether these fees were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature. (See Cal. Const., art. XIII A, § 3.)

FN1. All further statutory references are to the Health and Safety Code unless otherwise noted.

Contrary to the trial court and Court of Appeal, we conclude that the Act imposed bona fide regulatory fees, not taxes, because the Legislature imposed the fees to mitigate the actual or anticipated adverse effects of the fee payers' operations, and under the Act the amount of the fees must bear a reasonable relationship to those adverse effects. Accordingly, the trial court erred in granting summary judgment to award plaintiff Sinclair Paint Company (Sinclair) a refund of the fees it paid under the Act.

We take the following statement of uncontradicted facts largely from the Court of Appeal opinion in this case. Sinclair paid $97,825.26 in fees for 1991. After the Board of Equalization (the Board) denied Sinclair's administrative claim for refund, Sinclair filed a complaint for refund, alleging the fees assessed under section 105310 were "actually taxes imposed by the California [L]egislature in violation of Proposition 13, Article XIIIA, Section 3 of the California Constitution." The court granted the request of the Department of Health Services (the Department) for leave to intervene. It also granted a similar request to intervene by Ray Cochenour and Cardaryl Commodore, representatives of a class of children suffering from lead poisoning, and People United for a Better Oakland, an unincorporated association ***449 whose members include the Act's intended beneficiaries (collectively Cochenour).

Sinclair moved for summary judgment, claiming the Act was invalid on its face because it was not passed by the requisite two-thirds majority vote of the Legislature. The court agreed the Act imposed an unconstitutional tax and granted Sinclair's motion.

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The Board, the Department, and Cochenour appealed, contending the Act involves a regulatory fee, not a tax. Appellants also argued the court erred in granting Sinclair summary judgment without compelling it to produce discovery and improperly relied on legislative history in determining the Act's constitutionality. The Court of Appeal affirmed the judgment, concluding that the Act was unconstitutional on its face and rejecting appellants' other claims. We reverse the Court of Appeal's judgment.

***871 DISCUSSION**

I. *The Childhood Lead Poisoning Prevention Act of 1991*

When the Legislature enacted the Act in 1991, it explained the Act's background and ****1352** purpose in findings that described the numerous health hazards children face when exposed to lead toxicity and declared four state "goals," namely, (1) evaluating, screening, and providing case management for children at risk of lead poisoning, (2) identifying sources of lead contamination responsible for this poisoning, (3) identifying and utilizing programs providing adequate case management for children found to have lead poisoning, and (4) providing education on lead-poisoning detection and case management to state health care providers. (Stats.1991, ch. 799, § 1.)

The Act directs the Department to adopt regulations establishing a standard of care for evaluation, screening (i.e., measuring lead concentration in blood), and medically necessary follow-up services for children determined to be at risk of lead poisoning. (§ 105285; see § 105280, subd. (e).) If a child is identified as being at risk of lead poisoning, the Department must ensure "appropriate case management," i.e., "health care referrals, environmental assessments, and educational activities" needed to reduce the child's exposure to lead and its consequences. (§§ 105280, subd. (a), 105290.) Additionally, the Act requires the Department to collect data and report on the effectiveness of case management efforts. (§ 105295.)

The Department has "broad regulatory authority to fully implement and effectuate the purposes" of the Act. (§ 105300.) This authority "include[s], but is not limited to," the development of protocols for screening and for appropriate case management; the designation of laboratories qualified to analyze blood specimens for lead concentrations, and the monitoring of those laboratories for accuracy; the development of reporting procedures by laboratories; reimbursement for state-sponsored services related to screening and case management; establishment of lower lead concentrations in whole blood than those specified by the United States Centers for Disease Control for lead poisoning; notification to parents or guardians of the results of blood-lead testing and environmental assessment; and establishment of a periodicity schedule for evaluating childhood lead poisoning. (§ 105300.)

The Act states that its program of evaluation, screening, and follow-up is supported *entirely* by fees collected under the Act: "Notwithstanding the scope of activity mandated by this chapter, in no event shall this chapter be interpreted to require services necessitating expenditures in any fiscal year in excess of the fees, and earnings therefrom, collected pursuant to Section ***872** 105310. This chapter shall be implemented only to the extent fee revenues pursuant to Section 105310 are available for expenditure for purposes of this chapter."(§ 105305.)

Section 105310 imposes the fees at issue here. In pertinent part, that section imposes fees on manufacturers and other persons formerly and/or presently engaged in the stream of commerce of lead or products containing lead, or who are otherwise responsible for identifiable sources of lead, which have significantly contributed and/or currently contribute to environmental lead contamination. (§ 105310, subd. (a).) The Department must determine fees based on the manufacturer's or other person's past and *****450** present responsibility for environmental lead contamination, or its "market share" responsibility for this contamination. (§ 105310, subd. (b).)

Those persons able to show that their industry did not contribute to environmental lead contamination, or that their lead-containing product does not and did not "result in quantifiably persistent environmental lead contamination," are exempt from paying the fees. (§ 105310, subd. (d).)

The Legislature has authorized the Department to adopt regulations establishing the specific fees to be assessed the parties identified in section 105310, subdivision (a). (§ 105310, subd. (b).) The formula for calculating fees attributable to leaded architec-

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tural coatings, including ordinary house paint, is set forth in California Code of Regulations, title 17, section 33020.

II. *Proposition 13*

In June 1978, California voters added article XIII A, commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (article XIII A), to the state Constitution. **1353 The initiative's purpose was to assure effective real property tax relief by means of an "interlocking 'package' " consisting of a real property tax rate limitation (art. XIII A, § 1), a real property assessment limitation (art. XIII A, § 2), a restriction on state taxes (art. XIII A, § 3), and a restriction on local taxes (art. XIII A, § 4). (*Amador Valley Joint Union High Sch. Dist.* v. *State Bd. of Equalization* (1978) 22 Cal.3d 208, 231, 149 Cal.Rptr. 239, 583 P.2d 1281 (*Amador Valley*); see also *County of Los Angeles* v. *Sasaki* (1994) 23 Cal.App.4th 1442, 1451, 29 Cal.Rptr.2d 103.)

Section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: "From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods *873 of computation must be imposed by an Act passed by not less than two-thirds of all members ... of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed."

Section 4 of article XIII A imposes similar restrictions on local entities: "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose *special taxes* on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district." (Italics added.)

As we explained in *Amador Valley*, "... since any tax savings resulting from the operation of sections 1 and 2 [of article XIII A] could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes." (*Amador Valley*, *supra*, 22 Cal.3d at p. 231, 149 Cal.Rptr. 239, 583 P.2d 1281.)

III. *Taxes or Fees?*

Are the "fees" section 105310 imposes in legal effect "taxes enacted for the purpose of increasing revenues" under article XIII A, section 3, and therefore subject to a two-thirds majority vote? Although we have found no cases that interpret the language of section 3, several California appellate decisions have considered whether various fees are really "special taxes" under article XIII A, section 4. (See also *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 57, 184 Cal.Rptr. 713, 648 P.2d 935 ["special taxes" are taxes levied for a specific purpose rather than for general governmental purposes]; Gov.Code, § 50076 [excluding from the term "special tax" in article XIII A, section 4, "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes"].) Because of the close, "interlocking" relationship between the various sections of article XIII A (see *Amador Valley*, *supra*, 22 Cal.3d at p. 231, 149 Cal.Rptr. 239, 583 P.2d 1281), we believe these "special tax" cases may be helpful, though not conclusive, in deciding the case before us. The reasons why particular fees are, or are not, "special taxes" under article XIII A, ***451 section 4, may apply equally to section 3 cases.[FN2]

FN2. We are not here concerned with issues arising under constitutional amendments effected by a recent initiative measure (Proposition 218) adopted at the November 5, 1996, General Election. That measure contains new restrictions on local agencies' power to impose fees and assessments.

We first consider certain general guidelines used in determining whether "taxes" are involved in particular situations. The cases agree that *874 whether impositions are "taxes" or "fees" is a question of law for the appellate courts to decide on independent review of the facts. (*Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, 1216, 265 Cal.Rptr. 347; *California Bldg. Industry Assn. v. Governing Bd.* (1988) 206 Cal.App.3d 212, 234, 253 Cal.Rptr. 497; *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1504, 246 Cal.Rptr. 21.)

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The cases recognize that "tax" has no fixed meaning, and that the distinction between **1354 taxes and fees is frequently "blurred," taking on different meanings in different contexts. (*Russ Bldg. Partnership v. City and County of San Francisco, supra,* 199 Cal.App.3d at p. 1504, 246 Cal.Rptr. 21; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892, 905, 223 Cal.Rptr. 379; *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656, 660, 166 Cal.Rptr. 674; *County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 983-984, 156 Cal.Rptr. 777.) In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 240, 1 Cal.Rptr.2d 818; *County of Fresno v. Malmstrom, supra,* 94 Cal.App.3d at p. 983, 156 Cal.Rptr. 777 ["Taxes are raised for the general revenue of the governmental entity to pay for a variety of public services."].) Most taxes are compulsory rather than imposed in response to a voluntary decision to develop or to seek other government benefits or privileges. (*Shapell Industries, Inc. v. Governing Board, supra,* 1 Cal.App.4th at p. 240, 1 Cal.Rptr.2d 818; *Russ Bldg. Partnership v. City and County of San Francisco, supra,* 199 Cal.App.3d at pp. 1505-1506, 246 Cal.Rptr. 21; see *Terminal Plaza Corp. v. City and County of San Francisco, supra,* 177 Cal.App.3d at p. 907, 223 Cal.Rptr. 379.) But compulsory fees may be deemed legitimate fees rather than taxes. (See *Kern County Farm Bureau v. County of Kern* (1993) 19 Cal.App.4th 1416, 1424, 23 Cal.Rptr.2d 910.)

The "special tax" cases have involved three general categories of fees or assessments: (1) special assessments, based on the value of benefits conferred on property; (2) development fees, exacted in return for permits or other government privileges; and (3) regulatory fees, imposed under the police power. Although these three categories may overlap in a particular case, we consider them separately.

The cases uniformly hold that *special assessments* on property or similar business charges, in amounts reasonably reflecting the value of the benefits conferred by improvements, are not "special taxes" under article XIII A, section 4. (*Evans v. City of San Jose* (1992) 3 Cal.App.4th 728, 735-739, 4 Cal.Rptr.2d 601 [assessments on businesses for downtown promotion]; *875*J.W. Jones Companies v. City of San Diego* (1984) 157 Cal.App.3d 745, 750-758, 203 Cal.Rptr. 580 [facilities benefit assessments]; *City Council v. South* (1983) 146 Cal.App.3d 320, 332, 194 Cal.Rptr. 110 [special assessments on real property]; *County of Fresno v. Malmstrom, supra,* 94 Cal.App.3d at pp. 984-985, 156 Cal.Rptr. 777 [special assessments for construction of streets].)

Similarly, *development fees* exacted in return for building permits or other governmental privileges are not special taxes if the amount of the fees bears a reasonable relation to the development's probable costs to the community and benefits to the developer. (*Shapell Industries, Inc. v. Governing Board, supra,* 1 Cal.App.4th at p. 240, 1 Cal.Rptr.2d 818 [school facilities fees]; *Bixel Associates v. City of Los Angeles, supra,* 216 Cal.App.3d at pp. 1211, 1218-1219, 265 Cal.Rptr. 347 [fire hydrant fees]; ***452*California Bldg. Industry Assn. v. Governing Bd., supra,* 206 Cal.App.3d at pp. 235-237, 253 Cal.Rptr. 497 [school facilities development fees]; *Russ Bldg. Partnership v. City and County of San Francisco, supra,* 199 Cal.App.3d at pp. 1504-1506, 246 Cal.Rptr. 21 [transit impact fees]; *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 235-238, 211 Cal.Rptr. 567 [new facilities water hookup fees]; *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317, 325-328, 170 Cal.Rptr. 685 [fees as precondition for building permits]; *Mills v. County of Trinity, supra,* 108 Cal.App.3d at pp. 661-663, 166 Cal.Rptr. 674 [fees for processing subdivision, zoning, and land use applications]; see *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 898, 50 Cal.Rptr.2d 242, 911 P.2d 429 (conc. opn. of Mosk, J.).)

According to Sinclair, because the present fees have been imposed solely to defray the cost of the state's program of evaluation, screening, and follow-up services for children determined to be at risk for lead poisoning, they are not analogous to either special assessments or development fees, for they neither reimburse the state for special benefits **1355 conferred on manufacturers of lead-based products nor compensate the state for governmental privileges granted to those manufacturers. As the Court of Appeal observed, the fees challenged here "do not constitute payment for a government benefit or service. The program described in the Act bears no resemblance to regulatory schemes involving special assessments, developer fees, or efforts to recoup the

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cost of processing land use applications where the benefit analysis is typically applied. [Citations.] The face of the Act makes clear the funds collected pursuant to section 105310 are used to benefit children exposed to lead, not Sinclair or other manufacturers in the stream of commerce for products containing lead."

[1] Appellants argue, however, that the challenged fees fall squarely within a third recognized category not dependent on government conferred benefits or privileges, namely, *regulatory fees* imposed under the police power, rather than the taxing power. We agree.

***876** We have acknowledged that the term "special taxes" in article XIII A, section 4, " 'does not embrace fees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.' [Citations.]" (*Pennell v. City of San Jose* (1986) 42 Cal.3d 365, 375, 228 Cal.Rptr. 726, 721 P.2d 1111 (*Pennell*), affd. on other grounds *sub nom. Pennell v. San Jose* (1988) 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1, quoting from *Mills v. County of Trinity, supra,* 108 Cal.App.3d at pp. 659-660, 166 Cal.Rptr. 674; see *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 760-762, 53 Cal.Rptr.2d 120 [upholding regulatory fees charged to alcoholic beverage sale licensees to support pilot project to address public nuisances associated with those sales]; *Kern County Farm Bureau v. County of Kern, supra,* 19 Cal.App.4th at pp. 1422-1425, 23 Cal.Rptr.2d 910 [upholding landfill assessment based on land use to reduce illegal waste disposal]; *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, 280-285, 17 Cal.Rptr.2d 845 [upholding waste disposal surcharge imposed on waste haulers]; *Evans v. City of San Jose, supra,* 3 Cal.App.4th at p. 737, 4 Cal.Rptr.2d 601; *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145-1149, 250 Cal.Rptr. 420 (*SDG & E*) [upholding emissions-based formula for recovering direct and indirect costs of pollution emission permit programs]; *United Business Com. v. City of San Diego* (1979) 91 Cal.App.3d 156, 166-168, 154 Cal.Rptr. 263 (*United Business*) [upholding fees for inspecting and inventorying on-premises advertising signs].)

Pennell upheld rental unit fees that a city imposed under its rent control ordinance to assure it recovered the actual costs of providing and administering a rental dispute hearing process. (*Pennell, supra,* 42 Cal.3d at p. 375, 228 Cal.Rptr. 726, 721 P.2d 1111.) We explained in *Pennell* that regulatory fees in amounts necessary to carry out the regulation's purpose are valid despite the absence of any perceived "benefit" accruing to the fee payers. (*Id.* at p. 375, fn. 11, 228 Cal.Rptr. 726, 721 P.2d 1111; see also *****453***SDG & E, supra,* 203 Cal.App.3d at p. 1146, fn. 18, 250 Cal.Rptr. 420; *Mills v. County of Trinity, supra,* 108 Cal.App.3d at p. 661, 166 Cal.Rptr. 674.)

We observe that Sinclair, in moving for summary judgment, did not contend that the fees exceed in amount the reasonable cost of providing the protective services for which the fees are charged, or that the fees were levied for any *unrelated* revenue purposes. (See *Pennell, supra,* 42 Cal.3d at p. 375, 228 Cal.Rptr. 726, 721 P.2d 1111.) Moreover, Sinclair has not yet sought to establish that the amount of the fees bears no reasonable relationship to the social or economic "burdens" that Sinclair's operations generated. (See *SDG & E, supra,* 203 Cal.App.3d at p. 1146, 250 Cal.Rptr. 420; see also § 105310, subds. (b), (d); ***877***Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 421, 194 Cal.Rptr. 357, 668 P.2d 664 [persons challenging fees have burden of establishing invalidity].) Sinclair does contend, however, that the Act is not *regulatory* in nature, being primarily aimed at producing revenue.

****1356** According to Sinclair, the challenged fees were in effect "taxes" because the compulsory revenue measure that imposed them was not part of a *regulatory* effort. The Court of Appeal agreed, relying on prior cases indicating that where payments are exacted solely for *revenue* purposes and give the right to carry on the business with no further conditions, they are taxes. (E.g., *United Business, supra,* 91 Cal.App.3d at p. 165, 154 Cal.Rptr. 263.) The Court of Appeal held that "Placing the factors distinguishing taxes and fees along a continuum, we conclude the monies paid by Sinclair pursuant to the Act are more like taxes than fees. [¶] *There is nothing on the face of the Act to show the fees collected are used to regulate Sinclair.* Apart from mere calculation of the payment, the Department's regulatory authority involves implementation of the program to evaluate,

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screen, and provide followup services to children at risk for lead poisoning. The Act does not require Sinclair to comply with any other conditions; it merely requires Sinclair to pay what the Department determines to be its share of the program cost."

Contrary to the Court of Appeal, we believe that section 105310 imposes bona fide regulatory fees. It requires manufacturers and other persons whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating the adverse health effects their products created in the community. Viewed as a "mitigating effects" measure, it is comparable in character to similar police power measures imposing fees to defray the actual or anticipated adverse effects of various business operations.

From the viewpoint of general police power authority, we see no reason why statutes or ordinances calling on polluters or producers of contaminating products to help in mitigation or cleanup efforts should be deemed less "regulatory" in nature than the initial permit or licensing programs that allowed them to operate. Moreover, imposition of "mitigating effects" fees in a substantial amount (Sinclair allegedly paid $97,825.26 in 1991) also "regulates" future conduct by deterring further manufacture, distribution, or sale of dangerous products, and by stimulating research and development efforts to produce safer or alternative products. (Cf. *SDG & E, supra,* 203 Cal.App.3d at p. 1147, fn. 20, 250 Cal.Rptr. 420 [emissions-based fees provide incentive to use nonpollutant fuels].)

[2] Sinclair disputes the state's authority to impose industry-wide "remediation fees" to compensate for the adverse societal effects generated by an industry's products. To the contrary, the case law previously cited or discussed clearly indicates that the police power is broad enough to include ***878** mandatory remedial measures to mitigate the *past, present, or future* adverse impact of the fee payer's operations, at least where, as here, the measure requires a causal connection or nexus between the product and its adverse effects. (See *City of Oakland v. Superior Court, supra,* 45 Cal.App.4th at pp. 760-762, 53 Cal.Rptr.2d 120; *Kern County Farm Bureau v. County of Kern, supra,* 19 Cal.App.4th at pp. 1422-1425, 23 Cal.Rptr.2d 910; *City of Dublin v. County of Alameda, supra,* 14 Cal.App.4th at pp. 284-285, 17 Cal.Rptr.2d 845; *SDG & E, supra,* 203 Cal.App.3d at pp. 1146-1149, 250 Cal.Rptr. 420; *****454** *United Business, supra,* 91 Cal.App.3d at p. 168, 154 Cal.Rptr. 263; *Russ Bldg. Partnership v. City and County of San Francisco, supra,* 199 Cal.App.3d at pp. 1504-1506, 246 Cal.Rptr. 21 [fees to pay for increased transit costs]; *J.W. Jones Companies v. City of San Diego, supra,* 157 Cal.App.3d at pp. 755, 758, 203 Cal.Rptr. 580 [fees to defray costs of additional public facilities]; *Trent Meredith, Inc. v. City of Oxnard, supra,* 114 Cal.App.3d at p. 325, 170 Cal.Rptr. 685 [fees to reduce growth impact of new subdivision]; see also *Western Indemnity Co.v. Pillsbury* (1915) 170 Cal. 686, 694, 151 P. 398 [police power authorizes legislation necessary or proper for protection of legitimate public interest]; *County of Plumas v. Wheeler* (1906) 149 Cal. 758, 761-764, 87 P. 909 [broad legislative discretion to regulate business, including license fees or charges]; 8 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 784, p. 311 ["police power is simply the power of sovereignty or power to govern-the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare"]; see generally 6A McQuillan, The Law of Municipal ****1357** Corporations (3d rev. ed. 1997) Municipal Police Power and Ordinances, § 24.01 et seq., p. 7 et seq.)

SDG & E involved regulatory fees comparable in some respects to the fees challenged here. (*SDG & E, supra,* 203 Cal.App.3d 1132, 250 Cal.Rptr. 420.) There, 1982 legislation (see § 42311) empowered local air pollution control districts to apportion the costs of their permit programs among all monitored polluters according to a formula based on the amount of emissions they discharged. (See *SDG & E, supra,* 203 Cal.App.3d at p. 1135, 250 Cal.Rptr. 420.) The *SDG & E*court observed that "to show a fee is a regulatory fee and not a special tax, the government should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*Id.* at p. 1146, 250 Cal.Rptr. 420, fn. omitted; see *Beaumont Investors v. Beaumont-Cherry Valley Water Dist., supra,* 165 Cal.App.3d at pp. 234-235, 211 Cal.Rptr. 567.)

In *SDG & E,* the amount of the regulatory fees was limited to the reasonable costs of each district's pro-

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gram, and the allocation of costs based on emissions "fairly relates to the permit holder's burden on the district's programs." (*SDG & E, supra,* 203 Cal.App.3d at p. 1146, 250 Cal.Rptr. 420.) Accordingly, the ***879** court concluded that the fees were not "special taxes" under article XIII A, section 4. (*SDG & E, supra,* 203 Cal.App.3d at p. 1148, 250 Cal.Rptr. 420.)

As the court observed in *SDG & E,* "Proposition 13's goal of providing effective property tax relief is not subverted by the increase in fees or the emissions-based apportionment formula. A reasonable way to achieve Proposition 13's goal of tax relief is to shift the costs of controlling stationary sources of pollution from the tax-paying public to the pollution-causing industries themselves...." (*SDG & E, supra,* 203 Cal.App.3d at p. 1148, 250 Cal.Rptr. 420.) In our view, the shifting of costs of providing evaluation, screening, and medically necessary follow-up services for potential child victims of lead poisoning from the public to those persons deemed responsible for that poisoning is likewise a reasonable police power decision. (See also *Mills v. County of Trinity, supra,* 108 Cal.App.3d at p. 663, 166 Cal.Rptr. 674; *County of Fresno v. Malmstrom, supra,* 94 Cal.App.3d at p. 985, 156 Cal.Rptr. 777 [special assessments have no impact on government spending].)

[3] The fact that the challenged fees were charged after, rather than before, the product's adverse effects were realized is immaterial to the question whether the measure imposes valid regulatory fees rather than taxes. *City of Oakland v. Superior Court* seems close on point. There, the court upheld city fees imposed on retailers of alcoholic beverages to defray the cost of providing and administering hearings into nuisance problems associated with the prior sale of those beverages. The court first observed that "If a business imposes an unusual burden on city services, a municipality may properly impose fees pursuant to its police *****455** powers" to assure that the persons responsible "pay their fair share of the cost of government." (*City of Oakland v. Superior Court, supra,* 45 Cal.App.4th at p. 761, 53 Cal.Rptr.2d 120.) The court concluded that "The ordinance's primary purpose is regulatory-to create an environment in which nuisance and criminal activities associated with alcoholic beverage retail establishments may be reduced or eliminated. Thus, the fee imposed ... is not a tax imposed to pay general revenue to the local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the hearing process set out in the ordinance. [Citation.]" (*Id.* at p. 762, 53 Cal.Rptr.2d 120.)

The court in *United Business* applied the "regulation/revenue" distinction to conclude that sign inventory fees adopted to recover the city's cost of inventorying signs and bringing them into conformance with law were regulatory fees, not revenue-raising taxes. The court observed that, under the police power, municipalities may impose fees for the purpose of legitimate regulation, and not mere revenue raising, if the fees do not ****1358** exceed the reasonably necessary expense of the regulatory effort. ***880**(*United Business, supra,* 91 Cal.App.3d at p. 165, 154 Cal.Rptr. 263, and authorities cited.) Quoting with approval from an earlier decision, the court noted that, if revenue is the primary purpose, and regulation is merely incidental, the imposition is a tax, but if regulation is the primary purpose, the mere fact that revenue is also obtained does not make the imposition a tax. (*Ibid.*) Moreover, according to *United Business,* if a fee is exacted for revenue purposes, and its payment gives the right to carry on business without any further conditions, it is a tax. (*Ibid.*; see also *City of Oakland v. Superior Court, supra,* 45 Cal.App.4th at p. 761, 53 Cal.Rptr.2d 120; *County of Plumas v. Wheeler, supra,* 149 Cal. at p. 763, 87 P. 909 [fee in amount greater than reasonably needed to regulate business "cannot stand as an exercise of the police power"]; *Mills v. County of Trinity, supra,* 108 Cal.App.3d at pp. 659-660, 166 Cal.Rptr. 674; *City & County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445, 450-451, 189 P.2d 32.)

[4] The Court of Appeal, citing *United Business,* stressed that the challenged fees were exacted solely for revenue purposes, and their payment gave Sinclair and others the right to carry on the business without any further conditions. We see two flaws in that analysis. First, *all* regulatory fees are necessarily aimed at raising "revenue" to defray the cost of the regulatory program in question, but that fact does not automatically render those fees "taxes." As stated in *United Business,* if regulation is the primary purpose of the fee measure, the mere fact that the measure also generates revenue does not make the imposition a tax. (*United Business, supra,* 91 Cal.App.3d at p. 165, 154 Cal.Rptr. 263; see also *Mills v. County of Trinity, supra,* 108 Cal.App.3d at p. 660, 166

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Cal.Rptr. 674 [rejecting broad definition of "tax" as including all fees and charges that exact money for public purposes].)

Second, we find inconclusive the fact that the Act permits Sinclair and other producers to carry on their operations without any further conditions *specified in the Act itself.* As we have indicated, fees can "regulate" business entities without directly licensing them by mitigating their operations' adverse effects. Moreover, as appellants observe, the Act is part of a broader regulatory scheme by which, under various state and federal statutes, the state regulates Sinclair and other manufacturers in the stream of commerce for products containing lead. That being so, Sinclair's payment of the challenged fees did not confer the right to carry on business without any further conditions or regulation.

The Court of Appeal rejected appellants' argument invoking other state and federal regulations: "First, there is nothing on the face of the Act or the accompanying statement of legislative purpose which links the Act's programs for children at risk for lead poisoning with the cited state or federal statutes regulating lead. Second, none of the fees collected pursuant to ***881** section 105310 are used to fund those regulatory efforts." However, it is undisputed that Sinclair and other manufacturers of lead-based products remain subject to government regulation, that payment of the challenged fees therefore does not entitle those manufacturers to *****456** operate free of regulation, and that the state must use the funds it collects under section 105310 *exclusively* for mitigating the adverse effects of lead poisoning of children, and not for general revenue purposes. (§ 105310, subd. (f).)

Under existing case law, we can reasonably characterize the challenged fees as *regulatory fees* rather than as taxes. Accordingly, we conclude the trial court erred in granting Sinclair summary judgment on the constitutional issues. Of course, Sinclair should be permitted to attempt to prove at trial that the amount of fees assessed and paid exceeded the reasonable cost of providing the protective services for which the fees were charged, or that the fees were levied for unrelated revenue purposes. (See *Pennell, supra,* 42 Cal.3d at p. 375, 228 Cal.Rptr. 726, 721 P.2d 1111.) Additionally, Sinclair will have the opportunity to try to show that no clear nexus exists between its products and childhood lead poisoning, or that the amount of the fees bore no reasonable relationship to the social or economic "burdens" its operations generated. (*SDG & E, supra,* 203 Cal.App.3d. at p. 1146, 250 Cal.Rptr. 420; see also § 105310, subds. (b), (d).)

DISPOSITION

The judgment of the Court of Appeal, affirming the trial court's grant of summary judgment in Sinclair's favor, is reversed.

GEORGE, C.J., and MOSK, KENNARD, BAXTER and WERDEGAR, JJ., and ARMSTRONG[FN*] , J. Assigned, concur.

FN* Associate Justice of the Court of Appeal, Second District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Cal.,1997.
Sinclair Paint Co. v. State Bd. of Equalization
15 Cal.4th 866, 937 P.2d 1350, 64 Cal.Rptr.2d 447, 97 Cal. Daily Op. Serv. 5059, 97 Daily Journal D.A.R. 8242

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C

Effective: January 1, 2003

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 7. Planning and Land Use (Refs & Annos)
Division 1. Planning and Zoning (Refs & Annos)
Chapter 7. Fees for Specific Purposes (Refs & Annos)
→ § 66014. Local agency zoning and permit fees; costs reasonably necessary to prepare and revise plans and policies

(a) Notwithstanding any other provision of law, when a local agency charges fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 or under any other authority; those fees may not exceed the estimated reasonable cost of providing the service for which the fee is charged, unless a question regarding the amount of the fee charged in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) The fees charged pursuant to subdivision (a) may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion authorizing the charge of a fee subject to this section shall be brought pursuant to Section 66022.

CREDIT(S)

(Added by Stats.1990, c. 1572 (A.B.3228), § 19. Amended by Stats.2002, c. 963 (A.B.2936), § 1.)

CROSS REFERENCES

Approval of development permits, written agreement to expedite public agency actions, temporary services, contracts, or employees, see Government Code § 65950.5.

LAW REVIEW AND JOURNAL COMMENTARIES

Addressing California's uncertain water future by coordinating long-term land use and water planning: Is a water element in the general plan the next step? Ryan Waterman, 31 Ecology L.Q. 117 (2004).

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Am. Jur. 2d Municipal Corps., Counties, etc. § 785, Standing.

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CA Jur. 3d Zoning and Other Land Controls § 119, Mitigation or Development Fees.

CA Jur. 3d Zoning and Other Land Controls § 121, Mitigation or Development Fees; Notice and Formality of Action.

CA Jur. 3d Zoning and Other Land Controls § 122, Mitigation or Development Fees; Protesting Fee on Particular Development.

CA Jur. 3d Zoning and Other Land Controls § 123, Mitigation or Development Fees; Protesting Newly Enacted Fees.

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CA Jur. 3d Zoning and Other Land Controls § 263, Judicial Actions to Challenge Water or Sewer Connection and Local Agency Zoning and Permit Fees.

CA Jur. 3d Zoning and Other Land Controls § 371, Time Limitation.

Treatises and Practice Aids

Cal. Common Interest Devs.: Law and Practice § 14:6, License or Excise Tax on New Construction.

Cal. Common Interest Devs.: Law and Practice § 14:25, Building Permit Fees.

Miller and Starr California Real Estate § 25:45, Payment of Fees in Lieu of Dedication or for Construction of Public Improvements.

14 NO. 1 Miller & Starr, California Real Estate Newsalert 14, Subdivisions.

Rathkopf's the Law of Zoning and Planning § 69:21, General Validity.

12 Witkin, California Summary 10th Real Property § 818, (S 818) Imposition of Development Fees.

NOTES OF DECISIONS

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Construction and application 1
Impairment of contract 3
Limitation of actions 2

1. Construction and application

Building permit and plan review fees real estate developer paid to city were simply fees to defray administrative and enforcement costs of local regulatory program, and thus were not "development project fees" subject to Mitigation Fee Act's individual refund remedy and limitations period for alleged overcharges. Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.Rptr.3d 149, 37 Cal.4th 685, 124 P.3d 719, on remand 2006 WL 574330, unpublished. Zoning And Planning 382.4; Zoning And Planning 584.1

If a local agency charges building permit and similar fees based upon the Uniform Building Code Valuation Tables without supporting evidence regarding the relationship between the fees and the services rendered, such fees are invalid to the extent they exceed the reasonable costs of providing the services rendered unless the amounts of the fees are approved by the electorate. 76 Op.Atty.Gen. 4, 3-9-93.

2. Limitation of actions

Under California law, statute of limitations period of 120 days, for challenge to ordinance adopting new fee or service charge, applied to claim that street damage restoration fee, imposed upon cable television provider, violated statute governing local agency zoning and permit fees. Pacific Gas and Elec. Co. v. City of Union City, N.D.Cal.2002, 220 F.Supp.2d 1070. Municipal Corporations 1025

3. Impairment of contract

Municipalities seeking to avoid liability under Contract Clause failed to show that street damages restoration fees, found to substantially impair franchise agreements between municipalities and suppliers of electricity, gas, and cable television, were reasonable and necessary to fulfill important public purpose; there were many other ways that municipalities could achieve stated goal of ordinances imposing fees, which was to finance unanticipated costs of street restoration following excavation. Pacific Gas and Elec. Co. v. City of Union City, N.D.Cal.2002, 220 F.Supp.2d 1070. Constitutional Law 2715; Municipal Corporations 682(4)

West's Ann. Cal. Gov. Code § 66014, CA GOVT § 66014

Current with urgency legislation through Ch. 1 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 25 of the 2009-2010 3rd Ex.Sess., and Props. 1A to 1F on the 5/19/2009 ballot and propositions on the 6/8/2010 ballot received as of 3/15/2009

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Effective: January 1, 2007

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 7. Planning and Land Use (Refs & Annos)
Division 1. Planning and Zoning (Refs & Annos)
Chapter 8. Procedures for Adopting Various Fees (Refs & Annos)
§ 66016. Local agency fees; new fees and increases; procedures

(a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 10 days prior to the meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 65104, 65456, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

CREDIT(S)

(Added by Stats.1990, c. 1572 (A.B.3228), § 20. Amended by Stats.1992, c. 487 (A.B.2567), § 1; Stats.1995, c. 657 (S.B.647), § 1; Stats.1995, c. 686 (S.B.660), § 6.5, eff. Oct. 10, 1995, operative Jan. 1, 1996; Stats.2005, c. 595

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(S.B.253), § 7; Stats.2006, c. 643 (S.B.1196), § 19.)

HISTORICAL AND STATUTORY NOTES

2009 Electronic Update

2006 Legislation

Legislative findings and declarations and reimbursement provisions relating to Stats.2006, c. 643 (S.B.1196), see Historical and Statutory Notes under Government Code § 8855.

1997 Main Volume

Under the provisions of § 8.5 of Stats.1995, c. 686, the 1995 amendments of this section by c. 657 (S.B.647) and c. 686 (S.B.660) were given effect and incorporated in the form set forth in § 6.5 of c. 686. An amendment of this section by § 6 of Stats.1995, c. 686, failed to become operative under the provisions of § 8.5 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Derivation: Former § 54992, added by Stats.1981, c. 914, § 2, amended by Stats.1982, c. 289, § 3.

LAW REVIEW AND JOURNAL COMMENTARIES

Regulating land use in a constitutional shadow: The institutional contexts of exactions, Mark Fenster, 58 Hastings L.J. 729 (2007).

Review of Selected 1995 California Legislation. 27 Pac.L.J. 349 (1996).

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Am. Jur. 2d Municipal Corps., Counties, etc. § 785, Standing.

CA Jur. 3d Building Regulations and Development § 51, Local Agency Fees.

CA Jur. 3d Building Regulations and Development § 54, Refund of Fees.

CA Jur. 3d Building Regulations and Development § 65, Establishment of or Increase in Fee.

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CA Jur. 3d Municipalities § 346, Publication of Ordinances or Resolutions.

CA Jur. 3d Pollution and Conservation Laws § 474, Generally; Integrated Waste Management Plans.

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CA Jur. 3d Zoning and Other Land Controls § 54, Amendment in Public Interest; Frequency of Amendment.

CA Jur. 3d Zoning and Other Land Controls § 55, Requested Hearing on General Plan Amendment; Fees.

CA Jur. 3d Zoning and Other Land Controls § 66, Administration of Specific Plans; Capital Improvement Programs.

CA Jur. 3d Zoning and Other Land Controls § 121, Mitigation or Development Fees; Notice and Formality of Action.

CA Jur. 3d Zoning and Other Land Controls § 122, Mitigation or Development Fees; Protesting Fee on Particular Development.

CA Jur. 3d Zoning and Other Land Controls § 123, Mitigation or Development Fees; Protesting Newly Enacted Fees.

CA Jur. 3d Zoning and Other Land Controls § 255, Fees for Water or Sewer Connections.

CA Jur. 3d Zoning and Other Land Controls § 257, New Fees and Increases.

CA Jur. 3d Zoning and Other Land Controls § 260, Protest Procedures--Time Limits for Protest.

CA Jur. 3d Zoning and Other Land Controls § 263, Judicial Actions to Challenge Water or Sewer Connection and Local Agency Zoning and Permit Fees.

CA Jur. 3d Zoning and Other Land Controls § 371, Time Limitation.

Forms

West's California Code Forms, Government § 65354.5 Form 1, Notice of Right to Request for Hearing by Legislative Body.

Treatises and Practice Aids

Miller and Starr California Real Estate § 25:45, Payment of Fees in Lieu of Dedication or for Construction of Public Improvements.

14 NO. 1 Miller & Starr, California Real Estate Newsalert 14, Subdivisions.

16 NO. 5 Miller & Starr, California Real Estate Newsalert 26. State Board of Equalization Issues Comprehensive Summary and Qs and as for Transfers of Base Year Values of Principal Residences State Board of Equalization Issues Comprehensive Summary and Qs and as for Transfers of...

17 NO. 6 Miller & Starr, California Real Estate Newsalert 15, Court Rules Public Agency May Comply With Mitigation Fee Act by Incurring Expenses Having the Effect of Reducing Future Fees.

Rathkopf's the Law of Zoning and Planning § 69:21, General Validity.

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8 Witkin Cal. Proc. 5th Extraordinary Writs § 122, Remedy is Normally Adequate.

12 Witkin, California Summary 10th Real Property § 818, (S 818) Imposition of Development Fees.

9 Witkin, California Summary 10th Taxation § 137, (S 137) Rule.

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1/2. Construction and application

Mitigation Fee Act provision, requiring public entity to use revenues from fees collected in excess of actual cost of services to reduce such fees, allowed county that collected excess building inspection and construction plan fees to meet its duty by not only reducing its fees, but also by spending surplus on fee-related expenses. County of Orange v. Barratt American, Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 542, 150 Cal.App.4th 420, rehearing denied , review denied. Municipal Corporations ⚷883

1. Construction with other laws

City was not statutorily required to reduce building permit fees, rather than transferring building inspection fund revenues to planning and fire departments; although statute required any revenues in excess of actual cost to be used to reduce the fee or service charge creating the excess, city, in exercising its legislative discretion, determined the transfers were necessary to cover actual costs incurred by the planning and fire departments in connection with the city's building permit activities--activities related to the purposes for which the building permit fees were assessed. Collier v. City and County of San Francisco (App. 1 Dist. 2007) 60 Cal.Rptr.3d 698, 151 Cal.App.4th 1326, review denied. Health ⚷401

Statutory requirements for municipality when enacting a regulatory fee did not apply to city's decision to transfer to the planning and fire departments building inspection fund revenues from building permits. Collier v. City and County of San Francisco (App. 1 Dist. 2007) 60 Cal.Rptr.3d 698, 151 Cal.App.4th 1326, review denied. Health ⚷401

Even if excessive, city's building permit and plan review fees were not "special taxes" subject to penalty or offset remedies under Proposition 62; sole remedy for excessive fee was contained in Mitigation Fee Act. Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.Rptr.3d 149, 37 Cal.4th 685, 124 P.3d 719, on remand 2006 WL 574330, unpublished. Taxation ⚷2002; Zoning And Planning ⚷382.4

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Statute does not provide authority for public entity already bound by statutory requirements to adopt fee increases by ordinance, to ignore such limitations and adopt increases by resolution. Cavalier Acres, Inc. v. San Simeon Acres Community Services Dist. (App. 2 Dist. 1984) 199 Cal.Rptr. 4, 151 Cal.App.3d 798.

1.5. Purpose

Purpose of Mitigation Fee Act provision on local agency fees was to prevent a local agency from imposing fees that were unrelated to the services provided. County of Orange v. Barratt American, Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 542, 150 Cal.App.4th 420, rehearing denied , review denied. Municipal Corporations ⚷880

1.7. Separation of powers

Judicial inquiry into "reasonableness and necessity" of county's expenditures of excessive fees collected did not violate separation of powers doctrine. County of Orange v. Barratt American, Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 542, 150 Cal.App.4th 420, rehearing denied , review denied. Counties ⚷158

2. Data availability

School district in proceeding to impose school facilities fees on developers did not violate statute governing procedure to levy a new fee on ground that district did not physically provide developers with all documents justifying imposition of fees; statute only required district to make relevant data "available" for public inspection and to notify requesting parties, like developers, of that availability; thus, fact that materials were not produced at hearings or mailed to developers did not violate statute, where materials were at all times available to the public. Garrick Development Co. v. Hayward Unified School Dist. (App. 1 Dist. 1992) 4 Cal.Rptr.2d 897, 3 Cal.App.4th 320, review denied. Zoning And Planning ⚷382.4

3. Adoption of ordinances

Water district could amend ordinance establishing new connection fee by resolution under authority of Mitigation Fee Act, which allowed such action by ordinance or resolution; district was not subject to statute requiring sewage system actions to be enacted by ordinance. Richmond v. Shasta Community Services Dist. (2004) 9 Cal.Rptr.3d 121, 32 Cal.4th 409, 83 P.3d 518. Waters And Water Courses ⚷203(1)

4. Development project fees

Building permit and plan review fees real estate developer paid to city were simply fees to defray administrative and enforcement costs of local regulatory program, and thus were not "development project fees" subject to Mitigation Fee Act's individual refund remedy and limitations period for alleged overcharges. Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.Rptr.3d 149, 37 Cal.4th 685, 124 P.3d 719, on remand 2006 WL 574330, unpublished. Zoning And Planning ⚷382.4; Zoning And Planning ⚷584.1

5. Remedies

Mandate was proper procedure for developer to challenge county resolution to reduce building inspection fees as result of collection of excessive fees; developer brought two validation actions challenging resolution and ordinance, which became moot when resolution and ordinance were replaced, leaving developer with no adequate legal remedy. County of Orange v. Barratt American, Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 542, 150 Cal.App.4th 420, rehearing denied , review denied. Mandamus ⚷3(5)

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Mandamus was not remedy available to real estate developer that alleged city had failed to comply with its statutory duty to review and adjust building permit fees, since Mitigation Fee Act provided adequate legal remedy. Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.Rptr.3d 149, 37 Cal.4th 685, 124 P.3d 719, on remand 2006 WL 574330, unpublished. Mandamus 3(4)

6. Limitations

Challenge to city's resolution reenacting previously enacted building permit and plan review fees was not barred by statute requiring such challenges to be brought within 120 days of enactment; even though fees remained essentially unchanged, legislation constituted modification or amendment of those fees, thereby triggering new limitations period. Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.Rptr.3d 149, 37 Cal.4th 685, 124 P.3d 719, on remand 2006 WL 574330, unpublished. Zoning And Planning 586

7. Presumptions and burden of proof

On developer's challenge to county's fee reductions and expenditures resulting from collecting excess amounts of building inspection and construction plan fees, burden was on county to show that expenditures were reasonable and necessary. County of Orange v. Barratt American, Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 542, 150 Cal.App.4th 420, rehearing denied , review denied. Counties 158

8. Sufficiency of evidence

Substantial evidence supported determination that county's expenditures of excess amounts of building inspection and construction plan fees were not reasonable and necessary; county failed to explain large increases in overhead, and failed to provide adequate evidence to support its increased expenses. County of Orange v. Barratt American, Inc. (App. 4 Dist. 2007) 58 Cal.Rptr.3d 542, 150 Cal.App.4th 420, rehearing denied , review denied. Counties 158

West's Ann. Cal. Gov. Code § 66016, CA GOVT § 66016

Current with urgency legislation through Ch. 1 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 25 of the 2009-2010 3rd Ex.Sess., and Props. 1A to 1F on the 5/19/2009 ballot and propositions on the 6/8/2010 ballot received as of 3/15/2009

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Test Claim on: Public Utilities Code Sections 21670 and 21670.1 Chapter 644, Statutes of 1994, Chapter 66, Statutes of 1995, Chapter 91, Statutes of 1995. Filed on December 30, 1995, By the County of San Bernardino, Claimant.	No. CSM-4507 *Airport Land Use Commissions Plans* CORRECTED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7.

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was hereby adopted in the above entitled matter on July 31, 1997.

This Decision shall become effective on August 7, 1997.

Date: November 5, 1997

PAULA HIGASHI, Executive Director

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BEFORE THE
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Test Claim on: Public Utilities Code Sections 21670 and 21670.1 Chapter 644, Statutes of 1994, Chapter 66, Statutes of 1995, Chapter 91, Statutes of 1995. Filed on December 30, 1995, By the County of San Bernardino, Claimant.	No. CSM-4507 *Airport Land Use Commissions Plans* CORRECTED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

STATEMENT OF DECISION

BACKGROUND AND FINDINGS OF FACT

Issue: Do sections 21670 and 21760.1 of the Public Utilities Code, as amended by Chapter 644, Statutes of 1994 (Chapter 644/94), Chapter 66, Statues of 1995 (Chapter 66/95) and Chapter 91, Statutes of 1995 (Chapter 91/95), impose a reimbursable state mandated program, within the meaning of section 6, article XIIIB of the California Constitution and Government Code section 17514, upon local agencies, by requiring them to establish conventional/regular airport land use commissions (pursuant to section 21670), or to designate alternative procedures to satisfy the state mandated requirement for accomplishing airport land use planning (pursuant to section 21670. 1)?

San Bernardino County, claimant, alleges that the provisions of Public Utilities Code, sections 21670 and 21670. 1, as amended by Chapter 644, Statutes of 1994, Chapter 66, Statutes of 1995, and Chapter 91, Statutes of 1995; impose a new program or higher level of service within the meaning of section 6, article XIIIB of the California Constitution.

This test claim was heard by the Commission on State Mandates on February 27, 1997 and June 26, 1997, during regularly scheduled hearings, and was unanimously approved. On July 31, 1997, the Commission unanimously approved the proposed statement of decision, as clarified and presented by Commission staff.

Ms. Marcia Faulkner, County of San Bernardino, and Mr. James Apps, Department of Finance, appeared at these hearings. Evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIIIB of the California Constitution and related case law.

Public Utilities Code Section 21670, as amended by Chapter 644, Statutes of 1994 reads in relevant part:

> "(a) The Legislature hereby finds and declares that:
>
> (1) It is in the public interest to provide for the orderly development of each public use airport in the state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.
>
> (2) It is the purpose of this article to protect public health, safety and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.
>
> "(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, *shall* establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board ~~may~~ *shall,* in this event, transmit a copy of the resolution to the Director of Transportation. . . . " [Italics added for emphasis; strikeout and underlining denote Chapter 644/94 amendments.]

The Commission recognized that the foregoing statutory language, by using the term "shall," directs the creation of airport land use commissions in certain specified counties, namely:

- every county, in which there is located an airport which is served by a scheduled airline, and
- every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public.

The Commission found that *immediately prior* to the enactment of Public Utilities Code section 21670, as amended by Chapter 644/94, the establishment or creation of an airport land use commission was permissive under Public Utilities Code section 21670 of Chapter 59, Statutes of 1993. In sum, the statutory provisions formerly provided that every county, as specified therein, "may" establish an airport land use commission.

The Commission further found that the creation of airport land use commissions under section 21670 of Chapter 644/94 imposed a new program when compared to Chapter 59, Statutes of 1993 (the legislation in effect immediately before the enactment of the test claim legislation).

Although dating back to 1967[1], the Legislature required the creation and maintenance of airport land use commissions upon every county in which there is located an airport which is served by a scheduled airline, and in 1984[2], required the same duty upon every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, nevertheless, these past requirements do not affect the Commission's finding of a new program with respect to the test claim legislation. To determine whether a new program has been imposed, the test claim legislation is compared with the existing law in effect immediately before the effective date of the test claim legislation. *(Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830.) In essence, the effect of Chapter 59, Statutes of 1993, was to convert the long standing requirement of forming and maintaining airport land use commissions to a permissive standard and, thereby, caused a gap in the continuity of this state obligation during 1993-1994.

However, the Commission found that the development of the comprehensive land use plans itself is *not* a new state mandated program or activity, because those plans have long been required by Public Utilities Code section 21675, and were to have been completed by June 30, 1991 (or June 30, 1992, under specified circumstances), pursuant to Public Utilities Code section 21675. 1, subdivision (a).

Public Utilities Code section 21670. 1, as added by Chapter 644, Statutes of 1994, reads, in relevant part:

> "(a) Notwithstanding any other provision of this article, if the board of supervisors and the city selection committee of mayors in the county each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission as provided for in this article, and a commission need not be formed in that county.
>
> (b).....
>
> "(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.
>
> (2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1) of this subdivision, that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:
>
> (A) Adopt processes for the preparation, adoption, and amendment of the comprehensive airport land use plan for each airport that is served by a scheduled airline or operated for the benefit of the general public.
>
> (B) Adopt processes for the notification of the general public, landowners, interested groups, and other public agencies regarding the preparation, adoption, and amendment of the comprehensive airport land use plans.
>
> (C) Adopt processes for the mediation of disputes arising from the preparation, adoption, and amendment of the comprehensive airport land use plans.

[1] Public Utilities Code section 21670, Chapter 852, Statutes of 1967.
[2] Public Utilities Code section 21670, Chapter 1117, Statutes of 1984.

(D) Adopt processes for the amendment of general and specific plans to be consistent with the comprehensive airport land use plans.

(E) Designate the agency that shall be responsible of[3] the preparation, adoption, and amendment of each comprehensive airport land use plan.

(3) The Division of Aeronautics of the department shall review the processes adopted pursuant to paragraph (2), and shall approve the processes if the division determines that the processes are consistent with the procedure required by this article and will do all of the following:

(A) Result in the preparation, adoption, and implementation of plans within a reasonable amount of time.

(B) Rely on height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal regulations including but not limited to, Part 77 (commencing with Section 77. 1) of Title 14 of the Code of Federal Regulations.

(C) Provide adequate opportunities for notice to, review of, and continent by the general public, landowners, interested groups, and other public agencies.

(4) If the county does not comply with the requirements of paragraph (2) within 120 days, then the plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and a plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

"(d) A commission need not be formed in a county that has contracted for the preparation of comprehensive airport land use plans with the Division of Aeronautics under the California Aids to Airport Program (Title 21 (commencing with Section 4050) of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the county and the cities affected by the airports within the county, as defined by the plans:

(1) Agree to adopt and implement the comprehensive airport plans that have been developed under contract.

(2) Incorporated the height, use, as part of the general and specific plans for the county and each affected city.

(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

"(e) (1)A commission need not be formed in a county if all of the following conditions are met:

(A) The county has only one public use airport that is owned by a city.

(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (d), as part of their general and specific plans for the county and the affected city.

(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (d), on or before May 1, 1996, then a commission shall be established in accordance with this article."

In view of the foregoing statutory provisions, the Commission found that when satisfying the Public Utilities Code section 21670 directive to establish an airport land use commission, these specified counties may employ alternative procedures. Upon a determination, by prescribed local officials that the mandatory land use planning functions can be carried out properly, a conventional/regular type of airport land use commission under section 21670 need not be formed.

[3] So in chaptered copy.

The Commission further found that once a section 21670-type of airport land use commission is not formed, one of the alternative planning approaches from the state approved menu of such planning structures under section 21670.1 *must* be chosen.

The Commission further found that under the law in effect immediately before the test claim legislation, there was no obligation upon counties to establish an airport land use commission under Public Utilities Code section 21670 and, accordingly, no similar obligation to employ alternative procedures to comply with state prescribed requirements for accomplishing airport land use planning. (Former Public Utilities Code section 21670, Chapter 59, Statutes of 1993 and Public Utilities Code section 21670. 1, Chapter 10 1 8, Statutes of 1987.)

Thus, the Commission found that with the enactment of Chapter 644/94, that certain specified counties are *obligated to either* establish conventional/regular airport land use commissions (pursuant to section 21670), or designate alternative procedures to satisfy the state mandated requirement for accomplishing airport land use planning (pursuant to section 21670. 1).

Issue: Does the existence of subdivision (f) of Public Utilities Code section 21671.5, which authorizes an airport land use commission to assess and collect a fee, preclude the Commissions's finding of reimbursable costs mandated by the state?

Section 17556, subdivision (d) of the Government Code provides:

> "The [C]ommission [on State Mandates] shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> "……
>
> "(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Section 21671.5, subdivision (f), of the Public Utilities Code states:

> "The [airport land use] commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of the service, and shall be imposed pursuant to Section 66016 of the Government Code. Except as provided in subdivision (g), after June 30, 1991, a commission which has not adopted the comprehensive land use plan required by Section 21675 shall not charge fees pursuant to this subdivision until the commission adopts the plan."[4]

[4] Subdivision (g) permits fees to be charged until June 30, 1992, in the absences of a completed plan, under prescribed circumstances. Section 66016 of the Government Code pertains to fee setting procedures to be followed.

The Department of Finance has pointed to the fee authority of airport land use commissions, as well as their subventions from the Department of Transportation, as bases to find that a county has no reimbursed costs mandated by the state.

The claimant responded that there are not "proponents of action, regulations, or permits" sufficient to charge for the entire cost of airport land use commission activities.

In 1991, the question of airport land use commission fee authority was addressed by the Commission in its revision of the *Airport Land Use* Parameters and Guidelines (CSM-4231). The Commission adopted the following provisions in these parameters and guidelines regarding fee authority under the heading of "Offsetting Savings And Other Reimbursements:"

> "PUC section 21671.5, subdivision (f), allows Airport Land Use Commissions to establish fee schedules. Therefore, any fees *chargeable* to a proponent of an action, regulation or permit for reviewing and processing and for providing copies of land use plans as required by PUC section 21675, subdivision (d), must be deducted. " (Emphasis added.)

In the instant test claim, based on the administrative record, the Commission noted the county's fee authority under subdivision (f) of Public Utilities Code section 21751.5 is not sufficient to make a finding that no reimbursable costs mandated by the state are associated with the state mandated activities set forth in the test claim. Further, the Commission recognized that the fee authority spelled out in subdivision (f) does not offset all of the costs incurred in performing the state mandated activities set forth in Public Utilities Code sections 21670 and 21670.1.

Late Filing

The Commission observed a late filing from the Department of Transportation (Caltrans) dated July 29, 1997. Caltrans first contended that it is an error for the Commission on State Mandates to make decisions regarding the cost of (re)establishing an Airport Land Use Commission (ALUC) since it is beyond the facts of the test claim submitted by the County of San Bernardino.

The test claim legislation required those counties with an airport served by a scheduled airline, and those counties with an airport not served by a scheduled airline but operated for the benefit of the general public, to either (1) form an ALUC (section 21670); (2) designate a body as the ALUC (section 21670.1, subdivision (a)(1); or (3) not form a commission, but choose an alternative process under section 21670.1, subdivision (c). The test claimant, the County of San Bernardino, chose not to establish, or reestablish, an ALUC. Instead the test claimant chose the alternative process under section 21670.1, subdivision (c).

Although the test claimant chose not to (re)establish an ALUC under section 21670, the Commission found that it was appropriate to address the cost of (re)establishing an ALUC under section 21670. Pursuant to Government Code section 17521 and the *City of San Jose* v. *State of California* (1996) 45 Cal. App.4th 1802, 1807, the Commission found that the adjudication of a test claim governs all subsequent claims based on the same statute. Therefore, the test claim legislation is not limited to the unique issues

addressed by the test claimant, but is analyzed *as a whole*. Thus, the Commission found that it was appropriate to address the cost of (re)establishing an ALUC under section 21670 even thought the test claimant did not choose this approach under the required legislation.

Caltrans next contended that "local land use planning" is not prescribed by sections 21670 or 21670.1 and, thus, such costs should not be included as a reimbursable program. The Commission agreed with this contention finding that the development of the comprehensive land use plan itself is not a new state mandated program or activity since those plans have long been required by Public Utilities Code section 21675.

Finally, Caltrans contended that the County of San Bernardino is requesting duplicative charges and costs for analysis of legislation and workshop attendance not required by the test claim statute. The Commission found that this issue is more appropriately handled under the parameters and guidelines.

CONCLUSION

Based on the foregoing, the Commission approves this test claim and concludes that the provisions of Public Utilities Code sections 21670 and 21670. 1, as amended by Chapter 644, Statutes of 1994, and Chapter 66, Statutes of 1995, and Chapter 91, Statutes of 1995, impose a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIIIB of the California Constitution and Government Code section 17514 because certain specified counties are *obligated to either* establish conventional/regular airport land use commissions (pursuant to section 21670), or designate alternative procedures to satisfy the state mandated requirement for accomplishing airport land use planning (pursuant to section 21670. 1).

Further, the Commission determines that the following are reimbursable state mandated activities:

- Those costs incurred after January 1, 1995, the operative date of the test claim legislation, for the establishment or re-establishment of an airport land use commission, or one of the alternative approaches, pursuant to sections 21670 and 21670.1 of the Public Utilities Code. However, the land use plan required by Public Utilities Code section 21675 is not reimbursable because it was to have been adopted *prior* to the operative date of Chapter 644/94.

Further, the Commission determines that

- The fee authority under subdivision (f) of section 21671.5 of the Public Utilities Code, constitutes an offset against the reimbursement for costs claimed under sections 21670 and 21670.1 of the Public Utilities Code and that shall be reflected in the parameters and guidelines.
- Any state reimbursement of mandated activities determined under this test claim are to be paid from the Aeronautics Account, State Transportation Fund, pursuant to the recommendation of the Department of Finance.

Adopted: December 17, 1998
Document Date: December 31, 1998
Document Name: f:\mandates\4000\4507\finalp&g

Parameters and Guidelines
Public Utilities Code Sections 21670 and 21670.1
Statutes of 1994, Chapter 644
Statutes of 1995, Chapter 66
Statutes of 1995, Chapter 91
Airport Land Use Commissions/Plans

I. SUMMARY AND SOURCE OF THE MANDATE

Public Utilities Code sections 21670 and 21670.1, as amended by Statutes of 1994, Chapter 644, Statutes of 1995, Chapter 66, and Statutes of 1995, Chapter 91, require counties with an airport served by a scheduled airline or operated for the benefit of the general public to establish or re-establish an airport land use commission or designate alternative procedures to accomplish airport land use planning.

On July 31, 1997, the Commission on State Mandates adopted its Statement of Decision, finding that the test claim statutes impose a reimbursable state mandated program upon local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514. The Commission also found that the land use plan required by Public Utilities Code section 21675 is not reimbursable because it was a requirement prior to the operative date of Statutes of 1994, Chapter 644.

II. ELIGIBLE CLAIMANTS

Eligible Claimants include counties, cities, cities and counties, or other appropriately designated local government entities, except as provided by Public Utilities Code section 21670.2[1] which are required by Public Utilities Code sections 21670 and 21670.1, to perform specific Airport Land Use.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed by the County of San Bernardino on December 30, 1995, making costs incurred on or after July 1, 1994 eligible for reimbursement. However, Statutes of 1994, Chapter 644 became effective on January 1, 1995. Thus, only costs incurred on or after January 1, 1995 are eligible for reimbursement.

Actual costs for one fiscal year should be included in each reimbursement claim. Estimated costs to be incurred in the current fiscal year should be claimed on a separate claim. Estimated and actual reimbursement claims may be filed at the same time, if applicable. All initial claims for reimbursement shall be submitted within 120 days of issuance of the State Controller's Office claiming instructions, as provided in Government Code section 17561.

[1] Los Angeles County is excluded as an eligible Claimant by section 21670.2, which states that sections 21670 and 21670.1 do not apply to that county.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE COMPONENTS AND DESCRIPTION OF ACTIVITIES

A. For each eligible Claimant, the direct and indirect costs of the following activities are eligible for reimbursement on a one-time basis:

1. Selection of the Method of Compliance

a. Analyze the enacted legislation and alternatives.

b. Coordinate positions of the county and affected cities within the county, providing information, and resolving issues.

2. Establishment of one of the following methods:

METHOD 1 - Set up or restore an airport land use commission.

a. Establish and appoint the members.

b. Establish proxies of the members.

METHOD 2 - Determination of a designated body, pursuant to Public Utilities Code section 21670.1, subdivisions (a) and (b).

a. Conduct hearing(s) to designate the appropriate body.

b. Augment the body, if with two members with expertise in aviation.

METHOD 3 –Establishment of an alternative process, pursuant to Public Utilities Code section 21670.1, subdivision (c).

a. Develop, adopt and implement the specified processes.

b. Submit and obtain approval of the processes or alternatives from the Department of Transportation, Division of Aeronautics.

METHOD 4 - Establishment of an exemption, pursuant to Public Utilities Code sections 21670 (b) or 21670.1, subdivisions (d) and (e).

a. Determine that a commission need not be formed and meet the specified conditions.

If an eligible claimant, which has selected and established an exemption as specified under 21670 (b) or 21670.1, subdivisions (d) or (e), determines that the exemption no longer complies with the purposes of Public Utilities Code section 21670 (a), activities to select the Method of Compliance and to establish Method 1, 2 or 3 are eligible for reimbursement.

B. <u>For each eligible claimant, per diem for Commission members of up to $100 for each day actually spent in the discharge of official duties and any actual and necessary expenses incurred in connection with the performance of duties as a member of the Commission.</u>

The airport land use planning process described in Public Utilities Code section 21675 is *not* reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim for costs incurred to comply with the requirements of Public Utilities Code sections 21670 and 21670.1 must be timely filed and identify each cost element for which reimbursement is being claimed. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities, or functions. Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

   Identify the employee(s) and show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity, the productive hourly rate, and related employee benefits.

   Reimbursement includes compensation paid for salaries, wages and employee benefits. Employee benefits include the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

   Only expenditures that can be identified as a direct cost of the mandate may be claimed. List the cost of the supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the Claimant. Purchases in excess of reasonable quantity and quality are not reimbursable. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

   Provide the name(s) of contractor(s) who performed the services. Include any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activity(ies), if applicable. Show the inclusive dates when services ere performed and itemize all costs for those services. Contracting costs are eligible for reimbursement to the extent that the function(s) performed require special skills, knowledge, or staffing that is not readily available from the Claimant's staff.

4. Travel

   Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training for the activities specified in Section IV is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs include salaries and benefits, transportation, lodging, and per diem. Registration fees for commercial training classes are reimbursable only if the entire training class qualifies as job-required training. The cost of training is eligible for reimbursement to the extent it does not duplicate training provided by the state Department of Transportation at no expense to the county or affected cities.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, which benefit more than one program and cannot be directly assigned to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to all departments based on a systematic and rational basis through a cost allocation plan.

Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller or his or her agent, upon request, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

VII. DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE

The State Controller is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim specific form for the initial years' reimbursement claims by mail to the Commission on State Mandates at 1300 I Street, Suite 950 Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate which will be the basis for the appropriation to be made by the Legislature for this program.

VIII. OFFSETTING REIMBURSEMENTS AND OTHER SAVINGS

Any offsetting savings the Claimant experiences as a result of the subject mandates shall be deducted from the costs claimed. In addition, reimbursement for mandated activities received from any source, including (but not limited to) service fees collected, federal funds, and other state funds shall be identified and deducted from the amount claimed.

Section 21671.5, subdivision (f), of the Public Utilities Code authorizes an airport land use commission to establish fee schedules. To the extent that reimbursable activities are claimed under this mandate where there are fees chargeable to a proponent of action, regulation, or permit for reviewing and processing and for providing copies of land use plans as required by

section 21675, subdivision (d), of the Public Utilities Code, those fees shall be deducted from the amount claimed.

Funding received under the California Aid to Airports Program, including Project Ker-VAR 90-1 and Project SBd-VAR-90-1, that is applicable to reimbursable activities under the subject mandates shall also be deducted from the amount claimed.

IX. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the Claimant shall be required to provide a certification of the claim, as specified in the claiming instructions issued by the State Controller, for those costs mandated by the State contained herein.

BILL ANALYSIS

SENATE TRANSPORTATION COMMITTEE
SENATOR KEVIN MURRAY, CHAIRMAN
S.TRANS.COMM.

BILL NO: SB 1233
AUTHOR:

VERSION: 4/12/04

Analysis by: Randall Henry
FISCAL: yes

SUBJECT:

Miscellaneous transportation matters.

DESCRIPTION:

This "committee bill" would make various technical, non-substantive changes to the Public Utilities Code, Streets and Highways Code, and the Vehicle Code.

ANALYSIS:

Existing law includes various provisions relating to the California Highway Patrol, the Department of Motor Vehicles, the Department of Transportation, and other public agencies.

This bill is a "committee bill" and is intended to deal with minor, non-controversial transportation-related issues by making technical and clarifying changes and repealing obsolete statutory provisions.

Specifically, the bill would do the following:

Section 1
Makes technical corrections to Civil Code Sec. 2985.8.
(Sponsor: Department of Motor Vehicles)

Section 2
Makes technical changes to Public Utilities Code Sec. 21670.3 to provide for the use of uniform terminology in

airport land use planning law and publications.
(Sponsor: Department of Transportation)

Section 3
Makes technical changes to Public Utilities Code Sec. 21674.5 to provide for the use of uniform terminology in airport land use planning law and publications.
(Sponsor: Department of Transportation)

Section 4
Makes technical changes to Public Utilities Code Sec. 21675 to provide for the use of uniform terminology in airport land use planning law and publications.
(Sponsor: Department of Transportation)

Section 5
Makes technical changes to Public Utilities Code Sec. 21675.1 to provide for the use of uniform terminology in airport land use planning law and publications.
(Sponsor: Department of Transportation)

Section 6
Recognizes explicitly that a county can be a party in an acquisition transaction agreement for a street or highway.
(Sponsor: Department of Transportation)

Section 7
Authorizes a county to post signs prohibiting pedestrians on county expressways.
(Sponsor: Santa Clara County)

Section 8
Clarifies that a golf cart transportation plan shall not include the use of a state highway unless authorized by the Department of Transportation.
(Sponsor: Department of Transportation)

Section 9
Adds a definition of "expressway." (Legislative Counsel added the definition as clarification in light of the proposal by Santa Clara County in Sections 7 and 12.)
(Sponsor: Santa Clara County)

Section 10

Q

SB 1233 (S. TRANS. COMM.)
Page 3

Makes a technical clarification to Vehicle Code Sec. 11205.2.
(Sponsor: California Traffic School Association)

Section 11
Clarifies the provisions regarding the denial and revocation of schoolbus driver certificates or paratransit driver certificates.
(Sponsor: California Association of School Transportation Officials)

Section 12
Authorizes a county to post signs prohibiting pedestrians on county expressways.
(Sponsor: Santa Clara County)

Section 13
Permits a tow truck when towing a vehicle to exceed the existing 100-mile tow radius restriction under specified conditions.
(Sponsor: American Towing Alliance)

COMMENTS:

This is one of two committee bills (the other bill is SB 1235) that has been introduced this year by members of the Senate Transportation Committee. The provisions that are included in the bill generally entail only non-substantive changes and corrections in the law which have no expressed opposition. It is the practice of the Committee to remove any provision from the bill that generates opposition.
POSITIONS: (Communicated to the Committee before noon on Wednesday, April 14, 2004)

SUPPORT: None received.

OPPOSED: None received.

UNFINISHED BUSINESS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Bill No. SB 532 Author: Bergeson (R) Amended: 6/27/91 Vote Required: 27 - Urgency

Committee Votes:

COMMITTEE: LOCAL GOVERNMENT BILL NO.: SB 532 DATE OF HEARING: 5-8-91		
SENATORS:	AYE	NO
Bergeson (Ch)	✓	
Ayala (VC)		
Calderon		
Craven	✓	
C. Green	✓	
Hill		
Kopp	✓	
Russell	✓	
Thompson		
	5	0

Senate Floor Vote: Page 1499, 5/24/91

Senate Bill 532—An act to amend Sections 21671.5 and 21675.1 of the Public Utilities Code, relating to airports, and declaring the urgency thereof, to take effect immediately.

Bill read third time.

Urgency clause read and adopted, bill passed, and ordered transmitted to the Assembly.

The roll was called, and the above measures on the Consent Calendar passed by the following vote:

AYES (35)—Senators Alquist, Bergeson, Beverly, Boatwright, Craven, Davis, Deddeh, Dills, Cecil Green, Bill Greene, Hart, Hill, Johnston, Keene, Killea, Kopp, Leonard, Lewis, Lockyer, Maddy, Marks, McCorquodale, Mello, Morgan, Petris, Presley, Roberti, Rogers, Rosenthal, Royce, Russell, Thompson, Torres, Vuich, and Watson.

NOES (0)—None.

Assembly Floor Vote: 76-0, Page 3112, 7/1/91

SUBJECT: Airports: land use commissions: funding

SOURCE: Author

DIGEST: This bill extends the deadline to adopt comprehensive airport land use plans from June 30, 1991 to June 30, 1992 in any county where the airport land use commission has completed or contracted for at least half of the plans. The bill extends the ability of these commissions to continue to charge processing fees in the meantime. The bill also makes technical, nonsubstantive changes to existing law.

Assembly Amendments allows a commission to charge fees after 6/30/92, if the land use plans are complete by that date, and makes the prohibition after that date continue until the commission adopts the land use plans. Allows the schedule of fees adopted by an airport land use commission to be those necessary to carry out the provisions of law relating to its land use planning instead for reviewing and processing proposals.

ANALYSIS: In 1970, the Legislature required airport land use commissions (ALUCs) to adopt comprehensive land use plans for airports with scheduled air carrier service. In 1984, the Legislature extended the mandate to all public airports. The plans provide for the "orderly growth" of the airport and surrounding areas, minimizing noise and safety hazards. The way to force an ALUC to adopt a required plan is to file a suit that stops all development near an airport until the commission acts.

Rather than waiting for lawsuits, the Legislature set June 30, 1991 as the deadline for ALUCs to adopt their plans. In the meantime, the Legislature suspended any

CONTINUED

litigation to halt development. But until an ALUC adopts its plan, it must review and approve all development projects around the airport. ALUCs can charge fees to recover their planning costs, but this authority ends on June 30, 1991 if the ALUC fails to meet the deadline (SB 255, Bergeson, 1989).

Riverside County's ALUC has adopted plans for three of its 14 public use airports. County officials report that they have contracts to finish nine other plans. But they will not make the June 30 deadline. If they miss the deadline, they also lose the ability to charge processing fees.

Note: For informational purposes, please see attached table of Airport Land Use Plans.

According to the Senate Local Government Committee:

The 1989 Bergeson bill set the first statutory deadline for finishing airport land use plans.

Some ALUCs, especially those responsible for many airports, took a while to get their planning programs underway. They had to reassign staff, hire consultants, and find funding. Riverside officials say that they need just a little more time to finish their remaining airport plans. This bill stretches the statutory deadline by one year to accommodate Riverside's schedule.

The 1989 Bergeson bill gave ALUCs 18 months to finish their plans which the Legislature had required 19 years before. That bill declared "that this deadline provides sufficient time to the commissions to adopt these plans."

The Commission on State Mandates has determined that the planning costs for public use airports (other than those with scheduled service) are reimburseable costs. But the Legislature suspended this mandate during 1990-91 and did not pay any reimbursements (SB 1333, Dills, 1990; SB 899, Alquist, 1990).

The Legislature has already extended the deadline for adopting airport land use plans in Los Angeles County until January 1, 1992. SB 1228 (Beverly, 1990) also exempted development around airports in Los Angeles County from review and removed the statutory grant of immunity from suits that could halt development projects. Governor Deukmejian vetoed another Beverly bill which would have completely exempted Los Angeles County from the airport land use planning statute (SB 2798, Beverly, 1990). This year, both SB 329 (Beverly) and AB 1716 (Boland) further extend the deadline for Los Angeles County. The Assembly Local Government Committee will hear Assemblywoman Boland's bill.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 7/1/91)

County of Riverside
California Building Industry Association
Skylake Airport, Lake Elsinore
Palm Springs Regional Airport
Amador County ALUC

DLW:nf 7/3/91 Senate Floor Analyses

STATUS OF AIRPORT LAND USE PLANS

COUNTY	PUBLIC USE AIRPORTS	PLANS COMPLETED	PLANS IN PROGRESS	NOT DONE OR DON'T KNOW
Alameda	4	4	0	0
Alpine*	1	0	0	1
Amador	1	1	0	0
Butte	4	4	0	0
Calaveras	1	0	1	0
Colusa	1	0	1	0
Contra Costa	2	1	0	1
Del Norte	3	0	3	0
El Dorado	4	3	0	1
Fresno	9	8	1	0
Glenn	2	1	1	0
Humboldt	9	0	0	9
Imperial	6	6	0	0
Inyo	7	0	0	7
Kern	17	17	0	0
Kings	2	0	2	0
Lake	4	0	3	1
Lassen	5	5	0	0
Los Angeles	16	0	1	15
Madera**	2	0	0	2
Marin	1	1	0	0
Mariposa	1	0	1	0
Mendocino	6	0	0	6
Merced	5	5	0	0
Modoc*	9	0	0	9
Mono	3	1	2	0
Monterey	5	2	2	1
Napa	3	1	2	0
Nevada	2	2	0	0
Orange	2	2	0	0
Placer	3	2	0	1
Plumas	3	0	3	0
Riverside	14	3	8	3
Sacramento	7	7	0	0
San Benito	2	0	2	0
SanBernardino	16	4	12	0
San Diego	12	8	1	3
San Francisco	0	0	0	0
San Joaquin	6	6	0	0
SanLuisObispo	4	3	0	1

COUNTY	PUBLIC USE AIRPORTS	PLANS COMPLETED	PLANS IN PROGRESS	NOT DONE OR DON'T KNOW
San Mateo	3	3	0	0
Santa Barbara	4	4	0	0
Santa Clara	4	4	0	0
Santa Cruz**	1	0	0	1
Shasta	6	1	3	2
Sierra	1	0	1	0
Siskiyou	7	0	7	0
Solano	2	2	0	0
Sonoma	7	7	0	0
Stanislaus	2	2	0	0
Sutter	1	1	0	0
Tehama	2	2	0	0
Trinity**	6	0	0	6
Tulare	11	0	11	0
Tuolumne	2	2	0	0
Ventura	3	2	1	0
Yolo	4	4	0	0
Yuba	2	2	0	0
STATEWIDE	271	133 (49%)	69 (25%)	69 (25%)

FOOTNOTES:

Counties in **bold** have complied with the law.
* - Exempt from requirement to have ALUC.
** - No ALUC, but not exempt from requirement.

[Source: Caltrans Division of Aeronautics, May 1, 1991.]

SECRETARY OF STATE LEGISLATIVE SERVICES
The Original of this document is in
CALIFORNIA STATE ARCHIVES
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SACRAMENTO, CA 95814

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Date of Hearing: June 19, 1991

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Sam Farr, Chair

SB 532 (Bergeson) - As Amended: May 14, 1991

ASSEMBLY ACTIONS:

COMMITTEE L. GOV. VOTE> COMMITTEE VOTE

SUBJECT: Extends certain comprehensive airport land use planning deadlines.

DIGEST

Existing law under the Airport Land Use Planning Law:

1) Requires every county which is served by a scheduled airline or which has an airport operated for the general public to establish an airport land use commission (ALUC) to ensure the orderly expansion of airports and adoption of land use measures that minimize noise and safety hazards in the areas around airports. Local agencies must refer proposed land uses within the airport's planning area to the ALUC for consideration. The ALUC's decision may be overruled by a 2/3 vote of the local agency if certain findings are made.

2) Requires each ALUC to formulate a comprehensive airport land use plan (ALUP) for the orderly growth of each public airport and the surrounding area, which must include a long-range master plan reflecting the anticipated growth of the airport for at least a 20-year period. Planning boundaries must be established by the ALUC after a hearing and consultation with involved agencies.

3) Allows interested parties to initiate litigation to postpone zone changes/variances, issuance of permits, or the adoption of regulations within one mile of a public airport boundary if there is no ALUC in the county or no other body to assume its responsibilities, or the comprehensive airport land use plan has not been adopted.

4) Establishes an "interim process" for counties which had not complied with the law by January 1, 1990, which requires the adoption of the ALUPs by June 30, 1991 (January 1, 1992 in Los Angeles County). It also requires the city or county to submit certain actions related to property within the vicinity of a public airport to the ALUC for review and approval.

5) Allows the ALUC to charge fees for reviewing and processing applications, unless they fail to adopt the ALUP by June 30, 1991. Protects local agencies during the "interim process" period from legal actions until June 30, 1991, if the ALUC is making substantial progress toward completing the comprehensive airport land use plan.

- continued -

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This bill:

1) Extends the June 30, 1991, deadline for adopting plans (#4 above) to June 30, 1992, if at least one-half of the ALUPs are being undertaken by contract or are completed.

2) Allows the ALUC to continue charging fees for reviewing and processing applications (#5 above) until June 30, 1992, if at least one-half of the ALUPs are being undertaken by contract or are completed.

3) Makes technical amendments.

FISCAL EFFECT

No known fiscal effects.

COMMENTS

1) Background.

AB 1856 (Badham) Chapter 1182, Statutes of 1970, required ALUCs to formulate airport land use plans to provide for the orderly growth in the areas surrounding each public airport. The plan must include a long-range plan reflecting the airport's growth during the following 20 years. The ALUC may develop building height restrictions, specify land uses, and determine building standards (including soundproofing) within the area.

In an effort to strengthen the airport land use plan requirements, SB 633 (Rogers) Chapter 1018, Statutes of 1987, allowed interested parties to initiate litigation to postpone zone changes/variances, issuances of permits, or the adoption of regulations within one mile of a public airport boundary if, among other things, the comprehensive airport land use plan has not been adopted.

To avoid litigation against counties to stop development around airports, SB 255 (Bergeson) Chapter 306, Statutes of 1989, established the "interim process" (#4 and #5 above) and a new June 30, 1991, deadline for completing plans.

2) More Time.

This bill, sponsored by Riverside County, is an effort to extend the deadline one year (from June 30, 1991, to June 30, 1992) in those counties where at least one-half of the plans are undertaken by contract or completed. Apparently Riverside County has adopted plans for three of its 14 public use airports and have contracts to finish the nine remaining plans. The fee authority would also be extended for that period. This bill may also offer an extension for other counties facing similar constraints.

- continued -

Other efforts to extend the deadlines or exempt entities from the ALUP requirements include: a) SB 1288 (Beverly) Chapter 54, Statutes of 1990, setting January 1, 1992, as the new due date for Los Angeles County to complete the plans; b) SB 2798 (Beverly) of 1990 (vetoed by the Governor) which would have exempted Los Angeles County from Airport Land Use Planning Law; c) AB 1715 (Boland) to extend the Los Angeles County deadline to July 1, 1992; and, d) SB 329 (Russell) of 1991 to exempt Los Angeles County from the law.

3) Technical Issues.

By allowing counties to charge fees for reviewing projects until June 30, 1992, if one-half of the plans are completed or undertaken by contract, the bill is silent on the fee authority after that date.

SB 1333 (Dills) Chapter 459, Statutes of 1990, suspended numerous mandates, including the mandate relating to airport land use planning during 1990-91, and there were no subsequent reimbursements. Because the Legislature also provided fee authority in SB 1333 to cover costs associated with the various suspended mandates, should the existing fee authority in Airport Land Use Planning Law for reviewing and processing proposals be similarly revised to also cover all airport land use planning activities?

SUPPORT

Riverside County [SPONSOR]
CA Building Industry Assoc.
Skylark Airport, Lake Elsinore
Palm Springs Regional Airport
Amador County ALUC
County of Riverside

OPPOSITION

None on file.

Randy Pestor
445-6034
5/8/91:algov

BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 3026

THIRD READING

Bill No: AB 3026
Author: Assembly Transportation Committee
Amended: 8/5/02 in Senate
Vote: 21

SENATE TRANSPORTATION COMMITTEE : 14-0, 6/18/02
AYES: Murray, McClintock, Brulte, Costa, Dunn, Figueroa, Karnette, Monteith, Perata, Romero, Scott, Soto, Speier, Torlakson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 67-0, 5/2/02 - See last page for vote

SUBJECT : Transportation

SOURCE : Assembly Transportation Committee

DIGEST : This committee omnibus bill makes various technical and minor policy changes and repeals obsolete code sections or references, as a means of avoiding numerous single-provision bills.

ANALYSIS : Existing law contains a multitude of provisions relating to state and local transportation and related public agencies.

This bill is a "committee bill" and is intended to deal efficiently with several minor, noncontroversial transportation issues, make technical and clarifying changes and repeal obsolete statutory provisions. The bill

CONTINUED

amends numerous code sections which will do the following:

Sections 1, 2 and 3 . Strike language which cross-references sections of federal and state law which have been repealed.

Section 4 . Make a conforming change to AB 438 (2001) which expanded the categories of projects eligible for federal Grant Anticipation Revenue Vehicle (GARVEE) bonds. The bill clarifies that State Transportation Improvement Program (STIP) project costs for GARVEE-financed projects shall be counted against the state's interregional improvement program share of funds in the case of an interregional project and counted against the affected county's share of funds in the case of a project in a regional improvement program.

Section 5 . Add the State Department of Finance to the agencies with which the California Transportation Commission (CTC) must cooperate in determining whether to issue GARVEE notes instead of using other financing mechanisms for transportation project funding.

Section 6 . Add a catch-all technical reference related to existing provisions in law on the continuous appropriation of GARVEE funds to avoid conflicts with miscellaneous code sections.

Sections 7 and 8 . Correct references on legal claims in the Public Contract Code to be consistent with filing time periods in related sections and clarify the filing time period for other specified claims against the state.

Sections 8.5 - 24 . Replace references to "airport comprehensive land use plan" with references to "airport land use compatibility plan" to be consistent with the State Department of Transportation's (DOTs) 2002 Airport

Land Use Planning Handbook and to emphasize compatibility of land uses around airports.

Section 25 . Delete an obsolete reference in the Streets and Highways Code to a section that has been replaced.

Section 26 . Amend the list of highway routes in the

Interregional Road System (IRRS) to include Route 246 between Route 1 and Route 101, Lompoc to Buellton. The addition was proposed by the Santa Barbara Association of Governments and concurred in by the DOT on the basis that the route meets the criteria of CTC guidelines for including route which connect urbanized areas to trunk lines of the state's highway systems. Routes in the IRRS are eligible for state Interregional Improvement Program funding, as determined DOT through the STIP process.

Section 27 . Make a conforming technical correction to properly cross-reference project construction provisions which are now in the Public Contract Code but formerly were in the Government Code.

Section 28 . Make a conforming technical correction to properly reference a code subsection which was redesignated paragraph (f) rather than paragraph (g).

Section 29 . Extend the authority of a peace officer to remove (tow) a vehicle parked beyond 7 feet of rain rails but still within the railroad right-of-way if signs are posted giving notice that vehicles may be removed if parked at that location. Currently, only vehicles parked within 7 feet of the rails may be removed.

Section 30 . Direct DOT to revise the existing designation of the Willard Murray Freeway (Route 91) in Los Angeles.

Section 31 . Specify that irrespective of the sequence of enactment, the provisions of another statute enacted during the 2002 calendar year that takes effect on or before January 1, 2003, and that affects a provision amended, added, or repealed by this act prevails over this act.

This is an Assembly Transportation Committee omnibus bill. It generally is agreed that a committee bill such as this one shall include only minor policy matters, nonsubstantive change and corrections which have no expressed opposition. It has been the practice to remove from committee bills any provision which generates opposition from any member of the Legislature, state or local agency, or other interest group; that is the intent with the current bill as it proceeds through the Legislature.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 8/6/02)

Department of Transportation
Santa Barbara County Association of Governments
City of Lompoc
City of Buellton
Southern California Regional Rail Authority/Metrolink
American Federation of State, County and Municipal Employees

ASSEMBLY FLOOR :
AYES: Aanestad, Alquist, Aroner, Bates, Bogh, Calderon, Bill Campbell, John Campbell, Canciamilla, Cardenas, Cardoza, Chan, Chavez, Chu, Cogdill, Corbett, Correa, Cox, Daucher, Dias, Dickerson, Dutra, Firebaugh, Frommer, Goldberg, Harman, Havice, Hollingsworth, Horton, Jackson, Kehoe, Kelley, Koretz, La Suer, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Mountjoy, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pescetti, Richman, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wyland, Wyman,

Zettel, Wesson

RJG:cm 8/6/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Surface Mining Inspection $1,690*

Inspection by Consultant (consultant charge + 25% mgt fee)

Surface Mine Reclamation Plan (Modification)... $5,890*1

Subdivision Directional Sign $790

Temporary Residence $500

Tract Number Issuance.....$140

Underground Utility Waiver $480

Use Permit

Standard ..... $7,092 *eflr

Major (Golf course, quarry, sanitary landfill, timber harvesting, oil drilling/exploration, RV park or with EIR)..... $13,062 *eflr

Pre-application Meeting 10% of application fee + $423 ef

Renewal..... 100% of application fee

Late renewal (in addition to filing fee)..... $2,290

Variance $1,490

Williamson Act/Open Space Easement

WA Compatible Use Determination.....$787

OSE Compatible Use Determination.....$892

Appeal (Staff Level) $551

Appeal (Board of Supervisors) $1,009

Zone Change $5,900*

Zoning Interpretation

Written opinion by Zoning Administrator.....$220

Public hearing by Planning Commission $1,420*

Zoning Violation - Expungement Fee.....$460

(a) Includes minimum fee adopted by ALUC on March 26, 2008.

(e) Includes Environmental Health fee adopted by the Board of Supervisors on May 22, 2007.

(f) Includes Fire Marshal review fee adopted by the Board of Supervisors on April 8, 2008.

(l) Includes Land Development Review fee adopted by the Board of Supervisors on May 22, 2007.

(t) Includes $949 Roads and Airports Department review fee adopted by the Board of Supervisors on August 15, 2006, except for Use Permit fee of $508, adopted by the Board of Supervisors August 29, 2000.

Revised: 01/07/09

(Planning fees adopted by Board of Supervisors on April 8, 2008)

IMPORTANT

***Minimum non-refundable fee will be charged at the time of application for the applications listed below:**

Airport Land Use Commission
Architectural & Site Approval
Building Site Approval
Environmental Assessment
Environmental Impact Report
General Plan Amendment
Grading Abatement
Grading Approval/Grading Small
Lot Line Adjustments (Planning Commission Hearing)
Special Permit (dwellings)
Subdivision & Subdivision Cluster Permits
Use Permit
Zone Change
Zoning Interpretation (Planning Commission Hearing)

When fee is exhausted, owner/applicant will be required to pay additional fees to cover the cost of staff time to process/review application. The hourly rate for actual cost application is $160.

Fees

Santa Clara County
Planning Office
70 W. Hedding Street, 7th Floor, East Wing
San Jose, CA 95110
TEL 408-299-5770 • FAX 408-288-9198
http://sccplanning.org

Administrative Permit Fees

Bingo ..... $260 f

Dances

Class A ..... $1,970 f

Class B ..... $460 f

Day Care Centers-Large $480

Entertainment/Circus ..... $920 f

An additional $340 per day of event required prior to permit issuance. If circus permit is granted, additional fee as outlined in ordinance.

Fortune Telling $550

$10,000 bond or cash deposit required prior to license issuance.

Parades ..... $1,390 f

Temporary Off-Road Vehicle Recreational Use $350

Agricultural Exemptions ..... $760 f

Airport Land Use Commission

Major Project ..... $3,500 *a

Minor Project ..... $700 *a

Appeals

Single family residence $850

All others $1,280

Appeals to Director -Vehicle Ordinance $500

Application Reactivation ..... 10% of current fee

Architectural & Site Approval

All ASA except as indicated below ..... $6,323 *eflr

With standard use permit ..... $4,943 *elr

Airport Fixed Base Operator ..... $4,659 *lr

Duplex or single family residence ..... $7,879 *flr

With major use permit or EIR ..... $5,013 *elr

Signs $1,180

Variation to Standards $1,180

Staff approval, exemption or minor modification .. $620

Building Permit (Planning) Plan Review Fee

Minor permits (demolition, permit revision, etc.) $95

Minor detached structures and additions ..... $275 e

Some additions to SFD; detached structures ..... $455 e

Construction, addition, conversion or alteration with an ASA, P, DR and SP<500sf ..... $632 e

Major additions; New Residence, Mobile Home $872 e

Construction, addition, conversion or alteration with an ASA, P, DR and SP>500sf ..... $1,032 e

-For more details please see supplement

Comprehensive Planning Fee... 0.00082 on valuation of $25,000 or more (to a maximum fee of $6,700)

Building Site Approval

Urban (Inside Urban Service Area) $3,521*eflr

Rural (Outside Urban Service Area) ..... $7,809 *flr

HS, RHS, R1E - 30% + slope (BA) ..... $7,859 *flr

Exception to minimum lot size, Planning Commission hearing in addition to application $4,390

Certificate of Compliance, Basic $1,070

Certificate of Compliance (deed prior to 1925) $1,770

Conditional Certificate of Compliance $3,970*

Cluster Permit (see Subdivision)

Design Review ..... $1,700 f

Design Review Tier III $2,120*

Design Review-Staff approval for exemption or minor modification $590

Document Certification (per page) $20

Environmental Assessment ..... min. $2,380*

Categorical Exemption $300

Petition for use of prior CEQA document $320

Environmental Impact Report ..... min. $9,558*ef

EIR Monitoring Fee $1,530

EIR File Maintenance $1,340

Consultant prepared environmental documents EIR & initial study (15% of document cost)

Extension of Time ..... 50% of current application fee

File Retrieval (archival storage) $35

General Plan Amendment ..... $11,720 *f

Pre-application Meeting 10% of application fee

General Plan Conformity-Interpretation $2,760

Geologic Report Review (in-depth report) $1,280

Geologic Report Review (letter report) $640

Grading Abatement (filing and violation fees) ..... $4,608 *fl

(filing fee $2,620; violation fee $1,988)

Grading Permit ..... $2,750 *fl

If concurrently filed with other land use application ... $1,670 *fl

Grading small ..... $1,530 *fl

Home Occupation Interpretation

Written opinion by Zoning Administrator $220

Public hearing by Zoning Administrator $1,420

Land Use Violation Fee .....

$ 0 for first 30 days. After 30 days $ 1,090 min. plus 25% of the land use permit fees.

Lot Line Adjustment — for 2 lots/parcels ..... $2,330 plus $ 720 for each additional lot/parcel.

Pre-application Meeting (mandatory) $300

Planning Commission Review $6,440*

Lot Merger $780

Modification of Use Permit, ASA or Subdivision

Application, major 50%

Application, minor 25%

Approval, major 100%

Approval, minor 75%

Modification of Building Site Approval or Grading

Application, major 50%

Application, minor 25%

Approval, major 100%

Approval, minor 50%

Major modification-revised site/grading plan or tentative map IS required.

Minor modification-revised site/grading plan or tentative map IS NOT required.

Percentage noted is based on current application fee.

Pre-application for any application that includes referral to

FMO ..... 10% plus $210 f

Public Hearing Continuance, Planning Commission $150

Public Hearing Continuance, staff hearing $90

Research of Parcel, GIS and Zoning Ordinances $220/hr

Reversion to Acreage ..... $ 4,370

Septic Tank Permit

System on slopes < = 20% $1,406

System on slopes > 20% $1,872

Repair/ reconstruction $562

Special Permit

Mobile homes (agricultural and temporary) ... $4,519*flr

Secondary dwelling units $4,519*flr

All others ..... $1,700 f

Renewal ..... 100% of application fee

Staff Consulting Fee ..... $250/hr first two staff

..... $130/hr additional staff

State License Clearance

Standard (ABC or DMV) $420

Public Convenience or Necessity

Planning Director decision $1,610

Board of Supervisor decision $3,190

Subdivision & Subdivision Cluster Permits

Four lots or less ..... $ 10,739 *flr

Five lots or more (application fee) ..... $ 13,069 *flr

Pre-application Mtg ..... 10% of application fee + $210f

County of Santa Clara
Department of Planning and Development
Planning Office

PLN01 021406

Prepared by: Kavitha Kumar
Planner III

Reviewed by: Bill Shoe
Principal Planner

DATE: February 14, 2006

TO: Supervisor Don Gage, Chairperson
Supervisor Pete McHugh, Vice–Chairperson
Housing, Land Use, Environment, & Transportation Committee (HLUET)

FROM: Valentin Alexeeff
Director, Department of Planning and Development

SUBJECT: Proposed Comprehensive Planning Fee (CPF)

RECOMMENDED ACTION

Consider recommendations relating to the proposed Comprehensive Planning Fee (CPF).

Possible action:

a. Accept the Departments' report in response to Housing, Land Use, Environment, and Transportation (HLUET) Committee's request on January 20, 2005 for additional

information and discussion.

b. Consider and accept preliminary recommendations from the Department of Planning and Development regarding adding reasonable and appropriate surcharge to construction permits, in the form a Comprehensive Planning Fee (CPF).

1. Institute a "Comprehensive Planning Fee" (CPF), which would fund required functions and activities of comprehensive planning, including policy studies, plan and ordinance updates including the General Plan, and similar mandated functions and activities.

2. Collect the CPF at the time of application for a building permit plan check at the rate of 0.00074 (0.074%) of the construction value.

   (E.g.: A project with $1million construction value will be charged a CPF of $740 at the time of application for a building permit plan check.)

3. Exempt all utility permits (plumbing, mechanical and electrical) and minor construction projects valued at less than a $25,000 from this fee.

4. Create a separate revenue account for accruing the funds collected from assessing the CPF to fund comprehensive planning functions.

FISCAL IMPLICATIONS

The proposed CPF surcharge on construction permits will increase revenue for the Department of Planning and Development by an estimate of $102,000 annually. (In FY 2005 the total construction value of building permits processed by the department was $137,903,235.50; at the proposed CPF rate of 0.00074, the estimated revenue of $102,000 will be generated.) This fee surcharge will enhance the Department's cost recovery ratios, thereby, decreasing the Department's reliance on the general fund for functions and activities that are not revenue generating. The cumulative revenue generated from this proposed fee is estimated to be over to $1.53 million over 15 years based on existing assumptions, trends, and rates; which would cover 50% of the estimated cost of funding comprehensive planning functions (see Table B). The other half of the cost of comprehensive planning will be borne by the general public and funded through the General Fund, as the general public benefits equally from the County's comprehensive planning services.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

1. At its January 20, 2005 meeting, HLUET reviewed a report on the feasibility of General Plan Maintenance Fee (GPMF) submitted by then Director of Environmental Resources Agency, Tim Chow. HLUET engaged in a discussion of various aspects of the report and the concept of imposing a GPMF, as indicated in the meeting summary (Attachment A). Topics and requests for additional information included:

   a. Re–evaluate and discuss feasibility of GPMF in relation to construction/building permits and land use planning applications.

   b. Evaluate and discuss the existence of a nexus between the General Plan and construction/building permits and land use planning applications, or lack thereof.

   c. Evaluate and discuss cost–effectiveness and timing issues relating to feasibility of GPMF.

2. HLUET concluded its consideration of the GPMF report by referring the report back to the Administration for additional information regarding the feasibility of GPMFs for construction and land use planning applications, including legal implications, for a future report to the HLUET Committee.

3. As an alternative to a General Plan–related fee only, this report–back recommends the Board Committees consider a modest separate surcharge in the form of a "Comprehensive Planning Fee" (CPF). The revenue generated from this fee surcharge will be maintained in a separate revenue account to fund required functions and activities of comprehensive planning, and will increase cost recovery ratios for such activities.

4. This report addresses the nexus issues between permit issuance and the General Plan (Attachment E), the relative appropriateness of such fees for different types of land use and development permits, and the cost–effectiveness of such fees relative to the cost of updating plans, ordinances and planning studies. The report also provides further explanation of the role of the County General Plan (Attachment D) in permit review and issuance, information regarding the durability of the County's General Plan and Zoning Ordinance, and background regarding how frequently the General Plan needs to be updated, and options for doing so.

5. The original report's primary recommendation was to not enact fees tied solely to the maintenance of the County's General Plan, a General Plan Maintenance Fee (GPMF). Given a variety of factors, including nexus issues, the recommendation of this report concurs with that initial recommendation, in favor of a fee surcharge related to maintenance of the variety of comprehensive planning functions and services mandated by state law, described further in the Background section of this report.

6. The preliminary recommendations for the CPF are based on staff's review of prevailing practices by similar jurisdictions. Options regarding actual rates and/or applicability may be considered at the Board Committee meetings and future Board of Supervisors meetings.

7. The fee surcharge proposal is based on an analysis of the following:

   a. Best estimates for the future costs of a focused update of the General Plan, implementing ordinances, and special planning studies, over a 15–year period, with annualized data.

   b. Basic assumptions regarding the frequency and duration of future planning endeavors.

   c. General Plans and ordinances are enacted primarily for the public benefit for a multitude of purposes, land use and development opportunities being just one of the major purposes. Costs of maintaining plans and ordinances should be apportioned to both the general public and the more direct beneficiaries of permits and development.

BACKGROUND

Referral History

This report originates from a referral of the Board of Supervisors in June of 2004 to provide an analysis of the feasibility of a General Plan Maintenance Fee (GPMF). In response, the Director of the former Environmental Resources Agency, W.T. Chow, and staff conducted a survey and reported to the HLUET Committee of the Board in December of 2004 (Attachment B). HLUET continued the discussion to its January 20, 2005 (Attachment A) meeting and referred the report back to Administration for further information. The original report provided some background information on GPMFs, the survey results, and an extensive array of options for cost recovery based on general estimates for the future cost of a comprehensive update of the General Plan.

Various cities and counties in California (as elaborated in Attachment B), have adopted a general plan administration or maintenance fee to cover costs associated with general plan update preparation and maintenance. This type of fee was specifically authorized by the enactment of AB 2936 (2002), which modified Government Code Section 66014. According to subsection (b) of the code, "The fees charged pursuant to subdivision (a) may include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any

necessary findings and determinations." In other words, a local jurisdictions' planning documents, including general plans, special area plans, implementing ordinances, and formally adopted guidelines, serve as the basis for land use, development, and building permit approvals, and as such, their adequacy must be maintained as a prerequisite for permit issuance. Chief among these is the general plan.

Santa Clara County General Plan

(Adopted Dec. 1994, and hence referred to as the 1995 General Plan)

The current Santa Clara County General Plan was adopted December 20, 1994 after a five–year comprehensive review program. Its subtitle is "Charting a Course for Santa Clara County's Future: 1995 – 2010." Comprehensive plans or general plans may utilize such a statement of a "time horizon" to indicate that the general plan is a long range planning document. However, the use of descriptive time horizon is not necessarily an indication of the durability, "shelf life", or continued relevancy of the General Plan, nor is it an indication that it will inherently require comprehensive amendment upon the arrival of the end date of the time horizon. The County General Plan is three plans in one, serving as a countywide regional plan, a plan for the rural unincorporated areas, and a plan for the urban unincorporated areas, including Stanford University. The different "Roles of the County General Plan" are described in detail in Attachment D.

There is no statutory requirement to update the General Plan within a given time period following its adoption or amendment. State law requires that general plans be maintained for consistency with changes in applicable state laws, but otherwise the general plan laws and guidelines require that a general plan be maintained periodically to the degree necessary to ensure that it serves as an adequate guide to land use decision–making. In that regard, it serves as a vision or "blueprint" for the physical development of the city or county, and the primary need to update the General Plan is to maintain its general relevancy to local and regional issues.

The Housing Element is the only mandatory element that is required to be updated on a prescribed frequency, every five years or as modified by the legislature. The Board of Supervisors adopted the current Housing Element of the General Plan in March 2003.

The County's General Plan is presently in no imminent need of comprehensive updating or review with regard to the basic content requirements of the mandatory elements. Staff recommends that prior to undertaking a future work plan to review and update the General Plan, it would be advisable to first assess more specifically what most needs updating or improvement, focus on those elements or subsections, and undertake only the most cost–effective revisions needed. Costs associated with comprehensive updates of general plans and their environmental reviews have escalated tremendously in the last ten to 15 years. Many such programs take five years or more. To the extent possible, staff recommends that the County consider the most cost–effective means of maintaining the General Plan available, by undertaking focused updates to general plan elements that need to be revised, for example, the Transportation and Noise sections.

Planning Activities Addressed through CPF

California Government Code § 66014(b) states:

"Fees ... may include costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations." [emphasis added] I.e., refers to plans and implementing regulations that are the basis for granting land use approvals or issuing building permits.

Alternatively, interpretation of statute could limit applicability to only General Plan–related work, area plans, and implementing studies listed under (a) below.

Comprehensive Planning Services of the County Planning Office include a great variety of functions, services and activities, described in detail in Attachment C. The types of comprehensive planning functions/activities that most reasonably relate to the purposes of Govt. Code § 66014(b) stated above, are listed in this section:

a. General Plan–related work that may qualify:

i. Original adoption of the General Plan.

ii. General Plan updates or revisions of comprehensive nature (e.g.: 1994 GP Review Program).

iii. General Plan amendments/revisions/updates to specific elements or other subsections to comply with state mandates or changes therein for content of mandatory elements (e.g..: Mineral Resources Management Policies and Maps update to Conservation Chapter, Mineral Resources Section in August 2001; Land Use Policies Chapter revisions, Housing Element technical updates, etc.).

iv. Area or community plans adopted as part of a General Plan, and the planning studies authorized or needed as a basis for adoption.

v. Special studies relating to Implementation Recommendations of the General Plan or Work Plan items which have as their outcomes either the amendment of the General Plan and/or amendments to implementing regulations/ordinances that govern permitting functions.

vi. Specific Plans (not part of a General Plan, but similar; not used by County).

b. Zoning Ordinance–related work that may qualify:

i. Comprehensive update or revision of the Zoning Ordinance.

ii. Periodic amendment or revision of certain provisions for consistency with State law or other mandates or pursuant to direction of the Board as part of a work program (E.g.: secondary dwelling regulation changes over time; commercial antenna/cell tower regulations).

iii. General maintenance, revision for clarifications, corrections (E.g.: current process of amending for clarification and corrections)

c. Ordinance Code work that may qualify:

(Land Development Regulations and Administrative Permits)

i. Comprehensive updates and revisions of existing provisions (Subdivision Ordinance, Grading Ordinance, Single–Site Regulations, etc.)

ii. General maintenance and revision for clarification, reorganization, or corrections.

Nexus Between General Plan and Permit Applications

A General Plan serves as the "constitution" for land use and development for the jurisdiction, and all other ordinances, guidelines, or other implementing mechanisms are required to be consistent with the General Plan. No permit issuance or discretionary development approval may be authorized if not consistent with applicable provisions of the General Plan.

Beyond that most fundamental relationship or "nexus" between the General Plan, County ordinances, and the County's permitting functions, nexus issues can be analyzed further for better understanding on a geographic basis. Please see Attachment E for a detailed discussion

In conclusion, land use approvals, land development, and building permits do have some effect on the durability and relevancy of any jurisdiction's general plan. However, for Santa Clara County, there is a stronger overall nexus for considering a fee surcharge related to the provision of overall comprehensive planning services, as described in this transmittal, rather than one tied to the maintenance of the General Plan alone.

Cost Recovery and Effectiveness

A comprehensive planning fee or surcharge is usually intended to capture revenue over time to be devoted to maintaining staff capabilities and financial resources necessary to fulfill the mandates of state law for planning agencies, whether related to general plans, special studies, general plan implementation, ordinance revisions, or area planning. For some jurisdictions, the intent may be to capture all the revenue needed to pay the full estimated cost of these activities on an annualized basis. In other jurisdictions, the purpose may be to capture some percentage of the revenue needed, depending on the type, amount, and construction value of the development that occurs within the jurisdiction. The latter approach reflects a prevailing philosophy that some portion of these costs should be borne by the public, through general fund revenues, because General Plans and related activities are adopted and implemented in the public interest. They address a tremendous variety of subject matter, and are not just for the purpose of enabling the permitting functions of a city or county. For the purposes of the current proposal of the CPF, 50% of the revenue needed for Comprehensive Planning functions of the County are being recovered by the proposed fee. (See Table B.)

The Survey conducted by the ERA's staff in September 2004 included all of California's 58 counties, and 51 cities in the four county region in the immediate vicinity of Santa Clara County. It yielded useful information that was analyzed and presented to the HLUET Committee in December 2004. Please refer to Attachment B: General Plan Maintenance Fee Report (report) dated December 16, 2004.

The Survey Conclusions (page 9 of report) indicated that the prevailing practice of the respondents (67.2 percent of counties, and 64.7 percent of cities returned the survey) was not to impose a GPMF or similar fee pursuant to Government Code Section 66014(b). Of the 39 counties that responded, 11 charged a GPMF; and of the 33 cities that responded, only 14 cities charged a GPMF. However, such fees or surcharges may become more common over time.

None of the responding counties imposed a fee surcharge on construction application fees (typically building permit fees for plan check and inspection services). Most responding counties and cities that impose a surcharge apply it on the estimated construction value of those permits. The maximum prevailing rates charged by responding counties and cities were 40 percent of the planning application fee (Contra Costa), 10 percent of the construction application fees (Fremont), and 0.9 percent of the estimated construction value (Union City).

The cost–effectiveness of a fee for Santa Clara County would be affected by several factors:

- generally low rates of development and the modest types of development that occur compared to cities or those counties that permit urban types of land use and development;

- uncertainty regarding the extent and cost estimates for future work efforts, such as updating of the General Plan, whether on an element–by–element basis, or comprehensive basis; and,

- determinations of what a reasonable and appropriate surcharge would be, and the extent to which such a fee should support comprehensive planning functions relative to the general fund.

The first factor, generally modest rates of development, is a given, based on political geography, countywide growth management and land use policies, and the minimal percentages of available undeveloped land in urbanized areas.

Costs of recent general plan updates for similar jurisdictions have ranged widely depending on the extent or scope of review, the amount of consultant resources needed, the duration and extent of public review and hearing processes, whether legal challenges have occurred and whether adoption of the updated plan was successful or failed to obtain approval by the city council or board of supervisors. The County's previous report estimated a future General Plan review and update cost at between 2.5 and 4.5 million dollars. However, the next General Plan review does not necessarily have to entail a comprehensive update. There are different ways of approaching future updating in a more cost–effective, less politicized, and less–time consuming manner. The last update of the County's General Plan took over five years of continuous work effort. That is not uncommon today for cities and counties, but to the extent it can be avoided, it should be.

If done properly and cost–effectively, the scope of any future update of the General Plan and its cost would be based on a formal assessment of the current General Plan as to what content is most dated, what is most in need of clarification or improvement, and what content is essentially in no need of review and updating. It should be based on a clear understanding of what minimally is needed to ensure the continued relevancy, validity and value of the General Plan as a guide to decision–making where the General Plan plays such a role, as opposed to where the General Plan is only advisory to the cities or other entities. And the charge given to staff, advisory bodies, and consultants should be carefully articulated so as to avoid unnecessary expenditure of effort, finances, and time spent on content and policies which do not need to be updated or revised in any significant way.

In the absence of a formal assessment, this report contains a best estimate for future comprehensive planning costs based on staff experience and comparison with jurisdictions with similar comprehensive planning requirements. Table B lists the estimated costs of the various anticipated comprehensive planning components, and offers an elaboration on the basis for these estimates.

Given the above discussion, and careful consideration of the various factors involved, staff believes that a CPF surcharge of moderate proportion can be implemented to capture some additional revenue to augment and buffer the County's General Fund for those costs. It would supplement the General Fund as the source of funding for such planning functions, but not substitute for it.

Fee Inflation – Impacts on Code Compliance and Applicants

One of the many factors that must be weighed in considering use of a GPMF surcharge is the jurisdiction's fee policy and structure. Santa Clara County has employed a full–cost recovery mandate for planning and development services related to permit processing for a number of years. As a result, planning application fees have been raised across the board for land use applications on average by 8–10% annually. These include such applications as building site approval, lot line adjustments, subdivision, and the like. At those rates of annual increase, fees double roughly once every 7 years. As fees rise, the cost to some applicants for some types of permits becomes more cost–prohibitive, and fees can become more of a deterrent to compliance with building and planning codes and requirements than might be imagined. At some point, permit avoidance undermines the mission and purpose of regulations and the cost–recovery effort.

Consideration of a fee surcharge based on current state codes to maintain adequate planning capabilities for future planning studies, including updating a general plan, other plans, and ordinances should include the possible effects on fee inflation, and if adopted, be enacted such that it does not have significant undesired impacts to compliance with permit requirements.

The proposed CPF rate of 0.00074 of the construction value of the project is considered to be a modest surcharge that is not perceived to have any considerable impact on the fees currently being charged for construction in the County. Currently, a project valued at $1 million is charged $4,473 in plan check building permit fees. The CPF surcharge would add $740 to the fee, with the new total fees to be $5,213.

Additionally, all utility permits (plumbing, mechanical and electrical) and minor construction projects valued at less than a $25,000 are proposed to be exempt from this fee. This exemption provides relief from fee escalation for small projects, like a 450 square foot finished garage addition, a 200 square foot living area, and a 1,000 square foot stable or barn.

CONSEQUENCES OF NEGATIVE ACTION

If a fee surcharge pursuant to Government Code Section 66014(b) is not enacted, all current fee schedules will remain in effect.

STEPS FOLLOWING APPROVAL

The Finance and Government Operations Committee (FGOC) and Housing, Land Use, Environment and Transportation (HLUET) Committees will forward recommendations to the Board of Supervisors on the subject of a Comprehensive Planning Fee. If the Board elects to enact such a fee, the action would be in the form of an ordinance or resolution as prescribed by the statute. Documentation of such action would be provided by the Clerk of the Board for the Department's records.

ATTACHMENTS

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- Table A: Cities and Counties with GPMF or Other Fees Covering GP Costs
- Table B: Estimation of Cost Basis for Comprehensive Planning Fee
- Attachment A: HLUET Meeting Summary for December 16, 2004
- Attachment A (continued): HLUET Meeting Summary for January 20, 2005
- Attachment B: December 16, 2004 HLUET Report on GPMF
- Attachment C: Comprehensive Planning Services of the County Planning Office
- Attachment D: Roles of the County General Plan
- Attachment E: Nexus between General Plan and Permit Applications

County of Santa Clara
Clerk of the Board
Boards & Commissions
Airport Land Use Commission

BC04–060804

Prepared by: Dana Peak
Program Manager
Mary Trozzolillo
Board Clerk I

Reviewed by: Marilyn Anderson
Supervising Board Clerk,
Boards & Commissions

DATE: June 8, 2004

TO: Board of Supervisors

FROM: Phyllis Perez
Clerk of the Board

SUBJECT:
Santa Clara County Airport Land Use Commission Fee Schedule

RECOMMENDED ACTION

Accept fee schedule for project referrals, as adopted by the Airport Land Use Commission and supported by the Housing, Land Use, Environment and Transportation Committee.

FISCAL IMPLICATIONS

The adopted fee schedule of the ALUC will partially offset the cost of staff time spent processing project referrals. The ALUC anticipates that the existing General Fund subsidy, $30,000 included in the FY05 Recommended Budget, will continue to support other ALUC mandated responsibilities such as updates to the ALUC's Comprehensive Land Use Plan (CLUP) and activities such as Geographical Information System (GIS) mapping and staff support for ALUC Workshops.

Revenue resulting from this fee increase was included in the FY04 Final Budget in the amount of $11,750, but due to delays in approving the new fees, the revenue will not be realized in FY04. This revenue is included in the FY05 Recommended Budget.

REASONS FOR RECOMMENDATION

The Santa Clara County Airport Land Use Commission (ALUC) receives referrals from various jurisdictions and agencies, and the County of Santa Clara incurs substantial costs related to processing these ALUC referrals. The ALUC finds it necessary to implement a fee schedule, as authorized by state law, to reflect the reasonable cost of providing the services involved in reviewing, evaluating, and processing projects referred to the ALUC.

General Fund support is still needed to update the ALUC's CLUP because the CLUP has not been comprehensively updated since its initial adoption approximately 30 years ago. The CLUP update will be prepared in–house, which will minimize the cost, but there are still associated costs (such as technical assistance, reproduction, public hearings, and staff coordination) that necessitate General Fund support.

It is the goal of the ALUC to operate from a full cost–recovery position within the next three years. The initial adoption of fees will be a trial implementation intended to serve as a transitional step towards full cost recovery. The ALUC proposes to review the adopted fee schedule at the end of each fiscal year to evaluate whether the fees accurately cover County labor costs.

BACKGROUND

The adoption of project referral fees is a first in the history of the ALUC. Since the ALUC was established in 1971, it has accomplished its state–mandated functions through General Fund support. However, Public Utilities Code Section 21671.5(f) gives airport land use commissions the authority to establish fees necessary to comply with their statutory responsibilities. At its March 24, 2004 regular meeting, the Santa Clara County ALUC adopted a resolution (Attachment A) establishing fees for ALUC referrals subsequent to considering four different fee options (Attachment B) proposing varying levels of fees and ALUC staff support. The Commission selected a partial cost–recovery approach to initiate fees.

This fee schedule is based on the estimated Fiscal Year (FY) 04 costs incurred by the Planning Office, Clerk of the Board, and County Counsel for processing agency referrals (Attachment C). The proposed fees were developed by County Environmental Resources Agency Administration with project referral data and FY 04 hourly labor costs for ALUC staff support (ALUC Staff Coordinator/Planning Office – $112 per hour; ALUC Secretary/Clerk of the Board – $67 per hour; and ALUC Counsel/County Counsel – $161 per hour). The Planning Office provides the majority of staff support to the ALUC (Attachment D).

The fee schedule also includes a provision for charging the applicant on an hourly basis when referred projects require additional staff time beyond the standard number of hours assumed for processing the item. When "Major" project referrals exceed the flat fee by requiring review at more than one ALUC meeting, a blended hourly rate ($117/hr) will be billed to the applicant or referral agency to complete the ALUC's review.

The purpose of the ALUC is to carry out the statutory resposibilities required by Sections 21670 through 21679.5 of the Public Utilities Code of the State of California. These responsibilities include preparing and adopting a Comprehensive Land Use Plan for the areas surrounding the four public airports in Santa Clara County and assisting local jurisdictions in ensuring compatible land uses in the vicinity of local airports. The ALUC also assists local jurisdictions in identifying and recommending solutions for orderly development and future growth and activity focusing on minimizing the public's exposure to excessive noise and safety hazards in the vicinity of local airports. Other responsibilities of the ALUC are to review for CLUP consistency proposed amendments to general and specific plans of local jurisdictions adjacent to an airport; and to review individual proposed land use actions for the areas surrounding public airports.

Local agencies are required to submit proposals to amend general or specific plans, building or zoning regulations, and Airport Master Plans to the ALUC for a determination of consistency with its CLUP. Currently, the ALUC receives referrals that are "voluntary" and do not require referral by local jurisdictions. The ALUC adopted the implementation of fees that are not initially full cost–recovery to avoid deterring jurisdictions from referring projects and thus diminishing appropriate land use planning around the County's airports.

On March 24, 2004 the ALUC voted unanimously to approve the Resolution of the Airport Land Use Commission Adopting Fees for Project Referrals. Subsequently, on May 5, 2004, the Housing, Land Use, Environmental and Transportation Committee voted to forward a favorable recommendation to the Board of Supervisors to accept the fee schedule adopted by the ALUC for project referrals.

CONSEQUENCES OF NEGATIVE ACTION

If project referral fees are not adopted, ALUC staffing may or may not be supported by the General Fund and may require reduction to a basic level of support such as posting meeting agendas, preparing meeting minutes, and county counsel consultation only when necessary.

STEPS FOLLOWING APPROVAL

a. Environmental Resources Agency, in conjunction with the Planning Office, to work with affected jurisdictions in implementing the adopted ALUC fees.

b. Send original transmittal, with notification of Board action affixed, to Records Coordinator, Clerk of the Board.

c. The Deputy Clerk, Airport Land Use Commission, will advise the Commission of Board action.

ATTACHMENTS

- (Transmittal submitted on May 27, 2004 10:11:59 AM – PDF Version)
- A (Resolution)
- B (Miscellaneous)
- c (Miscellaneous)
- D (Miscellaneous)

ATTACHMENT A

RESOLUTION OF THE SANTA CLARA COUNTY AIRPORT LAND USE COMMISSION ADOPTING FEES FOR PROJECT REFERRALS

WHEREAS, the Santa Clara County Airport Land Use Commission ("ALUC") was established pursuant to California Public Utilities Code Section 21670 *et seq.* to protect the public health, safety, and welfare by promoting orderly expansion of airports and adoption of land use measures by local public agencies to minimize exposure to excessive noise and safety hazards near airports; and

WHEREAS, state law authorizes the ALUC to assist local agencies in ensuring compatible land uses in the vicinity of airports, to coordinate planning at the state, regional and local levels, to prepare and adopt airport land use plans, and to review and make recommendations concerning specified plans, regulations and other actions of local agencies and airport operators including the adoption and amendment of General and Specific Plans amendments, adoption or amendment of zoning ordinances, adoption or amendment of building regulations, revision of Airport Master Plans, and approval of plans to construct new airports/heliports; and

WHEREAS, California Public Utilities Code § 21671.5(f) provides:

> "The Commission may establish a schedule of fees necessary to comply with this article. Those fees shall be charged to the proponents of actions, regulations, or permits, shall not exceed the estimated reasonable cost of providing service, and shall be imposed pursuant to §66016 of the Government Code."

WHEREAS, the Airport Land Use Commission of Santa Clara County currently receives between 50 and 75 referrals per year from various jurisdictions and the County of Santa Clara incurs substantial costs related to processing these ALUC referrals, including the following:

(1) Administrative and clerical staff costs associated with preparing and publishing ALUC agendas and other public notices; scheduling, arranging and preparing for ALUC meetings; transcribing ALUC meetings, and preparing ALUC meeting minutes;

(2) Professional staff costs associated with reviewing, analyzing and reporting on project referrals, including but not limited to preparation of reports, maps, exhibits and other materials and consulting with the referring agencies; and

(3) Attorney staff costs associated with analyzing legal issues associated with project referrals and providing legal advice to the ALUC and ALUC staff regarding project referrals; and

WHEREAS, the ALUC finds it necessary to implement a fee schedule, as authorized by state law, to reflect the reasonable cost of providing the services involved in reviewing, evaluating and processing projects referred to the ALUC; and

WHEREAS, based upon the data presented, the ALUC finds that each of the fees set forth in the table below does not exceed the estimated cost reasonably necessary to provide the service for which each fee is levied; and

WHEREAS, the proposed fee schedule was considered by the ALUC at its March 24, 2004 regular, open public meeting; and

WHEREAS, notice of the time and place of the March 24, 2004 ALUC meeting was provided in compliance with Government Code section 66016 and Public Utilities Code section 21671.5(f); and

NOW THEREFORE BE IT RESOLVED, by the Santa Clara County Airport Land Use Commission, that the following fee schedule is adopted for all projects referred to the Airport Land Use Commission:

TYPE OF REFERRAL	FEE
Major Project Referrals:[1]	
- without CEQA document review	$ 805 + $117/hour[3]
- with CEQA document review	$ 1189 + $117/hour[3]
Minor Project Referrals:[2]	
- without CEQA document review	$ 158
- with CEQA document review	$ 333

[1] Major Project Referrals are all referrals that are not Minor Project Referrals.

[2] Minor Project Referrals are those referrals that ALUC staff determines can be evaluated at a staff level and need not be referred to the full Airport Land Use Commission for a determination of consistency with the comprehensive land use plan.

[3] The hourly fee applies to all staff time spent on the referral beyond the first ALUC meeting at which the referral is discussed.

PASSED AND ADOPTED by the Santa Clara County Airport Land Use Commission, State of California on March 24, 2004 by the following vote:

AYES: Blake, Knopf, Parle, Sturdivant, Windus, Grigsby (Alternate for Britton)
NOES: None
ABSENT: Kennedy
ABSTAIN: None

Ralph Britton, Chairperson
Santa Clara County Airport Land Use Commission

ATTEST:

Mary Trozzolillo, Deputy Clerk of the Board

APPROVED AS TO FORM AND LEGALITY:

Lizanne Reynolds, Deputy County Counsel

ATTACHMENT D

FUNDING OPTIONS FOR ALUC ACTIVITY

FUNDING OPTIONS	FEE (Associated with activity)	GENERAL FUND SUPPORT
OPTION 1 (No $30,000)		
▪ Major Project Referrals (Mandatory and Voluntary)	YES	NO
▪ Minor Project Referrals (Voluntary)	YES	NO
▪ Other "voluntary" activities (CLUP revisions, GIS support, workshop staffing, reproduction, etc.)	NO	NO
OPTION 2 (With $30,000)		
▪ Major Project Referrals (Mandatory and Voluntary)	PARTIAL	YES
▪ Minor Project Referrals (Voluntary)	PARTIAL	YES
▪ Other "voluntary" activities (CLUP revisions, GIS support, workshop staffing, reproduction, etc.)	NO	YES
OPTION 3 (With $30,000)		
▪ Major Project Referrals (Mandatory)	YES	YES
▪ Major Project Referrals (Voluntary)	NO	NO
▪ Minor Project Referrals (Voluntary)	NO	NO
▪ Other "voluntary" activities (CLUP revisions, GIS support, workshop staffing, reproduction, etc.)	NO	YES
OPTION 4 (With $30,000)		
▪ Major Project Referrals (Mandatory and Voluntary)	NO	YES TO $30,000 LIMIT
▪ Minor Project Referrals (Voluntary)	NO	YES TO $30,000 LIMIT
▪ Other "voluntary" activities (CLUP revisions, GIS support, workshop staffing, reproduction, etc.)	NO	YES TO $30,000 LIMIT

County of Santa Clara
Clerk of the Board
Boards & Commissions
Airport Land Use Commission

BC04–060804

Prepared by: Dana Peak
Program Manager
Mary Trozzolillo
Board Clerk I

Reviewed by: Marilyn Anderson
Supervising Board Clerk,
Boards & Commissions

DATE: June 8, 2004

TO: Board of Supervisors

FROM: Phyllis Perez
Clerk of the Board

SUBJECT:
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RECOMMENDED ACTION

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CONSEQUENCES OF NEGATIVE ACTION

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STEPS FOLLOWING APPROVAL

a. Environmental Resources Agency, in conjunction with the Planning Office, to work with affected jurisdictions in implementing the adopted ALUC fees.

b. Send original transmittal, with notification of Board action affixed, to Records Coordinator, Clerk of the Board.

c. The Deputy Clerk, Airport Land Use Commission, will advise the Commission of Board action.

ATTACHMENTS

- (Transmittal submitted on May 27, 2004 10:11:59 AM – PDF Version)
- A (Resolution)
- B (Miscellaneous)
- c (Miscellaneous)
- D (Miscellaneous)

Airport Land Use Commission									Option 2		
Fee Analysis											
FY2005 - Projected											
									Man / Vol - with (30K) GF Subsidy		
			PLANNING		COUNTY COUNSEL		CLERK OF THE BOARD				
		a	b	c	d	e	f	g			
		# of Ref / Mtg	Total Expense Per Category	Per Ref / Mtg	Total Expense Per Category	Per Referral	Total Expense Per Category	Per Referral	Proposed ALUC FEE		Prposed ALUC Hourly Rate
MANDATORY / VOLUNTARY											
Major Project Referrals		14	12544	896	3542	253	1038	74	805	65%	73.14
Major Project Referrals - with CEQA Document		4	1792	448	0	0	297	74	1,189	22%	35.56
Staffing for Meetings (spread across fees abov		6	4704	784	2898	483	2342	390		13%	8.20
Subtotal -			19040		6440		3676			100%	$ 117
VOLUNTARY											
Minor Project Referrals		47	8624	183	0	0	3484	74	158	78%	87.21
Minor Project Referrals - with CEQA Document		10	2128	213	0	0	741	74	333	0%	0.00
Staffing for Workshops (spread across fees ab		6	2016	336	0	0	0	0		22%	14.40
Subtotal -			15904		0		4522			100%	$ 102
Grand Total Cost -		79	34944		6440		8198				

ATTACHMENT B

ANALYSIS OF PLANNING OFFICE SUPPORT FOR THE ALUC

	Number of Referrals Located Outside AIA/ Hours Required	Number of Referrals Located Inside AIA Letter/ Hours Required	Number of Referrals Located Inside AIA Meeting Transmittal/ Hours Required	Total Staff Hours	Total Cost Planning $112/hr
MANDATORY					
MANDATORY MAJOR PROJECTS					
General Plan Amendments			6 @ 8 hours	48	$5,376
- Related CEQA Documents			2 @ 4 hours	8	$896
Rezoning			4 @ 8 hours	32	$3,584
- Related CEQA Documents			1 @ 4 hours	4	$448
Specific Plan Amendments			1 @ 8 hours	8	$896
- Related CEQA Documents					
Building Regulation Amendments					
SUBTOTAL MANDATORY REFERRALS Projects - CEQA Documents			14 / 100 11 / 88 3 / 12	100	$11,200
STAFF ALUC MEETINGS			6 meetings / 3 hrs each	18	$2,016
Coordinate agenda and prepare transmittals/attachments			6 meetings / 4 hrs each	24	$2,688
TOTAL MANDATORY ACTIVITY				142	$15,904

ATTACHMENT C

ANALYSIS OF PLANNING OFFICE SUPPORT FOR THE ALUC

	Number of Referrals Located Outside AIA/ Hours Required	Number of Referrals Located Inside AIA Letter/ Hours Required	Number of Referrals Located Inside AIA-Meeting Transmittal/ Hours Required	Total Staff Hours	Total Cost Planning $112/hr
VOLUNTARY					
VOLUNTARY MAJOR PROJECTS (inside safety area)					
▪ Grading					
▪ Site Development					
▪ Special/Conditional Use			3 @ 8 hours	24	$2,688
▪ Building Site Approval					
▪ Subdivision					
▪ ASA					
▪ Related CEQA Documents			1 @ 4 hours	4	$448
VOLUNTARY MINOR PROJECTS (Industrial/commercial or 1 unit residential outside safety area or outside Airport Influence Area)					
▪ General Plan Amendments	21 @ 1 hour			21	$2352
Related CEQA Documents	3 @ 1 hour			3	$336
▪ Rezoning	3 @ 1 hour			3	$336
Related CEQA Documents	2 @ 1 hour			2	$224
▪ Specific Plan Amendments					
Related CEQA Documents					
▪ Grading					
▪ Site Development		5 @ 3 hours		15	$1,680
▪ Special/Conditional Use	4 @ 1 hour	3 @ 3 hours		13	$1,456
▪ Building Site Approval		2 @ 3 hours		6	$672
▪ Subdivision		2 @ 3 hours		6	$672
▪ ASA	4 @ 1 hour	3 @ 3 hours		13	$1,456
▪ Related CEQA Documents	2 @ 1 hour	3 @ 4 hours		14	$1,568

ANALYSIS OF PLANNING OFFICE SUPPORT FOR THE ALUC

	Number of Referrals Located Outside AIA/ Hours Required	Number of Referrals Located Inside AIA Letter/ Hours Required	Number of Referrals Located Inside AIA- Meeting Transmittal/ Hours Required	Total Staff Hours	Total Cost Planning $112/hr
VOLUNTARY, Continued					
SUBTOTAL VOLUNTARY REFERRALS	39 / 39	18 / 57	4 / 28	124	$13,888
Projects	32 / 32	15 / 45	3 / 24		
CEQA Documents	7 / 7	3 / 12	1 / 4		
STAFF ALUC WORKSHOPS			6 meetings/3 hrs each	18	$2,016
CLUP AMENDMENTS					
▪ Staff Coordination				80	$8,960
▪ Map Reproduction				Outsource	$1,400
▪ Agency Consultation				8	$896
GIS SUPPORT				40	$4,480
TOTAL VOLUNTARY ACTIVITY				270	$30,240
TOTAL PLANNING OFFICE SUPPORT				412	$46,144
NOT INCLUDED:					
CLERK OF THE BOARD SUPPORT ($67/hour)				122.36	$8,198
COUNTY COUNSEL SUPPORT ($161/hour)				40	$6,440

BYLAWS OF THE
AIRPORT LAND USE COMMISSION
OF SANTA CLARA COUNTY
(Amended by ALUC on January 23, 2002)
Approved by the Board of Supervisors on August 6, 2002

1.0 NAME

The name of this organization is the Airport Land Use Commission of Santa Clara County, which may be abbreviated ALUC.

2.0 PURPOSE

The purpose of the ALUC is to carry out the statutory responsibilities required by Sections 21670 through 21679.5 of the Public Utilities Code of the State of California. Specifically, these responsibilities include, but are not limited to, assisting local agencies in ensuring compatible land uses in the vicinity of local airports, maintaining an Airport Land Use Plan, and reviewing the plans, regulations, and other actions of local agencies and airport operators.

3.0 MEMBERSHIP

1. The commission shall be composed of seven (7) voting members to be selected as follows:

    a. Two (2) representing the cities, appointed by the city selection committee; at least one, and preferably both, of these members must represent a city adjacent to an airport.

    b. Two (2) representing the county, appointed by the Board of Supervisors.

    c. Two (2) having expertise in aviation, appointed by a committee comprised of the aviation director of the San Jose International Airport and the director of the county roads and airports department.

    d. One (1) representing the general public to be selected by the other six (6) members of the commission.

2. Terms of office shall be:

   a. Except for the terms of office of the first commission, the term of office of each member shall be four years, ending on the first Monday in May of the fourth year. (A member may be re-appointed for one additional term.) Any vacancy in the membership of the commission shall be filled for the unexpired term of appointment by the body that originally appointed the member whose office has been vacant.

   b. Should the ALUC in existence at the time of adoption of these by-laws be disbanded and a new ALUC be re-established, the members of the first re-established commission shall classify themselves by lot so that the term of office of one member is one year, of two members is two years, of two members is three years, and of two members is four years. The expiration date of the term of office of each member shall be the first Monday in May of the year in which the term is to expire. Any vacancy shall be filled for the unexpired term as designated in "a" above.

3. Members of the ALUC are required to file annual conflict of interest reports.

4. Each member, upon appointment and taking the oath of office, shall promptly appoint a single proxy who shall take the oath of office and file conflict of interest reports with the clerk of the board. The proxy shall be designated in a signed written instrument, which shall be kept on file by the Clerk of the Board. When so directed by the appointing member, a proxy member will represent the sitting member in all affairs of the commission and exercise the vote of the member at meetings. If a member cannot be present for a meeting and his/her proxy will be attending, the deputy clerk of the board of supervisors should be notified within a reasonable period of time before the meeting so that arrangements will be made for the proxy to serve. If neither the member nor proxy can attend, the Chair or the deputy clerk of the board of supervisors must be notified within a reasonable period of time before the meeting.

5. Proxies serve at the pleasure of the appointing member and must meet the basic qualifications required for appointment to county commissions. A vacancy in the office of proxy

shall be filled promptly by appointment of a new proxy. Proxies are voting members only when substituting for the member.

6. Staff representatives of San Jose International Airport and the Santa Clara County Roads and Airports Department shall act as ex-officio non-voting members of the commission.

7. If an ALUC member (or proxy in stead) is absent for two regular meetings, the Chair shall first consult with the member to attempt to determine the cause for the absences, and may then forward a letter to the member's appointing body requesting correction of the problem, potentially including replacement of the member.

8. The Chair shall notify the member's appointing body sufficiently in advance (e.g. 6 months) of the end of that member's term for that body to appoint a successor who would take office at the end of the term of the outgoing member.

9. Resignations from the ALUC shall be submitted to the resigning member's appointing body, with a copy to the clerk of the board.

4.0 ROBERT'S RULES OF ORDER

Except as otherwise provided herein, the commission shall be governed by the rules of procedure set forth in Robert's Rules of Order (The Modern Edition).

5.0 OFFICERS

1. The officers of this commission shall be:

   a. Chair
   b. Vice-chair

2. The Chair and Vice-chair shall be elected by, and serve at the pleasure of, the commission for a period of one (1) year with a maximum extension of one (1) additional year.

3. Elections of officers shall occur at the first meeting after January 1 of each year or, when necessary, at the first meeting following an office becoming vacant.

6.0 STAFF

1. The staff of this commission shall be:

   a. Staff Coordinator
   b. Secretary

2. The Staff Coordinator shall be an employee of the County Planning Office assigned by the Principal Planner. Depending on staff resources, the County may provide alternative staffing.

3. The Secretary shall be a Deputy Clerk of the Board assigned by the Clerk of the Board.

7.0 DUTIES OF OFFICERS AND STAFF

1. The Chair shall:

   a. Preside at meetings of the Airport Land Use Commission.

   b. Call public hearings and other public meetings and initiate other action as provided for in California Public Utilities Code Sections 21670-21679.5.

   c. Perform other duties customarily performed by a Chair.

2. The Vice-chair shall serve as Chair upon absence or incapacity of the Chair.

3. The Staff Coordinator shall:

a. Receive, review and report on applications and referrals to the Airport Land Use Commission.

b. Make written responses to local agency referrals.

c. Prepare plans and reports as required by the commission and keep the commission informed of new matters involving Airport Land Use Commissions.

4. The Secretary shall:

a. Prepare and distribute notices for public meetings at least ten (10) calendar days prior to each meeting.

b. Prepare and distribute an agenda setting forth all items of business to be transacted or discussed by the Commission as well as staff reports for each meeting of the Airport Land Use Commission at least ten (10) days prior to the meeting.

c. Prepare, print and distribute minutes of each meeting of the commission.

d. Prepare letters regarding official action taken by the Airport Land use Commission.

e. Carry on correspondence at the direction of the commission. The Secretary as directed by the Chair may carry out routine correspondence regarding matters that do not require a vote by the Commission (e.g., correspondence not purporting to reflect the position or opinion of the Commission).

f. Maintain the records of the Airport Land Use Commission.

8.0 AGENDA

1. The agenda shall specify the time, location and order of business of any meeting, and shall include for the meeting:

a. All matters referred to the Commission.

b. All matters submitted by any member of the Commission.

c. All matters referred or requested by any other person during the usual course of business during regular meetings of the ALUC, provided those matters are consistent with the work of the Commission.

d. The Chair, or other commissioner designated by the Chair shall, at his/her discretion, meet in person, by telephone, or other means of communication with the Staff Secretary or Planner designated to the ALUC to place any and all matters upon the Agenda for consideration at a regular meeting not later than 12 o'clock noon on the eleventh (11th) calendar day immediately preceding the regular meeting day. Any and all members of the ALUC are invited to participate in the agenda setting process and review items for the agenda not later than 12 o'clock noon on the 11th day preceding the regular meeting date.

e. A Consent Calendar, which includes routine ALUC correspondence, approval of Minutes, or other items not requiring a public meeting.

2. The Commission may, from time to time, adopt by minute order a new or revised agenda and order of business with such agenda topics or headings listed in such order as is consistent with the Brown Act and as may be convenient or desirable for the conduct of Commission business.

9.0 VOTING

1. At the time of voting on any issue before the commission, each voting member or his/her proxy may cast one vote.

2. A majority of the full commission (i.e. four members) shall constitute a quorum for the transaction of business. No action may be taken by the commission except by the recorded vote of a majority of the full membership.

3. A member shall disqualify himself/herself from participation in the review or adoption of a proposal in the event of conflict of interest and shall notify the Secretary of any conflicts prior to the meeting at which the item that is the subject of the conflict will be considered. The member may

be replaced by his/her proxy provided the proxy has no conflict of interest with the proposal.

10.0 MEETINGS

1. Except as otherwise provided in these rules and regulations or the Brown Act, meetings of the Commission shall be open and public and shall comply with all applicable requirements of the Brown Act, and shall be conducted in accordance with the agenda and order of business prepared for the meeting.

2. Regular meetings of the Airport Land Use Commission will be held on the fourth Wednesday of odd-numbered months (or as needed at the discretion of the Chair or at the request of the majority of the commission members).

3. Special meetings of the Airport Land Use Commission may be called by the Chair provided that written notice is mailed to all members at least seven (7) days prior to the meeting and all Brown Act requirements for special meetings are met.

11.0 RULES AND REGULATIONS FOR PUBLIC MEETINGS

All Commission meetings shall be held in accordance with the Brown Act.

12.0 AMENDMENTS

Amendments of these bylaws shall be by a two-thirds vote of the entire membership (i.e. five votes in favor) at a Commission meeting following at least ten (10) days written notice of any amendment.

(Amended by ALUC on January 23, 2002)
Approved by the Board of Supervisors on August 6, 2002