
City Treasurer's Handbook

CALIFORNIA MUNICIPAL TREASURER'S ASSOCIATION

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Preface

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City Treasurer's Handbook

Lewis Keller, former Associate Counsel of the League of California Cities, in 1958 prepared the first paper on the duties of the City Treasurer, titled *Treasurer and the Law*. It was first presented to the League in 1958 and has been used as a legal handbook for City Treasurers in the performance of their official responsibilities and duties.

In 1959, Rodney Atchison, City Attorney of Santa Cruz, and in 1960, Carlyn Froerer, Staff Attorney of the League of California Cities, prepared revisions to the paper. The paper was last revised in 1963 by Jack D. Wickware, Assistant Legal Counsel of the League.

In 1977, at a Conference of the California Municipal Treasurers Association, the Board of Directors indicated a strong desire and need for a legal handbook for the City Treasurer and a complete revision and general updating of the paper. A committee was appointed and the update was completed, resulting in the publication of the *City Treasurer's Handbook*.

With the demise of the volunteer handbook committee, and in an effort to insure that it would continue to be a viable information document with annual updates, the CMTA Board of Directors, in 1983, hired municipal consultants Ralph Andersen & Associates and the legal firm of McDonough, Holland & Allen to review the existing Handbook.

Representatives of these two firms, legal counsel from the League of California Cities and a newly formed committee of CMTA members worked together to peruse, update and index the Handbook. The 1984 Handbook was the final result of that combined effort.

*We thank the League of California Cities for allowing us to use the contents of *Treasurer and the Law* and all those who contributed to this publication.*

Regularly since 1984, McDonough, Holland & Allen and CMTA have updated the Handbook. In 2001, CMTA and McDonough, Holland & Allen prepared this comprehensive update, beginning to expand the Handbook to cover issues related to all public agency treasurers. This Handbook is currently updated through 2001.

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Appendix D, Investment Policy Certification Program, is reproduced with the permission of the Municipal Treasurers Association of the United States and Canada.

Appendix F is excerpted with permission from a Bank of America publication titled Money Market Investments and Investment Vocabulary.

Appendix H, an explanation of the Local Agency Investment Fund, is reproduced with the permission of the California State Treasurer.

We wish to thank West Publishing Company, the Municipal Treasurers Association of the United States and Canada, Bank of America and the California State Treasurer for their cooperation in permitting these reprints.

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Treasurers' Handbook

The office of Treasurer for public agencies in California is a traditional and time-honored local public office. Every governmental agency which administers funds must have an officer who receives and handles these funds and acts in the capacity of Treasurer even though the office may not carry that title. City Treasurer is an office in all general law cities and almost without exception in chartered cities in California. The legal consequences which flow from this status as a "public officer" carry important official and personal responsibilities. This Handbook will review the constitutional, statutory and decisional law applicable to California Treasurers in order to assist Treasurers in defining and understanding their principal legal duties and liabilities.

As the duties and liabilities are reviewed, references will be made to specific constitutional and statutory provisions. Where appropriate, mention will also be made of legal and fiscal reference works that may assist a Treasurer who requires more detailed information about a specific topic. In expanding this Handbook to cover public agency treasurer, sometimes reference is made only to City Treasurers. Where this occurs, it is because the statute reference applies directly only to general law City Treasurers. Treasurers from other agencies will need to determine if similar requirements apply to their agencies.

The Appendices to this Handbook include copies of relevant statutes. In addition, the Appendices include sample investment policies, additional information concerning public investments and information on the California Municipal Treasurers Association and its certification program.

This Handbook is intended as an informational guide for both new and experienced Treasurers. However, as always, it is suggested that Treasurers consult with their Agency Attorneys for advice in particular situations.

I. General Nature
of the Office

I. General Nature of the Office

A. General Law and Charter Duties

The duties of the City Treasurer in California's general law cities are set forth in statutes. For the most part, City Treasurers or those discharging the treasury function in chartered cities or special districts will have the same types of duties as City Treasurers in general law cities. Sections 41001 through 41005 of the Government Code set forth the primary statutory duties of general law City Treasurers. These duties are to receive and safely keep all money coming into the treasury (Gov. Code, § 41001), to comply with all laws governing the depositing and securing of public funds (Gov. Code, § 41002), to pay money only on warrants signed by legally designated persons (Gov. Code, § 41003), and to submit a monthly written report and accounting of receipts, disbursements and fund balances to the City Clerk and the City Council (Gov. Code, § 41004). In addition, the City Treasurer is required to perform such duties relating to the collection of city taxes and license fees as are prescribed by ordinance (Gov. Code, § 41005). Section 53646 requires local agency Treasurer to render to their Boards or Councils an annual statement of investment policy and quarterly reports with specific requirements.

In charter cities, the duties and responsibilities of the City Treasurer are set forth in the city's charter. For special districts, the duties of the district treasurer are set forth in the statutes governing the particular district. Since the specific statutory duties of general law City Treasurers are identical, while the duties of City Treasurers in chartered cities and special districts will vary, the emphasis in this Handbook will be on the general law City Treasurer. Treasurers in charter cities should refer to their charters for their specific duties; treasurers for special districts should refer to the statute governing the particular district for their specific duties.

B. Tenure and Conditions of Office

In general law cities, the City Treasurer is one of the officers in whom the government of the city is vested along with the Council, the City Clerk, the Police Chief and the Fire Chief (Gov. Code, § 36501). The office of City Treasurer in general law cities is an elective office (Gov. Code, § 36503) with a four (4)-year term unless, either in the general incorporation (Gov. Code, § 36511) or as a result of an approving vote of the electorate on a proposition (Gov. Code, §§ 36508, 36509 and 36510), the office of the City Treasurer has been made appointive.

An elective City Treasurer, like other elective officers of general law cities, must be an “elector” of the city at the time he or she assumes office and must be a registered voter of the city when his or her nomination papers are issued (Gov. Code, § 36502; see *Smith v. Evans* (1974) 42 Cal.App.3d 154). An elective City Treasurer must continue to be a city resident and elector throughout his or her term or the office becomes vacant.

If the office of the elective City Treasurer becomes vacant, the City Council must, within thirty (30) days, either fill the vacancy by appointment or call a special election (Gov. Code, § 36512). During the period before appointment or the period before the special election is held, the city should appoint an Interim Treasurer to carry out the Treasurer’s duties pending the filling of the vacant position. The person appointed or elected to fill the vacancy holds office for the unexpired term of the former incumbent (Gov. Code, § 36512).

Although California statutes authorize term limits for Councilmembers in general law cities upon approval of the voters, this statutory authority does not extend to elected City Treasurers or City Clerks (Gov. Code, § 36502(b)). Therefore, general law cities do not have statutory authority to impose term limits on elected City Treasurers.

Before entering upon his or her duties, the City Treasurer, like other officers of the city, must take and file with the City Clerk the constitutional oath of office (Gov. Code, § 36507; Cal. Const., art. XX, § 3). In addition, the Treasurer must execute a bond to the city prior to entering upon the office in an amount recommended by the City Attorney and fixed by the City Council by resolution. The amount of the bond may be changed during a City Treasurer’s term of office (Gov. Code, § 36518).

The compensation of City Treasurers must be fixed by ordinance or resolution. Unlike the compensation of City Councilmembers, City Treasurers’ compensation may be changed during the Treasurer’s term of office (Gov. Code, § 36517). The former rule that a City Treasurer’s compensation could not be increased or decreased during the incumbent’s term of office was repealed in 1971 (see former Cal. Const., art. XI, § 5; Stats. 1971, ch. 275, § 1, amending Gov. Code, § 36517).

The City Treasurer is authorized to appoint his or her own deputies, who hold office at the Treasurer’s pleasure, unless the city has a civil service system or merit system that would apply to the Treasurer’s deputies. The deputies’ compensation is determined by the City Council (Gov. Code, § 41007). The City Treasurer and his or her bondsmen are responsible for the acts of the deputies (Gov. Code, § 41006). In the event of a vacancy in the office of City Treasurer, the city should immediately investigate, in light of general agency principles, both the status of deputies appointed by the Treasurer and the coverage of the Treasurer’s bond for those deputies.

C. Basic Differences Between Elective and Appointive Office

In the majority of California's general law cities, the office of City Treasurer is elective although there are a large number of cities with appointed Treasurers. There are several basic legal differences between the office of appointive City Treasurer and that of elective City Treasurer. Elective officers are selected by the voters and their tenure normally extends for a period of four (4) years, at which time they must again be approved by the voters of the community. The appointive officer, on the other hand, is appointed either by the City Council or by the City Manager and holds office at the pleasure of the appointing authority unless his or her position is made a part of a classified service under a merit or civil service system. Appointive City Treasurers, like other appointive officers, are not required to be residents or electors in the city (Gov. Code, § 36510), nor may a city require residency (Cal. Const., art. XI, § 10).

The greatest security in office is undoubtedly that provided by civil service since most civil service systems provide for employment termination only for cause. The comparative security of appointment at the pleasure of the appointing authority and election by the people cannot, however, be made the basis of generalization. Elective City Treasurers are responsible to, and removable by, the voters of the city. They may lose their office either by a failure to be re-elected or as the result of a recall initiated by petition of the citizens during their term (Elec. Code, § 27000 et seq.). The appointive officer, on the other hand, owes his or her responsibilities of office directly to the appointing authority, whether it be the City Council or the City Manager, and may be removed from office at any time, with or without cause. Both elective and appointive Treasurers lose their office upon the occurrence of one of the enumerated events causing vacancy in office which are set forth in Government Code section 1770.

If an elective officer performs his or her statutory duties, the officer need not perform any duties required by ordinance of the City Council unless such ordinance-imposed duties relate to "the collection of city taxes and license fees" (Gov. Code, § 41005). Appointive officers, on the other hand, are subject to the legally expressed wishes of the appointing authority. Elective status, therefore, confers on the elected City Treasurer the possibility of a much greater degree of independence from the City Council and the City Manager. So long as the elective officer performs the statutory duties of the office and the few duties which the Council can by ordinance require the officer to perform, there is no basis upon which he or she may be removed from public office other than recall or the occurrence of one of the events set forth in Government Code section 1770.

D. City's Authority to Change Duties, Working Conditions and Compensation of City Treasurer

One question that arises from time to time is whether the City Council may change the duties of an elective City Treasurer and transfer certain of the Treasurer's duties to other city officials and employees. In addition, since the prohibition against changing an elective City Treasurer's salary during a term of office has been repealed, the question also arises whether the city can decrease a Treasurer's salary if some of his or her duties are transferred to other officials.

There is no clear law on whether the City Council has the authority to transfer a Treasurer's duties to other city officers or employees. Under Government Code section 41005, the Treasurer is responsible for such duties relative to the collection of city taxes and license fees as are set by ordinance. The Council, therefore, could establish those duties or could transfer them to another city officer or employee by amendment of the ordinances dealing with those duties (see 48 Ops.Cal.Atty.Gen. 109 (1966)). Since the Government Code does not provide for transfer of the other principal duties of the City Treasurer, it is likely that those duties must be performed by the Treasurer although no court has directly ruled on this question.

One area where City Councils have attempted to transfer duties away from the City Treasurer is that of investment authority. Again, this is an area where no court has ruled on whether the City Treasurer, as opposed to any other city officer or employee, must have control over city investments.

As discussed below, City Treasurers, like other public agency treasurers, have statutory authority to invest city funds (Gov. Code, § 53635). In addition, a City Council, as a legislative body, has authority to direct investment of surplus city funds (Gov. Code, § 53601). These provisions also give the Council the authority to delegate investment decisions to the local agency's "Treasurer" (Gov. Code, § 53607). It is possible, therefore, that a Council may itself take over investment, thereby divesting the City Treasurer of this authority (see Gov. Code, §§ 53601, 53635). The difficult question is whether the Council may then delegate this authority to a city officer other than the Treasurer. Unfortunately, since no court has yet decided this question, it is impossible to predict the result.

Should a Council divest a City Treasurer of some of his or her duties, the next question is whether the Council can then reduce the Treasurer's salary. Government Code section 36517 provides that a City Treasurer shall be compensated in an amount set by the Council by ordinance or resolution. As discussed above, a Council may change a Treasurer's salary during the Treasurer's term of office.

There is no case addressing the scope of discretion of a City Council in setting the compensation of a City Treasurer. However, Government Code section 36506 contains language similar to section 36517 and relates to the fixing of compensation for appointed officials. This statute has been interpreted to impose a duty on a City Council to fix compensation in good faith and at a reasonable level (*Mitchell v. Walker* (1956) 140 Cal.App.2d 239, 243). In addition, it has been held that section 36506 authorizes the compensation to be decreased as well as increased (*Young v. City of Sausalito* (1961) 189 Cal.App.2d 768). It is likely, therefore, that the California courts may determine that the proper interpretation of section 36517 would impose a similar duty of good faith and reasonableness on the setting of compensation for an elected City Treasurer. As such, while it is not yet decided, a City Council can probably change the compensation of an elective City Treasurer at any time so long as it does so in good faith and provides reasonable compensation for the duties performed. Recently, the California Attorney General opined that the electorate of a general law city may set an elected city treasurer's compensation by initiative measure and may set the amount of compensation at the same level of compensation as that received by city councilmembers. Under Government Code section 36516, depending on the size of the city, councilmembers receive between \$300 to \$1000 per month plus statutorily permitted annual adjustments. In this opinion, the Attorney general stated that "A city council, and thus the electorate, is not authorized to set the salary for a city office at so low a figure that no competent person would accept the office." This would have the effect of abolishing the office. However, the Attorney General then concluded that a monthly salary of \$600 is not unreasonable because "the duties [of the treasurer] do not necessarily require the city treasurer's full-time attention, especially if the city has a finance department. . . ." The Attorney General then concluded that an initiative measure may set the salary of an elected general law treasurer at the same amount as received by the city council (Ops. Atty. Gen. No. 00-905, January 24, 2001.).

There are also no express statutory provisions empowering the Council to regulate the place of work, working hours or conditions of work of the Treasurer. However, the California Attorney General has opined that a City Council may specify the location where the Treasurer conducts city business (69 Ops.Cal.Atty.Gen. 25 (1986)). At the same time, the Attorney General cautioned that a City Council may not deprive the Treasurer of adequate quarters, help and equipment as is necessary to carry out his or her statutory duties. The California Attorney General has also opined that a City Council's authority to set a City Clerk's salary gives the Council the implied authority to regulate the Clerk's working hours (43 Ops.Cal.Atty.Gen. 119 (1964)). The Attorney General's opinion addressed a City Council's ability to expand a City Clerk's duties, to increase the number of hours worked by the Clerk and to establish the hours the Clerk's office was to be open to the public. The same reasoning can be applied to an increase or decrease in the duties and working conditions of a City Treasurer. Although, again, undecided by the courts, a Council probably may decrease the hours the Treasurer is required to work, commensurate with the decrease in duties, as long as the decrease does not conflict with the performance of the Treasurer's statutory duties.

II. Principal Duties and Responsibilities

II. Principal Statutory Duties and Responsibilities of the Office

A. Receipt and Custody of Funds

One of the most important single statutory duties of the Treasurer is receipt and safekeeping of funds. For example, Government Code section 41001, provided that the “city treasurer shall receive and safely keep all money coming into his hands as treasurer.” The full scope of the Treasurer’s legal duty to assure the safekeeping of money coming into the Treasurer’s custody has never been precisely determined in California. Some departments have the duty to promptly turn moneys received by them over to the Treasurer (see, e.g., Gov. Code, § 41609 (requiring the Police Chief to immediately deposit all money collected by the Police Department with the City Treasurer as required by ordinance); and Gov. Code, § 53680 (requiring a tax collector of a local agency to immediately deposit all money under his or her control with the Treasurer unless otherwise directed by the Treasurer)). Officers and employees having control of funds are required to deposit the funds in accordance with the Public Deposit Law (Gov. Code, § 53679). These procedures would insure that, to the extent possible, all public funds are deposited for safekeeping in a depository or properly invested (Gov. Code, § 53635).

Between the time of receipt and deposit of public funds, however, the California courts appear to have followed the somewhat liberal view that the Treasurer is held only to the obligation which the common law would impose upon a bailee for hire. This duty is that of exercising a high degree of care in the safekeeping and custody of funds (see *City of Healdsburg v. Mulligan* (1896) 113 Cal. 205). Further, by statute, the Treasurer and other public employees are not liable for money stolen from their official custody so long as the loss was not sustained as a result of their own negligent or wrongful act or omission (Gov. Code, § 822).

In safeguarding public funds, the Treasurer must comply with all laws covering the deposit of public funds (Gov. Code, §§ 41002, 53630 et seq.).

B. Deposit of Public Funds

In California, the authority and procedure for the deposit of public funds in banks is rather precisely spelled out in Government Code section 53630 et seq. These sections apply to cities, counties, and other local public agencies and vest in the Treasurer of the local agency the authority to select the depository bank (Gov. Code, § 53635) and to determine the amounts of money in the treasury which are to be deposited as inactive, active and interest-bearing active deposits (Gov. Code, § 53633; see 8 Ops.Cal.Atty.Gen 39 (1946)). The basic difference between inactive and active deposits is the time within which such deposits are subject to withdrawal. The Treasurer is authorized to enter into agreements with depositories concerning the terms and conditions of any part of the money deposited (Gov. Code, §§ 53649, 53682). In the absence of such an agreement, active deposits and interest on active deposits may be withdrawn on demand, subject to any penalties prescribed by federal law or regulation, while inactive deposits are subject to at least thirty (30) days' notice before withdrawal (Gov. Code, § 53644).

The following is intended as a summary of the major statutory provisions governing the making of deposits by the Treasurer.

Depositories eligible for public deposits are state or national banks, state or federal savings banks or savings and loan associations, state or federal credit unions and federally insured industrial loan companies (Gov. Code, § 53630). The use of state and federal credit unions was authorized for the first time by the approval of Proposition 45 in 1986, amending article XI, section 11 of the California Constitution. Treasurers may deposit public funds in credit unions so long as no agency boardmember or employee of the administrative office, budget office or Treasurer's office with decision making authority serves on the board of the credit union (Gov. Code, §§ 53637, 53648, 53679). Deposits in locally based savings institutions are permitted if they comply with all legal requirements for the deposit of public funds.

Federally insured industrial loan companies are industrial loan companies licensed under the Financial Code whose investment certificates are insured by the F.D.I.C. Federally insured industrial loan companies became eligible depositories when Proposition 88 was approved by the voters at the November 1988 election.

In 1995, to eliminate conflicts between California statutory law and changes in federal banking laws enacted in the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, the definition of depository eligible for use by local public agencies was broadened to include California branches of the banks of other states or nations authorized to be established under federal or state law (Gov. Code, § 53630.5).

The Treasurer is required to deposit funds in a depository with the objective of realizing a maximum return, consistent with prudent financial management (Gov. Code, § 53637). However, in choosing a depository, Treasurers should also bear in mind that, by statute, the primary goal of investment of public funds is to safeguard the funds, the secondary goal is meeting liquidity needs, and the third and last goal is achieving a return on the funds (see Gov. Code, § 53600.5 and discussion of investment requirements, *infra*).

In addition, the Code prescribes the maximum amount of deposits in any one depository (Gov. Code, § 53638). Deposits may not exceed the shareholders' equity of any depository. Further, the deposit may not exceed the net worth of any depository savings association or federal association except that deposits not exceeding \$500,000 may be made to a savings or federal association if insured, or secured, without regard to net worth. Similarly, a deposit in a credit union may not exceed the total of the credit union's unimpaired capital and surplus except, again, for insured or guaranteed deposits of \$500,000 or less. Deposits in investment certificates of a federally insured industrial loan company also may not exceed the total of the unimpaired capital and surplus of the company.

The Treasurer is authorized to enter into contracts with depositories relating to deposits which fix the duration of the deposit and the interest rate and provide for compliance with the other statutory requirements for government deposits. The contract must also provide that, upon notice to the Treasurer from the California Administrator of Local Agency Security, the Treasurer may withdraw deposits if the depository fails to pay fines or penalties assessed by the Administrator and that the Treasurer may withdraw authorization for placement of pooled securities with an agent of the depository, again if there is a failure to pay fines or penalties imposed by the Administrator (Gov. Code, § 53649). A copy of each such contract must be filed with the auditor, controller or secretary of the local agency. The Treasurer is also authorized to enter into contracts with depositories for services to be rendered by the depository to the agency (Gov. Code, § 53682). These contracts must specify: (1) the duration of compensating deposits, if any; (2) the interest rate on those compensating deposits; (3) the services to be rendered by the depository; (4) whether the depository will bear the expense of transportation of moneys to and from the depository; (5) the consideration payable by the agency for the depository's services (Gov. Code, § 53682); and (6) who may deposit money into the Treasurer's active account and how those persons are to make deposits. In the absence of an agreement pursuant to section 53682, the depository is obligated to handle, collect and pay all checks and other exchange without cost to the agency (Gov. Code, § 53640) and bear the cost of transporting moneys to and from the agency (Gov. Code, § 53639).

It should also be noted that depositories have duties and responsibilities toward public moneys on deposit that may differ from their duties relative to nonpublic funds (see, e.g., Gov. Code, §§ 53652-53667). California law requires public funds to be collateralized; that is, the depository must secure its public fund accounts by maintaining with the agent of the depository securities having a market value of at least one hundred ten percent (110%) of the value of the public fund accounts (see Gov. Code, § 53652). If a depository uses mortgage-backed securities (i.e., promissory notes secured by first mortgages or first deeds of trust) as collateral for public deposits, the market value of the mortgage-backed securities must be at least one hundred fifty percent (150%) of the value of the public fund accounts (see Gov. Code, § 53651(m)). There are also extensive rules for determining what mortgage-backed securities are eligible for use as collateral (Gov. Code, § 53651.2), and the depository must comply with additional reporting requirements (Gov. Code, § 53651.4). However, the requirement for collateralization may be waived by the Treasurer when local conditions warrant waiver, to the extent that the funds are insured by the Federal Deposit Insurance Corporation (FDIC). For deposits equivalent to the maximum insured amount, the Treasurer, at his or her discretion, may also waive security for interest accrued on the deposit, provided that the interest is computed by the depository on the average daily balance of the deposits, paid monthly and computed on a 360-day basis (see Gov. Code, § 53653). Under present FDIC regulations, funds deposited by an official custodian of public funds are insured up to \$100,000. The law insures the official custodian rather than the public agency itself. Where public agency funds are under the control of different official custodians, each custodian is insured up to \$100,000. For example, deferred compensation accounts generally have different custodians, and each account is insured up to \$100,000. All funds belonging to a public agency and invested by the same official custodian in an insured institution are aggregated and insured to the \$100,000 maximum, regardless of the number of accounts. If the same person is the official custodian for funds of more than one public unit, he or she is separately insured up to \$100,000 with respect to funds of each public unit held by him or her in properly designated accounts.

Treasurers should be aware that FDIC has adopted procedures that must be followed by depositors to collect insured account funds in the event of a bank failure. After an insured bank failure, FDIC will pay insured accounts in cash or by transferring the insured account to a new bank (see 12 U.S.C., § 1821(f)). However, the depositor may be required to file a claim for the insured account before payment is made. Failure to file this claim may preclude recovery of the insured amount from FDIC. Should one of the agency's depositories close or fail, the Treasurer should immediately ascertain the steps he or she must take to guarantee that the city will be paid through FDIC.

The necessity for continual and careful attention to the several statutory guides for the deposit of public funds was pointed out by an opinion of the Attorney General (35 Ops.Cal.Atty.Gen. 162 (1960)) which considered the restriction in Government Code section 53638 against deposits exceeding “the total of the paid-up capital and surplus of any depository.” Although some of the statutory rules have been amended since the opinion was rendered, the opinion is still instructive. In the factual situation presented, a county-depositor had engaged in the practice of exchanging with its depository groups of checks received by the county in payment of taxes for cashier’s checks issued by the bank. The cashier’s checks were not issued merely for the transmission of funds but the greater part were expected to remain outstanding for protracted periods. The Attorney General found that the aggregate amount of funds on deposit by the county in the form of active and inactive deposits and cashier’s checks exceeded the maximum permissible deposit authorized by the Public Deposit Act (Gov. Code, § 53638). In addition, the Attorney General held that, discounting any other public moneys which may have been on deposit in the same bank, the situation evidenced a violation by the depository of the statute prohibiting a bank from accepting public deposits exceeding in the aggregate a stated percentage of the bank’s entire capital and surplus (see Fin. Code, § 856). It was finally noted that:

“Even though the excess deposits may arise only twice a year during two major tax collection periods, Financial Code section 856 is quite explicit in its requirement when it states that a bank shall not have on deposit ‘at any one time’ moneys in excess of that permitted by this section and, although this language is not used in Government Code section 53638, it is subject to the same construction.”

The difficult task confronting the Treasurer is that of managing the agency’s deposits so as to safeguard the principal of the city’s fund, maintaining an adequate cash balance on hand to meet all immediate cash needs of the agency and, if appropriate, achieve a return of the funds (see Gov. Code, § 53600.5).

C. Investment of Funds

1. Authority to Invest Moneys

The authority to invest surplus funds is delegated by the legislative body to the Treasurer for a one year period, to be renewed annually. The Treasurer, unless otherwise directed by the legislative body, has the authority to invest funds in certain eligible securities (Gov. Code, § 53635). Eligible investments for public moneys under the control of the Treasurer are covered by Government Code section 53635. Eligible investments for surplus moneys by the legislative body are covered by Government Code sections 53601 and 53601.1.

The investment choices for surplus funds are limited by several requirements and/or prohibitions set forth in the statutes. For example, the legislative body may invest only in notes, bonds, bills, certificates of indebtedness, warrants or registered warrants which are legal investments for savings banks in the state (Gov. Code, § 53602). Investments under section 53601, other than certain securities underlying repurchase or reverse repurchase agreements, may not have a term or maturity at the time of investment of longer than that authorized by section 53601 or five years, unless the legislative body has granted express authority for the investment, either specifically or as part of an investment policy approved by the legislative body no less than three months prior to the investment.

Further, a local agency is prohibited from investing in inverse floaters, range notes and interest-only strips derived from a pool of mortgages (Gov. Code, §§ 53601.6(a), 53631.5(a)). Local agencies also may not invest any funds in any security that could result in zero interest accrual if held to maturity. In addition, this prohibition against zero interest instruments does not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C., § 80a-1 et seq.) if the shares are eligible investments under Government Code section 53601(k) (Gov. Code, §§ 53601.6(b); 53631.5(b)).

Together, these statutes governing eligible investments for public agencies have been frequently amended. Rather than refer specifically to such provisions here, Treasurers should research the most current statutory provisions on investments. Section 53607 permits the “legislative body” to delegate the authority to invest or reinvest the local agency’s funds, or to sell or exchange securities so purchased, to the “Treasurer” of the local agency, who shall thereafter assume full responsibility

for such transactions until such time as the delegation of authority is revoked. This delegation of authority is usually accomplished by passage of a resolution or ordinance adopted by the legislative body of the local agency. This delegation of authority must be renewed annually.

Legislative bodies, Treasurers or other persons authorized to make investment decisions on behalf of the agency are trustees and, therefore, fiduciaries of the agency and subject to the prudent investor standard.

This standard provides that when making decisions, the prudent investor “shall act with care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency” (Gov. Code, § 53600.3).

Within the limits of the prudent investor standard and considering individual investments as part of an overall strategy, agency trustee is authorized to acquire investments as authorized by law.

In addition, California law provides that the primary objective of a trustee is to safeguard the principal of the funds under his or her control. The secondary objective is to meet the liquidity needs of the agency, and the third objective is to achieve a return on the funds (Gov. Code, § 53600.5).

General law cities and other local agencies, are limited in their investments of surplus moneys to the securities enumerated in Government Code section 53601 et seq. In legislation effective January 1, 1996, the Legislature declared that deposit and investment of public moneys was a matter of statewide concern (Gov. Code, §§ 53600.6, 53630.1). While, generally speaking, only the courts can determine whether a particular matter is a matter of “statewide concern” or a “municipal affair,” if deposit and investment of local public funds is held to be a matter of statewide concern, charter cities would also be required to comply with, and be limited to, the investments authorized by state law.

2. Investment Policies and Reports

The Treasurer of a local agency, is required to annually render a statement of investment policy to the legislative body. The policy must also be given to any investment oversight committee established by the local agency (Gov. Code, § 53646(a)).

The legislative body must consider the investment policy at a public meeting (*id.*). Any changes to the investment policy must also be considered by the legislative body at a public meeting (*id.*).

The Treasurer must also render quarterly reports to the chief executive officer, the internal auditor and the legislative body. The quarterly report must be submitted within thirty (30) days of the end of the quarter covered in the report (Gov. Code, § 53646(b)(1)). While the statute, in this instance, does not specify how the Treasurer should “render” the quarterly report to the legislative body, many Treasurers believe that the quarterly report should be placed on the Council’s or Board’s agenda for its consideration.

The quarterly report must include the type of investment, issuer, date of maturity, par and dollar amount invested in all securities, investments and moneys held by the local agency. In addition, the quarterly report must include a description of any of the local agency’s funds, investments or programs that are under the management of contracted parties, including lending programs. For all securities under management of any outside party that is not also a local agency or the State Local Agency Investment Fund (“LAIF”; see discussion in Section II.C.4.j., below), the report must also include current market value as of the date of the report and the source of this valuation (Gov. Code, § 53646(b)(1)).

The quarterly report must also state compliance with the investment policy or the manner in which the investment portfolio is not in compliance (Gov. Code, §53646(b)(2)).

The quarterly report must state the ability of the agency to meet its expenditure requirements for the next six months or provide an explanation of why sufficient funds will or may not be available (Gov. Code, § 53646(b)(3)).

A subsidiary ledger of investments may be used in the quarterly report in accordance with accepted accounting practices (Gov. Code, §53646(b)(4)).

In addition, the quarterly report shall include any additional information or data that may be required by the legislative body (Gov. Code, § 53646(c)).

If the agency has placed all of its investments in LAIF or in FDIC insured accounts in a bank or savings and loan, in a county investment pool or any combination of these investments, the City Treasurer may supply the most recent statements received from these institutions in lieu of the specific investment information required in the quarterly report. Under this provision, the report must still include compliance with the investment policy, ability to meet expenditure requirements and any additional information required by the legislative body (Gov. Code, §53646(e)).

Finally, The legislative body may require that the report be made on a monthly rather than quarterly basis (Gov. Code, § 53646(d)) and may require additional information (Id at subd.(c).)

Finally, in certain circumstances, the agency is required to submit its second and fourth quarter reports or certification that it is not required to file the reports to the California Debt Advisory Commission within sixty (60) days of the end of the applicable quarter.

These investment reports are in addition to the Treasurer's monthly report and accounting of all receipts, disbursements and fund balances (see Gov. Code, § 41004).

3. Soft Dollar and Directed Brokerage Arrangements

Treasurers who exercise investment discretion over public funds or public pension/retirement funds in excess of ten million dollars (\$10,000,000) must follow legislation governing "soft dollar" and directed brokerage arrangements (Gov. Code, §§ 6930-6934). Soft dollar and directed brokerage arrangements are the brokerage and research services arrangements described under federal law (Gov. Code, § 6930(b); 15 U.S.C., § 78bb(e)). Every such securities transaction or brokerage arrangement must be executed at the lowest responsible transaction cost available (Gov. Code, § 6931). (See Gov. Code, § 6930 for definition of "transaction cost" and "responsible.")

All written contracts between an agency and an investment manager for the management of assets of a public fund or a public pension/retirement fund entered into, renewed or extended after January 1, 1991, which include soft dollar and directed brokerage arrangements must contain the following requirements specified in Government Code section 6932:

- (A) The investment manager must maintain complete and detailed records of all billed services provided pursuant to soft dollar and directed brokerage arrangements.
- (B) The services which may be provided by a broker-dealer pursuant to soft dollar and directed brokerage arrangements must be clearly defined.
- (C) The investment manager must, in customer agreement letters with governmental investors, disclose the following:
 - (1) *A list of all billed services provided pursuant to soft dollar and directed brokerage arrangements with respect to investment transactions for the governmental investor.*
 - (2) *The justification for providing each of those services.*
 - (3) *The maximum percentage of the investment transactions of the governmental investor planned for use in soft dollar and directed brokerage arrangements.*
 - (4) *An annual statement of all billed services provided during the previous year under soft dollar and directed brokerage arrangements with respect to investment transactions for the governmental investor.*
 - (5) *A determination of whether each service provided under soft dollar and directed brokerage arrangements with respect to investment transactions for the governmental investor is proprietary or is being shared by other clients of the investment manager.*

Soft dollar and directed brokerage arrangements are not subject to any statutory competitive bidding requirements (Gov. Code, § 6933).

4. Common Types of Investments Available to Local Agencies

The following is a general discussion of some of the types of investments open to local agencies. Treasurers should be aware that the statutes governing eligible types of investments for public agencies have frequently been amended. Prior to embarking on an investment program, Treasurers and other involved officers should research the current statutory provisions on investments (see Gov. Code, §§ 53601 et seq., 53635). The local agency should also adopt an investment policy.

Once the legislative body or Treasurer has determined what investments to purchase, the investments must be purchased directly from the issuer, from an institution licensed by the state as a broker-dealer, from a member of a federally regulated securities exchange, from a national or state-chartered bank, federal or state savings association or from a brokerage firm designated as a primary government dealer by the Federal Reserve Bank (Gov. Code, §§ 53601.5, 53635.5).

After the securities are purchased, the legislative body or the Treasurer may deposit the securities for safekeeping with a federally or state-chartered savings and loan located in California, a trust company, state or national bank located in California, with the Federal Reserve Bank of San Francisco or one of its branches in California, or with any state or national bank located in any city designated as a reserve city by the Federal Reserve System (Gov. Code, § 53608). The local agency must obtain a receipt for the securities it deposits (*id.*). Once the securities are delivered to and received for by the financial institution, the Treasurer is not responsible for their safekeeping until the securities are withdrawn (*id.*).

Further, if a local agency purchases securities in a negotiable, bearer, registered or nonregistered format, the city must require delivery of the securities to the local agency by book entry, physical delivery or third party custodial agreement. This requirement for delivery includes securities purchased for the agency by financial advisors, consultants or managers using the agency's funds.

The transfer of securities to a counterparty/bank's customer book entry account may be used for book entry. (Counterparty means the other party to the transaction.) A counterparty bank's trust or separate safekeeping department may be used for physical delivery if the security is held in the agency's name.

To be eligible to receive local agency money from a Treasurer, the bank, savings association, federal association or federally insured industrial loan company must have received an overall rating of not less than "satisfactory" in its most recent federal review evaluation (Gov. Code, section 53635).

a. Public Fund Time Deposits

One popular type of investment for surplus funds of a public agency is "inactive bank deposits." While public time deposits are a means of investment for cities, this investment is technically a "deposit" of public funds rather than an investment. The rules governing the use of "inactive deposits" are, therefore, the rules governing deposits which have been discussed above in Section II.B., Deposit of Public Funds.

b. Certificates of Deposit

Local agencies are permitted to invest public moneys in negotiable certificates of deposit issued by federal and state savings and loan associations, federal and state-chartered banks and by state-licensed branches of foreign banks (Gov. Code, §§ 53601(h), 53635(h)). Purchase of negotiable CDs may not exceed a specific percentage of the city's surplus money. In addition, investments in CDs are subject to the rules concerning maximum deposits in any one depository (Gov. Code, § 53638), although they are not subject to the other regulations concerning the deposit of public funds (see Gov. Code, § 53635(h)).

Local agencies may also invest in nonnegotiable certificates of deposit, commonly called time deposit certificates and time deposit open accounts.

Under the Government Code, these types of accounts are called interest-bearing active accounts (see Gov. Code, § 53632). However, since these accounts are technically "deposits" rather than "investments" of public moneys, all the rules governing deposits, as discussed above, apply.

At this point, it is also appropriate to mention Regulation Q. This federal regulation governs the interest ceilings and the penalties for early withdrawals of funds in time accounts. The regulation also requires disclosure of early withdrawal penalties and restrictions. Prior to investing in time deposit certificates and open accounts, Treasurers should be certain to ascertain the withdrawal restrictions and penalties applicable to the account.

c. Government Bonds and Notes

Another investment authorized for cities is certain federal, California State and California local agency bonds and notes. Surplus moneys may be invested in:

- (1) *United States Treasury notes, bonds, bills or certificates of indebtedness or those for which the full faith and credit of the United States are pledged for the payment of principal and interest (Gov. Code, §§ 53601(b), 53635(b)).*
- (2) *Registered state warrants or treasury notes or bonds of California, including bonds payable solely out of revenue from a revenue-producing property owned, controlled or operated by California or by a department, board, agency or authority of the state (Gov. Code, §§ 53601(c), 53635(c)).*

(3) *Bonds, notes, warrants or other evidences of indebtedness of any local agency within California, including bonds payable solely out of the revenues from revenue-producing property owned, operated or controlled by the local agency or by a board, agency, department or authority of the local agency (Gov. Code, §§ 53601(d), 53635(d)).*

In addition, a city may invest in bonds issued by it, again including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the agency or by a department, board, agency or authority of the agency (Gov. Code, §§ 53601(a), 53635(a)).

d. Banker's Acceptances

Banker's Acceptances are negotiable time drafts drawn to finance the export, import, shipment or storage of goods, and they are termed "Accepted" when a bank guarantees to pay the face value at maturity. A Banker's Acceptance constitutes an irrevocable obligation of the accepting bank and a contingent obligation of the drawer and of any endorsees whose names appear upon it. The bank is protected by its customer's agreement to provide the necessary funds in advance of the maturity of the Acceptance and also by the pledge of documents such as bills of lading, independent warehouse or terminal receipts and other documents evidencing ownership and the insurance of the goods so financed.

Local agencies are authorized to purchase Banker's Acceptances subject to several restrictions. First, purchases of Banker's Acceptances must not exceed one hundred eighty (180) days' maturity. Second, no more than a stated percentage of the agency's surplus money may be invested under Government Code sections 53601 and/or 53635. Finally, no more than a specific percentage of the agency's surplus funds may be invested in the Banker's Acceptances of any one commercial bank (Gov. Code, §§ 53601(f), 53635(f)).

e. Commercial Paper and Medium Term Corporate Notes

Commercial Paper is a negotiable, unsecured promissory note issued for a specific face amount that matures on a specific filing date. Agencies may invest only in commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investment Service or Standard and Poor's.

Municipal investments are further limited to issuing corporations organized and operating within the United States, having total assets in excess of five hundred million dollars (\$500,000,000) and having an “A” or higher rating for the issuer’s indebtedness, other than commercial paper, as provided for by Moody’s or Standard and Poor’s.

Purchase of eligible commercial paper may not exceed one hundred eighty (180) days maturity or represent more than ten percent (10%) of the outstanding paper of the issuing corporation. In addition, purchases may not exceed a stated percentage of the agency’s surplus money invested under Government Code sections 53601 and/or 53635 except in one situation. The agency may invest an additional percentage of its surplus money to a total of thirty percent (30%) if the dollar-weighted average maturity of the entire amount does not exceed thirty-one (31) days. (Dollar-weighted average maturity means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.) (Gov. Code, §§ 53601(g), 53635(g).)

Counties have specific authority to invest in commercial paper with a maturity not to exceed two hundred and seventy (270) days under certain circumstances (Gov. Code, § 53635.2).

Agencies may also invest in medium term corporate notes of a maximum of five years maturity issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Such securities must be rated in a rating category of “A” or better by a nationally recognized rating service. Purchase of medium term corporate notes may not exceed 30 percent of the agency’s surplus money which may be invested pursuant to section 53635 of the Government Code (Gov. Code, § 53635(j)).

f. Repurchase and Reverse Repurchase Agreements

Another authorized investment for agencies is repurchase agreements. Before investing in a repurchase agreement, Treasurers should carefully review the authorizing statute since this statute is frequently amended by the Legislature.

Repurchase agreements are purchases of securities by the agency whereby the counterparty seller agrees to “repurchase” the securities on or before a specified date and for a specified amount. The counterparty seller must also deliver the underlying securities to the agency by book entry, physical delivery or third party custodial agreement. Transfer of the underlying securities to the counterparty bank’s customer book entry account may be used for book entry delivery.

Investments in repurchase agreements may be made on any investment authorized for investment by the agency under Government Code section 53601 or 53635. The term of the repurchase agreement may not exceed one (1) year. The market value of the securities that underlay the repurchase agreement must be valued at 102 percent (102%) or greater of the funds borrowed against the securities and the value must be adjusted no less than quarterly (Gov. Code, §§ 53601(i)(2), 53635(i)(2)). Securities for the purpose of repurchase means securities of the same issuer, description, date and maturity (Gov. Code, §§ 53601(i)(6)(B), 53635(i)(6)(B)).

The use of reverse repurchase agreements has been limited by statute. Reverse repurchase agreements are the sale of securities by the agency under an agreement by which the agency will repurchase the securities on or before a specified date. Reverse repurchase agreements include other comparable agreements even if not called reverse repurchase agreements (Gov. Code, §§ 53601(i)(6)(C), 53635(i)(6)(C)).

Reverse repurchase agreements may only be used in two situations. First, a reverse repurchase agreement is permissible if the security was owned by the agency or the agency was specifically committed to purchase the security before December 31, 1994, and the security was sold using a reverse repurchase agreement on December 31, 1994 (Gov. Code, §§ 53601(i)(3)(A), 53635(i)(3)(A)).

Second, a reverse repurchase agreement is permissible if the security to be sold on reverse repurchase has been owned and fully paid for by the agency for a minimum of 30 days prior to sale, the total of the reverse repurchase agreements owned by the agency (after December 31, 1994) does not exceed 20 percent (20%) of the base value of the agency’s portfolio and the agreement does not exceed 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security (Gov. Code, §§ 53601(i)(3)(B), 53635(i)(3)(B)).

After December 31, 1994, a reverse repurchase agreement may not be entered into as a means of financing or paying for the security sold on a reverse repurchase agreement, but may only be entered into to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of an agency obligation.

Further, funds (including funds within a pool) obtained from selling a security to a counterparty by way of reverse repurchase agreement on securities purchased after December 31, 1994, shall not be used to purchase another security with a maturity longer than ninety-two (92) days from the initial settlement date of the reverse repurchase agreement unless there is a written codicil, as defined above (Gov. Code, §§ 53601(i)(4), 53635(i)(4)). Reverse repurchase agreements, like repurchase agreements, may only be made with primary dealers of the Federal Reserve Bank of New York.

Finally, investments in reverse repurchase agreements or similar instruments in which the agency sells a security prior to purchase may only be made with the prior approval of the legislative body (Gov. Code, §§ 53601(i)(5), 53635(i)(5)).

g. Mortgage and Other Securities

The Legislature has authorized local agencies to invest in notes, bonds and other obligations secured by a valid first priority security interest of the types approved as eligible securities for banks for securing public deposits (Gov. Code, § 53651) having a market value at least equal to that required in Government Code section 53652. Included in the types of securities listed in section 53651 are certain mortgage securities. The securities serving as collateral must be placed by delivery or book entry into the custody of a trust company or bank trust department which is not affiliated with the issuer of the secured obligation, and the security interest must be perfected (Gov. Code, §§ 53601(m), 53635(l)).

h. Bonds and Notes of Federally Sponsored Agencies

Local agencies also have the authority to invest in obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks and the Tennessee Valley Authority. Agencies may also invest in obligations or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association.

Other authorized investments under this category include guaranteed portions of Small Business Administration notes and obligations or other instruments issued by a federal agency or a United States government-sponsored enterprise (Gov. Code, §§ 53601(e), 53635(e)).

i. Mutual Funds

Local agencies are authorized to invest in shares of beneficial interest issued by diversified management companies that invest in securities and obligations otherwise eligible for local agency investment. The management company must comply with the investment and deposit restrictions of Government Code sections 53601 et seq. and 53635 et seq. In addition, to be eligible as an investment, the company must: (1) attain the highest ranking or rating provided by not less than two of the three largest national rating services; and (2) have an investment advisor registered with the SEC who has at least five years' experience with investing public type investments with a portfolio of at least five hundred million dollars (\$500,000,000). Finally, the purchase price of the shares may not include commission, and only a certain stated percentage of the agency's surplus money may be invested (Gov. Code, §§ 53601(k), 53635(k)).

j. The Local Agency Investment Fund

In 1976, the Legislature created the Local Agency Investment Fund ("LAIF") (Gov. Code, § 16429.1). This fund provides an alternative avenue of investment for local agencies. Current policies of LAIF set minimum and maximum amounts of moneys that may be invested and minimum amounts of time that the money must stay on deposit.

Any local government official, with the consent (by resolution) of his or her agency's governing body, may deposit money not required for immediate needs in LAIF. The local agency has the exclusive determination of the length of time its money will be on deposit with LAIF.

More information on LAIF is included in the Appendices.

k. Investment by the County Treasurer

The agency may also provide for investment of its surplus funds by the County Treasurer (Gov. Code, § 53684). First, the Board of Supervisors must authorize this action by resolution. The resolution makes Government Code section 53684 operative in the county. Then, to invest funds with the County Treasurer, the legislative body must first approve this investment by resolution and the County Treasurer must consent to the agency's depositing funds for investment (Gov. Code, § 53684).

The County Treasurer must provide to invested agencies monthly reports on the county investment fund in the same manner that the Treasurer must render quarterly investment reports (id.). The agency may withdraw funds at any time but must give the County Treasurer thirty (30) days' written notice of the intent to withdraw funds (id.).

l. Additional Investments

In addition to the common types of investments examined above, agencies have the authority to utilize many different types of investments. In addition to the common types of investments examined above, agencies may invest in guaranteed Small Business Administration notes and obligations issued by federally-sponsored enterprises. The legislative bodies of local agencies may also invest surplus funds in financial futures or financial option contracts (Gov. Code, § 53601.1).

D. Disbursement of Funds

Government Code section 41003 provides that a City Treasurer shall pay out money only on warrants (or checks if an alternative method of payment has been adopted by the city; see Gov. Code, § 37203) signed by legally designated persons. There are similar statutes for most special districts. While this section implies that a Treasurer has fully discharged his or her duty of care in paying out moneys if the warrants are signed by the proper persons, are in proper form and have been properly processed, this inference should be avoided. Since the Treasurer is held to a high degree of care with respect to the payment of warrants under the proper procedure, there are important procedural and substantive requirements applicable to the disbursement of public funds with which all treasurers should be familiar. The procedural requirements will be discussed in the next section, then the substantive requirements will be outlined. Both the procedural and the substantive requirements should be considered by Treasurers when they are disbursing funds.

1. Procedural Requirements

Procedurally, reference must first be made to the immediately and generally applicable claims procedure. In most cases, the manner of presenting demands against a local public agency is no longer controlled by local ordinance or resolution. For example, demands against city by vendors and other claimants for money or damages must be presented in the manner and contain the detailed information prescribed by the California claims statutes (Gov. Code, §§ 37201 and 900 et seq.). This law is applicable to general law cities and chartered cities (Cal. Const., art. XI, § 12). Section 905 of the claims statute lists types of claims that are exempted from the general claims filing requirements; these are listed in Appendix B. These “exempted” claims may be governed by procedures established by charter, ordinance or regulation of the agency (Gov. Code, § 935).

There is also statutory authority for the payment of payroll warrants or checks and budgeted demands prior to audit by the City Council (Gov. Code, § 37208). Both prepaid payroll warrants or checks and budgeted demands must be presented to the City Council for its ratification and approval at the first meeting after the delivery of the warrants or checks (id.). Following presentation of demands against the city in accordance with the claims statute, the Code generally requires that the legislative body may approve or reject demands only after an audit of the claims made in accordance with a procedure prescribed by ordinance or resolution (Gov. Code, § 37202). Again, there may be similar statutory requirements for special districts. Unless the city by ordinance or resolution has prescribed an alternative method of drawing checks or warrants, after auditing of the demands: (a) the Mayor must draw a warrant or warrants upon the City Treasurer specifying the purpose for the draw and the fund from which the payment is to be made; and (b) the City Clerk must countersign the warrant (Gov. Code, § 37203).

It should be noted that any requirement for a manual signature of an authorized officer on warrants and checks is governed by the Uniform Facsimile Signatures of Public Officials Act (Gov. Code, § 5500 et seq.). This Act authorizes the use of a facsimile signature on checks and warrants. The facsimile has the same legal effect as the manual signature of the authorized officer if his manual signature, certified by him under oath, has been filed with the Secretary of State (Gov. Code, § 5501). The requirement that each check or warrant have at least one manual signature has been repealed.

Finally, there may be still another procedural requirement with which the disbursing officer must comply. In some instances, the normal claims procedure alone is not adequate and the law requires additional procedures in order to properly disburse money from a particular fund or authorize an expenditure of a particular type. For example, where a contractor seeks payment for a public project, the Public Contract Code or the particular contract may establish additional procedures or requirements as prerequisites to payment. In other words, the law imposes specific procedural requirements as conditions to the payment of public funds in a wide variety of circumstances and, in order for payments to be validly made, the Treasurer should be satisfied that all procedural steps required by the law have been taken.

2. Substantive Requirements

Next, the Treasurer must be reasonably satisfied that, in addition to meeting all applicable procedural requirements, the payment is otherwise valid. This is an extremely difficult requirement.

The exact scope of the Treasurer's responsibility has never been clearly defined by the California appellate courts. Perhaps the best statement of this duty is found in the case of *Los Angeles v. Lankershim* (1893) 100 Cal. 525. In that case, the rule was laid down that a Treasurer may safely approve a warrant if it is regular on its face, unless he has notice that it is not based on a lawful demand or has notice of facts which would reasonably put him on inquiry as to the illegality of the claim for which the warrant was drawn. Further, in *City of Redondo Beach v. DeLong* (1981) 123 Cal.App.3d 1035, the court held that, at least insofar as the duties of this chartered City Treasurer were concerned, the Treasurer's duty to disburse money on a properly audited and approved warrant was ministerial and mandatory. Under *City of Redondo Beach*, the Treasurer may advise the responsible officers that he or she suspects a problem, but the Treasurer has no authority to determine whether the warrant is "legal" if it is properly drawn.

It is prudent for treasurers to be familiar with the substantive legal requirements for payment of public funds. If a treasurer is in doubt regarding the propriety of a payment, it is important to check with the agency's legal counsel prior to taking further action.

a. Constitutional Debt Limit

Article XVI, section 18 of the California Constitution contains the following language:

“No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose...”

The purpose of this section is to prohibit all indebtedness whereby one of the enumerated local agencies becomes obligated to pay in future years for a consideration which it had already received. The intent is to prohibit accumulated indebtedness by requiring that each year's taxes and revenues should pay fully for everything received that year (see *County of Shasta v. County of Trinity* (1980) 106 Cal.App.3d 30, 35-6; *Wright v. Compton Unified School District* (1975) 46 Cal.App.3d 177, 181; *San Francisco Gas Co. v. Brickwedel* (1882) 62 Cal. 641, 642). Contracts or agreements that violate the constitutional debt limitation are void, and payment under the contract would be a gift of public funds (*see below*).

The one exception to this inflexible rule which was contemplated at the time the section was first enacted is the approval by two-thirds (2/3) of the electorate of a proposition authorizing the creation of an indebtedness, the issuance of bonds and the levy of an annual tax to defray payments of principal and interest thereon. This is referred to as the “general obligation” bond method financing. Cities and other public agencies have for many years used this method of financing public works under the Bond Act of 1901 (Gov. Code, § 43600 et seq.). Proposition 13 severely limited the availability of general obligation bond financing. However, Proposition 46, approved in 1986, partially restored the ability of cities and other public agencies to use general obligation bond financing for the acquisition and improvement of real property.

There are a number of major “exceptions” to the prohibitions against indebtedness that have been approved by the courts. Each of these has developed into a method of financing. A brief discussion of these “exceptions” or methods of financing capital improvements may be helpful to an understanding of this limitation on indebtedness.

(1) Revenue Bonds and the Special Fund Doctrine

Bonds or other obligations which are payable solely from the revenues in a special fund or a particular public enterprise and which by their terms can never become a charge on the general funds or property of an agency need not be subjected to the requirements of submission to the electorate or an annual tax. This is the judicially created “special fund” doctrine. The special fund cannot be maintained out of the general fund or tax levies should the special fund prove insufficient. Such obligations are not considered to be an indebtedness or liability of the political subdivision within the meaning of the constitutional limitation (*Garrett v. Swanton* (1932) 216 Cal. 220; *City of Oxnard v. Dale* (1955) 45 Cal.2d 729; *City of Redondo Beach v. Taxpayers, Property Owners, etc.*, *City of Redondo Beach* (1960) 54 Cal.2d 126; *Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237, 248). California cities, counties and special districts have statutory authority to use the revenue bond method of financing to acquire and operate systems for providing sewers, water, storm drainage, electricity, off-street parking, ferry systems, small craft harbors, garbage disposal systems, airports, hospitals and golf courses (Gov. Code, § 54300 et seq.). Cities may also finance extensions and improvements of existing revenue-producing enterprises through the issuance of revenue bonds (*City of Oxnard v. Dale, supra*). Many other local public agencies are also authorized to use this type of financing. It is also clear that the source of revenue for the special fund need not be restricted to the improvements for which the bonds were issued, but rather there can be a pledge of revenue from the entire facility or enterprise to be benefited.

The moneys pledged for repayment of the bonds must come from a “special fund” or enterprise rather than from the general fund. For example, it has been held that sales and use tax revenues constitute general funds and may not be pledged for financing of improvements without compliance with the constitutional debt limitation provisions (*City of Palm Springs v. Ringwald* (1959) 52 Cal.2d 620; *City of Redondo Beach v. Taxpayers, etc., supra*).

One further clarifying point was made with respect to the use of future sales and use tax revenues. Shortly after the *Palm Springs* decision, section 43401 was added to the Government Code to provide that “All moneys received from sales and use taxes shall be paid into the General Fund, or into such special fund or funds for such purpose or purposes as shall be established by ordinance.” The court in the *Redondo Beach* decision held that, despite these provisions, sales tax revenues may not be considered as a special fund within the meaning of the special fund doctrine. Rather, this statute was designed to grant authority to general law cities to use sales tax revenues to repay bonded indebtedness but only after the constitutional debt limitation requirements are met.

In addition to revenue bond financing as a method to avoid problems with the constitutional debt limitation, “special fund contracts” provide another similar mechanism for financing improvements without incurring debt limitation problems. The special fund contract is very much like a single revenue bond, but instead of being in the form of a bond, it is in the form of an ordinary contract with a single financier who agrees to provide the capital for the acquisition, improvement or extension of the revenue-producing enterprise and look only to the revenues of the enterprise for payment. This type of financing was used by the City of Montclair to construct a library and lease it to the county, the rental payments to be placed in a special fund to pay for the construction costs. A financial organization agreed to pay the successful contractor in consideration of an assignment of rental payments. This arrangement was upheld in *City of Montclair v. Donaldson* (1962) 205 Cal.App.2d 201. In addition, some “special fund” contracts are authorized by statute. For example, this type of contract is authorized for construction of oversized subdivision drainage facilities (Gov. Code, § 66485 et seq.).

(2) *Special Assessment Bonds*

Improvements financed and constructed under one of the special assessment acts (i.e., the Improvement Act of 1911 (Sts. and Hy. Code, § 5000 et seq.)) are also exempt from compliance with the constitutional debt limitation. The costs of the improvement are assessed against the benefited property owners in the special assessment district (the district usually being only a portion of the city). The unpaid amounts are frequently financed by the issuance of bonds, payment of which is secured by a lien against a specific parcel of property and payable over a number of years by the property owner. In this situation, the courts have held that the indebtedness is not one of the “city,” but merely of the particular parcel of property or the district, and consequently, the constitutional debt limitation is not violated (*Stege v. City of Richmond* (1924) 194 Cal. 305).

As discussed later in section III, special assessment financing has proved to be an important and viable financing tool, both because special assessments are not “taxes” under Proposition 13 and because they are not subject to constitutional debt limitation restrictions. However, the passage of Proposition 218 has significantly changed special assessment financing procedures.

(3) *Lease Purchase*

Long term lease purchase agreements are another exception to the constitutional debt limitation. The California courts have held that long-term leases are not an indebtedness for the total or aggregate of all of the annual lease payments (which may exceed the debt limitation), but rather are a debt only for the amount of each year’s payments as they come due. The annual lease payments are usually well within the normal year’s income and revenue, and there consequently is no violation of the constitutional debt limit. So long as the lease is determined to be a valid lease and not a disguised conditional sales contract, the inclusion of unilateral purchase options exercisable annually by the lessee agency does not render the agreement invalid (*City of Los Angeles v. Offner* (1942) 19 Cal.2d 483; see also *County of Los Angeles v. Nesvig* (1965) 231 Cal.App.2d 603). The fact that title will pass at the conclusion of the lease term without any option amount being paid will not mean that the lease-purchase agreement is

invalid (*City of La Habra v. Pellerin* (1963) 216 Cal.App.2d 99; *Dean v. Kuchel* (1950) 35 Cal.2d 444). However, to assure that the lease-purchase agreement will be outside the debt limitation provisions, some public agency attorneys have insisted on including one or more options to purchase in the agreement following the type of agreement approved in the *Offner* case. In *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694, in which funds of the County Retirement System were used to finance a needed courthouse, the court approved a lease-purchase agreement and also stated that the county was obligated by law to provide adequate quarters for courts and that such obligation was not an indebtedness or liability within the constitutional debt limitation. *City of La Habra v. Pellerin* (1963) 216 Cal.App.2d 99 approved a lease-purchase agreement on police and fire station buildings on the same grounds as the Byram case. A Byram type lease-purchase agreement was also approved in *McClain v. County of Alameda* (1962) 209 Cal.App.2d 73. Similarly, the State Building Construction Act of 1955 (Gov. Code, § 15800 et seq.) permits the use of State Employees' Retirement System funds for financing state buildings using a combination of lease-purchase and special fund financing. In 27 Ops.Cal.Atty.Gen. 115 (1956), the Attorney General concluded that this Act is not a violation of the constitutional debt limit.

Another variation on the lease-purchase exception can be found in *Baker v. City of Palo Alto* (1961) 190 Cal.App.2d 744. In this case, a city contracted to buy a portion of the seller's property and was given options to be exercised at annual intervals for purchase of the remaining six (6) parcels but without any obligation to buy (*Baker v. City of Palo Alto, supra; California Pac. Title & Trust Co. v. Boyle* (1930) 209 Cal. 398). The court held that the contract was valid since it did not create an immediate obligation for the total price of all the land and therefore was not "an installment purchase contract."

Lease-purchase agreements have proven to be an important financing tool for cities because the transaction is outside the constitutional debt limitation.

(4) Minor Exceptions

In addition to the foregoing, there are a number of exceptions to article XVI, section 18 of the California Constitution which are of less common use. For example, a contract for services of a civil engineer over a five (5)-year period has been held valid on the theory that each year's services will be paid from the revenues of that year (*San Francisco v. Boyd* (1941) 17 Cal.2d 606).

Similarly, a contract providing for "progress payments" on a construction project has been held not to constitute a prohibited debt where each year's payments are only for the portion of the work completed for that year (*Smilie v. Fresno County* (1896) 112 Cal. 311). However, subsequent cases have developed a theory that where each year's consideration results in an "increasing compulsion" to complete the entire contract, there is an indebtedness for the total amount at the time the contract is executed (*Chester v. Carmichael* (1921) 187 Cal. 287; *Maboney v. San Francisco* (1927) 201 Cal. 248; *In re City and County of San Francisco* (1925) 195 Cal. 426; *Garrett v. Swanton, supra*). These later cases might cast some doubt on the doctrine of the *Smilie* case.

Since article XVI, section 18 of the Constitution purports to be applicable only to those agencies which it names, the conclusion that others are not bound by it was both logical and inevitable (*Shelton v. City of Los Angeles* (1929) 206 Cal. 544; *Department of Water, etc., v. Vroman* (1933) 218 Cal. 206; *Strain v. East Bay Municipal Utility District* (1937) 21 Cal.App.2d 281; 29 Ops.Cal.Atty.Gen. 195 (1957)). Treasurers who work with other agencies should be aware that their agencies may not be subject to this debt limitation.

At a rather early date, our courts held that the constitutional debt limitation applies only to voluntarily incurred obligations and not to obligations mandatorily imposed by law upon a city or agency (*Wright v. Compton Unified School District* (1975) 46 Cal.App.3d 177; *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694; *Lewis v. Widber* (1893) 99 Cal. 412). On this basis, a judgment against a public agency may be collected from revenues of successive years pursuant to Government Code section 970 et seq.; see also (*Metropolitan Life Ins. Co. v. Deasy* (1919) 41 Cal.App. 667). Similarly, the debt limitation does not apply to an indebtedness from obligations on water bonds imposed on a city upon merger of a district into the city (*People ex rel City of Downey v. Downey County Water District* (1962) 202 Cal.App.2d 786).

Finally, it should be stressed that the debt limit applies only in the event the funds of a particular year which could be applied to the obligation are exhausted. If funds exist at the end of a year and are accumulated, they may be validly expended at that later time or reached by a judgment creditor (*Title Guarantee & Trust Co. v. Long Beach* (1935) 4 Cal.2d 56).

It can be seen from the foregoing that questions involving debt limit are quite technical and highly important since moneys paid out in violation thereof are unlawfully expended and may provide a basis for individual liability of city officers approving payment (*Mines v. Del Valle* (1927) 201 Cal. 273). Whenever a contract is proposed which contemplates payment of city moneys over a period extending beyond the fiscal year in which the contract is executed the Treasurer should ask the agency's legal counsel whether or not there is a violation of California Constitution, article XVI, section 18.

b. Compensation for Elective Officers

Prior to 1970, the California Constitution prohibited salary increases for all elected city officers during their terms and applied to both general law and charter cities (see Cal. Const., former article XI, § 5). Today, however, this prohibition is found only in statute and applies only to general law City Councilmembers. Consequently, the statutory provisions on salaries and the limitations on salary increases do not apply to charter cities (see 57 Ops.Atty.Gen. 11 (1974)), and Councilmembers' salaries in chartered cities may be adjusted during their terms of office (*id.*) unless the charter prohibits adjustments in salary. Special districts should check their district statutes to determine if any prohibition on increases in salary apply to the particular district.

In addition, the statutory prohibition against increases in salary do not apply to all general law elective officers. For example, Government Code section 36517 provides that cities establish the salaries of elective City Clerks and City Treasurers by Council ordinance or resolution and no longer prohibits changes in Clerk and Treasurer salaries during their terms of office.

The Government Code does, however, establish the procedure for setting Council salaries and prohibits changes in salary during Council terms for general law cities (Gov. Code, § 36516 et seq.). A general law City Council may enact an ordinance setting the salary of its Councilmembers (Gov. Code, § 36516). The statute sets the permissible amount of salary by the population of the city. In addition, the Council may still increase its salaries beyond the amount set in section 36516 by an amount not to exceed a specified percentage for each year since the last salary adjustment was made (Gov. Code, § 36516(c)). The Council cannot, however, authorize automatic future increases (id.). In addition, salaries may not be increased beyond the amount set by section 36516 without approval by a majority vote of the city's electors (see Gov. Code, § 36516(b)). An elected Mayor may receive compensation in addition to that received as a Councilmember if such is provided for by Council ordinance or by majority vote of the electors voting on the proposition (Gov. Code, § 36516.1).

A change in compensation generally does not apply to a Councilmember during his or her term of office. Nor does it apply to a Councilmember appointed or elected to fill a vacancy (Gov. Code, § 36515). However, if the Councilmembers serve staggered terms, the compensation of all the Councilmembers can be adjusted whenever one or more of the members begins a new term (Gov. Code, § 36516.5).

(1) Reimbursement Not Compensation

It is important to note that reimbursement for actual and necessary expenses incurred in the performance of the public's business is not "compensation" and may be made to Councilmembers or other elective officers notwithstanding statutory or charter prohibitions against increases in compensation. Elective officers or other officers or employees of a public agency may be reimbursed for out-of-pocket expenses incurred while engaged in authorized municipal business. This is expressly recognized in Government Code section 36514.5. Municipal expenditures made for the purpose of improving municipal administration or for any proper municipal purpose authorized by the Council are valid so long as they have a reasonable connection with the object sought to be obtained. It is the City Council or District Board which must in the first instance determine the relationship of the expenditure to the purpose. Few, if any, persons would question the value of the City Engineer of one city visiting another to determine how

a sewage plant was constructed and operated. Many thousands of dollars have been saved the taxpayers by such conferences, and courts of this state have approved attendance of officers at a conference of the League of California Cities (*City of Roseville v. Tulley* (1942) 55 Cal.App.2d 601). The courts will not generally interfere with the discretion of public officials in determining what is necessary and proper to carry out public or municipal functions (*id.*).

In connection with reimbursement of public officials for out-of-pocket expenses, however, one word of caution as to procedure is offered. Authority to make such expenditures should be given in advance. In addition, the demand requirements of Government Code section 905 et seq. are applicable to reimbursement of elected officials (Gov. Code, § 37201; *Albright v. City of South San Francisco* (1975) 44 Cal.App.3d 866, 870). Such expenditures will normally be in an amount nominal enough to permit reimbursement upon filing of a claim by the officer or employee who has made an out-of-pocket expenditure while on municipal business. There are occasions, however, when the amount will be sufficient to warrant an advance. In this case, also, after the expenditure has been made by an officer, a claim should be filed detailing actual and necessary expenditures and attaching such receipts as are ordinarily given in the course of normal business transactions.

In *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, the California appellate court upheld this charter city's ordinance establishing a set dollar amount per month as reasonable out-of-pocket expenses. This holding was based in part on the city charter and on the general presumption in support of the validity of ordinances. However, in the absence of a valid ordinance or resolution, a flat expense allowance to the extent that it exceeds amounts actually expended on verifiable municipal expenses in any one month is the equivalent of a gift of public funds and is invalid (*Albright v. City of South San Francisco, supra*, at 869-870).

The dangers of misappropriating public funds drawn for the purpose of paying expenses of trips taken on official business are clearly set out in *People v. Byers* (1936) 5 Cal.2d 676, where a city official was sent to prison for the filing of fraudulent expense claims.

(2) Compensating Elective Officials for Added Burdens

While Government Code section 36516.5 prohibits increasing the compensation of Councilmembers during their terms of office, it is not an absolute bar to increasing the “take home” amount paid to all elective city officials as compensation for their services. City Councilmembers in general law cities may not be paid any compensation as Councilmembers other than that voted for them by the electorate or set by Council-adopted ordinance in the statutory amount for their Councilmember duties (Gov. Code, § 36516). However, elective City Clerks and City Treasurers are not so limited. The salaries of elective City Clerks and Treasurers may be increased (or decreased) during their terms of office (Gov. Code, § 36517).

Although not as important today as it was before the repeal of the constitutional provision prohibiting increases in salary during the term of all municipal officers, there is a court-made exception to the old constitutional prohibition which may still be relevant to some elective officials. This exception allows for additional compensation to be paid to public officers (other than Councilmembers) for the performance of new and additional duties outside the scope of their office, provided further that such duties are compatible and in no way conflict with the performance of their normal official duties. When such compatible added duties are assumed by an elective officer, he or she may be given additional compensation therefor without violating the prohibition against increasing the compensation of an elective officer during his or her term (*Mousseau v. Garey* (1926) 200 Cal. 201; *County of San Luis Obispo v. Felts* (1894) 104 Cal. 60; *Abbott v. McNutt* (1933) 218 Cal. 225; *Kilroy v. Whitmore* (1931) 115 Cal.App. 43).

In utilizing this exception, extreme care should be taken to avoid the assumption by an officer of a second public office which is incompatible with his or her primary office, since acceptance of the second incompatible office renders the first office held vacant by operation of law (*People ex rel. Bagshaw v. Thompson* (1942) 55 Cal.App.2d 147).

In addition, by statute in cities of under 200,000 in population where the City Council is the Redevelopment Agency, the Council may be compensated for this added duty (see Health & Saf. Code, § 33114.5). Further, a Councilmember who is appointed to serve on the board of another public agency (i.e., a LAFCO or Air District) may be compensated by that agency if that agency provides for board compensation.

Special Districts should check their own statutory requirements prior to modifying the salary of elected officials.

c. Prohibition Against Gifts and Retroactive Pay

The payment of retroactive pay increases to local public officers or employees is prohibited. The State Constitution, article XI, section 10 specifically prohibits payment of compensation for past services by general law, charter cities and other public agencies. In addition, article IV, section 17 of the California Constitution prohibits the Legislature from authorizing cities and other public agencies to grant compensation for past services. There have been several cases and Attorney General opinions discussing the application of this constitutional prohibition (see, e.g., *Longshore v. County of Ventura* (1979) 25 Cal.3d 14; *Goleta Educators Assn. v. Dall'Armi* (1977) 68 Cal.App.3d 830; *Gai v. City Council* (1976) 63 Cal.App.3d 381). This is, however, a very difficult area in which to make general rules, since the courts have generally upheld "retroactive pay raises" when the amount of compensation was in controversy (i.e., indefinite and subject to future determination) during the period covered by the pay raise (see *Gai v. City Council, supra*, at p. 390). Treasurers are advised to consult with their agency attorneys on issues of retroactive pay raises.

The California Constitution, article XVI, section 6 prohibits all gifts of public funds. The greatest danger of violating this section occurs when an attempt is made to be "fair" and pay out public money to a claimant when the agency's obligation is not legal. In the following cases, expenditures were held to be invalid as gifts because they were not based upon a **legal obligation**: *Orange County Foundation v. Irvine Co.* (1983) 139 Cal.App.3d 195 (expenditure of state funds in settlement of a wholly invalid claim); *County of Riverside v. Idyllwild County Water District* (1978) 84 Cal.App.3d 655 (relating to payment of an invalid tax or assessment);

Conlin v. Board of Supervisors (1893) 99 Cal. 17 (relating to an appropriation for the relief of a street contractor who had a moral but not a legal claim against the city); *Buck v. City of Eureka* (1895) 109 Cal. 504 (relating to extra compensation to a City Attorney for services he was already bound to perform); *City of Ojai v. Chaffee* (1943) 60 Cal.App.2d 54 (relating to the cancellation of taxes); and *Estate of Skinner* (1956) 47 Cal.2d 290 (relating to cancellation of taxes after the taxes become due). These cases are to be distinguished from those cases cited below under “Public Purpose” in which moneys were appropriated for the benefit of the general public to specific individuals. Here, the expenditure is to a specific individual for that individual's benefit (not the general public's benefit) and must, consequently, be supported by a legal obligation.

d. Public, Municipal and State Purposes

All expenditures of locally levied tax moneys must be made for a public and a municipal purpose. Generally, the line between a public purpose and a nonpublic purpose is the line between a public and a private purpose. If the expenditure is for something which will substantially benefit the general public rather than an identifiable group of individuals, it will generally be upheld as public. In addition to the public purpose requirement, there is the requirement of California Constitution, article XIII, section 24, which provides that “[t]he Legislature may not impose taxes for local purposes but may authorize local governments to impose them. Money appropriated from state funds to a local government for its local purposes may be used as provided by law. Money subvented to a local government under Section 25 [of the State Constitution] may be used for state or local purposes.” This section requires that moneys be spent for proper municipal or state purposes.

Examples of the various situations in which expenditures have been held to be for a “public,” or a “municipal” purpose are rather numerous in the appellate decisions of our state courts. Discussion of a few may help define these concepts.

(1) “Public Purpose”

One of the most important principles in determining whether or not a particular expenditure is for a public purpose is that the courts will not substitute their judgment for that of the local legislative body unless there is a showing that its judgment or discretion has been unquestionably abused (*County of Alameda v. Janssen* (1940) 16 Cal.2d 276; *Redevelopment Agency v. Shepard* (1977) 75 Cal.App.3d 453). Applying this principle to a variety of expenditures, the appellate courts of this state have held the following to be valid public purposes: (1) the payment of the necessary expenses of city officers and employees in attending an Annual Conference of the League of California Cities (*City of Roseville v. Tulley* (1942) 55 Cal.App.2d 601); (2) the expenditure of city funds for advertising the advantages of the city through a contract with the Chamber of Commerce (*Chamber of Commerce v. Stephens* (1931) 212 Cal. 607); and (3) expenditures of public funds for relief of assessment districts (*County of San Diego v. Hammond* (1936) 6 Cal.2d 709).

In determining whether there is a public purpose, only the legal propriety, not the economic or governmental propriety, should be examined (*City of Oakland v. Oakland Raiders* (1982) 32 Cal. 3d 60, 73).

Further, while the principal distinction between a public purpose and a nonpublic purpose is that the former is of benefit to the general public while the latter is not, there are many expenditures of public funds which benefit the public generally and are for valid public purposes even though they may directly benefit specific individuals. Examples of these are: *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [low interest loans for housing]; *Board of Supervisors v. Dolan* (1975) 45 Cal.App.3d 237 [low income housing]; *Redevelopment Agency v. Shepard* (1977) 75 Cal.App.3d 453 [bond financing for redevelopment]; *MacMillan Co. v. Clarke* (1920) 184 Cal. 491 [free school text books]; *Veterans' Welfare Board v. Riley* (1922) 188 Cal. 607, 189 Cal. 159 [transportation, tuition and living expenses for education of veterans]; *Allied Architects' Assn. v. Payne* (1923) 192 Cal. 431 [erection of memorial hall for war veterans]; *City of Oakland v. Garrison* (1924) 194 Cal. 298 [street improvements];

Patrick v. Riley (1930) 209 Cal. 350 [payments for destruction of diseased cattle]; *Sacramento etc. Drainage Dist. v. Riley* (1926) 199 Cal. 668 [flood control]; *San Francisco v. Collins* (1932) 216 Cal. 187 [bond issue for relief of indigent sick and poor]; *The Housing Authority v. Dockweiler* (1939) 14 Cal.2d 437 [slum clearance]; *County of San Diego v. Hammond* (1936) 6 Cal.2d 709 [use of county funds to pay delinquent assessments on overburdened property]; *Goodall v. Brite* (1936) 11 Cal.App.2d 540 [free treatment in county hospital only for those unable to pay]; and *Webb v. Swoap* (1974) 40 Cal.App.3d 191 [public assistance].

(2) “Municipal Purpose” and “State Purpose”

The municipal purpose requirement imposed on top of the public purpose requirement is derived from the constitutional provision that prohibits the State Legislature from imposing taxes for local purposes. There is no clear rule in this state as to what constitutes a proper local purpose for the expenditure of local tax moneys. Most of the examples in this area are from older cases decided prior to the latest constitutional amendment. In *Adams v. Ziegler* (1937) 22 Cal.App.2d 135, it was held that the conduct of an otherwise authorized summer music and drama program under the general supervision of the playground commission of a city constituted a proper municipal purpose. In *Bank v. Bell* (1923) 62 Cal.App. 320, the court held that the maintenance of a public market by a city was a municipal purpose.

One area of expenditures that most often raises the “municipal purpose” question is expenditures for extraterritorial activities. For example, in *Chapman v. City of Fullerton* (1928) 90 Cal.App. 463, although the court did not specifically base the decision on the “municipal purpose” requirement, it held that a proposal for an expenditure by a city for the extraterritorial purpose of helping to police other cities was invalid.

Another area that raises questions is expenditures of municipal moneys on a particular matter upon which the state also expends state tax moneys. If municipal funds can only be expended for a “municipal purpose,” it is logical to wonder how an expenditure for one specified purpose can be both. The question has been resolved by holdings that some purposes are of “mixed benefit” and can serve both municipal

and state purposes simultaneously. Two common examples of a mixed purpose are expenditures for highways (*Perez v. City of San Jose* (1951) 107 Cal.App.2d 562) and state parks within cities (*City of Sacramento v. Adams* (1915) 171 Cal. 458).

Thus, locally levied tax moneys may only be expended for “public” and “municipal” purposes. However, cities also receive moneys from the state, which raises the question of whether these state funds may only be expended for “state” purposes.

(3) Expenditures of State Funds

A substantial number of the expenditures made by cities and special districts in California are of funds which are raised from state tax levies. Under prior California constitutional provisions, these state funds could only be expended for “State purposes” (see Cal. Const., art. XI, § 12, repealed 1970). Now, however, the Constitution provides that money subvented to a city may be used for either state or local purposes. In addition, money appropriated to local government for local purposes from state funds may be used as provided by law (Cal. Const., art. XIII, § 24). Therefore, the question of what is a “State purpose” to which local agencies may devote state moneys is no longer as important as it once was. Unless otherwise restricted, cities may use subventions for any proper public purpose regardless of whether the purpose is “municipal” or “state.” An example of unrestricted funds are motor vehicle “in lieu” license fees which are paid to cities by the state and may be expended for any local purpose and “may, but need not necessarily, be used for purposes of general interest and benefit to the state” (Rev. & Tax. Code, § 11005).

The following are a few examples of state funds received by cities that must be spent for specified purposes only. Gas tax moneys received from the state under sections 2106(a), 2106(b) and 2107 of the Streets and Highways Code may be spent for any general street purposes (St. & Hys., § 2101). However, funds which cities receive from the state under the provisions of section 2107.5 of the Streets and Highways Code and the interest thereon must be expended only for engineering costs and administrative expenses in connection with the city street system. Cities with a population of less than 10,000 inhabitants may expend section 2107.5 moneys for acquisition of rights-of-way and construction of their street systems in addition to engineering and administrative expenses.

Funds paid to airport-owning cities from the Aeronautics Account in the State Transportation Fund (Publ. Util. Code, § 21680 et seq.) may be expended only for airport and aviation purposes. A special aviation fund must be created by the city for the deposit of these funds.

Cities also receive funds for transportation commonly lumped together and called "SB 325" funds (see Pub. Util. Code, § 99000 et seq.). Upon submission and approval of a claim by the transportation planning agency, a city may obtain funds for public transportation and for streets, roads, bicycle and pedestrian facilities. Again, these funds may only be expended for the purpose for which they are received (see e.g., Pub. Util. Code, §§ 99262, 99400).

Vehicle Code section 42200 requires that the proportion of the total amount of fines and forfeitures which a city receives pursuant to Penal Code section 1463 which is represented by fines and forfeitures resulting from Vehicle Code misdemeanors shall be deposited in a special fund to be known as the "Traffic Safety Fund." This is another example of state-authorized moneys that must be used for the purpose established by law. The section then provides that moneys in such fund shall be used exclusively for "...official traffic control devices, the maintenance thereof, equipment and supplies for traffic law enforcement and traffic accident prevention, and for the maintenance, improvement, or construction of public streets, bridges, and culverts within the City, but such fund shall not be used to pay the compensation of traffic or other police officers. The fund may be used to pay the compensation of school crossing guards who are not regular full-time members of the Police Department of the City."

When agencies receive state funds, they should be careful to determine whether there are any requirements or whether they are free to expend the money for local purposes. In addition, even where maintenance of a special fund is not mandated by statute, it is usually an effective practice to place restricted purpose revenues in a special revenue fund to facilitate proper accounting for all expenditures therefrom.

(4) Expenditures of Federal Funds

In addition to state funds, agencies may also receive federal funds. Again, while some federal moneys may be expended for any public purpose, most federal funds are restricted and may be expended only for specifically authorized purposes. Federal funds are received in the form of grants such as Community Development Block Grants (CDBG). This funding source is authorized by the Housing and Community Development Act of 1974, as amended. CDBG grants may only be expended for certain types of projects. In addition, some CDBG funds may only be used for specific projects. In both cases, however, the funds must be separately maintained and accounted for. There are many other federal programs that provide funding for specific projects or activities. Treasurers should review the requirements for each grant to ensure that the funds are properly spent and accounted for.

(5) Regulatory Charges and User Fees

Another type of fund which is subject to restricted purpose expenditure is that resulting from the imposition of regulatory charges or exactions. Some of these are imposed under a city's constitutional police power, and others may be imposed under statutory authority. Special districts also impose regulatory charges and user fees.

(a) Statutory Regulatory Fees

An example of a regulatory charge authorized by statute is parking meter charges. Under the Vehicle Code, cities have the authority to adopt ordinances regulating lawful parking on city streets (Veh. Code, § 22508; *County of Los Angeles v. City of Alhambra* (1980) 27 Cal.3d 184; see also *DeAryan v. City of San Diego* (1946) 75 Cal.App.2d 292, 296; *Downing v. Municipal Court* (1948) 88 Cal.App.2d 345, 351; and *Mervynne v. Acker* (1961) 189 Cal.App.2d 558).

Since the placing of parking meters on public streets, and the use of a fee system for parking privileges, is supported as a regulatory measure rather than a revenue-raising measure, certain well defined legal consequences follow. The fee to be charged must bear a reasonable relation to the service rendered and the cost of rendering it (*De Aryan v. City of San Diego, supra*). The funds derived from such regulatory fees must be expended for some purpose substantially connected with

the problem of traffic regulation and control. Thus, such funds may properly be expended for traffic enforcement, traffic engineering, traffic circulation, purchase of off-street parking facilities, signalization, street signs, traffic enforcement and officers' salaries, as well as the purchase, installation, supervision, protection, inspection, maintenance and operation of the parking meters themselves.

(b) Statutory User Fees

An example of a user charge which is authorized by statute and the expenditure of which is limited by the authorizing statute is the imposition of sewer user fees and charges, including connection charges and standby charges, authorized under section 5470 et seq., of the Health and Safety Code. Under section 5471, the funds received can be expended 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." Further, the charges collected may not be used for the acquisition or construction of new local street sewers or laterals (as distinguished from main trunk, interceptor and outfall sewers). The power to levy sewer connection charges to raise revenue for sewer purposes under section 5471 has been declared constitutional (*Associated Homebuilders v. City of Livermore* (1961) 56 Cal.2d 847).

(c) Development Fees

Another example of regulatory fees or charges are the fees imposed as a condition of obtaining a land use permit or entitlement, such as a rezoning, conditional use permit, variance or subdivision map. Cities and counties have both statutory authority and authority under their constitutional police power to regulate the permitted uses of property within the city. Where special districts provide facilities and services, such as parks, water, sewer or other utilities, special districts may also be involved in the determination of the type and amount of exactions imposed on development projects.

Again, because these fees and charges are regulatory rather than revenue raising, certain general principles apply both to the amount of the charge and the use to which the money may be put. In general, there are two types of charges. The first is a processing fee imposed to offset the cost to the agency of processing an application for a permit or entitlement. Agencies have statutory authority to impose these processing fees (see Gov. Code, § 66014). As a general rule, these fees may not exceed the cost of providing the service (see *Mills v. County of Trinity* (1980) 108 Cal.App.3d 656; see also Gov. Code, § 66014). Many special districts also have either express or implied authority to impose processing fees for permits the special district may be involved in issuing.

Prior to adopting a new or increased land use processing fee, the city, county or district imposing the fee must hold a hearing and, in some cases, publish notice of the hearing (Gov. Code, §§ 66016-66018). In addition, in most cases, the agency must make available to the public the cost data that supports the fact that the fees do not exceed the reasonable cost of providing the service (see, i.e., Gov. Code, § 66016). After adoption, certain fees may not go into effect for sixty days (Gov. Code, § 66017). Unlike fees to finance capital facilities and other exactions (*see below*), there is no requirement, as of this writing, that processing fees collected be segregated from other agency funds. These fees may be deposited in the agency's general fund. This is an area, however, where the Legislature has been adding additional rules. Prior to adopting new processing fees, the agency should be sure it is following the most recent state requirements.

The second type of land use regulatory charge is one imposed as a condition of development to offset the burden new development places on existing city facilities. These charges or exactions may be imposed under statutory authority or under the city's general police power. One commonly used statutory exaction is park land dedications or in-lieu fees imposed as a condition of obtaining a subdivision map (Gov. Code, § 66477). By statute, the fees and/or land dedications collected must bear a reasonable relationship to the use of park facilities by future residents of the subdivision. The validity of park fees and dedications was upheld in *Associated Home Builders etc. v. City of Walnut Creek* (1971) 4 Cal.3d 633. The city may use the in-lieu fees collected only for developing new parks or rehabilitating existing park and

recreational facilities (as distinguished from regular maintenance). School impact fees are also authorized by statute (Gov. Code, § 65970 et seq.). The validity of this exaction was upheld in *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317 as a regulatory charge and as not violative of Proposition 13. Again, the fee must bear a reasonable relationship to the impact of new development on overcrowding in the schools. If schools are overcrowded, the school district may adopt regulations imposing a fee to offset this impact. The Legislature has established the maximum amount of the fee that may be imposed on development projects (Gov. Code, § 65995 et seq.). The money is collected by the school district for use by the impacted school district. In some cases, however, cities have agreed to collect these fees for the school districts since payment of the school impact fees are tied to issuance of building permits.

Although the school impact fee law precludes fees on development permits above the amount set by statute, previous court decisions held cities could still deny land use applications for general plan amendments, rezonings and similar legislative determinations based on school impacts. As a result of these decisions, many cities still conditioned these legislative land use decisions on mitigation of school impacts over and above the statutory maximum school fees (*Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201; *William S. Hart Union High School Dist. v. Regional Planning Com.* (1991) 226 Cal.App.3d 1612; *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212). The issue of whether cities can impose school mitigation fees in addition to the statutory fees has been an area of controversy.

Treasurers should contact their Agency Attorneys regarding school impact fees.

Regulatory charges, such as park in-lieu fees and school impact fees, have become increasingly important since the enactment of Proposition 13. Since these fees provide one method of securing the infrastructure (i.e., streets, parks, schools, sewers and water) needed to serve new development without requiring the imposition of new taxes, many cities have begun to impose capital improvement fees as a condition of obtaining land use entitlements using their general police power authority rather than statutory authority. The validity of the many

varieties of these charges has not yet been determined by the courts, but each of these charges must bear a reasonable relationship to the burden the development places on a city facility (*Scrutton v. County of Sacramento* (1969) 275 Cal.App.2d 412; *Ayres v. City Council of Los Angeles* (1949) 34 Cal.2d 31). The Legislature has enacted several statutes regulating land use exaction fees charged to a developer to offset the cost of providing capital facilities (see, e.g., Gov. Code, § 66000 et seq., “AB 1600”). The League of California Cities and other organizations have published detailed information concerning the requirements of these statutes. Very generally, AB 1600 requires the local agency to follow certain procedures before adopting a new capital facilities fee or increasing an existing fee. These procedures include identifying the purpose of the fee, identifying the use to which the fee will be put, determining the reasonable relationship between the fee’s use and the type of development on which the fee will be imposed and determining the reasonable relationship between the need for the public facility and the type of development on which the fee will be imposed (Gov. Code, § 66001). The agency must also determine the reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development. This analysis generally will require an arithmetic calculation.

Finally, these types of capital facilities fees must be deposited with other fees for the public improvement in a separate capital facilities account or fund to “avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments . . .” (Gov. Code, § 66006). Interest earned on these fees must be attributed back to the capital facilities account and may only be used for the purpose for which the fee was originally collected (Gov. Code, § 66006). Thus, these fees and interest on these fees must be segregated for accounting purposes.

Section 66006(b) requires agencies to make available to the public and to the City Council information on the capital facilities accounts. The information specified in section 66006(b) must be made available within 60 days of the close of each fiscal year (Gov. Code, § 66006(b)). The agency must review the information at its next regularly scheduled meeting not less than 15 days after the information is released to the public. Notice of this meeting must be sent to anyone requesting notice (and paying the cost of the notice) (*id.*).

Treasurers should consult with their Attorneys to determine which fees are subject to these rules and the exact accounting procedures applicable to each fee.

e. Authority for the Expenditure

There must always be legal authority to make the expenditure or perform the action for which the expenditure is required (*Frisbee v. O'Conner* (1932) 119 Cal.App. 601). Personal liability could result if the members of a public agency expend the agency's funds for an unauthorized purpose (id.). A general law city's authority is found in the Constitution, the general laws or as an incident to the exercise of its constitutional police power (id.; see also *Harden v. Superior Court* (1955) 44 Cal.2d 630). A special district should also look to the Constitution and the laws applicable to the particular district for its authority for expenditures. In a chartered city, somewhat different tests apply. In cases of doubt, the agency's legal adviser should be consulted.

The question of authority can arise when a proposed expenditure is for a service to be rendered outside of the agency's boundary limits. As a general proposition, a city can act outside of its boundaries only when expressly authorized by statute (*Harden v. Superior Court* (1955) 44 Cal.2d 630; *Mulville v. City of San Diego* (1920) 183 Cal. 734). However, when a city serves territory immediately adjacent to its limits for the purpose of protecting person and property within its limits from fire (*Raynor v. City of Arcata* (1938) 11 Cal.2d 113), indications are that the power will be implied.

With respect to public works included in article XI, section 9 of the California Constitution, such as water, power, transportation or light, the Constitution expressly authorizes cities to provide service beyond city limits, provided that before a city may provide services in a neighboring city, the consent of the neighboring city served must be obtained (see *Durant v. City of Beverly Hills* (1940) 39 Cal.App.2d 133; *City of Mill Valley v. Saxton* (1940) 41 Cal.App. 2d 290). In some circumstances, a city must obtain approval from its county Local Agency Formation Commission ("LAFCO") before providing services outside of the city limits. (Gov. Code § 56113.)

In addition, there is rather broad authority under the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.) for contracts between public agencies having powers in common whereby one serves the other (*City of Oakland v. Williams* (1940) 15 Cal.2d 542).

This is, again, an area where, should the Treasurer question the agency's authority, he or she should refer the question or concern to the agency's legal counsel.

f. Conflicts of Interest

There are two bodies of law concerning conflicts of interest which affect the validity of contracts and other municipal expenditures. The first prohibits public officers from having an "interest" in a contract made by them in their official capacity. The second, the Political Reform Act, concerns, among other things, disclosure of an official's financial interests and requires an interested officer to disqualify himself from participating in decisions in which he has a financial interest.

(1) Officers' Interest in Contracts

One very important condition of the validity of public agency expenditures is that imposed by the prohibition against "interest in contracts" provisions of Government Code section 1090 et seq. The same prohibition in similar or more restrictive language is contained in most city charters. Generally, section 1090 prohibits public officers and employees from having an interest in any contract made by them in their official capacity or by a board or body of which they are members.

Contracts made in violation of section 1090 may be avoided at the instance of any party except the interested officer (Gov. Code, § 1092) with one exception. Leases, purchases and encumbrances on real property may not be avoided in derogation of the interest of a good faith lessee, purchaser or encumbrancer who paid value and acquired the interest without actual knowledge of the section 1090 violation (Gov. Code, § 1092.5). Public officials who willfully violate the prohibition against interests in contracts are punishable by fine, imprisonment and disqualification from holding public office (Gov. Code, § 1097).

To determine whether a public official's interest falls within the general prohibition against interests in public contracts, the Code defines twelve "remote interests" which, although an interest, are deemed to be so remote as to permit an exception from the strict provisions of the law (Gov. Code, § 1091). Officers having only a remote interest in a contract can eliminate their disqualifying interest if they disclose the remote interest and have the disclosure noted in the official records and refrain from voting on the matter and from influencing the votes of other members on the matter.

Following these steps, the governing body may approve or ratify the contract so long as the vote is sufficient without counting the vote of the officer with the remote interest. Contracts made without disclosure of a remote interest are valid unless the contracting party had knowledge of the remote interest at the time the contract was executed (Gov. Code, § 1091(d)). However, willful failure by the public officer to disclose a remote interest is punishable by a fine of up to \$1,000, imprisonment and disqualification from holding public office in the state (Gov. Code, § 1097).

Officers charged with the disbursement of public moneys may not pay any warrant when it has been purchased, received or transferred contrary to the provisions of section 1090 et seq. Further, upon being informed by affidavit that an account about to be settled or paid has violated section 1090 et seq., the disbursing officer shall suspend settlement or payment and cause the District Attorney to prosecute the violation (Gov. Code, § 1096).

The possibility of committing a violation of these prohibitions constitutes a continuing threat to all officers who participate in public contracts, including the Treasurer who has had notice of facts which should have warned him or her of the possible invalidity of the contract. The courts tend to treat harshly persons found to have violated section 1090 et seq. For example, in *Thomson v. Call* (1985) 38 Cal.3d 633, a Councilmember was found to have violated section 1090 et seq. by indirectly selling real property to the city. The court required the Councilmember to forfeit the entire purchase price of the property together with interest. (see also *People v. Honig* (1996) 48 Cal. App. 4th 289.) Because the existence or non-existence of a disqualifying interest is an extremely technical and difficult matter, Treasurers should not attempt to decide these questions for themselves but should refer their questions to legal counsel for his or her opinion.

(2) Conflicts of Interest Under the Political Reform Act

In 1974, the Political Reform Act was enacted as an initiative measure. The Act regulates in two major areas: (a) campaign contributions and interest disclosure, and (b) conflicts of interest for elected and appointed public officials. Of particular interest to Treasurers are the conflict of interest provisions.

First, the Act mandates that public officials annually disclose their financial interests (Gov. Code, §§ 87200, 87302). Treasurers and other public officials who manage public investments are required to comply with the disclosure and reporting provisions of the Act (Gov. Code, §§ 87200 et seq.). Treasurers will always be included in their agency's Conflict of Interest Code and be required to disclose their financial interests since the position of Treasurer entails participation in decisions that may foreseeably have a material effect on financial interests held by the Treasurer (see Gov. Code, § 82019).

Second, the basic requirement of the Act is that “[n]o public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest” (Gov. Code, § 87100).

However, unlike Government Code section 1090, discussed above, the existence of a conflict of interest does not preclude the city from taking an action. Rather, the interested official is required to disclose the interest and to refrain from participation in the decision.

Any person residing within the jurisdiction of the agency may institute a judicial action to restrain a decision or action taken in violation of the Political Reform Act, and the court has the discretion to declare the action void if it determines that a violation has occurred (Gov. Code, § 91003).

In addition, the Act contains provisions for both criminal misdemeanor penalties and civil liability in the event of its violation. Public officials, including Treasurers, who are designated officials under a Conflict of Interest Code are also subject to employee discipline procedures, including dismissal, consistent with the agency's civil service or personnel regulations (Gov. Code, § 91003.5).

Determining whether an official has a conflict of interest that requires him or her to refrain from participating in a governmental decision is a complicated and technical area of the law. Again, as with Government Code section 1090, Treasurers should not attempt to decide these questions alone but should refer their questions or concerns to legal counsel. This is true both as to any conflict the Treasurer may believe he or she has and to any conflict any other public official may have. Legal counsel, in turn, may refer questions to the Fair Political Practices Commission for its opinion on whether a disqualifying interest exists. Public officials may directly seek the advice of the FPPC regarding potential conflicts of interest under the Political Reform Act.

3. Conclusion

Many times, resolution of whether an expenditure is legally proper must be referred to the agency's legal counsel. It is believed that the duty of the Treasurer to inquire concerning the validity of a proposed expenditure, when circumstances of which he or she has notice or knowledge indicate possible invalidity, is fully discharged when the Agency's legal counsel has rendered an unqualified opinion that it is valid. This will relieve the Treasurer of his or her potential liability. The plain fact is that the validity of an expenditure in a close case cannot be determined with certainty until it has been approved by the highest court in the land, and even then, three or four judges may take a completely different viewpoint from the four or five who wrote the majority opinion. A general understanding of the legal limitations on expenditures will permit the Treasurer to recognize the possible legal significance of facts and circumstances not known to the Attorney, but the Treasurer should never substitute his or her own judgment for that of the Attorney on questions of law any more than the Attorney should direct the handling of cash in the Treasurer's office.

III. Additional Duties and Responsibilities

III. Additional Statutory Duties and Responsibilities

In addition to the principal statutory duties and responsibilities of the Treasurer's office reviewed in the preceding section, there are a large number of statutory duties which may be imposed upon the Treasurer from time to time but which are not a continuing part of the Treasurer's duties in all cities or at all times. Some familiarity with the general nature of these duties will make it possible to anticipate some of the problems which they may present.

A. Financing

1. Dry Period Financing

It is entirely possible that an occasion will arise when there is just no cash available for the payment of agency bills. This has been quite aptly called a "dry period." The question then arises as to how the city's or agency's bills can be met when there is no available cash in the treasury, although taxes have been levied and cash is expected within the immediate future. Dry period financing can be handled on any one of the following bases:

a. Registered Demands

The demands against the City Treasurer for payment can be registered following the procedures set forth in Government Code sections 37204 and 37205. This involves endorsing demands "not approved for want of funds" and then registering them in the order of endorsement. When the city treasury is replenished with cash, these registered demands are presented for payment in the order of their registration and become payable at face value plus interest from the date of registration at six percent (6%) per annum.

In practice, the creditor can sell these demands to banks and other financial institutions and receive immediate cash, with the financier presenting the demands for payment when funds are available in the city treasury.

Counties and most special districts, also have authority to issue registered demands (See Govt. Code, § 29821).

b. Tax Revenue and Grant Anticipation Warrants and Temporary Notes

Two more formalized procedures for temporary financing of dry periods are: (1) the issuance of temporary notes pursuant to Government Code section 53850 et seq.; and (2) the issuance of tax anticipation warrants pursuant to Government Code section 53820 et seq. In addition, when an agency has obtained approval of a grant but has not yet received the grant funds, the Government Code authorizes the issuance of grant anticipation notes.

An agency may borrow money by the issuance of temporary notes under Government Code section 53850 et seq. Money may be borrowed under section 53850 on or after the first day of any fiscal year, and the money borrowed may be used for any authorized purpose, including current expenses, capital expenditures, investment and reinvestment and the discharge of indebtedness (Gov. Code, § 53852). Temporary borrowing notes must be issued by resolution of the legislative body (the city council or agency board of directors). The resolution must set forth the form and the manner of execution of the notes and may authorize that notes will be issued from time to time as set forth in the resolution (Gov. Code, § 53853). The notes may be negotiable, may be payable to bearer and may be in any denomination (Gov. Code, § 53854). Notes are payable not later than the last day of the fiscal year in which they are issued, with one exception. If the note is payable only from revenue received or accrued during the fiscal year in which it is issued, the note may be made payable during the next succeeding fiscal year but in no event later than fifteen (15) months from the date of issue (Gov. Code, § 53854).

Interest on the notes may not exceed ten percent (10%) (id.). The resolution authorizing the notes may provide for call and redemption at the option of the city and a premium not exceeding three percent (3%) of the par value of the notes subject to redemption.

Temporary borrowing notes, including the interest thereon issued in any fiscal year, may not exceed an amount which is eighty-five percent (85%) of the estimated amount of the then-uncollected taxes, income, revenue or other moneys which are available for the payment of the notes and interest, with some exceptions (Gov. Code, § 53858).

Proceeds from the temporary borrowing set aside for repayment of the notes may not be invested for a term that exceeds the term of the note (see Gov. Code, § 53852.5) the temporary borrowing notes and the interest on the notes are a first lien and charge against the money pledged for the notes. The temporary notes are payable from the first moneys received from the pledged funds. (Gov. Code § 53856.)

Another procedure for temporary financing is tax anticipation warrants. If tax revenues will not be received in time to meet obligations, the Treasurer, together with the agency's chief accounting officer, may recommend the issuance of tax anticipation warrants to the legislative body (Gov. Code, § 53821). These warrants may be issued only after the adoption of a resolution by a four-fifths (4/5) vote of all of the members of the City Council or Board of Directors (Gov. Code, § 53824). An agency may not borrow more than fifty percent (50%) of the revenue anticipated from taxes for the current fiscal year or that portion of the taxes not collected at the time of borrowing (Gov. Code, § 53822). The warrants must be offered at public sale after published notice (Gov. Code, § 53826) and must be sold to the bidder whose bid represents the lowest rate of interest or the lowest net cost to the city (Gov. Code, § 53827). In addition, the rate of interest may not exceed fifteen percent (15%) per year (*id.*). Repayment constitutes a first lien on tax revenues for the fiscal year in which the money is borrowed and must be repaid from the first tax money received by the city (Gov. Code, § 53829). All warrants issued for funds borrowed prior to December 31 in any fiscal year must be repaid not later than December 31. Warrants may not be issued after December 31 in any fiscal year if funds borrowed prior to December 31st have not been repaid. Funds borrowed after December 31st must be repaid by May 30th of the fiscal year.

Again, as with temporary borrowing, notes proceeds from the sale or funds set aside for repayment of the notes or warrants may not be invested for a term that exceeds the term of the notes or warrants (Gov. Code, § 53821.5).

Temporary borrowing notes offer a simpler and more expeditious procedure for dry period financing than the issuance of tax anticipation warrants since they do not require public sale of the securities and may, therefore, be the subject of a negotiated sale. In addition, since the borrowing cap is eighty-five percent (85%) of uncollected taxes rather than fifty percent (50%), the agency has more flexibility in the amount it can borrow.

Grant anticipation notes may be issued by cities and other local agencies. The security for these notes is the specified accounts receivable from the state or federal government that has approved the grant and appropriated the funds for the grant. Again, the legislative body must authorize the issuance of the notes by resolution, which must set forth the form and manner of execution of the notes (Gov. Code, § 53859.03). The notes may be issued for periods of up to thirty-six (36) months by some local agencies. However, general law cities and other local agencies that are subject to the constitutional debt limitation can issue grant anticipation notes for no longer than fifteen (15) months from the date of issuance (Gov. Code, § 53859.04). Interest on the notes may not exceed ten percent (10%) per annum but may be discounted by not more than two percent (2%) of par value (*id.*). A premium of not more than three percent (3%) of par value may be given on notes subject to redemption (Gov. Code, § 53859.05). Grant anticipation notes may be sold at public or private sale (Gov. Code, § 53859.04). The total amount of the notes may not exceed ninety-five percent (95%) of the grant or loan (Gov. Code, § 53859.08). Treasurers should be aware that the revenue from grant anticipation notes may only be used for the purpose that the grants or loan may be used (Gov. Code, § 53859.02). In addition, section 53859.07 provides that, to the extent the notes are not paid by the grant or loan funds, they shall be paid with interest thereon to the extent permitted from any taxes, income, revenue, cash receipts or other moneys of the local agency “lawfully available” to pay the note. Finally, proceeds of the sale or funds set aside for repayment of these notes may not be invested for a term that exceeds the term of the notes (Gov. Code, § 53859.02(b)).

c. Interfund Transfers

The most satisfactory method for meeting the dry period when it arises is that of utilizing interfund transfers. The Constitution, article XVI, section 6, authorizes “advances” against tax revenues from other funds in possession of an agency on authorization by resolution from the legislative body. The Attorney General has indicated that the use of this procedure is permissible (21 Ops.Cal.Atty.Gen. 70 (1953)). It should be noted, however, that interfund transfers from trust funds and gas tax funds are not authorized and should be avoided. Special requirements for the use of development impact fees may also restrict interfund transfers from these funds.

d. Cash Basis Fund

Finally, if an agency experiences the dry period problem on a recurring basis, it would seem good sense and valid legal practice to accumulate surplus revenue for a few years in order to build up a so-called “cash basis fund” to be used strictly for purposes of financing the dry period between the levy of taxes and the receipt of tax payments. While in the past it was possible to levy a property tax in excess of current needs for the purpose of establishing a “cash basis fund” (*Rancho Santa Anita v. City of Arcadia* (1942) 20 Cal.2d. 319), with the enactment of Proposition 13 (Cal. Const., art. XIII A), such additional tax levy is no longer possible, at least without approval of the voters. However, public agencies may, by budgeting and expending less than the amount received, create a reserve over several years.

2. Taxing And Spending Limitations: Propositions 13, 62, 4 and 218

Although Treasurers are usually not directly involved with either the revenue-raising limitations of Propositions 13 and 62 or the expenditure limitations of Proposition 4, some familiarity with these constitutional limitations may be helpful in understanding the financial restrictions under which cities operate. In addition, an understanding of Propositions 13 and 4 will help place the upcoming discussion of long term financing methods in context. In 1996, the voters adopted Proposition 218 which has added new restrictions and procedures for the enactment and increase of taxes, special assessments and certain regulatory fees. Proposition 218’s requirements are discussed below.

a. Proposition 13 (Article XIII A)

Proposition 13 was adopted in 1978 as an initiative measure. It is now Article XIII A of the California Constitution. The proposition has four main provisions: (1) a limitation of property tax rate to one percent (1%) of full cash value; (2) a limitation on assessed valuation; (3) a limitation on state taxes; and (4) a limitation on local taxes. The validity of Article XIII A was upheld by the *Supreme Court in Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208. Since that time, there have been numerous cases delineating the scope of the initiative and its effect on municipal revenue-raising measures. In 1992, the United States Supreme Court held that the California Constitution’s real property tax system, which generally assesses property on value at time of acquisition rather than on current value, does not violate equal protection (*Nordlinger v. Hahn*, 505 U.S. 1, 120 L.Ed.2d 1, 112 S.Ct. 2326 (1992)).

One of the primary impacts of Article XIII A was in the method of imposing and collecting property tax. Prior to 1978, the property tax system was established by city ordinance (Gov. Code, § 43000 et seq.). Special districts also established their own tax rates, subject to statutory requirements. Maximum tax rates were established by SB 90 (Rev. & Tax. Code, § 2250 et seq. (repealed)), with provision for additional tax rates for bonded indebtedness (Gov. Code, § 43070 (repealed); Cal. Const., art. XVI, § 18). Proposition 13 set the maximum property tax rate at one percent (1%) of full cash value and provided that the county would collect the tax and apportion it to the cities and districts within the county. The result for almost all local agencies was a drastic decrease in property tax revenues. An exception to this maximum tax rate was provided for property taxes and assessments to pay interest and redemption charges on any indebtedness approved by the voters before the effective date of Proposition 13. In *Carman v. Alword* (1982) 31 Cal.3d 318, the court held that the term “indebtedness” had no fixed meaning and includes both bonds and other debt obligations (see also *County of Shasta v. County of Trinity* (1980) 106 Cal.App.3d 30). Thus, a voter approved property tax to pay PERS contributions was a prior indebtedness under the proposition (*Carman v. Alword, supra*; *City of Watsonville v. Merrill* (1982) 137 Cal.App.3d 185).

One of the questions that most vitally concerned cities after the adoption of Proposition 13 was which, if any, of their financing methods remained viable. Section 4 of the Proposition 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.”

When first approved, many people believed that this section precluded local agencies from establishing new assessment districts, raising any existing fees and taxes and imposing new exactions on land use projects. However, as determined through the courts, this turned out to be an overly broad reading of this section.

In *County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, the appellate court held that special assessments were not “special taxes” under section 4, basically because special assessments were imposed to pay for benefits that property received from an improvement. Therefore, special assessments and bonds issued pursuant to the special assessment do not require approval by two-thirds of the electors (see also *City Council of San Jose v. South* (1983) 146 Cal.App.3d 320). ***The procedures for special assessments has been modified by Proposition 218 discussed below.***

Processing fees and land use exactions were also challenged as “special taxes.” However, again, these fees and charges were upheld, since they were imposed to pay for a service or, in the case of exactions, an impact development would have on the community. Therefore, to the extent the fee or exaction did not exceed the cost of the service or the impact, they were not “special taxes” (*Mills v. County of Trinity* (1980) 108 Cal.App.3d 656 (land use processing fees); *Trent Meredith, Inc. v. City of Oxnard* (1981) 114 Cal.App.3d 317 (school impact in-lieu fees); *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496 (transit fees)).

Finally, in *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, the Supreme Court reviewed a payroll and gross receipts tax established by San Francisco. The revenue from the tax was to be deposited in the general fund. The court upheld the tax finding, again, that it was not a “special tax” requiring a two-thirds vote, and stated that the term “special tax” means taxes levied for a specific purpose rather than taxes placed in the City’s general fund and used for general purposes.

In 1991, the California Supreme Court, in the case of *Rider v. County of San Diego* (1991) 1 Cal.4th 1, addressed the issue of whether special districts which have no property taxing powers are subject to Proposition 13’s two-thirds vote requirement for special taxes. Rider involved a “special purpose” district whose sole function was to finance and construct justice facilities. The court noted that the special purpose district was formed after Proposition 13 and the district was “essentially controlled” by the county. The court held that a tax levied by the district was a special tax even though the proceeds of the tax were placed in the district’s general fund.

Today, therefore, the scope of section 4 has been defined to a large extent, although many questions still exist. In addition, with the California Supreme Court's decision in *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, mod. 12 Cal.4th 344e, Proposition 62 will impact many taxing measures cities, counties and special districts might propose (see "Proposition 62," *infra*). Finally, Proposition 218 also significantly impacts new taxes and proposals to increase existing taxes.

However, local agencies may still utilize many of the financing methods they could use before the adoption of Proposition 13. In addition, the Legislature has enacted several new mechanisms for imposing "special taxes" that cities and other agencies may use subject to approval by the voters (see "Long-Term Financing," *infra*).

b. Proposition 62

Proposition 62, which was passed by the voters in the November 1986 election, adds sections 53720 through 53730 to the Government Code. One of its purposes was to overturn the Farrell case discussed above by requiring voter approval of both special and general taxes.

It provides that local governments or districts may not impose any special tax unless and until such special tax is submitted to the electorate of the local government or district and approved by a two-thirds vote (Gov. Code, § 53722). Further, local governments or districts, whether or not authorized to levy a property tax, may not impose any general tax unless and until such general tax is approved by a majority vote of the electorate.

It further provides that taxes imposed by any agency on or after August 1, 1985, and prior to Proposition 62's effective date shall continue to be imposed only if approved by a majority vote of the electorate, such election to be held within two years of the initiative's effective date. If majority approval is not sought or obtained, imposition of the tax, according to Proposition 62, shall cease on November 15, 1988 (Gov. Code, § 53727(b)). The voter approval requirement for these "window period" taxes was found to be unconstitutional in the case of *City of Westminster v. County of Orange* (1988) 204 Cal.App.3d 623. The case also cast doubt on the constitutionality of the prospective application of Proposition 62.

In 1991, the Court of Appeal, in the case of *City of Woodlake v. Logan* (1991) 230 Cal.App.3d 1058, held that the prospective application of Proposition 62's voter approval requirement was unconstitutional. The court, however, did not rule on the remaining portions of Proposition 62. The California Supreme Court declined to review the Woodlake decision.

A majority of the California Supreme Court, in *Rider v. County of San Diego* (1991) 1 Cal.4th 1, also declined to rule on the constitutionality of Proposition 62.

Following these court decisions, many people believed that Proposition 62 had been found unconstitutional and that the California Supreme Court's decisions not to take the issue up meant that the Supreme Court also believed Proposition 62 invalid. Many public agencies, therefore, began enacting taxes that met the requirements of Proposition 13 but did not have voter approval as required by Proposition 62.

However, in December 1995, the California Supreme Court held that the voter approval requirements of Proposition 62 were valid (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11Cal.4th 220, mod. 12 Cal.4th 344e). This decision "overturned" the *Woodlake* decision discussed above.

In *Guardino*, the Transportation Authority was a statutorily authorized local transportation authority created for the purpose of imposing a sales tax to fund certain transportation improvements. The sales tax was imposed without the required two-thirds voter approval. The Court of Appeal in *Guardino* invalidated the sales tax, holding that the tax was a special tax under the earlier Supreme Court decision in *Rider, supra*, because (1) the sales tax would raise moneys to replace funds lost under Proposition 13 and (2) the authority was created for this purpose. The case was appealed to the California Supreme Court. The Supreme Court decided to review this case under Proposition 62 rather than Proposition 13.

In *Guardino*, as in the earlier Proposition 62 cases, the challenge to the Proposition was that it authorized a referendum on a tax. Referenda on taxes are prohibited by the California Constitution, article II, section 9. The Supreme Court, however, held that the requirement for voter approval of general taxes was merely a condition precedent to the adoption of the tax and not a referendum on the tax. Therefore, the Supreme Court upheld the validity of Proposition 62's voter approval requirement for both general and special taxes.

There were many questions raised by the Guardino decision. Some of these questions have been answered by additional appellate court decisions. In *Traders Sports, Inc. v. City of San Leandro*, (10/24/01) 2001 CalApp.Lexis 824, the court held that Proposition 62 does not apply to charter cities. In *McBreaty v. City of Brawley*, (1997) 59 Cal. App. 4th 1441, the court held that the three year statute of limitations of code of Civil Procedure section 338(a) applies to Proposition 62 actions. The *McBreaty* court ran the statute of limitation from the date of the Guardino decision, December 14, 1995. Recently, however, the continuing force of this decision was called in to question by the decision in *Howard Jarvis Taxpayers Association v. City of La Habra* (June 4, 2001) 25 Cal. 4th 809 in which the California Supreme Court stated that the statute of limitations runs anew each time the tax is collected. This ruling has lead many agencies to review and update their claims filing ordinances. There are additional questions yet to be answered on Proposition 62 issues.

Treasurers who are involved in decisions regarding new or increased taxes or, indeed, the validity of existing city, county or agency taxes, should consult with their Agency Attorneys regarding compliance with Proposition 62.

c. Proposition 4 (Article XIII B)

One year after the adoption of Proposition 13, the voters approved Proposition 4 (the Gann Initiative). This proposition is now Article XIII B of the California Constitution. In June 1990, California voters approved Proposition 111, which made significant changes to the Gann Initiative provisions. The highlights of those changes are discussed below. For additional details, Treasurers should review the League of California Cities' Appropriations Limit Implementation Guide (published in March 1991). The Gann Initiative was aimed at government spending and places limitations on appropriations of revenue from the "proceeds of taxes." "Proceeds of taxes" are defined to include: (1) all tax revenues; (2) revenue from the investment of tax revenues; (3) revenue from user charges and regulatory fees to the extent it exceeds the reasonable cost of providing the service; and (4) for local government, certain subventions received from the state (see section 8(c)). "Proceeds of taxes" do not include: (1) debt service in connection with indebtedness authorized before January 1, 1979, and bonded indebtedness approved by the electors; (2) appropriations required to comply with court orders or

mandates of the federal government; (3) appropriations of revenue which are derived from a portion of motor vehicle taxes and related sales and use taxes and certain weight fees imposed on commercial vehicles; and (4) appropriations for all qualified capital outlay projects, as defined by the Legislature (see section 9). The exemption for qualified capital outlay, added by Proposition 111, was a significant new exemption. The Legislature has defined “qualified capital outlay projects” to mean fixed assets (including land and construction) with a useful life of ten or more years and with a value greater than or equal to \$100,000 (Gov. Code, § 7914). Expenditures for such projects are now exempt from the Gann appropriations limit.

Briefly, the Gann Initiative established a limit on appropriations from proceeds of taxes. Proposition 111 required each governmental entity to establish a base year 1986-87 appropriations limitation (see section 10.5). Each year, this limitation is adjusted to reflect changes in population and cost of living. Proposition 111 allowed local governments a choice of population and cost of living adjustment factors (see section 8(e), (f); Gov. Code, § 7901(b)). After determining what the year’s appropriations limitation is, the governmental entity must determine whether its appropriations from proceeds of taxes exceed this limit.

If the Board of the Agency or the City Council adopts an annual budget, the budget document must include the city’s appropriations limit and the total annual appropriations subject to limitation (see e.g. Gov. Code, § 37200). Although the law does not speak directly to the issue of a two year budget, if the agency adopts a multiyear budget, it should calculate the appropriations subject to limitation for each year in the budget.

The proposition allows for emergencies that require exceeding the limitation (see Cal. Const., art. XIII B, § 3(c)). It also provides that governmental entities may establish sinking funds, contingency, unemployment and retirement funds and similar funds. If these funds are derived from proceeds of taxes, they are subject to the limitation for the year of the contribution. However, withdrawals or expenditures of these funds are not subject to the limitation (see Cal. Const., art. XIII B, § 5). In addition, special assessments are not “proceeds of taxes” and are not, therefore, subject to the appropriations limitation (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443; *City Council v. South* (1983) 146

Cal.App.3d 320). Should an agency exceed its appropriations limitation, it must return the excess revenues to the people. This may be accomplished by revising tax rates or fee schedules rather than actually returning moneys already collected (see Cal. Const., art. XIII B, § 2; see also Gov. Code, § 7911).

Compliance with Article XIII B will generally be the responsibility of the city officer who prepares the budget rather than the Treasurer. However, Treasurers should have some familiarity with the limitations imposed by this proposition to better understand the general financial decisions made by their agencies.

d. Proposition 218

Proposition 218, entitled the “Right to Vote of Taxes Act” was passed by the State’s voters on November 5, 1996. The Proposition adds Articles XIII C and XIII D to the California Constitution. In very general terms, Proposition 218 affects (1) local taxes; (2) special assessments; and (3) “property-related” fees and charges. As occurred with the enactment of Proposition 13, there has been, and continues to be, uncertainty regarding the implementation of this Proposition, its scope and its requirements. Although some of the questions raised have been addressed by the courts, many questions yet remain. The League of California Cities has published an excellent resource entitled “Proposition 218 Implementation Guide” which Treasurers and Agency Legal Counsel involved in fiscal issues may wish to consult. The discussion in this Handbook is intended only as a summary of the Proposition. Particular questions should be addressed to agency legal counsel.

1. Local taxes under Proposition 218.

First, Proposition 218 states that the Proposition applies to cities and counties, including charter cities and counties, special districts, and any other local or regional governmental entity (see Cal. Const. Art. XIII C § 1). Second, Proposition 218 defines special and general taxes stating that “general taxes” are any taxes imposed for general governmental purposes while “special taxes” are those imposed for a specific purpose. (Id.) Further, all taxes are either special or general. The Proposition expressly states that special districts, including school districts, have no power to levy general taxes. Thus, all taxes levied by special purpose districts are, by definition, “special taxes.” Third, Proposition 218 provides that the imposition, extension or increase of

any tax must be approved by the voters. (Id. at §2). General taxes may only be imposed, increased or extended by a majority vote. The election for a general tax must be consolidated with the regularly scheduled general election for the members of the governing body (i.e. the City Council) “except in cases of emergency declared by a unanimous vote of the governing body.” (Id. at §2(b).) Special taxes require a 2/3rd’s vote and may be submitted to the voters at a regular or special election. (Id at §2(d).) Taxes are not deemed to be increased if they are imposed at a rate that is not higher than the maximum tax rate approved by the voters. Therefore, a tax may include an annual “cost of living” or “consumer price index” type increase or may have a maximum rate and be collected at fluctuating rates over time, not exceeding the maximum rate, without triggering another voter approval requirement. Proposition 218 also prohibits taxes on parcels of property, or on persons as an incident of property ownership, except ad valorem property taxes and special taxes approved by a two-thirds vote. Proposition 218 also requires that any tax imposed after January 1, 1995 that was not approved by the voters had to be submitted and approved by the voters by the November 6, 1998 election. (Id. at §2(c).)

Proposition 218 applies to all local taxes, including business license taxes, utility users taxes, and transient occupancy taxes. When an agency or city is contemplating a new or increased charge, it is, therefore, crucial to determine whether the levy is a tax. If the new or increased charge is a tax, it will require voter approval. If it is a regulatory fee, a user or service charge, or a special assessment, different requirements will apply.

2. *Special Assessments under Proposition 218.*

Proposition 218 made significant changes in both the substantive and the procedural rules and requirements for special assessments.

First, the Proposition changed the procedural requirements for assessments. Generally, the new procedures require that the agency:

- (1) *Identify all the parcels that will receive “special benefit” or benefit that is “particular and distinct benefit over and above general benefits ...conferred on the public at large.”*

- (2) *Apportion or spread the benefit to the properties. The agency must determine the proportionate benefit derived by each parcel.*
- (3) *Segregate any "general benefit." General benefits must be paid from a source other than the assessment proceeds.*
- (4) *Prepare an Engineer's Report, which must be done by a registered professional engineer.*
- (5) *Mail notice of the proposed assessment to all record owners. The notice must be mailed 45 days prior to the assessment hearing. There are detailed requirements for the content of the notice. In particular, the notice must contain the procedures to the mailed ballot and the effect of a majority protest.*
- (6) *Determine the number of the mailed protests and whether a majority protest exists. The number of "votes" is determined on a one "vote" per dollar of proposed assessment basis. Counting only the ballots returned, if a majority of the ballots are against the assessment, a majority protest exists and the assessment proceedings are terminated. This is one of the most significant changes in assessment procedures. Property owners must now affirmatively "vote" in favor of an assessment.*
- (7) *Conduct a public hearing. At the conclusion of the hearing, if there has not been a valid majority protest, the assessment may be imposed. If a majority protest has been made, the assessment proceedings must terminate.*
(Cal. Const. art. 13D § 4)

There are also significant changes to the substantive requirements for assessments. First, as mentioned above, the Proposition changed the definition of special benefit and precluded the inclusion of incidental general benefit in the assessment. Second, the burden of proof on any challenge to the determination of special benefit changed from the property owner to the public agency. Third, public property is not required to be assessed unless the agency can demonstrate by "clear

and convincing evidence” that the public property receives no special benefit. Under prior law, public property was exempt from assessment in most circumstances. Finally, the Proposition states that assessments are subject to amendment, reduction or repeal by initiative. (Cal Const. art. XIII C, §3.) This final change raises significant legal issues that are beyond the scope of this Handbook.

Treasurers working on assessment districts and other financing mechanisms should work closely with the agency legal counsel and, if appropriate bond counsel on these issues.

3. Property Related Fees under Proposition 218.

The third major area addressed by Proposition 218 is “property related fees.” These are fees and charges that are “levied or imposed on a parcel or upon a person as an incident of property ownership . . . for a property-related service.” (Cal Const. art. XIII D § 2.) There has been a significant amount of litigation concerning what fees are subject to the requirements of 218. First, by its express terms, Proposition 218 does not apply to development impact fees (Cal Const. art. XIII D § 1(b).) It also does not apply to fees for gas and electrical service. (*Id. at § 3(b).*)

The next issue is what fees are “property related.” To date the courts have held that fees that are “metered” such as metered water and other metered utility service charges, are not property related. (See *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2001) 2001 Cal.Lexis 1002. Flat rate charges, however, may be property related. Again, each fee for service the agency charges must be reviewed to determine if the procedures and requirements of 218 apply. If Proposition 218 applies, it requires expansive notice and hearing for fee increases. It also includes a “majority protest” if a majority of the property owners subject to the new or increased fee formally object.

Of major importance, “except for sewer, water and refuse collection service, no property related fee or charge shall be imposed or increased unless that fee or charge is . . . approved by a majority vote of the property owners subject to the fee . . . or, at the option of the agency, by a two-thirds vote of the electorate.” (Cal Const. art. XIII D § 6(c).) This requirement has raised significant issues when reviewing other fees that may be property related.

Finally, 218 prohibits fees and charges for “general governmental services.” (*Id. at § 5.*) Defining the full scope and requirements of Proposition 218 will take more time. If an agency decides to adopt, modify or increase existing fees, taxes and assessments, careful review of the requirements of 218 should be made early in the process.

3. Long-Term Financing

Local Agencies have always required methods for long-term financing of public improvements and facilities. Many of these methods have been briefly mentioned in other sections of this Handbook. Especially when long-term financing involves bonded indebtedness, Treasurers should be directly involved. The following is a synopsis of some of the principal methods of long-term financing used today by local public agencies.

a. General Obligation Bonds

Cities are authorized to finance municipal improvements through the use of general obligation bonds under the Bond Act of 1901 (Gov. Code, § 43600 et seq.), Counties and many special districts also have general obligation bond authority. The use of general obligation bond financing was severely restricted by the passage of Proposition 13, which limited the ability of cities to increase ad valorem property taxes. However, in 1986, Proposition 46 was approved, thereby permitting cities to increase ad valorem property taxes for the purpose of paying interest and redemption charges on any bonded indebtedness for the acquisition or improvement of real property approved by a two-thirds (2/3) vote of the electorate. Accordingly, general obligation bonds are once again a viable financing mechanism in certain situations.

b. Revenue Bonds

Cities, counties and many special districts have statutory authority under the Revenue Bond Law of 1941 (Gov. Code, §§ 54300-54700) to finance “enterprises” through the issuance of revenue bonds. Typical enterprises financed in this manner are water, sewer, solid waste disposal, public transportation and hospitals. As discussed above, since the bonds are repaid from revenues generated by the “enterprise” and are not a debt of the agency per se, these bonds do not come within the constitutional debt limitation. However, the bonds must be submitted to the voters and approved by a majority vote (Gov. Code, § 54386).

c. Special Assessments

Another principal means of financing public improvements is by establishing special assessment districts. As discussed above, Proposition 218 has significantly changed many of the legal standards and procedures for the adoption of special assessments. Thus, agencies considering special assessments now need to comply with both Proposition 218 and the Act under which the assessment will be imposed.

Under the Special Assessment or Improvement Acts, the construction of improvements within a designated district is financed by assessing the costs against the benefited property owners within the district. This method of financing is common practice in many cities and is being used with even greater frequency in the post-Proposition 13 timeframe. There are several acts that are used. One is the Improvement Act of 1911 (Sts. & Hy. Code, § 5000 et seq.). Duties of the Treasurer in connection with proceedings taken under this Act relate to the issuance of bonds, the collection and disbursement of amounts received as payments from property owners and the conduct of foreclosure proceedings following delinquency.

Another commonly used improvement act is the Municipal Improvement Act of 1913 (Sts. & Hy. Code, § 10000 et seq.). This act, like the 1911 Act, authorizes special assessments to finance water, sewer, electric, lighting and other public improvements. If the landowners choose not to pay the assessments in full, bonds may be issued under either the 1911 Act or the Improvement Bond Act of 1915 (Sts. & Hy. Code, § 8500 et seq.). Again, the duties of Treasurers under the 1913 Act and the 1915 Act relate to the issuance of bonds, collection and disbursement of moneys received and foreclosure following delinquency.

Other improvement acts which may be used by agencies and may result in the imposition upon the Treasurer of similar responsibilities are the following: The Street Opening Act of 1903 (Sts. & Hy. Code, § 4000 et seq.); the Refunding Bond Act for bonds issued under the 1915 Act (Sts. & Hy. Code, § 9000 et seq.); the Pedestrian Mall Law of 1960 (Sts. & Hy. Code, § 11000 et seq.); the Street Lighting Act of 1919 (Sts. & Hy. Code, §§ 18000 et seq.); the Landscaping and Lighting Act of 1972 (Sts. & Hy. Code, § 22500 et seq.); the Vehicle Parking District Law of 1943 (Sts. & Hy. Code, § 31500 et seq.); the Parking and Business Improvement Area Law of 1989 (Sts. & Hy. Code, § 36500 et seq.); and the Habitat Maintenance Assessment Districts Act of 1993 (Gov. Code, § 50060 et seq.). In addition, charter cities may adopt their own procedures for establishing assessment districts (*City Council v. South* (1983) 146 Cal.App.3d 320).

4. Other Financing Mechanisms and “Special Taxes”

With the decrease in property tax revenues since Proposition 13 was enacted, local agencies have frequently turned to new alternative financing mechanisms. One alternative method already discussed is increased fees and charges for permits and entitlements. Treasurers will likely not be too involved with this financing mechanism, although they may be required to maintain separate funds for some of these revenues.

The Legislature has enacted several acts authorizing funding mechanisms for public services such as fire and police services.

One such act is the Mello-Roos Community Facilities Act of 1982 (Gov. Code, § 53345). This Act authorizes cities and other local agencies to create districts and issue bonds to finance specified public facilities and services within the district (Gov. Code, § 53318 et seq.). The bonds must be approved by a two-thirds vote of the electors residing within the district (Gov. Code, § 53329). This vote also authorizes a special tax to repay the bonds (Gov. Code, § 53313).

Another act authorizes the creation of benefit districts and the imposition of a “special tax” for police and fire protection services (Gov. Code, § 53970 et seq.). Again, these taxes must be approved by a two-thirds vote (Gov. Code, § 53978).

In addition, the Legislature in 1979 authorized all cities to impose special taxes, again in compliance with Article XIII A, subject to a two-thirds vote (Gov. Code, § 50075 et seq.). Presumably, cities may, therefore, enact any type of special tax not preempted by state law or otherwise prohibited (see also Gov. Code, § 37100.5). Most significantly, in 1982, the Legislature added Government Code section 37100.5, which has the effect of giving general law cities the same taxing authority as charter cities. If the tax is a “special tax,” it must, of course, first receive an approving vote of two-thirds of the electorate. If it is a general tax (see *City and County of San Francisco v. Farrell, supra*, at p. 58), voter approval will also be required under Proposition 218.

Treasurers will likely not be directly involved in these types of financing mechanisms. If a Treasurer becomes involved, it will be in the area of processing bonds or safeguarding and managing the funds generated. Still, some familiarity with new financing mechanisms will assist Treasurers in keeping on top of this area of government financing.

5. Brown Act Notice Requirements – New or Increased Taxes and Assessments

In 1992, the California Open Meeting Law, commonly known as the Brown Act, was amended to add notice and hearing requirements for new or increased taxes or assessments (Gov. Code, § 54950 et seq.). Section 54954.6 sets forth specific requirements for the amount of time notice must be given, persons that notice must be given to, how the notice is to be given and the information which must be included in the notice. Among other things, these notice requirements will significantly increase the amount of lead time necessary to enact new or increased taxes and assessments. In many cases, this added notice has been superceded by the requirements of Proposition 218. However, the Agency Attorney should be consulted for the specific requirements.

B. Duties Imposed By Council or Board Ordinance

As noted earlier, Government Code section 41005 requires the City Treasurer to perform such duties “relative to the collection of city taxes and license fees as are prescribed by ordinance.” The City Treasurer, accordingly, must perform such tax and license fee collection duties as are prescribed by ordinance.

These would seem to be the only additional duties which the City Council may validly require an elected Treasurer to perform. However, as discussed above, it is likely that City Councils may direct appointed City Treasurers to perform other additional duties beyond those related to taxes and license fees.

Special district enabling legislation may also provide for authority to impose additional duties on the agency treasurer.

C. Other Miscellaneous Duties of Treasurers

Finally, the California Codes contain a wide variety of miscellaneous statutory provisions which call for the performance of specific duties by Treasurers. Although not an exhaustive list, some of these additional statutory duties are:

1. Administration of Private Trusts

Government Code sections 37354 through 37355 authorize the legislative body of a general law city to accept and administer gifts, bequests and devises from private individuals and to hold and dispose of the income and property according to the terms of the gift, bequest and devise. This authority may impose upon the City Treasurer in a city which has accepted such a gift or trust responsibility for seeing that the disposition of income from the trust is made in accordance with the terms of the trust and the directives of the City Council. Trust funds and the drawings thereon must be specifically accounted for.

2. Cemetery Endowment Funds

Government Code section 37681 et seq. provides for the operation of cemeteries by general law cities and authorizes the establishment of a perpetual care fund for cemetery plots. This special fund, which must be maintained in the city treasury, will be the responsibility of the City Treasurer, and proper payments from the fund must follow the terms of these code sections.

3. Park Discontinuance Fund

Government Code section 38400 et seq. provides for the discontinuance of parks dedicated by original townsite maps or plats. Section 18 requires the proceeds from the sale of such discontinued park sites to be deposited in the city treasury in a special fund and used exclusively for the payment of damages and the purchase of improvements of other public grounds.

4. Signature on Bonds

Government Code sections 43623 and 43624 require the City Treasurer's signature on all general obligation bonds and bond coupons issued under the Bond Act of 1901. This would apply only to general obligation bond issues authorized prior to the adoption of Proposition 13 in 1978. Other bond acts may also require the signature of the agency treasurer on bonds and bond coupons.

5. Refunding Bonded Indebtedness

Government Code sections 43743 through 43747 impose specific duties upon the City Treasurer with respect to the keeping of records and redeemed bonds which have been taken up and cancelled under those provisions for refunding bonded indebtedness.

6. Bond Compromises

Under Government Code sections 43850 through 43860, cities are authorized to effect compromises with bond holders pursuant to a procedure prescribed therein. Section 43859 provides that the City Treasurer must hold bonds delivered to him or her until satisfaction of the judgment in the compromise action.

7. Registration of Bonds

Government Code sections 43880 through 43886 authorize cities to provide for the registration of bearer bonds issued by them. This process has the effect of converting negotiable bonds into non-negotiable instruments through the process of registration, and thereby securing the holder thereof against financial loss through theft or other means. The Code imposes upon the City Treasurer the duty of converting and registering such bonds pursuant to the procedures set forth in those sections. As of January 1, 1984, federal law requires bonds with a term exceeding one (1) year to be registered. However, bonds issued in the past may still be in bearer bond form.

8. Escheat of Money in Treasury

Government Code sections 50050 through 50053 establish a procedure for the escheat of money in the treasuries of local agencies which has remained unclaimed for a period of three (3) years. This procedure is administered by the Treasurer and consists of the publication of a newspaper notice and the lapse of time after such publication, followed by a transfer of the unclaimed funds to the general fund of the city or other local agency.

If the unclaimed money is less than fifteen dollars (\$15) or if the depositor's name is unknown, special rules apply (Gov. Code, § 50055). Such money may be transferred to the agency's general fund when such money remains unclaimed for one year or upon order of the court. The City Council or Agency Board may transfer such funds without publication of notice.

9. Registration of Unpaid Bonds

Under Government Code sections 50630 through 50633, bonds which are due and are presented to the Treasurer for payment and are not paid for want of funds must be registered by the Treasurer for future payment. The Treasurer's duties under this Act are defined in these four sections of the Code.

10. Miscellaneous Duties for Other Agencies

In addition to a Treasurer's duties and responsibilities for agency funds, the Treasurer may also be required to perform Treasurer duties for other public agencies affiliated with the city or agency. For example, the city and one or more other public agencies may create a joint powers agency (see Gov. Code, § 6500 et seq.). In the agreement creating the joint powers agency, the City Treasurer or the Treasurer of one of the other involved public agencies may be designated the Treasurer of the joint powers agency (Gov. Code, § 6505.5). The designated Treasurer will then be required to perform Treasurer duties for the agency (id.).

A city may also create a redevelopment agency. While the redevelopment agency is legally independent from the city, the redevelopment agency may be staffed by city personnel. Thus, the City Treasurer may be designated to perform duties for the redevelopment agency.

11. Booking Fees and Property Tax Administrative Fees

Legislation enacted in 1990 (Rev. & Tax. Code, § 97) allowed counties to collect from local governmental entities a proportionate share of the costs of assessing, collecting and allocating property tax revenues. A number of redevelopment agencies contested the statute's application to redevelopment agencies because, in addition to other issues, the original legislation did not consider them to be local government entities. The Court of Appeal upheld the right of the Legislature to impose property tax administration fees on redevelopment agencies (*Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444); review was denied by the Supreme Court.

Effective August 5, 1991, cities may, through a criminal judgment or condition of probation, recover from the person arrested the booking fee that is charged by the county (Gov. Code, § 29550.1).

12. Public Employees Retirement System (PERS) Contributions

Many public agencies are part of PERS, and Treasurers may oversee the payment of contributions to PERS. One of the issues that has arisen in the past is what types of compensation should be reported to PERS as part of “total compensation” for requirement purposes. In *Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, employees challenged whether employee PERS contributions paid by employers should be included in “total compensation.” The appellate court held that employee contributions to PERS paid by employers are not part of total compensation. Treasurers should consult with PERS and with their Agency Attorneys regarding any questions related to PERS contributions.

13. Business License Taxes – Workers Compensation

The Treasurer’s duties may include collecting business license taxes and issuing business licenses, or this duty may be imposed on a different officer or employee of the city.

An employer is required, upon request, to furnish a written statement showing the name of his or her workers’ compensation insurer or the manner in which they have complied with the provisions of Labor Code section 3700. The request may be made by the Director of Industrial Relations at any time. An employer who fails to respond within ten days (10) shall be assessed a \$500.00 penalty. This sum will be deposited in the State Treasury Uninsured Employers Fund (Lab. Code, § 3711.).

14. Reimbursement For State-Mandated Costs

Cities, counties and other local agencies that incur costs due to programs mandated by the state may be reimbursed for those costs. However, the costs that are, and are not, reimbursable by the state have been the subject of much controversy and litigation.

Briefly, the California Constitution provides that whenever the Legislature or a state agency imposes a new program or a higher level of service on any local government, the state must reimburse local government for the costs incurred (Cal. Const., art. XIII B, § 6; see Gov. Code, §§ 17500-17524; *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182).

In general, reimbursable costs are costs mandated by the state which accompany a new program or a higher level of service in an existing program required as a result of a statute enacted after January 1, 1975, and incurred after July 1, 1980. Reimbursement for state-mandated costs was intended to provide taxpayer protection from excessive taxation (*County of Fresno v. State of California* (1991) 53 Cal.App.3d 482). It was also intended to preclude the state from shifting financial responsibility for state programs to local governments (*id.*; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830).

The question of what actually is a state-mandated cost has been the subject of a fair amount of litigation and legislation. The California Supreme Court has held that the state is only required to reimburse for programs that provide service to the public or which impose unique requirements on local government. Therefore, there is no reimbursement for programs that apply equally to private and public entities (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [workers' compensation]; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51 [unemployment insurance]). In addition, there are numerous constitutional and statutory exceptions to the requirement for reimbursement. For example, costs relating to defining a new crime, mandates enacted before January 1, 1975, and programs requested by the local agency affected are not reimbursable (Cal. Const., art. XIII B, § 6). Costs related to a statute that is declaratory of existing law, that implements a federal law, that provides offsetting savings, that were included in a ballot measure and approved by the voters, and costs for which a revenue source like fees is provided are not reimbursable (see Gov. Code, § 17556).

Treasurers may check the State Controller's web site for information on reimbursable state mandates (<http://www.sco.ca.gov>).

If a Treasurer believes that there are state mandates for which reimbursement is not provided, the Treasurer should seek the advice of the Agency's Attorney on whether to pursue such a claim and the best manner for doing so.

IV. Personal Risks of the Treasurer

In addition to the possible financial responsibility of the Treasurer for the valid payment of warrants, there are a number of additional personal risks which the Treasurer runs in the performance of the duties of his or her office. Many of these attach to all public officers, while some of these are particularly relative to those officers having responsibility for the handling of public funds. A Treasurer should be familiar with these risks.

The liabilities of public officers, including Treasurers, are fundamentally of two kinds: criminal and civil. Where society in general is the injured party, the liability is criminal and the penalty is imprisonment or the payment of a fine to the state. Where a specific individual or group of individuals is injured, the liability is civil and the penalty is the payment of money damages to compensate the injured person or persons for their injuries. One act, whether in office or out of office, can result in both criminal and civil liabilities. For example, murder can result both in criminal prosecution and in civil suit for damages. In California, we also have one hybrid type of liability which is technically neither civil nor criminal, but is akin to a criminal liability. That is the accusation procedure for willful misconduct in office (Gov. Code, § 3060 et seq.). The accusation may be brought against elective and appointive officers. Officers so accused are entitled to a jury trial. The sole consequence is removal from public office after a plea or a finding of guilty.

A. Criminal Liabilities

We are all familiar with the more common crimes which are found in the Penal Code. These criminal liabilities are common to all citizens in our society, but in addition to being required to refrain from assault, battery, murder, mayhem and the other “common” kinds of crime, the Treasurer is confronted with the prospect of avoiding the commission of a myriad of other crimes pertaining to public office generally, and the office of Treasurer specifically. Some of these can be found in Government Code sections 1000 through 2003, dealing with “Public Officers and Employees,” while others are in the Penal Code. All should be read carefully by every Treasurer. Similarly, Treasurers in chartered cities should read their charters very carefully to be fully aware of the charter restrictions. Some of the crimes of special concern to Treasurers are discussed below; however, the prohibitions discussed are a selected list and are not, by any means, all of the criminal statutes that may apply in any given situation.

In the past, the California Constitution provided that making a profit out of public funds or using public funds for an unauthorized purpose was a felony (Cal. Const., art. XI, § 17, repealed 1970). Although this provision has been repealed, as discussed below, the Penal Code prohibits the same types of actions by public officials.

The Constitution does, however, contain one provision that may be a trap for the unwary public official. Article XII, section 7 prohibits acceptance of free passes from railroads and other transportation companies. Acceptance of such passes will work a forfeiture of the public office. The California Attorney General, in two opinions, stated that public officials may, in limited circumstances, accept such passes if they are given the passes because of a general policy of the transportation company and not because of the public official's status as a public official. In a 1984 opinion (67 Ops.Cal.Atty.Gen. 81), the Attorney General concluded that a state legislator who was the spouse of a flight attendant could accept passes for free or discounted air travel when such passes are offered to all spouses of flight attendants. In a 1991 opinion (74 Ops.Cal.Atty.Gen. 26), the Attorney General concluded that a City Councilmember on his honeymoon could accept an upgrade from coach to first class since the upgrade for honeymoon travel was standard airline policy. Treasurers should consult with their Agency Attorneys if they have any questions regarding accepting free or discounted travel.

1. Statutory Crimes

a. Government Code

The Government Code imposes various duties on public officers in general and on Treasurers specifically. For example, section 1090 et seq. provides that a willful violation of the laws prohibiting public officers from having an interest in a contract, becoming a vendor or purchaser at sales or dealing in evidences of indebtedness is a felony (see discussion in section II.D.2.f, Conflicts of Interest, *supra*).

Under section 1098, any public officer who willfully and knowingly discloses for pecuniary gain confidential information acquired in the course of his or her official duties or uses such information for purposes of pecuniary gain is guilty of a misdemeanor.

Under section 1854, willfully holding over in office after the expiration of the term of office is a misdemeanor, and section 1855 provides that destroying, removing or withholding official records after the expiration of a term of office is a felony.

Further, intoxication resulting in a failure to perform the duties of a public officer is a misdemeanor and, upon conviction, punishable by forfeiture of office (Gov. Code, § 3001).

Section 53681 provides that an officer or employee who deposits money belonging to or in the custody of any local agency in any manner other than that set forth in the Deposit Law is subject to forfeiture of office or employment. Section 1195 provides that any officer who accepts, retains or diverts any part of a salary or fees due his or her deputy or subordinate for his or her own use is guilty of a felony.

In addition, willful violations of the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) are punishable as misdemeanors and include fines of up to \$10,000 per violation (Gov. Code, § 91000).

b. Penal Code

Sections 424, 503 and 504 of the Penal Code, in the aggregate, define the crime of embezzlement of public funds and property. Treasurers should exercise extreme caution in connection with the use of public property in their possession and the handling of city funds an absolute personal necessity. In general, section 424 prohibits embezzlement, falsification of accounts, misappropriation of funds, unauthorized loans, use of public funds for private profit and willful refusal to pay over public moneys when a lawful demand is made. Violation of section 424 is a felony punishable by imprisonment and disqualification from holding public office. Section 503 defines embezzlement, and section 504 provides that public officers who fraudulently appropriate public funds are guilty of embezzlement. Conviction under sections 503 and 504 is also a felony punishable by imprisonment and disqualification from holding public office (Pen. Code, § 514). The full text of sections 424, 503 and 504 is included in Appendix C.

Treasurers should be aware that the use of the agency's name and funds to make purchases of supplies which are purportedly for the agency at a discount but are for private benefit is a violation of Penal Code section 424, even if full reimbursement of agency funds is made immediately (*People v. Dillon* (1926) 199 Cal.1). Also punishable under these sections is any private use of public property, such as the use of official city stationery and envelopes or agency personnel in connection with lobbying or a campaign for re-election (*People v. Battin* (1978) 77 Cal.App.3d. 635). This unauthorized use of agency property has been held to constitute a violation of section 504 (*People v. Nathanson* (1955) 134 Cal.App. 2d 43).

In addition, Treasurers should be aware that knowingly receiving or agreeing to receive any emolument, gratuity or reward for doing an official act, unless such is authorized by law, is a misdemeanor (Pen. Code, § 70).

2. Charter Crimes

City Treasurers in chartered cities should read their city charters very carefully. Any violation of a specific provision of a city charter will constitute a misdemeanor under Government Code section 1222, even if the charter itself does not provide for the misdemeanor sanction for its violation.

3. Ordinance Crimes

Ordinances may also impose duties on Treasurers. Failure to perform duties that are validly imposed by ordinance can result in the commission of a misdemeanor under Government Code section 1222.

In turn, it is believed that the failure to perform duties imposed by an ordinance enacted under Government Code section 41005, relating to the collection of taxes and license fees as well as duties imposed by statute, could form the basis for a vacancy in office pursuant to subsection (h) of Government Code section 1770 as an “offense involving a violation of his or her official duties.”

4. Summary

The foregoing are only a few of the specific crimes applicable to public officers; others are scattered throughout the codes, and still others are found in individual city charters and ordinances. Government Code section 1222 reads as follows:

“Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”

Thus, every statutory mandate or prohibition, and every ordinance and charter requirement which is imposed upon the Treasurer, may be enforceable by criminal sanctions.

It would seem difficult enough to attempt to comply with every portion of the written law of the state and the agency to avoid collision with the criminal law. Even more difficult, and considerably less specific, is the procedure for removal from office for willful misconduct in office.

Under Government Code section 3060 et seq., a public officer may be removed for willful or corrupt misconduct in office even though he or she has not committed a crime. Thus, in addition to obeying the multitude of specific written laws, the Treasurer must not to engage in any practices which a jury would consider "misconduct" even though they are not prohibited by statute or ordinance.

The criminal liabilities incidental to local public office in California are very strict. They require the closest adherence to all written laws and to the dictates of generally accepted standards of governmental morality. Only by constant attention to the written law and personal conscience can Treasurers and other public officers feel secure against prosecution.

B. Civil Liabilities

1. Statutory and Tort Liability

The civil liabilities of a Treasurer are those of a private citizen, plus others. These liabilities are called liabilities in "tort," which is a term applied to a miscellaneous and more or less unconnected group of civil wrongs, other than breach of contract, for which a court of law will afford a remedy in the form of an action for damages. The general rules governing this branch of the law are found in Civil Code sections 1708 and 1714. The liability in tort of a public officer is the result of our scheme of government. Since all power exercised by officials is delegated, the limits of the power are strictly construed. The mode or method prescribed by the statute for the exercise of the power is usually the measure of the power. So long as the officer acts for the public and conforms to the limits of the power, he or she cannot be liable for his or her official actions. However, a departure from the terms of the delegation resulting in injury to an individual may result in civil liability.

Various public offices with their divergent responsibilities will have different normal exposures to liability. The Treasurer's exposure seems far narrower than that of some other city officials. This is primarily because the nature of the Treasurer's duties are such that his or her negligence or other types of error do not usually result in serious

injury or damage to the person or property of individual citizens. The street superintendent, the police officer, the health officer and the engineer are all constantly in situations where a mistake on their part can cause serious injury or property damage to citizens. This is not as true of Treasurers. Because there are relatively few decisions involving the personal liability of the Treasurer in California, the types of potential civil liability must remain somewhat conjectural.

For the most part, therefore, the liability of the Treasurer will be to the agency, rather than to individuals, and will be for improper expenditures of public funds. A few examples are:

- a. Government Code section 1130 et seq. requires withholding of salary pending a judicial contest for any public office. If a Treasurer should pay salary during the lawsuit to the loser, he would probably be personally liable.*
- b. Government Code section 1770 enumerates the events causing a vacancy in office. If the Treasurer should approve warrants for the salary of an agency official knowing of facts which would cause the vacation of the office in question, the Treasurer might well be liable for such payments.*
- c. Government Code section 3107 prohibits the payment of compensation to disaster service workers until they have filed their oaths of office. If a Treasurer should forget this requirement for an appreciable period of time, his or her liability could be substantial.*

Thus, although the Treasurer's potential liability is large, in most cases liability depends on acts within the Treasurer's control. In addition, as discussed in this section IV., the governmental immunities enacted by the Legislature will mitigate some of the potentially harsh results of personal liability to third parties for public officers.

2. Civil Rights Liability

In addition to possible civil liability based on state law, public officials also face possible civil liability under the federal Civil Rights Act (42 U.S.C., § 1983). Section 1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

Thus, for a plaintiff to allege a violation of section 1983, he or she need only allege that (a) some person deprived him or her of a federal right and (b) this person acted under color of state law (*Gomez v. Toledo* (1980) 446 U.S. 635, 640, 64 L.Ed.2d 572). Deprivations of federal rights are not limited to racially discriminatory acts, but rather may include depriving an individual of property or failing to comply with procedural rights before taking an official action (see *Maine v. Thiboutot*, (1980) 448 U.S. 1, 65 L.Ed.2d 555).

The United States Supreme Court discussed the meaning of “under color of law” as applied to an individual in *Monroe v. Pape*, (1961) 365 U.S. 167, 5 L.Ed.2d 492, stating:

“Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken ‘under color of’ state law.” (At p. 184, quoting United States v. Classic (1941) 313 U.S. 299, 85 L.Ed. 1368.)

The Monroe court held that the “under color of” provision of section 1983 applied as well to unconstitutional actions taken without state authority as to unconstitutional action authorized by the state.

Liability under section 1983 has greatly expanded in the recent past. Again, many other public officials face greater exposure to civil rights actions than do Treasurers. Common areas for civil rights actions are police activities and First Amendment regulations. Another common area that may involve Treasurers is personnel activities (see Antieau, *Federal Civil Rights Acts* (2d ed.)). Because this is a rapidly changing and expanding area of law, it is difficult to predict what acts or omissions by City Treasurers may open them up to liability.

To compound the problem, both for agencies and for their officers and employees, the question of what, if any, immunities apply to protect the individual officer or employee is also in a state of flux. It appears certain that state statutory immunities, such as those discussed in the next section of this Handbook, do not apply to actions brought under section 1983 (*Martinez v. California*, (1980) 444 U.S. 277, 284, 62 L.Ed.2d 481, 488, n. 8).

Local public officials may, however, have a qualified immunity if they acted in good faith and within the scope of their employment (see *Gomez v. Toledo*, (1980) 446 U.S. 635, 64 L.Ed.2d 572; *Scheuer v. Rhodes*, (1974) 416 U.S. 232, 40 L.Ed.2d 90). Good faith must exist both objectively and subjectively, which means that the public official must show the existence of reasonable grounds for the belief formed at the time and in light of all circumstances, coupled with good faith belief (416 U.S. at p. 247).

Plaintiffs who prevail under section 1983 may recover compensatory damages and attorneys' fees as well as punitive damages against individual defendants. On the bright side, the California Supreme Court has held that the defense and indemnification obligations of public entities to their employees, discussed below, apply to 1983 actions as well as state actions (*Williams v. Horvath* (1976) 16 Cal.3d 834). Therefore, depending on the facts in the particular case, a public employee will be indemnified for claims or judgments under section 1983 except for punitive damage awards (see Gov. Code, § 825). Further, a legislative body may, in certain circumstances, pay punitive damages awarded against a public employee (*id.*).

3. Governmental Immunities and the Agency's Duty to Defend

a. Governmental Immunities

Statutory provisions relating to the liability of public officers and employees can be found beginning with Government Code section 810. Of particular interest to Treasurers are the specific immunities from liability that are granted therein. These immunities apply to state actions generally involving third party plaintiffs but do not provide protection against federal civil rights actions. For example, Government Code section 820.2 provides for the so-called "discretionary act immunity" as follows:

“Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.”

This section really states what has always been held to be the law by the courts. If there are occasions where the Treasurer has a discretion in whether or not to perform a particular act, this section would exonerate him or her from liability. However, discretionary immunity has been narrowly construed by the California courts with the result that many activities that appear discretionary are not within this immunity.

Another immunity contained in Government Code section 820.6 protects public officers who act under statutes or ordinances that are later declared invalid or unconstitutional. This section reads as follows:

“If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for any injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.”

Section 820.8 grants immunity for injuries caused by the acts of others and reads as follows:

“Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission.”

A similar provision is found in Government Code section 1504, relating to official bonds. It should be noted, however, that Government Code section 41006 imposes responsibility on the City Treasurer for acts of his or her

appointed deputies. This responsibility is also attached to the Treasurer's bondsmen. Although this problem has not been dealt with by the California courts, it is possible that a City Treasurer would be liable under section 41006, notwithstanding the immunity provided for in section 820.8;

Of particular interest to Treasurers is section 822, which reads as follows:

"A public employee is not liable for money stolen from his official custody. Nothing in this section exonerates a public employee from liability if the loss was sustained as a result of his own negligent or wrongful act or omission."

There is also an immunity for injuries caused by the issuance, denial or suspension of permits, licenses and similar authorizations by public officials (see Gov. Code, § 821.2).

Since these statutory immunities for public officers and employees were enacted, there have been numerous cases explaining and delineating the scope of each immunity. As in the other areas of California law pertaining to the duties and responsibilities of Treasurers, the question of whether an act or omission comes within one of these statutory immunities is sometimes difficult to determine. In addition, the statutory immunities do not apply to actions brought under the Federal Civil Rights Act (42 U.S.C., § 1983). City Treasurers interested in this area may wish to review California Government Tort Liability Practice (Cont.Ed.Bar 1992). Specific questions should, of course, be directed to the Agency Attorney, hopefully before the Treasurer takes the proposed action.

b. Agency's Duty to Defend and Indemnify

Should the Treasurer become involved in a claim or action involving his or her action or omission to act, the Legislature has provided that in most situations, the public entity must undertake the defense of the Treasurer or employee and indemnify the Treasurer or employee.

In addition, Government Code section 990 et seq. authorizes agencies to insure its officers and employees and to pay the cost of premiums for insurance coverage for the individual liability of their officers and employees. Thus, coverage can be obtained and paid by the agency which will cover much of the liability exposure for official acts of the Treasurer.

Government Code section 995 et seq. provides for public entities taking over the defense of public employees. Upon request from an employee or former employee, the public entity is generally required to provide a defense against any claim or action against the employee for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity (Gov. Code, § 995).

Under section 825, which pertains primarily to indemnification, the request for defense and indemnification must be made not less than ten days before the date of trial, and the employee or former employee must reasonably cooperate in good faith in the defense of the claim or action.

A public entity may refuse to provide a defense in a few situations. For example, it may refuse if the public entity determines that the employee acted or failed to act because of actual fraud, corruption or actual malice or if the act or omission was not within the scope of the employment (Gov. Code, § 995.2). The entity may also refuse to provide a defense if doing so would create a conflict of interest between the entity and the employee (Gov. Code, § 995.2(a)(3)).

Further, the public entity may, but is not required to, provide a defense in disciplinary proceedings, administrative proceedings and criminal proceedings (Gov. Code, §§ 995.4, 995.6, 995.8).

In addition to providing for defense of public employees, the Legislature has also provided that public agencies indemnify their employees for claims and judgments arising out of their public employment. These statutory provisions are set forth in Government Code section 825 et seq. Generally, a public entity must indemnify its employees if the claim rose out of an act or omission within the scope of the employment and if the employee reasonably and in good faith cooperates in the defense of the claim (Gov. Code, § 825). However, a public entity may pay an award for punitive damages against its employee only if such payment is, in addition to the foregoing, in the best interest of the public entity as determined by the governing body in its sole discretion (*id.*).

The public entity may conduct the defense of an employee or former employee pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise or settlement until it is established that the injury arose out of

an act or omission occurring within the scope of his or her employment as an employee of the public entity (see Gov. Code, §§ 825, 995.2). In this case, the public entity is required to pay the judgment, compromise or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

If the public employee pays a claim or judgment, he or she is entitled, again subject to some exceptions, to recover the amount paid from the public entity (Gov. Code, § 825.2).

Treasurers and other public employees will be happy to note that these indemnification provisions apply to federal civil rights actions as well as state actions.

As advised earlier, this is another reason for taking the Agency Attorney's advice – if you are sued, he or she will have the duty of defending you and will have a lot more insight and motivation in defending you if your predicament is the result of having taken his or her advice rather than the result of having failed to take it.

C. Conclusion

To summarize, the office of Treasurer is one firmly and honorably rooted in California law and administration. The office is one of specifically defined legal duties performed within rigidly circumscribed limits. The custody of public funds is a task of great public responsibility which necessitates safeguards and intensifies the challenge to ever higher standards of performance.

With the enormous growth of California's cities in the last decade, the volume of legal duties imposed upon the Treasurer has increased. This same growth has been accompanied by new complexities in the performance of the Treasurer's duties and new administrative techniques to solve them.

The rigid criminal and civil liabilities which can follow an honest error or mistake on the part of a Treasurer make an intimate knowledge of the law governing his or her official duties absolutely necessary. To mitigate the harshness of the law and assist the Treasurer in meeting its demands, the law provides a skilled guide for all city officials to follow in the person of an Agency Attorney. This Handbook will supply a bare skeleton of the law governing Treasurers – request consultation with your Agency Attorney will fill in the flesh, add the spirit and make the law your living helper.

V. Other Information of Interest to City Treasurers

A. California Municipal Treasurers Association

The California Municipal Treasurers Association is a professional organization which is a valuable resource to Treasurers throughout the State of California. The following provides general information on the purpose and activities of the Association and explains the Association's Certification Program, which is designed to advance the professionalism of the Treasurer.

1. General Information

The California Municipal Treasurers Association works continuously statewide to enhance the role of the Treasurer as a key official in local government. CMTA promotes professional recognition of Treasurers through its programs, committees and endeavors of individual members.

The formal Certified California Municipal Treasurer Program is a key element in achieving this goal (see subsection 2, Certification Program, below). In addition, CMTA promotes Treasurers' issues to legislative bodies, congressional committees, professional organizations in the public affairs area, the banking community, local government officials and the general public. The following describe some of the services of CMTA:

a. Information

Through networking, CMTA members can receive advice and assistance in resolving problems. In addition, through its division and educational programs, CMTA offers a broad range of informational material, such as: economic forecasts, legislative updates, debt management and loss prevention techniques.

b. Publications and Selective Surveys

Periodically, CMTA publishes the CMTA Newsletter, which is directed to the needs of Treasurers, reporting on current developments, CMTA news and related events. CMTA also publishes special legislative reports and surveys designed to present current factual data on problems of immediate concern to members.

c. Education

CMTA, through its Board of Directors and committee chairs, is dedicated to offering members the opportunity to learn new and efficient methods to more effectively fulfill their responsibilities and gain awareness of the constantly shifting patterns of governmental organizations and public administration.

Periodically, CMTA sponsors or co-sponsors seminars, mid-career institutes and in-service training programs. In addition to providing the participants with the opportunity to attain credit toward their Certified California Municipal Treasurer award, the seminars offer an opportunity to gain substantial information regarding urgent public policy issues confronting local government officials.

2. Certification Program

The Certification Program is designed to advance the professionalism of the Treasurer, Finance Officer or other chief financial officer of a municipal or governmental agency. Municipal finance, like other professions, requires special study, knowledge and skill. The constituency that is served by the finance officer requires a high level of professional competence. The Certification Program is designed as a set of regulations and standards which recognize professional attainment and provide a system through which standards are met. The Certification Program assures: (1) the public of the basic knowledge and competency of the public finance official; (2) the public official of a reasonable professional recognition; and (3) professional advancement and acknowledgment of the public financial official's competency by his colleagues in the field of municipal finance. The following further describes the elements of the Certification Program:

a. A Professional Title

The Certification award proves to be one of CMTA's most significant achievements. The Certified California Municipal Treasurer (CCMT) award is designed to bring community recognition and honor to designated Treasurers and to their office.

This award is not just a title. It must be earned through individual effort and expertise. The formal Certification Program for California Treasurers was launched in 1978 by CMTA to recognize the significance of professionalism in public administration. It is also designed to assist

Treasurers in improving job performance through continuing education and affords recognition as valued administrators in local government. CMTA introduced this program to spotlight those persons who meet high standards for knowledge, skills and ethics. A certified Treasurer is a professional qualified to meet the challenges of a job that continues to become increasingly complex.

b. Program Administration

The Certification Program is administered by a Certification Committee, including a chairperson and two or more members appointed by the President of the California Municipal Treasurers Association for a one-year term. The duties of the Certification Committee are to prescribe a policy regarding applicants and requirements, screen applications and recommend to the Board of Directors individuals qualified to receive the professional designation.

c. General Eligibility

General eligibility requirements for candidates for the Certification Program are as follows:

Each candidate must be an elected or an appointed official with that position so identified under the organizational structure of the public body for which the candidate serves.

The candidate must be a member of the California Municipal Treasurers Association for at least two years prior to the time of application for certification.

The candidate must file an approved California Municipal Treasurers Association application form with the proper documentation, along with the required fee.

The candidate must believe in and practice the Code of Ethics of the California Municipal Treasurers Association.

d. Certificate Presentation

Once an applicant has met all of the requirements for his or her professional designation and been recommended by the Certification Committee, an appropriate certificate, authorized by the Certification Committee and the Board of Directors of the California Municipal Treasurers Association, is presented to the qualified applicant.

Appropriate recognition of certificate recipients is made at the next annual meeting of the California Municipal Treasurers Association.

e. Appeals

Appeal of the decision of the Certification Committee shall be made to the Board of Directors of the California Municipal Treasurers Association, whose decision shall be final.

f. Fees

A fee, determined by the Board of Directors of the California Municipal Treasurers Association, shall accompany the application for a professional designation.

g. Certification Continuity

The California Municipal Treasurers Association preserves the records of all certified officials. Copies of the records may be obtained from the California Municipal Treasurers Association for a nominal charge.

B. Investment Policies

Refer to Section on Principal Statutory Duties and Responsibilities of the Office for information on the authority and responsibilities of Treasurers regarding the investment of funds in certain eligible securities.

Appendix D provides information concerning the Investment Policy Certification of the Municipal Treasurers Association of the United States and Canada (MTA US&C), including a model investment policy.

C. City Fiscal Reports of Importance to the City Treasurer

The Treasurer is required to render an annual investment policy and reports on investments as described in the Handbook.

Other reports may require the involvement of the Treasurer. If the Treasurer is also the entity's Finance Officer, he or she may have primary responsibility for the report preparation. The following summarizes city fiscal reports of importance to the Treasurer.

Other Fiscal Reports of Importance to the City Treasurer

DESCRIPTION/TITLE	SUBMITTED TO	DUE DATE
CITY REPORTS		
1. Annual Audit	City Council	As Required
COUNTY REPORTS		
1. Special Taxes to be Levied (i.e., Bond Redemption, Special Assessments)	Tax Collector	August
2. A Copy of the City Budget	County Auditor	60 days after beginning of fiscal year
STATE CONTROLLER		
1. Excess State Tax and Property Tax	State Controller <i>Div. of Local Govt. Affairs</i> P. O. Box 1019 Sacramento, CA 95805	December 31
2. Annual Report of Financial Transactions	State Controller <i>Div. of Local Govt. Affairs</i> P. O. Box 1019 Sacramento, CA 95805	September 30
3. Annual Street Report	State Controller <i>Div. of Local Govt. Affairs</i> P. O. Box 1019 Sacramento, CA 95805	October 1
MANDATED COSTS		
1. Claim for Payment	State Controller <i>Div. of Accounting</i> P. O. Box 1019 Sacramento, CA 95805	October

D. Sources of Information

Keeping abreast of the many changes in the financial community requires a continuing effort by the Treasurer. Further, as in other professions, an effective Treasurer must remain current and informed in the knowledge and skills required. Informational resources to assist the Treasurer include, in addition to individual books, publications from a number of professional organizations which provide valuable sources of information. The Municipal Treasurers Association of the United States & Canada, League of California Cities, Municipal Finance Officers Association and California Society of Municipal Finance Officers are the primary organizations which publish books, periodicals and other publications covering topics of interest to the Treasurer.

Valuable resource information is provided in Appendix E of this Handbook, "Websites and Other Resources for Treasurers".

Appendix A

SECTIONS OF THE STATE CONSTITUTION

OF INTEREST TO THE CITY TREASURER

(Current through 7/01/01)

Appendix A

SECTIONS OF THE STATE CONSTITUTION OF INTEREST TO THE CITY TREASURER

Article 4

Sec. 17. Extra compensation for past services

The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law.

(Added Nov. 8, 1966.)

Article 11

Sec. 9. Public works in municipalities; operation or regulation

(a) A municipal corporation may establish purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law.

(Adopted June 2, 1970.)

Sec. 10. Extra compensation or allowance after service rendered; payment of claims; residency of public employees; exception

(a) A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.

(b) A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location.

(Adopted June 2, 1970. Amended June 8, 1976.)

Sec. 11. Delegation of powers over municipal functions; deposits in and payments by financial institutions; investments; registration of evidences of debt

(a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

(b) The Legislature may, however, provide for the deposit of public moneys in any bank in this state or in any savings and loan association in this state or any credit union in this state or in any federally insured industrial loan company in this state and for payment of interest, principal, and redemption premiums of public bonds and other evidence of public indebtedness by banks within or without this state. It may also provide for investment of public moneys in securities and the registration of bonds and other evidences of indebtedness by private persons or bodies, within or without this state, acting as trustees or fiscal agents.

(Adopted June 2, 1970. Amended Nov. 5, 1974; June 8, 1976; June 3, 1986; Nov. 8, 1988.)

Article 12

Sec. 7. Transportation company; passes and discounts; forfeiture of office; conflicts of interest

A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission.

(Added by A.C.A. No. 36, approved Nov. 5, 1974.)

Article 13

Sec. 24. Taxation for local purposes; use of state appropriations and subventions

The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.

Money appropriated from state funds to a local government for its local purposes may be used as provided by law.

Money subvented to a local government under Section 25 may be used for State or local purposes.

(Adopted Nov. 5, 1974.)

Sec. 25. Reimbursement of local governments for loss from homestead exemptions

The Legislature shall provide, in the same fiscal year, reimbursements to each local government for revenue lost because of Section 3(k).

(Adopted Nov. 5, 1974.)

Article 13A

Sec. 1. Ad valorem tax on real property; maximum amount; application; school facilities

(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b).

(Adopted June 6, 1978. Amended June 3, 1986; amended by Initiative Measure (Prop. 39, §. 4, operative Nov. 8, 2000, approved Nov. 7, 2000.)

Sec. 2. Full cash value assessment; property destroyed by disaster; contaminated property

(a) The "full cash value" means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property that is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not

include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single- or multiple-family dwelling that is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to a severely disabled person.

(4) The construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies, that are constructed or installed in existing buildings after the effective date of this paragraph. The Legislature shall define eligible improvements. This exclusion does not apply to seismic safety reconstruction or improvements which qualify for exclusion pursuant to the last sentence of the first paragraph of subdivision (a).

(5) The construction, installation, removal, or modification on or after the effective date of this paragraph of any portion or structural component of an existing building or structure if the construction, installation, removal, or modification is for the purpose of making the building more accessible to, or more usable by, a disabled person.

(d) For purposes of this section, the term "change in ownership" shall not include the acquisition of real property as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action that has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect.

(e) (1) Notwithstanding any other provision of this section, the Legislature shall provide that the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

(2) Except as provided in paragraph (3), this subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base year values for the 1985-86 fiscal year and fiscal years thereafter.

(3) In addition to the transfer of base year value of property within the same county that is permitted by paragraph (1), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as declared by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this paragraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this paragraph, "affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. This paragraph shall apply to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster, as declared by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991-92 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property that it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms “purchased” and “change in ownership” shall not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse that take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner’s interest.

(5) The distribution of a legal entity’s property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) (1) For purposes of subdivision (a), the terms “purchased” and “change in ownership” shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first one million dollars (\$1,000,000) of the full cash value of all other real property between parents and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(2) (A) Subject to subparagraph (B), commencing with purchases or transfers that occur on or after the date upon which the measure adding this paragraph becomes effective, the exclusion established by paragraph (1) also applies to a purchase or transfer of real property between grandparents and their grandchild or grandchildren, as defined by the Legislature, that otherwise qualifies under paragraph (1), if all of the parents of that grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased as of the date of the purchase or transfer.

(B) A purchase or transfer of a principal residence shall not be excluded pursuant to subparagraph (A) if the transferee grandchild or grandchildren also received a principal residence, or interest therein, through another purchase or transfer that was excludable pursuant to paragraph (1). The full cash value of any real property, other than a principal residence, that was transferred to the grandchild or grandchildren pursuant to a purchase or transfer that was excludable pursuant to paragraph (1), and the full cash value of a principal residence that fails to qualify for exclusion as a result of the preceding sentence, shall be included in applying, for purposes of subparagraph (A), the one million dollar (\$1,000,000) full cash value limit specified in paragraph (1).

(i) (1) Notwithstanding any other provision of this section, the Legislature shall provide with respect to a qualified contaminated property, as defined in paragraph (2), that either, but not both, of the following shall apply:

(A) (i) Subject to the limitation of clause (ii), the base year value of the qualified contaminated property, as adjusted as authorized by subdivision (b), may be transferred to a replacement property that is acquired or newly constructed as a replacement for the qualified contaminated property, if the replacement real property has a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated and, except as otherwise provided by this clause, is located within the same county. The base year value of the qualified contaminated property may be transferred to a replacement real property located within another county if the board of supervisors of that other county has, after consultation with the affected local agencies within that county, adopted a resolution authorizing an intercounty transfer of base year value as so described.

(ii) This subparagraph applies only to replacement property that is acquired or newly constructed within five years after ownership in the qualified contaminated property is sold or otherwise transferred.

(B) In the case in which the remediation of the environmental problems on the qualified contaminated property requires the destruction of, or results in substantial damage to, a structure located on that property, the term "new construction" does not include the repair of a substantially damaged structure, or the construction of a structure replacing a destroyed structure on the qualified contaminated property, performed after the remediation of the environmental problems on that property, provided that the repaired or replacement structure is similar in size, utility, and function to the original structure.

(2) For purposes of this subdivision, "qualified contaminated property" means residential or nonresidential real property that is all of the following:

(A) In the case of residential real property, rendered uninhabitable, and in the case of nonresidential real property, rendered unusable, as the result of either environmental problems, in the nature of and including, but not limited to, the presence of toxic or hazardous materials, or the remediation of those environmental problems, except where the existence of the environmental problems was known to the owner, or to a related individual or entity as described in paragraph (3), at the time the real property was acquired or constructed. For purposes of this subparagraph, residential real property is "uninhabitable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unfit for human habitation, and nonresidential real property is "unusable" if that property, as a result of health hazards caused by or associated with the environmental problems, is unhealthy and unsuitable for occupancy.

(B) Located on a site that has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

(C) Real property that contains a structure or structures thereon prior to the completion of environmental cleanup activities, and that structure or structures are substantially damaged or destroyed as a result of those environmental cleanup activities.

(D) Stipulated by the lead governmental agency, with respect to the environmental problems or environmental cleanup of the real property, not to have been rendered uninhabitable or unusable, as applicable, as described in subparagraph (A), by any act or omission in which an owner of that real property participated or acquiesced.

(3) It shall be rebuttably presumed that an owner of the real property participated or acquiesced in any act or omission that rendered the real property uninhabitable or unusable, as applicable, if that owner is related to any individual or entity that committed that act or omission in any of the following ways:

- (A) Is a spouse, parent, child, grandparent, grandchild, or sibling of that individual.
- (B) Is a corporate parent, subsidiary, or affiliate of that entity.
- (C) Is an owner of, or has control of, that entity.
- (D) Is owned or controlled by that entity.

If this presumption is not overcome, the owner shall not receive the relief provided for in subparagraph (A) or (B) of paragraph (1). The presumption may be overcome by presentation of satisfactory evidence to the assessor, who shall not be bound by the findings of the lead governmental agency in determining whether the presumption has been overcome.

(4) This subdivision applies only to replacement property that is acquired or constructed on or after January 1, 1995, and to property repairs performed on or after that date.

(j) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, on or after the effective date of the amendment.

(Adopted June 6, 1978; Amended Nov. 7, 1978; Nov. 4, 1980; June 8, 1982; June 5, 1984; Nov. 6, 1984; June 3, 1986; Nov. 4, 1986; Nov. 8, 1988; S.C.A. 37 (Prop. 110), approved June 5, 1990; S.C.A. 33 (Prop. 127), approved Nov. 6, 1990; Stats.1992, Res. ch. 136 (A.C.A. 41) (Prop. 171), approved Nov. 2, 1993; Stats.1993, Res. ch. 92 (A.C.A. 8) (Prop. 177), approved June 7, 1994; Stats.1994, Res. ch. 110 (A.C.A. 17), approved March 26, 1996); Stats.1998, Res. Ch. 60 (A.C.A.22) (Prop. 1, approved Nov. 3, 1998, eff. Nov. 4, 1998).)

Sec. 3. Changes in state taxes; enactments to increase revenues; imposition; assessments; specified fees and fee increases; damages, remedial expenses, or penalties

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 the method of computation must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses 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. For purposes of this section, "state taxes" do not include an "assessment" or "fee" as defined in Article XIII D, Section 2, subdivisions (b) and (e), real property development fees, or regulatory fees that do not exceed the reasonable cost of regulating the activity for which the fee is charged. Provided, however, compulsory fees enacted after July 1, 1999, to monitor, study or mitigate the societal or economic effects of an activity, and which impose no significant regulatory obligation on the fee payor's activity other than the payment of the fee, and regulatory fees that exceed the reasonable cost of regulating the activity for which the fee is charged, shall be deemed state taxes subject to the two-thirds vote requirement of this section. Monies recoverable as damages, remedial expenses or penalties arising from a specific event shall not be deemed taxes or fees.

This section shall not apply to (1) any fee that was authorized by law prior to July 1, 1999, (2) any increase in such fee attributable to inflation, or (3) any increase in such fee attributable to increased workload, provided such increased workload is not the result of expansion of the class of activity or activities to which the fee applied prior to July 1, 1999.

(Adopted June 6, 1978. Amended by Initiative Measure (Prop. 37, § 3, operative Nov. 8, 2000, approved Nov. 7, 2000).)

Sec. 4. Special taxes; imposition

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.

(Adopted June 6, 1978.)

Sec. 5. Effective date of article

This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article.

(Adopted June 6, 1978.)

Sec. 6. Severability

If any section, part, clause, or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

(Adopted June 6, 1978.)

Article 13B

Sec. 1. Total annual appropriations; amount not to exceed limit of prior year; adjustments

The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.

(Adopted Nov. 6, 1979. Amended by S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 1.5. Annual calculation of appropriations limit

Sec. 1.5. 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.

(Adopted by S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 2. Revenues in excess of limitation

(a)(1) Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be transferred and allocated, from a fund established for that purpose, pursuant to Section 8.5 of Article XVI.

(2) Fifty percent of all revenues received by the state in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the state in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years

(b) All revenues received by an entity of government, other than the state, in a fiscal year and in the fiscal year immediately following it in excess of the amount which may be appropriated by the entity in compliance with this article during that fiscal year and the fiscal year immediately following it shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.

(Adopted Nov. 6, 1979. Amended by Initiative Measure (Prop. 98), approved Nov. 8, 1988; S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 3. Adjustment of appropriation limits; transfer of financial responsibility; emergency

The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:

(a) In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.

(b) In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.

(c)(1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.

(2) In the event an emergency is declared by the Governor, appropriations approved by a two-thirds vote of the legislative body of an affected entity of government to an emergency account for expenditures relating to that emergency shall not constitute appropriations subject to limitation. As used in this paragraph, "emergency" means the existence, as declared by the Governor, of conditions of disaster or of extreme peril to the safety of persons and property within the state, or parts thereof, caused by such conditions as attack or probable or imminent attack by an enemy of the United States, fire, flood, drought, storm, civil disorder, earthquake, or volcanic eruption.

(Adopted Nov. 6, 1979. Amended by S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 4. Establishment or change in appropriation limit for new or existing entities by electors

The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change.

(Adopted Nov. 6, 1979.)

Sec. 5. Establishment of funds by each entity of government; contributions; withdrawals

Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation.

(Adopted Nov. 6, 1979.)

Sec. 5.5. Prudent state reserve

The Legislature shall establish a prudent state reserve fund in such amount as it shall deem reasonable and necessary. Contributions to, and withdrawals from, the fund shall be subject to the provisions of Section 5 of this Article.

(Added by Initiative Measure (Prop. 98), approved Nov. 8, 1988.)

Sec. 6. New programs or services mandated by legislature or state agencies; subvention

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.

(Adopted Nov. 6, 1979.)

Sec. 7. No impairment of obligation to meet bonded indebtedness

Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness.

(Adopted Nov. 6, 1979.)

Sec. 8. Definitions

As used in this article and except as otherwise expressly provided herein:

(a) "Appropriations subject to limitation" of the state means any authorization to expend during a fiscal year the proceeds of taxes levied by or for the state, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6 and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance, and disability insurance funds.

(b) "Appropriations subject to limitation" of an entity of local government means any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes.

(c) "Proceeds of taxes" shall include, but not be restricted to, all tax revenues 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. With respect to any local government, "proceeds of taxes" shall include subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions.

(d) "Local government" means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.

(e)(1) "Change in the cost of living" for the state, a school district, or a community college district means the percentage change in California per capita personal income from the preceding year.

(2) "Change in the cost of living" for an entity of local government, other than a school district or a community college district, shall be either (A) the percentage change in California per capita personal income from the preceding year, or (B) the percentage change in the local assessment roll from the preceding year for the jurisdiction due to the addition of local nonresidential new construction. Each entity of local government shall select its change in the cost of living pursuant to this paragraph annually by a recorded vote of the entity's governing body.

(f) "Change in population" of any entity of government, other than the state, a school district, or a community college district, shall be determined by a method prescribed by the Legislature.

"Change in population" of a school district or a community college district shall be the percentage change in the average daily attendance of the school district or community college district from the preceding fiscal year, as determined by a method prescribed by the Legislature.

"Change in population" of the state shall be determined by adding (1) the percentage change in the state's population multiplied by the percentage of the state's budget in the prior fiscal year that is expended for other than educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges, and (2) the percentage change in the total statewide average daily attendance in kindergarten and grades one to 12, inclusive, and the community colleges, multiplied by the percentage of the state's budget in the prior fiscal year that is expended for educational purposes for kindergarten and grades one to 12, inclusive, and the community colleges.

Any determination of population pursuant to this subdivision, other than that measured by average daily attendance, shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor department.

(g) "Debt service" means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.

(h) The "appropriations limit" of each entity of government for each fiscal year is that amount which total annual appropriations subject to limitation may not exceed under Sections 1 and 3. However, the "appropriations limit" of each entity of government for fiscal year 1978-79 is the total of the appropriations subject to limitation of the entity for that fiscal year. For fiscal year 1978-79, state subventions to local governments, exclusive of federal grants, are deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, "appropriations subject to limitation" do not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

(Adopted Nov. 6, 1979. Amended by S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 9. Appropriations subject to limitations; exclusions

"Appropriations subject to limitation" for each entity of government do not include:

(a) Appropriations for debt service.

(b) Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 1/2 cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

(d) Appropriations for all qualified capital outlay projects, as defined by the Legislature.

(e) Appropriations of revenue which are derived from any of the following:

(1) That portion of the taxes imposed on motor vehicle fuels for use in motor vehicles upon public streets and highways at a rate of more than nine cents (\$0.09) per gallon.

(2) Sales and use taxes collected on that increment of the tax specified in paragraph (1).

(3) That portion of the weight fee imposed on commercial vehicles which exceeds the weight fee imposed on those vehicles on January 1, 1990.

(Adopted Nov. 6, 1979. Amended by S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 10. Effective date

This Article shall be effective commencing with the first day of the fiscal year following its adoption.

(Adopted Nov. 6, 1979.)

Sec. 10.5. Appropriations limit for fiscal years beginning on or after July 1, 1990

For fiscal years beginning on or after July 1, 1990, the appropriations limit of each entity of government shall be the appropriations limit for the 1986-87 fiscal year adjusted for the changes made from that fiscal year pursuant to this article, as amended by the measure adding this section, adjusted for the changes required by Section 3.

(Added by S.C.A. 1 (Prop. 111), approved June 5, 1990, operative July 1, 1990.)

Sec. 11. Adjustment of appropriations limit; judgment of court; severability

If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect.

(Added Nov. 6, 1979.)

Sec. 12. Appropriations subject to limitations; exclusion of cigarette and tobacco revenue

“Appropriations subject to limitation” of each entity of government shall not include appropriations of revenue from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Cigarette and Tobacco Products Surtax Fund created by the Tobacco Tax and Health Protection Act of 1988.

(Added by Initiative Measure (Prop. 99), approved Nov. 8, 1988.)

Sec. 13. Appropriations subject to limitations; exclusion of cigarette and tobacco revenue

“Appropriations subject to limitation” of each entity of government shall not include appropriations of revenue from the California Children and Families First Trust Fund created by the California Children and Families First Act of 1998. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Children and Families First Trust Fund. The surtax created by the California Children and Families First Act of 1998 shall not be considered General Fund revenues for the purposes of Section 8 of Article XVI.

(Added by Initiative Measure (Prop. 10, § 4, approved Nov. 3, 1998).)

Article 13C

Sec. 1. Definitions

Definitions. As used in this article:

- (a) “General tax” means any tax imposed for general governmental purposes.
- (b) “Local government” means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.
- (c) “Special district” means an agency of the State, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.
- (d) “Special tax” means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.
- (e) For purposes of subdivisions (a) and (d), “general taxes” and “special taxes” do not include an “assessment” or “fee” as defined in Article XIII D, Section 2, subdivisions (b) and (e), real property development fees, or regulatory fees that do not exceed the reasonable cost of regulating the activity for which the fee is charged. Provided, however, compulsory fees enacted after July 1, 1999, to monitor, study or mitigate the societal or economic effects of an activity, and which impose no significant regulatory obligation on the fee payor’s activity other than the payment of the fee, and regulatory fees that exceed the reasonable cost of regulating the activity for which the fee is charged, shall be deemed general or special taxes subject to the majority or two-thirds vote requirements of Section 2, subdivisions (b) and (d), of this article. Monies recoverable as damages, remedial expenses or penalties arising from a specific event shall not be deemed taxes, special taxes, assessments or fees.

This section shall not apply to (1) any fee that was authorized by law prior to July 1, 1999, (2) any increase in such fee attributable to inflation, or (3) any increase in such fee attributable to increased workload, provided such increased workload is not the result of expansion of the class of activity or activities to which the fee applied prior to July 1, 1999.

(Added by Initiative Measure (Prop. 218, § 3, approved Nov. 5, 1996). Amended by Initiative Measure (Prop. 37, § 4, operative Nov. 8, 2000, approved Nov. 7, 2000).)

Sec. 2. General and special taxes; local government powers; powers of special purpose districts or agencies

Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

(Added by Initiative Measure (Prop. 218, § 3, approved Nov. 5, 1996).)

Sec. 3. Power of initiatives

Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

(Added by Initiative Measure (Prop. 218, § 3, approved Nov. 5, 1996).)

Article 13D

Sec. 1. Application of article

Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Sec. 2. Definitions

Definitions. As used in this article:

- (a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.
- (b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."
- (c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.
- (d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.
- (e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.
- (f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.
- (g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.
- (h) "Property-related service" means a public service having a direct relationship to property ownership.
- (i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Sec. 3. Limitations on property taxes, assessments, fees and charges; electric and gas service fees

Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

- (1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.
 - (2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.
 - (3) Assessments as provided by this article.
 - (4) Fees or charges for property related services as provided by this article.
- (b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Sec. 4. Proposed assessments; procedures and requirements

Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Sec. 5. Effective date of article; assessments exempted from procedures and requirements of Section 4

Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Sec. 6. New or existing increased fees and charges; procedures and requirements; voter approval

Property Related Fees and Charges.

(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) **Voter Approval for New or Increased Fees and Charges.** Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

(Added by Initiative Measure (Prop. 218, § 4, approved Nov. 5, 1996).)

Article 16

Sec. 6. Public credit or funds; loan or gift; public ownership of corporate stock; veterans aid; transfer of funds

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals,

waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation; and

Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue.

(Added Nov. 5, 1974. Amended June 6, 1978; June 3, 1980; Nov. 2, 1982.)

Sec. 18. Debt limit; county, municipal, and school; required majority of voters; school facilities

(a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose, except that with respect to any such public entity which is authorized to incur indebtedness for public school purposes, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the purpose of repairing, reconstructing or replacing public school buildings determined, in the manner prescribed by law, to be structurally unsafe for school use, shall be adopted upon the approval of a majority of the voters of the public entity voting on the proposition at such election;

nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and to provide for a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the indebtedness.

(b) Notwithstanding subdivision (a), on or after the effective date of the measure adding this subdivision, in the case of any school district, community college district, or county office of education, any proposition for the incurrence of indebtedness in the form of general obligation bonds for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, shall be adopted upon the approval of 55 percent of the voters of the district or county, as appropriate, voting on the proposition at an election. This subdivision shall apply only to a proposition for the incurrence of indebtedness in the form of general obligation bonds for the purposes specified in this subdivision if the proposition meets all of the accountability requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

(c) When two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when two-thirds or a majority or 55 percent of the voters, as the case may be, voting on any one of those propositions, vote in favor thereof, the proposition shall be deemed adopted.

(Adopted Nov. 5, 1974. Amended by Initiative Measure (Prop. 39, § 5, operative Nov. 8, 2000, approved Nov. 7, 2000).)

Sec. 19. Special assessments; improvements; property for public use; chartered cities or counties

All proceedings undertaken by any chartered city, or by any chartered county or by any chartered city and county for the construction of any public improvement, or the acquisition of any property for public use, or both, where the cost thereof is to be paid in whole or in part by special assessment or other special assessment taxes upon property, whether the special assessment will be specific or a special assessment tax upon property wholly or partially according to the assessed value of such property, shall be undertaken only in accordance with the provisions of law governing: (a) limitations of costs of such proceedings or assessments for such proceedings, or both, in relation to the value of any property assessed therefor; (b) determination of a basis for the valuation of any such property; (c) payment of the cost in excess of such limitations; (d) avoidance of such limitations; (e) postponement or abandonment, or both, of such proceedings in whole or in part upon majority protest, and particularly in accordance with such provisions as contained in Sections 10, 11 and 13a of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 or any amendments, codification, reenactment or restatement thereof.

Notwithstanding any provisions for debt limitation or majority protest as in this section provided, if, after the giving of such reasonable notice by publication and posting and the holding of such public hearing as the legislative body of any such chartered county, chartered city or chartered city and county shall have prescribed, such legislative body by no less than a four-fifths vote of all members thereof, finds and determines that the public convenience and necessity require such improvements or acquisitions, such debt limitation and majority protest provisions shall not apply.

Nothing contained in this section shall require the legislative body of any such city, county, or city and county to prepare or to cause to be prepared, hear, notice for hearing or report the hearing of any report as to any such proposed construction or acquisition or both.

(Adopted Nov. 5, 1974.)

Article 20

Sec. 3. Oath of office

Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I,....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

.....

(If no affiliations, write in the words "No Exceptions")

and that during such time as I hold the office of.....

(name of office)

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

"Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.

(Amended Nov. 4, 1952.)

Appendix B

SECTIONS OF THE GOVERNMENT CODE

OF INTEREST TO THE CITY TREASURER

(Current through 7/01/01)

Appendix B

SECTIONS OF THE GOVERNMENT CODE OF INTEREST TO THE CITY TREASURER

Claims and Actions

Sec. 810. Construction of division

Unless the provision or context otherwise requires, the definitions contained in this part govern the construction of this division.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 810.2. Employee

“Employee” includes an officer, judicial officer as defined in Section 327 of the Elections Code, employee, or servant, whether or not compensated, but does not include an independent contractor.

(Added by Stats.1963, c. 1681, p. 3267, § 1. Amended by Stats.1977, c. 745, p. 2333, § 1; Stats.1994, c. 923 (S.B.1546), § 30.)

Sec. 810.4. Employment

“Employment” includes office or employment.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 810.6. Enactment

“Enactment” means a constitutional provision, statute, charter provision, ordinance or regulation.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 810.8. Injury

“Injury” means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 811. Law

“Law” includes not only enactments but also the decisional law applicable within this State as determined and declared from time to time by the courts of this State and of the United States.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 811.2. Public entity

“Public entity” includes the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 811.4. Public employee

“Public employee” means an employee of a public entity.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 811.6. Regulation

“Regulation” means a rule, regulation, order or standard, having the force of law, adopted by an employee or agency of the United States pursuant to the federal Administrative Procedure Act (Chapter 5 (commencing with Section 500) of Title 5 of the United States Code) or as a regulation by an agency of the state pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).

(Added by Stats.1963, c. 1681, p. 3266, § 1. Amended by Stats.1987, c. 1201, § 14; Stats.1987, c. 1207, § 3; Stats.1988, c. 160, § 50.)

Sec. 811.8. Statute

“Statute” means an act adopted by the Legislature of this State or by the Congress of the United States, or a statewide initiative act.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 811.9. Judges, subordinate judicial officers, and court executive officers; superior and municipal courts; state officer status

(a) Notwithstanding any other provision of law, judges, subordinate judicial officers, and court executive officers of the superior and municipal courts are state officers for purposes of Part 1 (commencing with Section 810) to Part 7 (commencing with Section 995), inclusive, and trial court employees are employees of the trial court for purposes of Part 1 (commencing with Section 810) to Part 7 (commencing with Section 995), inclusive. The Judicial Council shall provide for representation, defense, and indemnification of such individuals and the court pursuant to Part 1 (commencing with Section 810) to Part 7 (commencing with Section 995), inclusive. The Judicial Council shall provide for such representation or defense through the county counsel, the Attorney General, or other counsel. The county counsel and the Attorney General may, but are not required to, provide such representation or defense for the Judicial Council. The fact that a judge, subordinate judicial officer, court executive officer, trial court employee, or the court was represented or defended by the county counsel, the Attorney General, or other counsel shall not be the sole basis for a judicial determination of disqualification of a judge, subordinate judicial officer, the county counsel, the Attorney General, or other counsel in unrelated actions.

(b) To promote the cost-effective, prompt, and fair resolution of actions, proceedings, and claims affecting the trial courts, the Judicial Council shall adopt rules of court requiring the Administrative Office of the Courts to manage actions, proceedings, and claims that affect the trial courts and involve superior or municipal courts, superior or municipal court judges, subordinate judicial officers, court executive officers, or trial court employees in consultation with the affected courts and individuals. The Administrative Office of the Courts' management of these actions, proceedings, and claims shall include, but not be limited to, case management and administrative responsibilities such as selection of counsel and making strategic and settlement decisions.

(c) Nothing in this section shall be construed to affect the employment status of subordinate judicial officers, court executive officers, and trial court employees related to any matters not covered by subdivision (a).

(Added by Stats.2000, c. 447 (S.B.1533), § 4.5.)

Sec. 814. Effect upon liability based on contract or right to relief other than money or damages

Nothing in this part affects liability based on contract or the right to obtain relief other than money or damages against a public entity or public employee.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 814.2. Workers' compensation provisions not repealed

Nothing in this part shall be construed to impliedly repeal any provision of Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code.

(Added by Stats.1963, c. 1681, p. 3267, § 1.)

Sec. 815. Liability for injuries generally; immunity of public entity; defenses

Except as otherwise provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

(Added by Stats.1963, c. 1681, p. 3268, § 1.)

Sec. 815.2. Injuries by employee within scope of employment; immunity of employee

(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

(Added by Stats.1963, c. 1681, p. 3268, § 1.)

Sec. 815.3. Intentional torts

(a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.

(b) If the elected official is held liable for an intentional tort other than defamation in such an action, the trier of fact in reaching the verdict shall determine if the act or omission constituting the intentional tort arose from and was directly related to the elected official's performance of his or her official duties. If the trier of fact determines that the act or omission arose from and was directly related to the elected

official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. For the purpose of this subdivision, employee managerial functions shall be deemed to arise from, and to directly relate to, the elected official's official duties. However, acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.

(c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the amount of the deficiency and the plaintiff may seek to collect that remainder of the judgment from the public entity. The public entity may pay that deficiency if the public entity is otherwise authorized by law to pay that judgment.

(d) To the extent the public entity pays any portion of the judgment against the elected official pursuant to subdivision (c) or has expended defense costs in an action in which the trier of fact determines the elected official's action did not arise from and did not directly relate to his or her performance of official duties, the public entity shall pursue all available creditor's remedies against the elected official in indemnification, including garnishment, until the elected official has fully reimbursed the public entity.

(e) If the public entity elects to appeal the judgment in an action brought pursuant to this section, the entity shall continue to provide a defense for the official until the case is finally adjudicated, as provided by law.

(f) It is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct.

(g) This section shall not apply to a criminal or civil enforcement action brought on behalf of the state by an elected district attorney, city attorney, or Attorney General.

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(Added by Stats.1994, c. 796 (A.B.2508), § 1.)

Sec. 815.4. Injuries by independent contractors

A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person. Nothing in this section subjects a public entity to liability for the act or omission of an independent contractor if the public entity would not have been liable for the injury had the act or omission been that of an employee of the public entity.

(Added by Stats.1963, c. 1681, p. 3268, § 1.)

Sec. 815.6. Mandatory duty of public entity to protect against particular kinds of injuries

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

(Added by Stats.1963, c. 1681, p. 3268, § 1.)

Sec. 816. Injuries by members of National Guard; legislative intent

A public entity is not liable for injury arising out of any activity conducted by a member of the California National Guard pursuant to Section 316, 502, 503, 504, or 505 of Title 32 of the United States Code and compensated pursuant to the Federal Tort Claims Act.

It is the intent of the Legislature, in enacting this section, to conform state law regarding liability for activities of the National Guard to federal law as expressed in Public Law 97-124.

(Added by Stats.1982, c. 616, p. 2600, § 1.)

Sec. 818. Exemplary damages

Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(Added by Stats.1963, c. 1681, p. 3266, § 1.)

Sec. 818.2. Adoption or failure to adopt or enforce enactment

A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

(Added by Stats.1963, c. 1681, p. 3268, § 1.)

Sec. 818.4. Issuance, denial, suspension or revocation of permit, license, or similar authorization

A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

(Added by Stats.1963, c. 1681, p. 3268, § 1.)

Sec. 818.5. Injury caused by omission of lienholder's name from ownership certificate for motor vehicle

The Department of Motor Vehicles is liable for any injury to a lienholder or good faith purchaser of a vehicle proximately caused by the department's negligent omission of the lienholder's name from an ownership certificate issued by the department. The liability of the department under this section shall not exceed the actual cash value of the vehicle.

(Added by Stats.1985, c. 437, § 2.)

Sec. 818.6. Failure to inspect, or negligent inspection of, property

A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 818.7. Publication of records relating to controlled substance law violators; confidential information

No board, commission, or any public officer or employee of the state or of any district, county, city and county, or city is liable for any damage or injury to any person resulting from the publication of any reports, records, prints, or photographs of or concerning any person convicted of violation of any law relating to the use, sale, or possession of controlled substances, when such publication is to school authorities for use in instruction on the subject of controlled substances or to any person when used for the purpose of general education. However, the name of any person concerning whom any such reports, records, prints, or photographs are used shall be kept confidential and every reasonable effort shall be made to maintain as confidential any information which may tend to identify such person.

(Added by Stats.1968, c. 182, p. 469, § 36. Amended by Stats.1984, c. 1635, § 40.)

Sec. 818.8. Misrepresentations by employees

A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 818.9. Advice to small claims court litigants

A public entity, its employees, and volunteers shall not be liable because of any advice provided to small claims court litigants pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

(Added by Stats.1981, c. 958, p. 3643, § 10. Amended by Stats.1990, c. 1305 (S.B.2627), § 10.)

Sec. 820. Liability for injuries generally; defenses

(a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person.

(b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 820.2. Discretionary acts

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 820.21. Juvenile court and child protection workers; exceptions to immunity; malice

(a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice:

- (1) Perjury.
- (2) Fabrication of evidence.
- (3) Failure to disclose known exculpatory evidence.

(4) Obtaining testimony by duress, as defined in Section 1569 of the Civil Code, fraud, as defined in either Section 1572 or Section 1573 of the Civil Code, or undue influence, as defined in Section 1575 of the Civil Code.

(b) As used in this section, "malice" means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others.

(Added by Stats.1995, c. 977 (A.B.1355), § 1.)

Sec. 820.25. Peace officers or law enforcement officials; decisions not to render assistance or to respond to an emergency

(a) For purposes of Section 820.2, the decision of a peace officer, as defined in Sections 830.1 and 830.2 of the Penal Code, or a state or local law enforcement official, to render assistance to a motorist who has not been involved in an accident or to leave the scene after rendering assistance, upon learning of a reasonably apparent emergency requiring his immediate attention elsewhere or upon instructions from a superior to assume duties elsewhere, shall be deemed an exercise of discretion.

(b) The provision in subdivision (a) shall not apply if the act or omission occurred pursuant to the performance of a ministerial duty. For purposes of this section, "ministerial duty" is defined as a plain and mandatory duty involving the execution of a set task and to be performed without the exercise of discretion.

(Added by Stats.1979, c. 806, § 1, eff. Sept. 19, 1979.)

Sec. 820.4. Execution or enforcement of laws; exception

A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 820.6. Acting under unconstitutional, invalid or inapplicable enactments

If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for an injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 820.8. Acts or omissions of others

Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 820.9. Mayors, members of local public entities, boards, commissions and advisory bodies; vicarious liability for injuries caused by public entity

Members of city councils, mayors, members of boards of supervisors, members of school boards, members of governing boards of other local public entities, members of locally appointed boards and commissions, and members of locally appointed or elected advisory bodies are not vicariously liable for

injuries caused by the act or omission of the public entity or advisory body. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.

This section shall become operative January 1, 2000.

(Added by Stats.1997, c. 132 (S.B.1159), § 2, operative Jan. 1, 2000.)

Sec. 821. Adoption or failure to adopt or enforce enactment

A public employee is not liable for an injury caused by his adoption of or failure to adopt an enactment or by his failure to enforce an enactment.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 821.2. Issuance, denial, suspension, or revocation of permit or license.

A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of, or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

(Added by Stats.1963, c. 1681, p. 3269, § 1.)

Sec. 821.4. Failure to inspect, or negligent inspection of, property

A public employee is not liable for injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than the property (as defined in subdivision (c) of Section 830) of the public entity employing the public employee, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

(Added by Stats.1963, c. 1681, p. 3270, § 1.)

Sec. 821.5. Failure to restrict or prohibit tunnel traffic of vehicles carrying flammable liquids

A public entity or a public employee acting within the scope of his employment is not liable for failing to prohibit or restrict the time that cargo tank vehicles required to display flammable liquid placards may travel through a tunnel.

(Added by Stats.1982, c. 1255, p. 4600, § 1.)

Sec. 821.6. Institution or prosecution of judicial or administrative proceeding

A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

(Added by Stats.1963, c. 1681, p. 3270, § 1.)

Sec. 821.8. Entry upon property

A public employee is not liable for an injury arising out of his entry upon any property where such entry is expressly or impliedly authorized by law. Nothing in this section exonerates a public employee from liability for an injury proximately caused by his own negligent or wrongful act or omission.

(Added by Stats.1963, c. 1681, p. 3270, § 1.)

Sec. 822. Money stolen from custody

A public employee is not liable for money stolen from his official custody. Nothing in this section exonerates a public employee from liability if the loss was sustained as a result of his own negligent or wrongful act or omission.

(Added by Stats.1963, c. 1681, p. 3270, § 1.)

Sec. 822.2. Misrepresentations

A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice.

(Added by Stats.1963, c. 1681, p. 3270, § 1.)

Sec. 823. Liability of widow, widower or heirs for act or omission by peace officer

Neither the widow, widower, nor the heirs of a peace officer, as defined in Sections 830.1, 830.2, and 830.32 of the Penal Code, shall be liable individually for any injury or death that may result from an act or omission of a peace officer that occurs in his or her line of duty, including an act or omission not directly related to the officer's death, if the officer was slain while in the line of duty. Nothing in this section shall preclude any action from being brought against the estate of the peace officer.

(Added by Stats.1998, c. 559 (A.B.1865), § 2.)

Sec. 825. Defense by public entity; payments of judgments, compromises or settlements; punitive damages; memorandum of understanding; elected officials; tortious influencing of judicial actions

(a) Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. However, where the public entity conducted the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

Nothing in this section authorizes a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages.

(b) Notwithstanding subdivision (a) or any other provision of law, a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

(1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.

(2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.

(3) Payment of the claim or judgment would be in the best interests of the public entity.

As used in this subdivision with respect to an entity of state government, "a decision of the governing body" means the approval of the Legislature for payment of that part of a judgment that is for punitive damages or exemplary damages, upon recommendation of the appointing power of the employee or former employee, based upon the finding by the Legislature and the appointing authority of the existence of the three conditions for payment of a punitive or exemplary damages claim. The provisions of subdivision (a) of Section 965.6 shall apply to the payment of any claim pursuant to this subdivision.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

The possibility that a public entity may pay that part of a judgment that is for punitive damages shall not be disclosed in any trial in which it is alleged that a public employee is liable for punitive or exemplary damages, and that disclosure shall be grounds for a mistrial.

(c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) The subject of payment of punitive damages pursuant to this section or any other provision of law shall not be a subject of meet and confer under the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or pursuant to any other law or authority.

(e) Nothing in this section shall affect the provisions of Section 818 prohibiting the award of punitive damages against a public entity. This section shall not be construed as a waiver of a public entity's immunity from liability for punitive damages under Section 1981, 1983, or 1985 of Title 42 of the United States Code.

(f) (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortiously intervening or attempting to intervene in, or by way of tortiously influencing or attempting to influence the outcome of, any judicial action or proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

(2) If an elected official is held liable for monetary damages in the action, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the elected official's assets are insufficient to satisfy the total judgment, as determined by the court, the public entity may pay the deficiency if the public entity is authorized by law to pay that judgment.

(3) To the extent the public entity pays any portion of the judgment or is entitled to reimbursement of defense costs pursuant to paragraph (1), the public entity shall pursue all available creditor's remedies against the elected official, including garnishment, until that party has fully reimbursed the public entity.

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.

(Added by Stats.1963, c. 1681, p. 3270, § 1. Amended by Stats.1972, c. 1352, p. 2685, § 1; Stats.1979, c. 1072, § 47, eff. Sept. 28, 1979; Stats.1985, c. 1373, § 1; Stats.1994, c. 794 (A.B.2467), § 1; Stats.1995, c. 799 (A.B.1361), § 1.)

Sec. 825.2. Recovery of payment from public entity; memorandum of understanding

(a) Subject to subdivision (b), if an employee or former employee of a public entity pays any claim or judgment against him, or any portion thereof, that the public entity is required to pay under Section 825, he is entitled to recover the amount of such payment from the public entity.

(b) If the public entity did not conduct his defense against the action or claim, or if the public entity conducted such defense pursuant to an agreement with him reserving the rights of the public entity against him, an employee or former employee of a public entity may recover from the public entity under subdivision (a) only if he establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his employment as an employee of the public entity and the public entity fails to establish that he acted or failed to act because of actual fraud, corruption or actual malice or that he willfully failed or refused to conduct the defense of the claim or action in good faith or to reasonably cooperate in good faith in the defense conducted by the public entity.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1963, c. 1681, p. 3271, § 1. Amended by Stats.1972, c. 1352, p. 2685, § 2; Stats.1979, c. 1072, § 48, eff. Sept. 28, 1979.)

Sec. 825.4. Indemnification of public entity by employee generally

Except as provided in Section 825.6, if a public entity pays any claim or judgment against itself or against an employee or former employee of the public entity, or any portion thereof, for an injury arising out of an act or omission of the employee or former employee of the public entity, he is not liable to indemnify the public entity.

(Added by Stats.1963, c. 1681, p. 3271, § 1.)

Sec. 825.6. Grounds for indemnification of public entity by employee; memorandum of understanding

(a)(1) Except as provided in subdivision (b), if a public entity pays any claim or judgment, or any portion thereof, either against itself or against an employee or former employee of the public entity, for an injury arising out of an act or omission of the employee or former employee of the public entity, the public entity may recover from the employee or former employee the amount of that payment if he or she acted or failed to act because of actual fraud, corruption, or actual malice, or willfully failed or refused to conduct the defense of the claim or action in good faith. Except as provided in paragraph (2) or (3), a public entity may not recover any payments made upon a judgment or claim against an employee or former employee if the public entity conducted his or her defense against the action or claim.

(2) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted his or her defense against the claim or action pursuant to an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of the payment from him or her unless he or she establishes that the act or omission upon which the claim or judgment is based occurred within the scope of his or her employment as an employee of the public entity and the public entity fails to establish that he or she acted or failed to act because of actual fraud, corruption, or actual malice or that he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.

(3) If a public entity pays any claim or judgment, or any portion thereof, against an employee or former employee of the public entity for an injury arising out of his or her act or omission, and if the public entity conducted the defense against the claim or action in the absence of an agreement with him or her reserving the rights of the public entity against him or her, the public entity may recover the amount of that payment from him or her if he or she willfully failed or refused to reasonably cooperate in good faith in the defense conducted by the public entity.

(b)(1) Upon a felony conviction for a violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, by an elected official or former elected official of a public entity for an act or omission of that person while in office, the elected official or former elected official shall forfeit any rights to defense or indemnification under Section 825 with respect to a claim for damages for an injury arising from that act or omission.

(2) If a public entity pays any claim or judgment, or any portion thereof, either against itself or against an elected official or former elected official of the public entity, for an injury arising out of an act or omission of the elected official or former elected official of the public entity, which act or omission constituted a felony violation of Section 1195 of this code, or of Section 68, 86, 93, 165, 504, or 518 of the Penal Code, the public entity shall recover from the elected official or former elected official the amount of that payment upon the felony conviction of the elected official or former elected official for that act or omission. Upon that conviction, the public entity shall also recover from the elected official the costs of any defense to a civil action filed against the elected official for that act or omission.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Added by Stats.1963, c. 1681, p. 3271, § 1. Amended by Stats.1972, c. 1352, p. 2685, § 3; Stats.1979, c. 1072, § 49, eff. Sept. 28, 1979; Stats.1994, c. 797 (A.B.2522), § 1; Stats.1995, c. 91 (S.B.975), § 43.)

Sec. 827. Health care providers; extent of indemnification

A provider of health care, as defined in Section 56.05 of the Civil Code, its officers, employees, agents, and subcontractors, who are defended by the Attorney General pursuant to Section 12511.5, or other legal counsel provided by the state, shall be indemnified in accordance with Section 825, subject to the same conditions and limitations applicable to state employees, except that no provider of health care shall be indemnified in a civil rights action unless the health care provider maintains insurance for professional negligence. To the extent that negligence constitutes the basis of liability of the health care provider, the provider's private insurance shall be the source of recovery.

(Added by Stats.1995, c. 749 (A.B.1177), § 3, eff. Oct. 10, 1995.)

Sec. 900. Definitions governing construction of part

Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this part.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 900.2. Board

"Board" means:

- (a) In the case of a local public entity, the governing body of the local public entity.
- (b) In the case of the State, the State Board of Control.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 900.4. Local public entity

"Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 900.6. State

"State" means the State and any office, officer, department, division, bureau, board, commission or agency of the State claims against which are paid by warrants drawn by the Controller.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 901. Date of accrual of cause of action

For the purpose of computing the time limits prescribed by Sections 911.2, 911.4, 912, and 945.6, the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon. However, the date upon which a cause of action for equitable indemnity or partial equitable indemnity accrues shall be the date upon which a defendant is served with the complaint giving rise to the defendant's claim for equitable indemnity or partial equitable indemnity against the public entity.

(Added by Stats.1963, c. 1715, p. 3372, § 1. Amended by Stats.1968, c. 134, p. 349, § 1; Stats.1981, c. 856, p. 3286, § 1.)

Sec. 905. Claims for money or damages against local public entities; exceptions

There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 (commencing with Section 3201) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or by a state department or agency or by another local public entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including but not limited to claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960, Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 905.1. Inverse condemnation; claim unnecessary to maintain action; procedure if claim filed

No claim is required to be filed to maintain an action against a public entity for taking of, or damage to, private property pursuant to Section 19 of Article I of the California Constitution.

However, the board shall, in accordance with the provisions of this part, process any claim which is filed against a public entity for the taking of, or damage to, private property pursuant to Section 19 of Article I of the California Constitution.

(Added by Stats.1976, c. 96, p. 155, § 1.)

Sec. 905.2. Claims for money or damages against state

There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the state:

(a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

(b) For which the appropriation made or fund designated is exhausted.

(c) For money or damages (1) on express contract, or (2) for an injury for which the state is liable.

(d) For which settlement is not otherwise provided for by statute or constitutional provision.

(Added by Stats.1963, c. 1715, p. 3372, § 1. Amended by Stats.1976, c. 96, p. 155, § 2.)

Sec. 905.3. Claims against state for additional reimbursement

Notwithstanding any other provision of law to the contrary, no claim shall be submitted by a local agency or school district, nor shall a claim be considered by the State Board of Control pursuant to Section 905.2, if that claim is eligible for consideration by the Commission on State Mandates pursuant to Article 1 (commencing with Section 17550) of Chapter 4 of Part 7 of Division 4 of Title 2.

(Added by Stats.1977, c. 1135, p. 3646, § 3.5. Amended by Stats.1994, c. 726 (A.B.3069), § 2, eff. Sept. 22, 1994.)

Sec. 905.4. Chapters 1 and 2 not exclusive means for presenting claims

Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part shall not be construed to be an exclusive means for presenting claims to the Legislature nor as preventing the Legislature from making such appropriations as it deems proper for the payment of claims against the State which have not been submitted to the board or recommended for payment by it pursuant to Chapters 1 and 2 of this part.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 905.5. School districts' civil liability for asbestos exposures

A school district, its officers, directors, or employees shall have no civil liability in any civil action for injury, disease, death, or economic loss arising out of exposure on or after January 1, 1989, to asbestos contained in buildings owned, leased, or otherwise used by a school district, except upon proof that the injury, disease, death, or economic loss was caused by the negligence of the school district, its officers, directors, or employees. Notwithstanding the provisions of Section 815.6 of the Government Code and Section 669 of the Evidence Code, no presumption of negligence shall apply to any action under this section. This section applies only to actions against school districts, and shall not apply to any other action, including, but not limited to, actions against a manufacturer, contractor, or any person who makes, sells, distributes, furnishes, or installs asbestos-containing materials. This section shall not affect, alter, or otherwise modify the law pertaining to workers' compensation claims. This section shall not affect the right of a school district, its officers, directors, or employees to seek indemnification.

(Added by Stats.1988, c. 1022, § 1.)

Sec. 905.6. Claims against regents of University of California

This part does not apply to claims against the Regents of the University of California.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 905.8. Necessity of existence of liability

Nothing in this part imposes liability upon a public entity unless such liability otherwise exists.

(Added by Stats.1963, c. 1715, p. 3372, § 1.)

Sec. 906. Amount allowed on the claim; interest; agreement to vary terms; settle or compromise claim

(a) As used in this section, "amount allowed on the claim" means the amount allowed by the public entity on a claim allowed in whole or in part or the amount offered by the public entity to settle or compromise a claim.

(b) Except as provided in subdivision (c):

(1) No interest is payable on the amount allowed on the claim if payment of the claim is subject to approval of an appropriation by the Legislature; but, if an appropriation is made for the payment of a claim described in this paragraph, interest on the amount appropriated for the payment of the claim commences to accrue 30 days after the effective date of the law by which the appropriation is enacted.

(2) Interest on the amount allowed on the claim, other than a claim described in paragraph (1), commences to accrue 30 days after the claimant accepts in writing the amount allowed on the claim in settlement of the entire claim.

(3) Interest on the amount allowed on the claim accrues at the rate provided for judgments until paid.

(c) The public entity and the claimant may agree in writing to vary the terms prescribed by subdivision (b), including but not limited to, any one or more of the following:

(1) An agreement that no interest will be payable on the amount allowed on the claim.

(2) An agreement that interest on the amount allowed on the claim will commence to accrue at a time other than the time specified in paragraph (1) or (2) of subdivision (b).

(3) An agreement that interest on the amount allowed on the claim will accrue at a different rate than is specified in paragraph (3) of subdivision (b).

(d) The public entity may allow a claim in whole or in part, or may offer to settle or compromise a claim, upon the condition that the claimant agree in writing to a provision that varies the terms prescribed in subdivision (b). The acceptance by the claimant in writing of the amount allowed on the claim in settlement of the entire claim subject to such condition creates a written agreement that satisfies the requirements of subdivision (c).

(e) Nothing in this section limits the rights of a claimant to interest on a judgment obtained against a public entity.

(Added by Stats.1980, c. 215, § 4.)

Sec. 907. Offset of delinquent amounts due for services rendered to other public entities; notice; disputes

A local public entity, as defined in Section 900.4, may offset any delinquent amount due it for services rendered to any other local public entity. The offset may be charged, against any amount reciprocally owing, upon the giving of 30 days advance written notice, if no written dispute is received from the debtor within the 30-day notice period. Notices from the creditor or the debtor shall be made through certified mail.

If the offset would result in the debtor's inability to meet encumbered bonded indebtedness repayments, the debtor shall so state in a written dispute within the time period stated above.

If a dispute notice is received and the dispute is subsequently resolved in favor of the entity to whom an amount is due, interest on the principal amount from the date that amount was originally owing shall be assessed at the legal rate per annum established pursuant to Section 685.010 of the Code of Civil Procedure.

For purposes of this section, an amount reciprocally owing includes any tax revenue collected by a local public entity for disbursement to another local public entity.

(Added by Stats.1990, c. 697 (A.B.3463), § 1.)

Sec. 990. Authority to insure

Except for a liability which may be insured against pursuant to Division 4 (commencing with Section 3200) of the Labor Code, a local public entity may:

- (a) Insure itself against all or any part of any tort or inverse condemnation liability.
- (b) Insure any employee of the local public entity against all or any part of his liability for injury resulting from an act or omission in the scope of his employment.
- (c) Insure, contract or provide against the expense of defending a claim against the local public entity or its employee, whether or not liability exists on such claim, including a claim for damages under Section 3294 of the Civil Code or otherwise for the sake of example or by way of punishment, where such liability arose from an act or omission in the scope of his employment, and an insurance contract for such purpose is valid and binding notwithstanding Section 1668 of the Civil Code, Section 533 of the Insurance Code, or any other provision of law.
- (d) A hospital district may participate in a reciprocal or interinsurance exchange with the members of its medical staff as provided in Section 1284 of the Insurance Code.

Nothing in this section shall be construed to authorize a local public entity to pay for, or to insure, contract, or provide for payment for, such part of a claim or judgment against an employee of the local entity as is for punitive or exemplary damages.

(Added by Stats.1963, c. 1682, p. 3294, § 12. Amended by Stats.1967, c. 298, p. 1480, § 1; Stats.1971, c. 140, p. 187, § 1; Stats.1976, c. 1465, p. 6575, § 2; Stats.1977, c. 904, p. 2761, § 1.)

Sec. 990.2. Court officers and attachés; authority to insure

A county may insure any officer or attaché of its superior and municipal courts against all or any part of the officer or attaché's liability for injury resulting from any act or omission in the scope of the officer or attaché's employment, and also may insure against the expense of defending any claim against such officer or attaché, whether or not liability exists on such claim.

(Added by Stats.1963, c. 1682, p. 3294, § 12. Amended by Stats.1998, c. 931 (S.B. 2139), § 176, eff. Sept. 28, 1998.)

Sec. 990.4. Manner of providing insurance

The insurance authorized by this part may be provided by:

- (a) Self-insurance, which may be, but is not required to be, funded by appropriations to establish or maintain reserves for self-insurance purposes.
- (b) Insurance in any insurer authorized to transact such insurance in this state.

(c) Insurance secured in accordance with Chapter 6 (commencing with Section 1760) of Part 2 of Division 1 of the Insurance Code.

(d) Participation by a hospital district and its medical staff in a reciprocal or interinsurance exchange as provided in Section 1284 of the Insurance Code.

(e) Any combination of insurance authorized by subdivisions (a), (b), (c), and (d).

(Added by Stats.1963, c. 1682, p. 3294, § 12. Amended by Stats.1976, c. 1465, p. 6576, § 3; Stats.1977, c. 904, p. 2761, § 2.)

Sec. 990.6. Cost of insurance

The cost of the insurance authorized by this part is a proper charge against the local public entity.

(Added by Stats.1963, c. 1682, p. 3294, § 12.)

Sec. 990.8. Insurance by two or more local public entities; pooling

(a) Two or more local public entities, by a joint powers agreement made pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7, may provide insurance authorized by this part or for any other purpose by any one or more of the methods specified in Section 990.4. Where two or more hospital districts have joined together to pool their self-insurance claims or losses, any nonprofit corporation created pursuant to subdivision (p) of Section 32121 of the Health and Safety Code, and affiliated with a hospital district which is a party to the pool may participate in the pool.

(b) Two or more local public entities having the same governing board may be coinsured under a master policy and the total premium may be prorated among those entities.

(c) The pooling of self-insured claims or losses among entities as authorized in subdivision (a) of Section 990.4 shall not be considered insurance nor be subject to regulation under the Insurance Code.

(d) Any liability or loss under a joint powers agreement for the pooling of self-insured claims or losses authorized by this part and provided pursuant to this section may, notwithstanding Section 620 of the Insurance Code or any other provision of law, be reinsured to the same extent and the same manner as insurance provided by an insurer.

(e) Where a joint powers agreement authorized by this part or authorized pursuant to Section 6516 provides for the pooling of self-insured claims or losses among entities, if any peril insured or covered under contract has existed, and the joint powers authority or other parties to the pool have been liable for any period, however short, the agreement may provide that the party insured or covered under contract is not entitled to the return of premiums, contributions, payments, or advances so far as that particular risk is concerned.

(Added by Stats.1963, c. 1682, p. 3294, § 12. Amended by Stats.1976, c. 1459, p. 6536, § 1; Stats.1982, c. 454, p. 1839, § 34; Stats.1986, c. 1355, § 1; Stats.1996, c. 181 (S.B.2047), § 1; Stats.1997, c. 131 (S.B.1153), § 1.)

Sec. 990.9. Health care providers; voluntary care of low-income patients

Any city, county, city and county, or any other local public entity with authority to provide health care services may provide insurance or provide indemnity through self-insurance for medical or other health-care tort claims against any person who, in good faith and without compensation, renders voluntary care to low-income patients within the scope of his or her practice at a community clinic or free clinic, as those terms are defined in subdivision (a) of Section 1204 of the Health and Safety Code, serving residents within the jurisdiction of the local public entity, and who is licensed under Division 2 (commencing with Section

500) of the Business and Professions Code or under an initiative act referred to in those provisions. However, the insurance or indemnity provided pursuant to this section shall not cover liability for which there is other insurance coverage in effect.

(Added by Stats.1993, c. 154 (A.B.2058), § 1.)

Sec. 991. Other enactments requiring local public entity to insure

Where an enactment, other than this part, authorizes or requires a local public entity to insure against its liability or the liability of its employees:

(a) The authority provided by this part to insure does not affect such other enactment.

(b) Such other enactment does not limit or restrict the authority to insure under this part; but, except to the extent authorized by Section 1251 of the Education Code, nothing in this part permits a school district to self-insure in any case where the school district is required to insure.

(Added by Stats.1963, c. 1682, p. 3294, § 12.)

Sec. 991.2. Application of part

Neither the authority provided by this part to insure, nor the exercise of such authority, shall:

(a) Impose any liability upon the local public entity or its employee unless such liability otherwise exists.

(b) Impair any defense the local public entity or its employee otherwise may have.

(Added by Stats.1963, c. 1682, p. 3294, § 12.)

Addition of a § 991.2, by Stats.1963, c. 1682, § 1, relating to insurance for local public entities and their personnel, failed to become operative under the terms of § 13 of that Act.

Sec. 995. Authority to provide for defense of civil action or proceeding

Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.

For the purposes of this part, a cross-action, counterclaim or cross-complaint against an employee or former employee shall be deemed to be a civil action or proceeding brought against him.

(Added by Stats.1963, c. 1683, p. 3302, § 16.)

Sec. 995.2. Grounds for refusal to provide defense; request of defense; refusal because of conflict of interest

(a) A public entity may refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the public entity determines any of the following:

(1) The act or omission was not within the scope of his or her employment.

(2) He or she acted or failed to act because of actual fraud, corruption, or actual malice.

(3) The defense of the action or proceeding by the public entity would create a specific conflict of interest between the public entity and the employee or former employee. For the purposes of this section, "specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, as specified by statute or by a rule or regulation of the public entity.

(b) If an employee or former employee requests in writing that the public entity, through its designated legal counsel, provide for a defense, the public entity shall, within 20 days, inform the employee or former employee whether it will or will not provide a defense, and the reason for the refusal to provide a defense.

(c) If an actual and specific conflict of interest becomes apparent subsequent to the 20-day period following the employee's written request for defense, nothing herein shall prevent the public entity from refusing to provide further defense to the employee. The public entity shall inform the employee of the reason for the refusal to provide further defense.

(Added by Stats.1963, c. 1683, p. 3300, § 16. Amended by Stats.1982, c. 1046, p. 3806, § 1.)

Sec. 995.3. Defense against allegations of use of official authority or influence to interfere with disclosure of information

(a) If a state employee provides his or her own defense against an action brought for an alleged violation of Section 8547.3, and if it is established that no violation of Section 8547.3 occurred, the public entity shall reimburse the employee for any costs incurred in the defense.

(b) A public entity which does provide for the defense of a state employee charged with a violation of Section 8547.3 shall reserve all rights to be reimbursed for any costs incurred in that defense. If a state employee is found to have violated Section 8547.3, he or she is liable for all defense costs and shall reimburse the public entity for those costs.

(Added by Stats.1984, c. 1212, § 1. Amended by Stats.1986, c. 353, § 2; Stats.1995, c. 277 (A.B.1097), § 1.)

Sec. 995.4. Actions or proceedings brought by public entity

A public entity may, but is not required to, provide for the defense of:

(a) An action or proceeding brought by the public entity to remove, suspend or otherwise penalize its own employee or former employee, or an appeal to a court from an administrative proceeding by the public entity to remove, suspend or otherwise penalize its own employee or former employee.

(b) An action or proceeding brought by the public entity against its own employee or former employee as an individual and not in his official capacity, or an appeal therefrom.

(Added by Stats.1963, c. 1683, p. 3300, § 16.)

Sec. 995.6. Administrative proceedings

A public entity is not required to provide for the defense of an administrative proceeding brought against an employee or former employee, but a public entity may provide for the defense of an administrative proceeding brought against an employee or former employee if:

(a) The administrative proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and

(b) The public entity determines that such defense would be in the best interests of the public entity and that the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity.

(Added by Stats.1963, c. 1683, p. 3300, § 16.)

Sec. 995.8. Criminal actions and proceedings

A public entity is not required to provide for the defense of a criminal action or proceeding (including a proceeding to remove an officer under Sections 3060 to 3073, inclusive, of the Government Code) brought against an employee or former employee, but a public entity may provide for the defense of a criminal action or proceeding (including a proceeding to remove an officer under Sections 3060 to 3073, inclusive, of the Government Code) brought against an employee or former employee if:

(a) The criminal action or proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and

(b) The public entity determines that such defense would be in the best interests of the public entity and that the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity.

(Added by Stats.1963, c. 1683, p. 3300, § 16.)

Sec. 995.9. Defense or indemnification of witness by public entity

Notwithstanding any other provision of law, upon a request made in writing to a public entity, the public entity may defend or indemnify or defend and indemnify any witness who has testified on behalf of the public entity in any criminal, civil, or administrative action. The decision of the public entity to defend or indemnify or defend and indemnify such a witness shall rest within the sound discretion of the public entity and may be based on any relevant factors, including, but not limited to, whether the provision of defense or indemnity would serve the public interest. The public entity may defend or indemnify or defend and indemnify the witness only if it is determined by the public entity that the action being brought against the witness is based directly upon the conduct which the public entity requested of the witness related to the witness' testimony or provision of evidence. The public entity has the discretion to provide a defense alone apart from indemnity, and the public entity may offer to defend or indemnify or defend and indemnify while reserving all rights to subsequently withdraw these offers upon reasonable notice.

Neither defense nor indemnification shall be provided if the testimony giving rise to the action against the witness was false in any material respect, or was otherwise not given by the witness with a good faith belief in its truth; nor shall representation or indemnification under this section be offered or promised unless the action has been commenced and the witness has requested the public entity to act for the witness' benefit under this section. The public entity shall not be liable for indemnification of a defendant witness for punitive damages awarded to the plaintiff in such an action. If the plaintiff prevails in a claim for punitive damages in an action defended at the expense of the public entity, the defendant shall be liable to the public entity for the full costs incurred by the public entity in providing representation to the defendant witness.

(Added by Stats.1995, c. 799 (A.B.1361), § 2.)

Sec. 996. Counsel; insurance; expenses

A public entity may provide for a defense pursuant to this part by its own attorney or by employing other counsel for this purpose or by purchasing insurance which requires that the insurer provide the defense. All of the expenses of providing a defense pursuant to this part are proper charges against a public entity. A public entity has no right to recover such expenses from the employee or former employee defended.

(Added by Stats.1963, c. 1683, p. 3300, § 16.)

Sec. 996.4. Failure or refusal to provide defense

If after request a public entity fails or refuses to provide an employee or former employee with a defense against a civil action or proceeding brought against him and the employee retains his own counsel to defend the action or proceeding, he is entitled to recover from the public entity such reasonable attorney's fees, costs and expenses as are necessarily incurred by him in defending the action or proceeding if the action or proceeding arose out of an act or omission in the scope of his employment as an employee of the public entity, but he is not entitled to such reimbursement if the public entity establishes (a) that he acted or failed to act because of actual fraud, corruption or actual malice, or (b) that the action or proceeding is one described in Section 995.4.

Nothing in this section shall be construed to deprive an employee or former employee of the right to petition for a writ of mandate to compel the public entity or the governing body or an employee thereof to perform the duties imposed by this part.

(Added by Stats.1963, c. 1683, p. 3300, § 16.)

Sec. 996.6. Rights of employee under contract or other enactments

The rights of an employee or former employee under this part are in addition to and not in lieu of any rights he may have under any contract or under any other enactment providing for his defense.

(Added by Stats.1963, c. 1683, p. 3300, § 16.)

Residence Restrictions And Absence From State

Sec. 1062. Absence from state, state or municipal officer; time limitations; conditions; extension of time

No state or municipal officer shall absent himself from the state for more than 60 days, unless either:

- (a) Upon business of the state, or the municipality,
- (b) With the consent of the Legislature, or the governing body of the municipality.

The prohibition of this section shall not apply to the Governor, Lieutenant Governor, Secretary of State, Attorney General, Controller, Treasurer, Superintendent of Public Instruction, a Member of the State Board of Equalization, a Member of the State Personnel Board, or a Member of the Legislature; provided, no such person shall reside outside the state.

In the case of illness or other urgent necessity, and upon a proper showing thereof the time limited for absence from the state shall be extended by:

- (a) The Governor in the case of state officers.
- (b) The city council or other governing body of the municipality in the case of municipal officers.

(Stats.1943, c. 134, p. 956, § 1062. Amended by Stats.1955, c. 1034, p. 1949, § 1; Stats.1979, c. 485, § 1.)

Prohibitions Applicable To Specified Officers (or Conflicts of Interest)

Sec. 1090. Conflicts of interest contracts, sales and purchases

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(Stats.1943, c. 134, p. 956, § 1090. Amended by Stats.1951, c. 1553, p. 3535, § 2; Stats.1953, c. 1081, p. 2572, § 1; Stats.1961, c. 381, p. 1435, § 1; Stats.1963, c. 2172, p. 4559, § 1; Stats.1970, c. 447, p. 895, § 1.)

Sec. 1090.1. Acceptance of commissions for placement of insurance

No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

(Added by Stats.1957, c. 812, p. 2027, § 1.)

Sec. 1091. Remote interest of officer or member

(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965¹.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

(Stats.1943, c. 134, p. 956, § 1091. Amended by Stats.1951, c. 1553, p. 3535, § 3; Stats.1953, c. 1081, p. 2572, § 2; Stats.1955, c. 1325, p. 2406, § 1; Stats.1957, c. 1499, p. 2825, § 1; Stats.1959, c. 427, p. 2366, § 1; Stats.1963, c. 906, p. 2151, § 1; Stats.1963, c. 1950, p. 4015, § 1; Stats.1968, c. 525, p. 1171, § 1; Stats.1969, c. 825, p. 1653, § 1; Stats.1970, c. 226, p. 476, § 2, eff. June 22, 1970; Stats.1973, c. 459, p. 928, § 1; Stats.1977, c. 706, p. 2264, § 1; Stats.1980, c. 110, § 1, eff. May 20, 1980; Stats.1982, c. 451, p. 1821, § 1; Stats.1984, c. 113, § 1, eff. May 10, 1984; Stats.1987, c. 847, § 1; Stats.1990, c. 565 (A.B.66), § 1; Stats.1990, c. 1593 (S.B.1963), § 1, eff. Sept. 30, 1990; Stats.1991, c. 341 (S.B.1110), § 1, eff. Aug. 5, 1991; Stats.1991, c. 1176 (A.B.2231), § 1. Amended by Stats.1996, c. 1133 (S.B.1412), § 1; Stats.1998, c. 687 (S.B.281), § 1, eff. Sept. 22, 1998; Stats.1999, c. 349 (S.B.689), § 1.)

Sec. 1091.1. Interest in contracts; subdivided lands

The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

(Added by Stats.1959, c. 628, p.2608, § 1. Amended by Stats.1975, c. 24, p. 30, § 6, eff. April 4, 1975.)

Sec. 1091.2. Local workforce investment boards; contracts or grants; application of § 1090

Section 1090 shall not apply to any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

(Formerly § 1091.1, added by Stats.1985, c. 910, § 1. Renumbered § 1091.2 and amended by Stats.1987, c. 56, § 57. Amended by Stats.2000, c. 108 (A.B.2876), § 3, eff. July 10, 2000.)

Sec. 1091.5. Interests not constituting an interest in a contract

(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these

individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of or a person having less than a 10-percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.

(12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, "agreement" includes contracts and grants, and "park," "natural lands," and "historical resources" shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

(Added by Stats.1959, c. 427, p. 2367, § 2. Amended by Stats.1961, c. 381, p. 1435, § 2; Stats.1963, c. 1950, p. 4016, § 2; Stats.1968, c. 1276, p. 2401, § 1; Stats.1971, c. 1054, p. 2009, § 1; Stats.1973, c. 414, p. 879, § 1; Stats.1975, c. 611, p. 1334, § 1; Stats.1977, c. 706, p. 2266, § 2; Stats.1980, c. 110, § 2, eff. May 20, 1980; Stats.1991, c. 382 (A.B.1402), § 1; Stats.1996, c. 1133 (S.B.1412), § 2; Stats.1999, c. 349 (S.B.689), § 2; Stats.2000, c. 87 (S.B.1679), § 4, eff. July 5, 2000.)

Sec. 1092. Avoidance of contracts

Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he is a member.

(Stats.1943, c. 134, p. 956, § 1092. Amended by Stats.1953, c. 1081, p. 2572, § 3.)

Sec. 1092.5. Lease, purchase or encumbrance of real property; avoidance

Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

(Added by Stats.1981, c. 66, p. 122, § 1.)

Sec. 1093. Warrants and other evidences of indebtedness, private use or benefit

The State Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any State, county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof. This section does not apply to evidences of indebtedness issued to or held by such an officer, deputy or clerk for services rendered by them, nor to evidences of the funded indebtedness of the State, county, or city.

(Stats.1943, c. 134, p. 956, § 1093.)

Sec. 1094. Accounts; certificate as prerequisite to allowance

Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who wilfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

(Stats.1943, c. 134, p. 956, § 1094. Amended by Stats.1951, c. 385, p. 1185, § 2.)

Sec. 1095. Warrants and other evidences of indebtedness; restrictions on payment

Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

(Stats.1943, c. 134, p. 956, § 1095.)

Sec. 1096. Accounts; suspension of settlement or payment; prosecutions

Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed.

(Stats.1943, c. 134, p. 957, § 1096.)

Sec. 1097. Penalty for violations

Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

(Stats.1943, c. 134, p. 957, § 1097. Amended by Stats.1955, c. 1125, p. 2119, § 4; Stats.1976, c. 1139, p. 5076, § 54.5, operative July 1, 1977.)

Sec. 1098. Confidential information; use or disclosure for pecuniary gain; misdemeanor; application

(a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.

(b) As used in this section:

(1) "Confidential information" means information to which all of the following apply:

(A) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the Public Records Act.

(B) At the time of the use or disclosure of the information, the disclosure is prohibited by (i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; (ii) the statement of incompatible activities adopted pursuant to Section 19990 by the agency in which the officer or employee serves; or (iii) a provision in a document similar to a statement of incompatible activities if the agency in which the officer or employee serves is a local agency.

(C) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information or acquires within 90 days following the use or disclosure of the information.

(2) For purposes of paragraph (1):

(A) "Interest in real property" has the definition prescribed by Section 82033.

(B) "Investment" has the definition prescribed by Section 82034.

(C) "Material financial effect" has the definition prescribed by Sections 18702 and 18702.2 of Title 2 of the California Administrative Code, as those sections read on September 1, 1987.

(3) "Pecuniary gain" does not include salary or other similar compensation from the officer's or the employee's agency.

(c) This section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to Sections 10542 and 10543.

(d) This section is not intended to supersede, amend, or add to subdivision (b) of Section 8920 regarding prohibited conduct of Members of the Legislature.

(Added by Stats.1987, c. 962, § 1.)

Sec. 1100. Public securities

As used in this article, "public securities" means any issue of bonds, notes, warrants, or other evidences of indebtedness and the interest coupons, if any, attached thereto, issued by any public body.

(Added by Stats.1958, 1st Ex.Sess., c. 53, p. 257, § 1.)

Sec. 1101. Public body

As used in this article, "public body" means any county, city and county, city, municipal corporation, political subdivision, school district, or any other public district or public corporation, any public authority, or any agency of any thereof.

Sec. 1102. Interest of public officer or employee in contract for sale of public securities

Notwithstanding any provision of law to the contrary, a member of the legislative body of any public body or any officer or employee thereof shall not be deemed interested in a contract for the sale of any public securities issued by such public body; provided, that such public securities are sold at public sale to the highest bidder after notice inviting bids has been published as required by the law under which said bonds are issued, or for one time in a newspaper of general circulation not less than five (5) days prior to the date of such sale.

(Added by Stats.1958, 1st Ex.Sess., c. 53, p. 257, § 1.)

Incompatible Activities

§ 1125. Local agency

“Local agency,” as used in this article, means a county, city, city and county, political subdivision, district, or municipal corporation.

(Added by Stats.1971, c. 633, p. 1249, § 1.)

§ 1126. Inconsistent, incompatible, or conflicting employment, activity, or enterprise by local agency officer or employee; rules; rights; collective bargaining

(a) Except as provided in Sections 1128 and 1129, a local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. The officer or employee shall not perform any work, service, or counsel for compensation outside of his or her local agency employment where any part of his or her efforts will be subject to approval by any other officer, employee, board, or commission of his or her employing body, unless otherwise approved in the manner prescribed by subdivision (b).

(b) Each appointing power may determine, subject to approval of the local agency, and consistent with the provisions of Section 1128 where applicable, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their duties as local agency officers or employees. An employee’s outside employment, activity, or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient.

(c) The local agency shall adopt rules governing the application of this section. The rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee. Nothing in this section is intended to abridge or otherwise restrict the rights of public employees under Chapter 9.5 (commencing with Section 3201) of Title 1.

(d) The application of this section to determine what outside activities of employees are inconsistent with, incompatible with, or in conflict with their duties as local agency officers or employees may not be used as part of the determination of compensation in a collective bargaining agreement with public employees.

(Added by Stats.1971, c. 633, p. 1249, § 1. Amended by Stats.1974, c. 544, p. 1248, § 5; Stats.1981, c. 391, p. 1579, § 1; Stats.1987, c. 32, § 1, eff. May 29, 1987; Stats.1989, c. 495, § 1; Stats.1990, c. 1593 (S.B.1963), § 1.2, eff. Sept. 30, 1990; Stats.1991, c. 1176 (A.B.2231), § 2; Stats.1996, c. 710 (S.B.1375), § 8.)

§ 1127. Intent

It is not the intent of this article to prevent the employment by private business of a public employee, such as a peace officer, fireman, forestry service employee, among other public employees, who is off duty to do work related to and compatible with his regular employment, or past employment, provided the person or persons to be employed have the approval of their agency supervisor and are certified as qualified by the appropriate agency.

(Added by Stats.1971, c. 633, p. 1250, § 1.)

§ 1128. Agency employed attorneys; service on government boards.

Service on an appointed or elected governmental board, commission, committee, or other body by an attorney employed by a local agency in a nonelective position shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the attorney as an officer or employee of the local agency and shall not result in the automatic vacation of either such office.

(Added by Stats.1981, c. 391, p. 1580, § 2.)

§ 1129. Service on board of Local Agency Self-Insurance Authority; relationship to other duties

Service on the Board of Directors of the Local Agency Self-Insurance Authority by an officer or employee of a local agency, as defined by subdivision (a) of Section 6599.02, or by a person who serves in an appointed or employed position with an agency or entity created by a joint powers agreement pursuant to Section 6503.5 to provide insurance pooling, shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to, duties of the officer or employee in either capacity.

(Added by Stats.1987, c. 32, § 2, eff. May 29, 1987.)

Salary And Wage Deductions

Sec. 1130. Contest of title, withholding of salary until final determination

When the title of the incumbent of any office in this State is contested by proceedings instituted in any court for that purpose, no warrant shall thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

(Stats.1943, c. 134, p. 957, § 1130.)

Sec. 1131. Certification of facts upon institution of proceedings

As soon as the proceedings are instituted, the clerk of the court in which they are pending shall certify the facts to the officers whose duty it would otherwise be to draw the warrant or pay the salary.

(Stats.1943, c. 134, p. 957, § 1131.)

Sec. 1132. Inapplicability of article

This article does not apply to any party to a contest or proceeding who holds the certificate of election or commission of office and discharges the duties of the office. No certification by the clerk need be made. Such party shall receive the salary of the office the same as if no contest or proceeding was pending.

(Stats.1943, c. 134, p. 957, § 1132.)

Sec. 1150. Definitions

As used in this article:

(a) "State employee" means all persons who receive wages for services through the uniform payroll system established and administered by the Controller under Section 12470.

(b) "Public agency" includes counties, cities, municipal corporations, political subdivisions, public districts, and other public agencies of the state.

(c) "Employee organization" means an organization which represents employees of the state or the California State University in their employer-employee relations, and which is registered with the Department of Personnel Administration or the Trustees of the California State University, or which has been recognized or certified by the Public Employment Relations Board.

(d) "Bona fide association" means an organization of employees and former employees of an agency of the state and the California State University, and which does not have as one of its purposes representing these employees in their employer-employee relations.

(e) "Deduction" does not include direct deposit by electronic fund transfer, as authorized by Sections 7506 and 12480.

(Added by Stats.1982, c. 1270, p. 4686, § 2. Amended by Stats.1985, c. 600, § 1, operative Jan. 1, 1987.)

Sec. 1151. Insurance premiums; credit union shares; recurrent fees and charges of state agencies; United States savings bond purchases; charitable contributions; transportation passes; bank or savings and loan deposits; industrial loan company investment or thrift certificate purchases; authorization by state employees

State employees may authorize deductions to be made from their salaries or wages for payment of one or more of the following:

- (a) Insurance premiums or other employee benefit programs sponsored by a state agency under appropriate statutory authority.
- (b) Premiums on National Service Life Insurance or United States Government Converted Insurance.
- (c) Shares or obligations to any regularly chartered credit union.
- (d) Recurrent fees or charges payable to a state agency for a program which has a purpose related to government, as determined by the Controller.
- (e) The purchase of United States savings bonds in accordance with procedures established by the Controller.
- (f) Payment of charitable contributions under any plan approved by the Board of Control in accordance with procedures established by the Controller.
- (g) Passes, tickets, or tokens issued for a period of one month, or more, by a public transportation system.
- (h) Deposit into an employee's account with a state or federal bank or savings and loan association located in this state, for services offered by that bank or savings and loan association.
- (i) The purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state.

(Added by Stats.1982, c. 1270, p. 4687, § 4. Amended by Stats.1985, c. 363, § 1.)

Sec. 1151.5. Support payments

In addition to deductions authorized pursuant to Section 1151, a state employee may authorize deductions to be made from salaries or wages for payment for the support, maintenance, or care of the employee's child, children, family, or former spouse for whom the employee has a duty of support. A service charge may be assessed for this deduction.

(Added by Stats.1988, c. 231, § 2, operative July 1, 1989. Amended by Stats.1989, c. 1359, § 10; Stats.1993, c. 176 (A.B.877), § 2.)

Sec. 1152. Employee organizations and associations; membership dues, initiation fees, assessments and benefit deductions

Deductions may be requested by employee organizations and bona fide associations from the salaries and wages of their members, as follows:

- (a) Employee organizations may request membership dues, initiation fees, and general assessments, as well as payment of any other membership benefit program sponsored by the organization.
- (b) Bona fide associations may request membership dues and initiation fees.

The Controller shall not be required to make any benefit deductions for an employee member whose membership dues are not deducted.

(Added by Stats.1982, c. 1270, p. 4687, § 6.)

Sec. 1153. Administration procedures; deductions, reductions, cancellations or changes

The Controller shall provide for the administration of payroll deductions as set forth in Sections 1151, 1151.5, and 1152, salary reductions pursuant to Section 12420.2, and may establish, by rule or regulation, procedures for that purpose.

In administering these programs the Controller shall:

(a) Make, cancel, or change a deduction or reduction at the request of the person or organization authorized to have the deduction or reduction. All requests shall be made on forms approved by the Controller.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made.

(c) Provide for an agreement from individuals, organizations, and business entities receiving services to relieve the state, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions or reductions. However, no financial institution receiving a payroll service pursuant to this section shall be required to reimburse the state for any error in the payroll service received by that financial institution after 90 days from the month in which the payroll service was deducted from an individual's paycheck.

(d) Determine the cost of performing the requested service and collect that cost from the organization, entity, or individual requesting or authorizing the service. Services requested which are incidental, but not necessary, to making the deduction may be performed at the Controller's discretion with any additional cost to be paid by the requester. At least 30 days prior to implementation of any adjustment of employee costs pursuant to Section 12420.2, the Controller shall notify in writing any affected employee organization.

(e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized, certified, or registered by the appropriate authority.

(f) Decline to make salary services for any individual, organization, or entity if the Controller determines that it is not administratively feasible or practical, or if the Controller determines that the individual, organization, or entity requesting or receiving the salary service has failed to comply with any statute, rule, regulation, or procedure for the administration of salary services.

(g) Make, cancel, or change a deduction or reduction not later than the month subsequent to the month in which the request is received. Except as provided in subdivision (c), all cancellations or changes shall be effective when made by the Controller.

(h) At the request of a state agency, transfer employee deduction authorization for a state-sponsored benefit program from one provider to another if the benefit and the employee contribution remain substantially the same. Notice of the transfer shall be given by the Controller to all affected employees.

(Added by Stats.1982, c. 1270, p. 4687, § 8. Amended by Stats.1985, c. 363, § 2; Stats.1986, c. 746, § 1; Stats.1988, c. 231, § 3; Stats.1993, c. 1300 (S.B.408), § 4.)

Sec. 1156. Eligible employees; flexible benefits program; flexelect benefit fund

(a) Any eligible employee who is participating in a flexible benefits program may elect to receive one or more benefits that qualify to be excluded from gross income in lieu of a portion of his or her salary.

(b) For purposes of this section, an "eligible employee" means any of the following:

(1) An employee excluded from the definition of "state employee" in Section 3513.

(2) A "managerial employee" as defined in Section 3513.

(3) A "confidential employee" as defined in Section 3513 and Section 3562.

(4) A "supervisory employee" as defined in Section 3580.3.

(5) An officer or employee of the State of California in the executive or judicial branch of government who is not a state civil service employee pursuant to Part 2 (commencing with Section 18500) of Division 5 of Title 2.

(6) A "state employee," as defined by Section 3513 or employed by the state as provided for in Article VI of the Constitution.

(c) Any eligible employee participating in the flexible benefits program shall be subject to federal laws and implementing regulations of the Department of Personnel Administration which affects the flexible benefit program throughout the period of the employee's enrollment.

(d) Unless the trustee or the administrator of the state's flexible benefit program is the Controller or another state officer, that program shall be administered in compliance with the federal Employee Retirement Income Security Act of 1974 (ERISA: 29 U.S.C. Sec. 1001 et seq.).

(e) As a condition of participating in a flexible benefits program, each eligible employee shall provide evidence, in a manner satisfactory to the Department of Personnel Administration, that the employee is covered by a basic health benefits plan, and his or her agreement to remain covered for the period of participation in the flexible benefits plan.

(f) There is in the State Treasury the Flexelect Benefit Fund which, notwithstanding Section 13340, is continuously appropriated without regard to fiscal years to the Department of Personnel Administration for expenditure to implement the flexible benefits program and to pay the related administrative costs. The fund shall consist of the amounts received from state employee compensation excluded from gross income and transmitted to the Flexelect Benefit Fund, income of whatever nature earned on the money in the Flexelect Benefit Fund during any fiscal year and credited to the fund, and amounts appropriated therefor in the annual Budget Act and other statutes.

(g) On or after July 1, 1990, any funds remaining in the State Employees' Dependent Care Assistance and Health Care Assistance Fund shall be transmitted into the account in the Flexelect Benefit Fund for the administrative expenses of the Controller's office to pay the related administrative costs.

(Added by Stats.1987, c. 642, § 1. Amended by Stats.1989, c. 967, § 1; Stats.1999, c. 971 (S.B.1279), § 1.)

Sec. 1157. Insurance and professional services deduction; authorization by officers and employees not under the uniform payroll system

(a) Officers and employees of a public agency, other than those under the uniform payroll system provided for in Article 5 (commencing with Section 12470) of Chapter 5 of Part 2 of Division 3 of Title 2, may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of premiums on life, accident, health, disability, legal expense, or automobile liability insurance, or on any two or more, under a system of insurance approved by or adopted and carried into effect by the governing body, or for the payment of premiums on National Service Life Insurance or United States Government Converted Insurance. Officers and employees of the public agency may authorize the governing body of the public agency to make deductions from their salaries or wages for the payment of dues or subscription charges of nonprofit membership corporations for defraying the cost of medical service (including services rendered by doctors of medicine, doctors of osteopathic medicine, or doctors of chiropractic), or hospital care, or legal services, or, any of them, under system of medical service, or hospital care, or legal services, or, any of them, approved by or adopted and carried into effect by the governing body.

(b) The board of supervisors may, by resolution, permit officers and employees of a county to authorize deductions from their salaries or wages for the premiums on long-term care insurance established pursuant to Article 8.8 (commencing with Section 31696.1) of Chapter 3 of Part 3 of Division 4 of Title 3 or pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 and

approved by, or adopted and carried into effect by, the retirement association. Materials offering that long-term care insurance shall specify that the long-term care insurance is approved by, or adopted and carried into effect by, the retirement association and not by the county.

(Stats.1943, c. 134, p. 958, § 1157. Amended by Stats.1947, c. 276, p. 839, § 1; Stats.1947, c. 701, p. 1758, § 1; Stats.1947, c. 1420, p. 2980, § 1; Stats.1951, c. 1631, p. 3674, § 3; Stats.1961, c. 1938, p. 4089, § 1; Stats.1974, c. 1370, p. 2968, § 2; Stats.1982, c. 1270, p. 4688, § 15; Stats.1993, c. 226 (A.B.1987), § 10; Stats.1997, c. 491 (S.B.1020), § 1.)

Sec. 1157.1. Association dues; authorization by employees of public agencies

Employees of a public agency, on approval of and in accordance with the provisions made by the governing body of the public agency, may authorize deductions to be made from their salaries or wages for the payment of dues in, or for any other services provided by, any bona fide association (a) whose members are comprised exclusively of the employees of such public agency, or (b) whose members are comprised exclusively of the employees of such public agency and one or more other public agencies the payrolls of which are prepared by the same finance officer, or (c) whose members are comprised exclusively of the employees of such public agency or agencies as provided in (a) or (b) above, together with former employees of such public agency or agencies if such former employees (1) were employees of such public agency or agencies at the time of joining such association, and (2) were members of such association at the time of ceasing to be such employees.

(Added by Stats.1951, c. 1468, p. 3447, § 1. Amended by Stats.1955, c. 228, p. 691, § 1; Stats.1955, c. 1957, p. 3586, § 1; Stats.1957, c. 485, p. 1515, § 1; Stats.1967, c. 1624, p. 3889, § 1.)

Sec. 1157.2. Charitable organizations; authorization by employees of public agencies

With the approval of the governing body of a public agency and under such regulations as it may prescribe, employees of the public agency may authorize deductions to be made from their salaries or wages either for the payment of contributions to bona fide charitable organizations or for the payment of designated sums to a nonprofit California corporation which is compelled by its by-laws to make, and which does expend such sums solely by the making of, contributions to bona fide charitable organizations.

(Added by Stats.1955, c. 1215, p. 2229, § 1.)

Sec. 1157.3. Dues of public employees' organization

Employees, including retired employees, of a public agency in addition to any other purposes authorized in this article, on approval of the governing body of such public agency, may also authorize deductions to be made from their salaries, wages, or retirement allowances for the payment of dues in, or for any other service provided by, any bona fide organization whose membership is comprised, in whole or in part, of employees of such agency and employees of such organization and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of such employees, such deductions to be made in accordance with the provisions made by the governing body of the public agency.

(Added by Stats.1957, c. 2396, p. 4139, § 1. Amended by Stats.1961, c. 1113, p. 2840, § 1; Stats.1961, c. 2178, p. 4515, § 1; Stats.1967, c. 1624, p. 3890, § 2.)

Sec. 1157.4. Employees of counties; deductions from salaries or wages for payment of dues

(a) Employees of a county employing more than 20,000 persons, other than a city and county, may authorize deductions to be made from their salaries or wages for the payment of dues in, or for any other services provided by, any bona fide association (a) whose members are comprised exclusively of the employees of such county, other than a city and county, or (b) whose members are comprised exclusively of the employees of such county, other than a city and county, and one or more other public agencies the payrolls of which are prepared by the same finance officer, or (c) whose members are comprised exclusively of the employees of such county, other than a city and county, or agencies as provided in (a) or (b) above, together with former employees of such county, other than a city and county, or agencies if such former employees (1) were employees of such county, other than a city and county, or other agencies at the time of joining such association, and (2) were members of such association at the time of ceasing to be such employees.

In addition to the other requirements of this section, any employee organization for which dues are to be deducted from pay warrants shall have in membership at least 1 percent of the employees of such county, other than a city and county, provided that an employee organization which is formally recognized as the majority representative of employees of such county, other than a city and county, in an established employee representational unit shall qualify as an employee organization for which dues are to be deducted from pay warrants.

(b) Notwithstanding subdivision (a), an employee organization which has in membership at least 1 percent of the total number of employees of such county, other than a city and county, on April 30, 1973, and which, on April 30, 1973, was an employee organization for which dues could be deducted from pay warrants, shall not lose such qualification for the reason that such employee organization does not have after April 30, 1973, a membership of at least 1 percent of the total number of employees of such county, other than a city and county.

(c) No employee may have deductions for more than a total of two organizations under this section and under Section 1157.5.

(Added by Stats.1967, c. 1624, p. 3890, § 3. Amended by Stats.1973, c. 681, p. 1237, § 1.)

Sec. 1157.5. Employees of county; deductions from salaries, wages or retirement allowance

Employees, including retired employees, of a county, other than a city and county, employing more than 20,000 persons in addition to any other purposes authorized in this article may also authorize deductions to be made from their salaries, wages, or retirement allowances for the payment of dues in, or for any other service provided by, any bona fide organization whose membership is comprised, in whole or in part, of employees of such county, other than a city and county, and employees of such organization and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of such employees.

(Added by Stats.1967, c. 1624, p. 3890, § 4.)

Sec. 1157.6. Employees of public agencies; deductions for dues in association of retired employees

Retired employees of a public agency, other than a school district, or eligible surviving spouses of such retired employees, on approval of the governing body of such public agency, in addition to any other purposes authorized in this article, may authorize deductions to be made from their retirement or survivors'

allowances for the payment of dues in any bona fide association whose membership is comprised in whole or in part of retired employees of such public agency in accordance with provisions made by the governing body of the public agency.

(Added by Stats.1974, c. 198, p. 392, § 1.)

Sec. 1157.7. Employees of public agencies; ethnic employee organization membership; authorization for dues deduction

Employees of a public agency employing more than 20,000 persons, other than a city and county, may authorize dues deductions for membership in an ethnic employee organization operating within the public agency prior to January 1, 1981, which includes ethnic minority employees and which has as its primary purpose representing those employees in their employment civil rights with the employer. This purpose shall not include meeting and conferring with the public agency concerning matters within the scope of representation pursuant to Chapter 10 (commencing with Section 3500).

(Added by Stats.1981, c. 612, p. 2351, § 1.)

Sec. 1157.8. United States savings bonds; purchase by officers and employees of public agencies; special accounts; trust funds

Officers and employees of public agencies may authorize deductions to be made from their salaries or wages for the purchase of United States savings bonds in accordance with provision made by the governing body of the public agency.

All auditors, treasurers, and other disbursing officers of public agencies are authorized to recognize and act upon these requests for salary or wage deductions and to establish special accounts for each officer or employee so that sufficient funds may be accumulated to the credit of the officer or employee for the purchase of United States savings bonds. All funds so accumulated are trust funds.

(Added by Stats.1982, c. 1270, p. 4689, § 16.)

Sec. 1157.9. Officers and employees of public agencies; bank or savings and loan association deposits; credit union share purchases or payments; industrial loan company investment or thrift certificates; authorization to disbursing officers of agencies

Officers and employees of public agencies may authorize wage and salary deductions for deposit into an account with a state or federal bank or savings and loan association located in this state, or for the purchase of shares in, or the payment of money to, any regularly chartered credit union, or for the purchase of any investment or thrift certificate issued by an industrial loan company licensed by this state. Auditors, treasurers, and other disbursing officers of any public agency other than a state agency are authorized to recognize and act upon these wage or salary assignments.

(Added by Stats.1982, c. 1270, p. 4689, § 17.)

Sec. 1157.10. Administration procedures; deductions, cancellations or changes; state employees of public agencies not under uniform payroll system

Payroll deductions for state employees of public agencies, other than those under the uniform payroll system, shall be administered by the appropriate officer of the public agency. In administering payroll deductions the officer shall do all of the following:

(a) Make, cancel, or change a deduction at the request of the person or organization authorized to have the deduction. All requests shall be on forms approved by the public agency.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction that they have, and will maintain, an authorization to make the deduction, signed by the individual from whose salary or wages the deduction is to be made.

(c) Provide for an agreement from organizations and business entities receiving deductions to relieve the public agency, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions.

(d) Determine the cost of performing the requested deduction service and collect that cost from the organization, entity, or individual requesting or authorizing the deduction. Services requested which are incidental, but not necessary, to making the deduction may be performed at the public agency's discretion, with any additional cost to be paid by the requester.

(e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized or registered by the appropriate authority.

(f) Decline to make deductions for any individual, organization, or entity if the public agency determines that it is not administratively feasible or practical to make the deduction.

(g) Make, cancel, or change a deduction not later than the month subsequent to the month in which the request is received. All deductions, cancellations, or changes shall be effective when made by the public agency.

(Added by Stats.1982, c. 1270, p. 4689, § 18. Amended by Stats.1983, c. 152, § 1.)

Sec. 1157.11. Securities issued by local governments or public agencies; salary or wage deductions for purchase

(a) Officers and employees of a county with a population of over 8,000,000, may authorize deductions to be made from their salaries or wages for the purchase of securities issued by any of the following:

(1) The county.

(2) Any joint powers authority created pursuant to an agreement to which the county is a party entered into pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7.

(3) Any public district which is governed by the governing body of the county.

(4) Any nonprofit public benefit corporation created by the governing body of the county for the purpose of assisting the county in financing capital projects and equipment purchases, provided the corporation is deemed to be an instrumentality of the county for federal income tax purposes.

(b) In each case, the deductions shall be made in accordance with provisions made by the governing body of the county.

(c) For purposes of this section, "securities" includes bonds, notes, warrants, lease or installment sale obligations represented by certificates of participation, or other evidences of indebtedness.

(d) The auditor, the treasurer, and other disbursing officers of the county are authorized to recognize and act upon the requests for wage or salary deductions and to establish special accounts for each officer or employee so that sufficient funds may be accumulated to the credit of the officer or employee for the purchase of securities as authorized by this section. All funds so accumulated are trust funds.

(Added by Stats.1991, c. 1226 (S.B.767), § 1.)

Sec. 1158. Construction of law

No provision of law prohibiting, restricting or limiting the assignment or order for wages or salaries in any way prohibits, restricts or limits the powers conferred in this article.

(Stats.1943, c. 134, p. 958, § 1158.)

Sec. 1170. Law

As used in this article, "law" means any federal law relating to internal revenue.

(Added by Stats.1949, c. 83, p. 328, § 1.)

Sec. 1170.5. Law; definition in case of the state

In the case of the State, "law" also means the law of any state providing for the withholding of personal income tax from wages or salaries of its residents employed by other states; provided, that the law of that state, in the determination of the State Controller, provides for withholding of personal income taxes from wages or salaries of its employees residing in California.

(Added by Stats.1959, c. 1661, p. 4038, § 1, eff. July 8, 1959.)

Sec. 1171. Authority to withhold portion of wages

The State, its agencies and political subdivisions, cities, and all other public agencies may withhold from any wages or salaries paid by them that portion required to be withheld by any law.

(Added by Stats.1949, c. 83, p. 328, § 1.)

Sec. 1172. Payment of withheld sums; records, reports, returns

They may pay the withheld sums at the times and in the manner provided by the law and make the records, reports, and returns required by the law or the regulations promulgated under it.

(Added by Stats.1949, c. 83, p. 328, § 1.)

Sec. 1173. Records; forms

The Department of Finance shall direct the manner and form in which each state department, board, commission, or other agency maintains the records incidental to withholding funds pursuant to this article. The Department of Finance shall prescribe the forms to be used in making any returns, reports, or payments except where forms are provided by the law or the regulations promulgated under it.

(Added by Stats.1949, c. 83, p. 328, § 1. Amended by Stats.1965, c. 371, p. 1514, § 88; Stats.1974, c. 1221, p. 2643, § 12.)

Sec. 1174. Deposit and withdrawal of funds withheld by state units

All funds withheld pursuant to this article by any state unit whose funds are deposited in the State Treasury shall, immediately upon such withholding, be deposited in such depository or depositories as may be prescribed by the Director of Finance, and shall be withdrawn therefrom in the manner prescribed by him in fulfillment of the purpose for which said funds were deposited.

(Added by Stats.1949, c. 83, p. 329, § 1. Amended by Stats.1949, c. 666, p. 1165, § 1; Stats.1965, c. 371, p. 1515, § 89; Stats.1974, c. 1221, p. 2643, § 13.)

Sec. 1175. Deposit and withdrawal of funds withheld by counties

All funds withheld by any county pursuant to this article shall, immediately upon such withholding, be deposited in such depository or depositories as may be prescribed by the board of supervisors of the county, and shall be withdrawn therefrom in the manner prescribed by such board in fulfillment of the purpose for which said funds were deposited.

(Added by Stats.1949, c. 83, p. 329, § 1. Amended by Stats.1949, c. 666, p. 1165, § 2.)

Sec. 1176. Deposit and withdrawal of funds withheld by public agencies not within Government Code §§ 1174, 1175

All funds withheld pursuant to this article by any public agency not within the provisions of Sections 1174 or 1175 of this code shall, immediately upon such withholding, be deposited in such depository or depositories as may be prescribed by the governing body of such public agency, and shall be withdrawn therefrom in the manner prescribed by such governing body, in fulfillment of the purpose for which said funds were deposited.

(Added by Stats.1949, c. 83, p. 329, § 1. Amended by Stats.1949, c. 666, p. 1165, § 3.)

Deputies and Subordinates

Sec. 1190. Appointments; appointive officer or body

All assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, shall be appointed by the officer or body to whom they are respectively subordinate.

(Stats.1943, c. 134, p. 959, § 1190.)

Sec. 1191. Appointments; writing, filing

When not otherwise provided for, the appointment of deputies and other subordinate officers shall be made in writing and filed in the office of the appointing power or the office of its clerk.

(Stats.1943, c. 134, p. 959, § 1191.)

Sec. 1192. Oath

When not otherwise provided for, within 10 days after receiving notice of their appointment, deputies and other subordinate officers shall take and file an oath in the manner required of their principals.

(Stats.1943, c. 134, p. 959, § 1192.)

Sec. 1193. Number

When the number of deputies or other subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(Stats.1943, c. 134, p. 959, § 1193.)

Sec. 1194. Powers and duties

When not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

(Stats.1943, c. 134, p. 959, § 1194.)

Sec. 1195. Diversion of salary or fees by superior

Every officer of the State, or of any county, city, or judicial district who accepts, keeps, retains or diverts for his own use or the use of any other person any part of the salary or fees allowed by law to his deputy, or other subordinate officer, is guilty of a felony.

(Stats.1943, c. 134, p. 959, § 1195. Amended by Stats.1951, c. 1553, p. 3535, § 4.)

Miscellaneous

Sec. 1220. Discharge of duties ex officio

When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation shall be in the name of the office the duties of which he discharges.

(Stats.1943, c. 134, p. 959, § 1220.)

Sec. 1221. Seals of office

Where not otherwise provided, the seals of office of the various executive officers are those in use by such officers on January 1, 1873.

(Stats.1943, c. 134, p. 959, § 1221.)

Sec. 1222. Willful omission to perform duty

Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.

(Stats.1943, c. 134, p. 959, § 1222.)

Sec. 1223. Traveling expenses

When traveling expenses are allowed by law to any state, county, judicial district, or city officer, he may contract with the appropriate authorities for an allowance or mileage rate for the use of vehicles owned or rented and used by him in the performance of duty, in lieu of the usual transportation charges.

(Stats.1943, c. 134, p. 959, § 1223. Amended by Stats.1951, c. 1553, p. 3535, § 5.)

Sec. 1224. Refunds for postage paid by officer

Any money paid by a state, county, judicial district, or city officer for United States postage for use in conducting the official business of his office may be refunded to him by claim allowed in accordance with law.

(Stats.1943, c. 134, p. 959, § 1224. Amended by Stats.1951, c. 1553, p. 3535 § 6.)

Vacancy in Office

Sec. 1770. Events causing vacancy before expiration of term

An office becomes vacant on the happening of any of the following events before the expiration of the term:

- (a) The death of the incumbent.
- (b) An adjudication pursuant to a quo warranto proceeding declaring that the incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his or her office for the remainder of his or her term. This subdivision shall not apply to offices created by the California Constitution nor to federal or state legislators.
- (c) His or her resignation.
- (d) His or her removal from office.
- (e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged. However, the office of judge of a municipal court shall not become vacant when, as a result of a change in the boundaries of a judicial district during an incumbent's term, the incumbent ceases to be an inhabitant of the district for which he or she was elected or appointed to serve.
- (f) His or her absence from the state without the permission required by law beyond the period allowed by law.
- (g) His or her ceasing to discharge the duties of his or her office for the period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.
- (h) His or her conviction of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, "trial court judgment" means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.
- (i) His or her refusal or neglect to file his or her required oath or bond within the time prescribed.
- (j) The decision of a competent tribunal declaring void his or her election or appointment.
- (k) The making of an order vacating his or her office or declaring the office vacant when the officer fails to furnish an additional or supplemental bond.
- (l) His or her commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, dipsomaniac, inebriate, or stimulant addict; but in that event the office shall not be deemed vacant until the order of commitment has become final.

(Stats.1943, c. 134, p. 969, § 1770. Amended by Stats.1943, c. 166, p. 1062; Stats.1949, c. 1512, p. 2695, § 1, operative Jan. 1, 1952; Stats.1970, c. 465, p. 921, § 1; Stats.1971, c. 702, p. 1362, § 1; Stats.1974, c. 1234, p. 2678, § 1; Stats.1988, c. 283, § 1; Stats.1998, c. 931 (S.B.2139), § 177, eff. Sept. 28, 1998.)

Sec. 1770.1. Disqualification from office not stayed by initiation or successful prosecution of appeal

The disqualification from holding office upon conviction, as provided in Section 1021, or the forfeiture of office upon conviction, as provided in subdivision (h) of Section 1770 and Section 3000, is neither stayed by the initiation of an appeal from the conviction, nor set aside by the successful prosecuting of an appeal from the conviction by the person suffering the conviction.

(Added by Stats.1988, c. 283, § 2.)

Sec. 1770.2. No assumption of office, or suspension from holding office upon pleas of guilty or nolo contendere or rendering of verdict; exception

Upon the entry of a plea of guilty, the entry of a plea of nolo contendere, or the rendering of a verdict of a guilty either by a jury or by the court sitting without a jury of a public offense, the conviction of which would invoke the provisions of Section 1021, subdivision (h) of Section 1770, or Section 3000, the person found guilty shall not assume the office for which the person is otherwise qualified or shall be suspended immediately from the office the person then holds. During the time of inability to assume an office or of suspension from office, the person shall not be entitled to receive the emoluments of the office, including, but not limited to, the exercise of the powers of the office, the rights to be seated in the office, and the compensation, including benefits, prescribed for the office.

In the event the trial court sets aside or otherwise nullifies the plea or verdict before the trial court judgment is entered, the inability to assume office or the suspension from holding office shall be lifted, and the person suspended from office shall be restored to office with its emoluments, including those that would have otherwise accrued during the suspension, excluding, however, interest on any monetary payment.

(Added by Stats.1988, c. 283, § 3.)

Sec. 1854. Intrusion into office; exercise of functions after expiration of term

Every person who wilfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive, administrative or ministerial officer, wilfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

(Stats.1943, c. 134, p. 972, § 1854.)

Sec. 1855. Mutilation, destruction, or removal of records; withholding of records, money or property

Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully

(a) Mutilates, destroys, or takes away the records, papers, documents, or other writings appertaining or belonging to his office, or

(b) Withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writings appertaining or belonging to his office, or any money or property in his custody as such officer, is punishable by imprisonment in the state prison.

(Stats.1943, c. 134, p. 972, § 1855. Amended by Stats.1976, c. 1139, p. 5077, § 55.5, operative July 1, 1977.)

Removal From Office

Sec. 3000. Conviction of crime

An officer forfeits his office upon conviction of designated crimes as specified in the Constitution and laws of the State.

(Stats.1943, c. 134, p. 976, § 3000.)

Sec. 3001. Intoxication

Any State, county, or city officer who is intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of, or neglects his duties, is guilty of a misdemeanor. On conviction of such misdemeanor he forfeits his office, and the vacancy occasioned thereby shall be filled in the same manner as if the officer had filed his resignation in the proper office.

(Stats.1943, c. 134, p. 976, § 3001.)

Sec. 3107. Conditioning of compensation on taking of oath; ascertainment and certification as to taking; correction of error or deficiency

No compensation nor reimbursement for expenses incurred shall be paid to any disaster service worker by any public agency unless such disaster service worker has taken and subscribed to the oath or affirmation required by this chapter. It shall be the duty of the person certifying to public payrolls to ascertain and certify that such disaster service worker has taken such oath or affirmation. Whenever there is more than one officer certifying to public payrolls the governing body of a city or county or school district may designate and make it the duty of a certain officer or officers to ascertain and certify that such disaster service worker has taken such oath or affirmation. The governing body of a city or county or school district may designate and make it the duty of a local disaster service officer to ascertain and certify that each volunteer disaster service worker has taken such oath or affirmation.

Nothing in this chapter, however, shall prevent the correction of any technical error or deficiency in an oath taken pursuant to this chapter; provided, such correction is made before the disaster service worker is actually paid or reimbursed.

(Added by Stats.1950, 3rd Ex.Sess., c. 7, p. 16, § 1, eff. Oct. 3, 1950. Amended by Stats.1951, c. 539, p. 1694, § 3, eff. May 17, 1951; Stats.1953, c. 1250, p. 2810, § 4; Stats.1959, c. 1230, p. 3310, § 1; Stats.1971, c. 38, p. 51, § 9.)

Facsimile Signatures

Sec. 5500. Definitions

As used in this chapter:

(a) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by any county, city, or public district.

(b) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) "Authorized officer" means any official of this State or any of its departments, agencies, or other instrumentalities, or any county, city, or public district whose signature to a public security or instrument of payment is required or permitted, or any deputy of such official who has been authorized by such official in writing to affix the official's signature.

(d) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

Sec. 5501. Filing and certification of manual signature; execution of public securities and instruments of payment with facsimile signature

Any authorized officer may, after filing with the Secretary of State his manual signature certified by him under oath, execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed; and

(b) Any instrument of payment.

Upon compliance with this section by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

Sec. 5502. Facsimile of seal of state or public agencies; legal effect

When the seal of this State or any of its departments, agencies, or other instrumentalities, or of any county, city, or public district, is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

Sec. 5503. Unlawful use of facsimile signatures or seals

Any person who with intent to defraud uses on a public security or an instrument of payment;

(a) A facsimile signature, or any reproduction of it, of any authorized officer, or

(b) Any facsimile seal, or any reproduction of it, of this State or any of its departments, agencies, or other instrumentalities, or of any county, city, or public district, is guilty of a felony.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

Sec. 5504. Construction of act; uniformity

This act shall be so construed as to effectuate its general purpose to make uniform the law of states which enact it.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

Sec. 5505. Citation

This chapter may be cited as the Uniform Facsimile Signature of Public Officials Act.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

Sec. 5506. Partial invalidity

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Added by Stats.1959, c. 1061, p. 3107, § 3.)

General Bond Provisions

Sec. 5850. Definitions

As used in this chapter:

(a) "Bonds" means any bonds, notes, certificates of indebtedness or other evidences of indebtedness issued after January 1, 1989, by a public body which is authorized to issue bonds, notes, certificates of indebtedness or other evidence of indebtedness.

(b) "Public body" means the county, city, city and county, public district, public authority, public corporation, nonprofit corporation or other statutorily constituted public entity which is authorized to issue bonds.

(c) "Governing body" means the governing board, commission, city council, board of supervisors, board of directors or similar multimember body which exercises authority over a public body.

(Added by Stats.1988, c. 1055, § 3.)

Sec. 5851. Interest payments

Notwithstanding any other provision of law specifying that interest on bonds is payable semiannually, interest on bonds is payable at the times established in the resolution, indenture, agreement or other instrument providing for the issuance of the bonds.

(Added by Stats.1988, c. 1055, § 3.)

Sec. 5852. Issuance by authority of governing bodies

Notwithstanding any other provision of law specifying that bonds shall be issued pursuant to a resolution of a governing body of a public body, a governing body of a public body may authorize the issuance of bonds pursuant to a resolution, indenture, agreement or other instrument providing for the issuance of bonds.

(Added by Stats.1988, c. 1055, § 3.)

Sec. 5853. Authority for actions in addition to special provisions

The general authority provided in this chapter is intended to be in addition to, and not limited by, specific provisions authorizing the issuance of bonds, notes or other evidences of indebtedness and is separate and complete authority for the actions authorized in this chapter.

(Added by Stats.1988, c. 1055, § 3.)

Sec. 5854. Municipal securities; owners' risks and contractual rights; effect of adoption of Proposition 218

Section 3 of Article XIII C of the California Constitution, as adopted at the November 5, 1996, general election, shall not be construed to mean that any owner or beneficial owner of a municipal security, purchased before or after that date, assumes the risk of, or in any way consents to, any action by initiative measure that constitutes an impairment of contractual rights protected by Section 10 of Article I of the United States Constitution.

(Added by Stats.1997, c. 38 (S.B.919), § 3, eff. July 1, 1997.)

Governmental Investors

Sec. 6930. Definitions

As used in this chapter:

(a) "Governmental investor" means the Treasurer, the Teachers' Retirement Board, and the Board of Administration of the Public Employees' Retirement System. "Governmental investor" also means each county treasurer, each city treasurer, each public governing or investing body or public investing officer, who exercises investment discretion over public funds in excess of ten million dollars (\$10,000,000) or over public pension or retirement funds in excess of ten million dollars (\$10,000,000).

(b) "Soft dollar and directed brokerage arrangements" means the brokerage and research services described by Section 28 (e) of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78bb(e)).

(c) "Transaction cost" means the overall cost of the transaction, including, but not limited to, commissions, services, and the price of the securities.

(d) "Responsible" means with the due diligence required of a fiduciary to examine a presented transaction for: necessity of soft dollar services provided and for commission cost; quality of the trade; quality of the broker-dealer's research; the broker-dealer's execution capabilities; and the broker-dealer's quality of service.

(Added by Stats.1990, c. 709 (S.B.1131), § 1.)

Sec. 6931. Execution of securities transaction or brokerage agreement at lowest responsible transaction cost

Each securities transaction or brokerage agreement carried out for a governmental investor pursuant to a soft dollar and directed brokerage arrangement, as defined in subdivision (b) of Section 6930, shall be executed at the lowest responsible transaction cost available.

(Added by Stats.1990, c. 709 (S.B.1131), § 1.)

Sec. 6932. Soft dollar and directed brokerage arrangement; contract requirements

Any written contract entered into between a governmental investor and an investment manager on or after January 1, 1991, for the management of assets of a public fund or a public pension or retirement fund, which includes a soft dollar and directed brokerage arrangement, shall contain the following requirements:

(a) The investment manager shall maintain complete and detailed records of all billed services provided pursuant to soft dollar and directed brokerage arrangements.

(b) The services which may be provided by a broker-dealer pursuant to soft dollar and directed brokerage arrangements shall be clearly defined.

(c) The investment manager shall, in the customer agreement letters with governmental investors, disclose:

(1) A list of all billed services provided pursuant to soft dollar and directed brokerage arrangements with respect to investment transactions for the governmental investor.

(2) The justification for providing each of those services.

(3) The maximum percentage of the investment transactions of the governmental investor planned for use in soft dollar and directed brokerage arrangements.

(4) An annual statement of all billed services provided during the previous year under soft dollar

and directed brokerage arrangements with respect to investment transactions for the governmental investor.

(5) A determination of whether each service provided under soft dollar and directed brokerage arrangements with respect to investment transactions for the governmental investor is proprietary or is being shared by other clients of the investment manager.

(Added by Stats.1990, c. 709 (S.B.1131), § 1.)

Sec. 6933. Exemption from statutory bidding requirements

Soft dollar and directed brokerage arrangements are not subject to any statutory competitive bidding requirements.

This section does not constitute a change in, but is declaratory of, existing law.

(Added by Stats.1990, c. 709 (S.B.1131), § 1.)

Sec. 6934. Application of chapter

This chapter shall apply to contracts entered into, renewed, or extended on and after January 1, 1991.

(Added by Stats.1990, c. 709 (S.B.1131), § 1.)

Expenditure Limitations

Sec. 7900. Legislative findings, declarations and intent

(a) The Legislature finds and declares that the purpose of this division is to provide for the effective and efficient implementation of Article XIII B of the California Constitution.

(b) It is the intent of the Legislature that citizens be provided with timely information so that effective oversight can be accomplished at the local level.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7901. Definitions

For the purposes of Article XIII B of the California Constitution and this division:

(a) "Change in California per capita personal income" means the number resulting when the quotient of the California personal income, as published by the United States Department of Commerce in the Survey of Current Business for the fourth quarter of a calendar year divided by the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly determined quotient for the next prior year. For example, the change in California per capita personal income for 1979 (to be used for computing the appropriations limit for the 1980-81 fiscal year) would equal the fourth quarter 1979 personal income divided by the January 1, 1980, population, the quotient divided by the fourth quarter 1978 personal income divided by the January 1, 1979, population.

(b) "Change in population" for a local agency for a calendar year means the number resulting when the percentage change in population between January 1 of the next calendar year and January 1 of the calendar year in question, as estimated by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code for each city and county and Section 2228 of the Revenue and Taxation Code for each special district, plus 100, is divided by 100. For example, the change in population for 1979 would equal the percentage change in population between January 1, 1980, and January 1, 1979, plus 100, the sum divided by 100. For purposes of the state's appropriations limit, "change in population" means the number resulting when the civilian population of the state on January 1 of the next calendar

year, as estimated by the Department of Finance, is divided by the similarly estimated population for January 1 of the calendar year in question. For example, the change in population for 1979 (to be used for computing the appropriations limit for the 1980-81 fiscal year) would equal the January 1, 1980, population divided by the January 1, 1979, population.

A city or special district may choose to use the change in population within its jurisdiction or within the county in which it is located. For a special district located in two or more counties, the special district may choose to use the change in population in the county in which the portion of the district is located which has the highest assessed valuation. Each city and special district shall select its change in population pursuant to this paragraph annually by a recorded vote of the governing body of the city or special district. A charter city and county may choose to use the change in population provided in this paragraph or may choose to use the change in population provided in Section 2 of Chapter 1221 of the Statutes of 1980.

A county may choose to use any one of the following:

(1) The change in population within its jurisdiction.

(2) The change in population within its jurisdiction, combined with the change in population within all counties having borders that are contiguous to that county.

(3) The change in population within the incorporated portion of the county.

(c) "Change in population" for a school district means the change in average daily attendance between the year prior to that for which the appropriations limit is being computed and the year for which the appropriations limit is being computed, using the average daily attendance as defined in Section 7906.

(d) "Change in population" for a community college district means the number resulting when the average daily attendance reported by the community college district for state apportionment funding purposes computed pursuant to Article 2 (commencing with Section 84520) of Chapter 4 of Part 50 of the Education Code is divided by the similarly computed average daily attendance for the previous year.

(e) "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12 1/2 cents per \$100 of assessed value for the 1977-78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

If a special district levied, or had levied on its behalf, different property tax rates for the 1977-78 fiscal year depending on which area or zone within the district boundaries property was located, it shall be deemed not to have levied a secured property tax rate in excess of 12 1/2 cents per \$100 of assessed value if the total revenue derived from the ad valorem property tax levied by or for the district for 1977-78, divided by the total amount of taxable assessed valuation within the district's boundaries for 1977-78, does not exceed .00125.

(f) "School district" means an elementary, high school, or unified school district.

(g) "Local jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

(h) As used in Section 2 and subdivision (b) of Section 3 of Article XIII B, "revenues" means all tax revenues and the proceeds to a local jurisdiction or the state received 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 as described in subdivision (i) of Section 8 of Article XIII B. For a local jurisdiction, revenues and appropriations shall also include subventions, as defined in Section 7903, and with respect to the state, revenues and appropriations shall exclude those subventions.

(i) (1) "Proceeds of taxes" shall not include proceeds to a local jurisdiction or the state from regulatory licenses, user charges, or user fees except to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service.

(2) "Proceeds of taxes" also does not include the proceeds received by a local jurisdiction from a license tax imposed pursuant to Section 25149.5 of the Health and Safety Code or a tax or fee imposed pursuant to Section 25173.5 of the Health and Safety Code on the operation of a hazardous waste facility, or the proceeds received by a local jurisdiction from a surcharge which is collected by a regional disposal facility, as authorized pursuant to Section 115255 of the Health and Safety Code to the extent that these proceeds of the license tax, tax, fee, or surcharge are expended for costs or increased burdens on local jurisdictions which are associated with the hazardous waste facility or regional disposal facility. These costs or burdens include, but are not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, emergency medical response, law enforcement, air and groundwater monitoring, epidemiological studies, emergency response training, and equipment related to the hosting of the hazardous waste facility or regional disposal facility.

(Added by Stats.1980, c. 1205, p. 4059, § 2. Amended by Stats.1989, c. 82, § 26, eff. June 30, 1989; Stats.1989, c. 83, § 26, eff. June 30, 1989; Stats.1989, c. 1349, § 1, eff. Oct. 2, 1989; Stats.1990, c. 60 (S.B.88), § 6, operative July 1, 1990; Stats.1996, c. 1023 (S.B.1497), § 83, eff. Sept. 29, 1996.)

Sec. 7902. State and local jurisdictions; appropriations limit

(a) For the 1980-81 fiscal year, the appropriations limit of the state and of each local jurisdiction shall be determined as follows:

(1) Multiply the total amount of appropriations subject to limitation of each such entity for the 1978-79 fiscal year by the lesser of the change in cost of living for the 1979 calendar year or the change in California per capita personal income for the 1978 calendar year, and multiply this product by the change in population of each such entity for the 1978 calendar year.

(2) Multiply the product determined pursuant to paragraph (1) by the lesser of the change in cost of living for the 1980 calendar year or the change in California per capita personal income for the 1979 calendar year, and multiply this product by the change in population of each entity for the 1979 calendar year. The resulting product, as adjusted for other changes required or permitted by Article XIII B of the California Constitution, shall be the appropriations limit of each entity for fiscal year 1980-81.

(b) For the 1981-82 fiscal year and each year thereafter, the appropriations limit of the state and of each local jurisdiction shall equal the appropriations limit for the prior fiscal year multiplied by the lesser of the change in cost of living for the calendar year in which the fiscal year begins or the change in California per capita personal income for the calendar year preceding the beginning of the fiscal year for which the appropriations limit is to be determined, the product multiplied by the change in population of the local jurisdiction for the calendar year preceding the beginning of the fiscal year for which the appropriations limit is to be determined, and adjusted for other changes required or permitted by Article XIII B of the California Constitution.

(c) For the purposes of this division, if a local agency's fiscal year begins on January 1, the agency shall base its appropriations limit on its appropriations subject to limitation for the 1979 calendar year. For such agency, the 1981 calendar year shall be the first year for which the appropriations limit shall apply. For purposes of the computations required by this section, such agency shall use the change in population, cost-of-living, and per capita personal income factors which it would have used had its fiscal year begun on the previous July 1.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7902.1. Proceeds of taxes in excess of appropriations limit; increase in limit; notice; decrease in state aid

(a) If, beginning with the 1980-81 fiscal year or any fiscal year thereafter, the proceeds of taxes of a school district, community college district, or county superintendent of schools, exceed its appropriations limit determined pursuant to Section 7902 for that fiscal year, the governing body of the school district or community college district, or the county superintendent of schools, may increase its appropriations limit to an amount equal to its proceeds of taxes.

(b) In the event that the governing body of a district or the county superintendent of schools increases its appropriations limit pursuant to this section, it shall notify the Director of Finance of the change within 45 days.

(c) Any increase in a local jurisdiction's appropriations limit pursuant to this section shall, in the fiscal year in which the change is made, reduce the appropriations limit of the state by an equal amount.

(Added by Stats.1981, c. 1093, p. 4205, § 18.7.)

Sec. 7902.5. New cities incorporated between July 1, 1978 and January 1, 1980; appropriation limit; determination

The governing body of any city incorporated after July 1, 1978, but prior to January 1, 1980, may, by resolution, adopt an appropriations limit for the purposes of Article XIII B of the California Constitution determined in the following manner:

(a) If the city's first full fiscal year of operation was the 1979-80 fiscal year, the appropriations limit of the city for fiscal year 1980-81 shall be equal to the total amount of proceeds of taxes received for fiscal year 1979-80 adjusted for changes in the cost of living and population and such other changes as may be required or permitted by Article XIII B.

(b) If the city's first full fiscal year of operation is the 1980-81 fiscal year, the governing body of the city shall, prior to July 1, 1980, estimate the amount of revenue anticipated to be received by the city from the proceeds of taxes for the 1980-81 fiscal year. This amount shall be the appropriations limit of the city for the 1980-81 fiscal year. For the 1981-82 fiscal year and each fiscal year thereafter, the appropriations limit of the city shall be equal to the total amount of proceeds of taxes received for fiscal year 1980-81 adjusted for changes in the cost of living and population and such other changes as may be required or permitted by Article XIII B.

(Formerly § 7900, added by Stats.1980, c. 220, p. 461, § 1, eff. June 25, 1980. Renumbered § 7902.5 and amended by Stats.1980, c. 1205, p. 4058, § 1.)

Sec. 7902.6. New cities incorporated at the general election on November 4, 1980; appropriations limit

The governing body of any city incorporated at the General Election held on November 4, 1980, for which no appropriations limit has been established by the electors of that entity, may, by resolution, adopt an appropriations limit for the purposes of Article XIII B of the California Constitution in the following manner:

(a) For the 1980-81 fiscal year, the appropriations limit of the city shall not exceed the amount determined pursuant to subdivision (a) of Section 3 of Article XIII B of the California Constitution as adjusted in any manner which may be required or permitted by Article XIII B.

(b) For the 1981-82 fiscal year, the appropriations limit of the city shall not exceed the total amount of proceeds of taxes received by the city during the 1981-82 fiscal year.

(c) For the 1982-83 fiscal year and each year thereafter, the appropriations limit of the city shall be equal to the total amount of proceeds of taxes received by the city for the 1981-82 fiscal year, adjusted for changes in the cost-of-living and population and such other changes as may be required or permitted by Article XIII B.

(Added by Stats.1981, c. 84, p. 199, § 1, eff. June 21, 1981.)

Sec. 7902.7. Cities incorporated or special districts or counties formed on or after January 1, 1988; cities incorporated on or after January 1, 1990; appropriation limit; determination

(a) The appropriations limit of a city incorporated on or after January 1, 1988, but prior to January 1, 1990, shall be determined pursuant to Sections 56842.6 and 57104 and approved by the voters at the incorporation election.

(b) The appropriations limit of a city incorporated on or after January 1, 1990, shall be determined pursuant to Section 56842.6.

(c) The appropriations limit of a special district formed on or after January 1, 1988, shall be determined pursuant to Sections 56842.5 and 57104 and approved by the voters at the formation election.

(d) The appropriations limit of a county formed on or after January 1, 1988, shall be determined pursuant to Section 23332 and approved by the voters at the formation election.

(Added by Stats.1987, c. 1025, § 3. Amended by Stats.1989, c. 1384, § 1.)

Sec. 7902.8. Special district formed during 1978-79 fiscal year; appropriations limit; determination

Notwithstanding any other provision of law, with respect to any special district formed during the 1978-79 fiscal year which initially was totally funded by other than the proceeds of taxes, and which subsequently, during the 1980-81 fiscal year, imposed a special tax with voter approval, the appropriations limit of such an entity, unless otherwise established pursuant to law, shall be deemed established by the electors at the election approving the special tax as that amount equal to the proceeds of taxes received during the first full fiscal year in which proceeds of taxes were received, and shall thereafter be adjusted in any manner which may be required or permitted by Article XIII B of the California Constitution.

(Added by Stats.1989, c. 211, § 1.)

Sec. 7903. State subventions

“State subventions” shall include only money received by a local agency from the state, the use of which is unrestricted by the statute providing the subvention.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7904. Appropriation of same proceeds of taxes; limit of more than one entity

In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7905. Aggregation of revenues to local jurisdiction from regulatory licenses and user charges or fees

Revenues to a local jurisdiction from regulatory licenses, user charges, or user fees may be aggregated if they are reasonably related.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7906. School districts; definitions

For school districts:

(a) "ADA" means a school district's second principal apportionment units of average daily attendance as determined pursuant to Section 42238.5 of the Education Code, including average daily attendance in summer school, regional occupational centers and programs, and apprenticeship programs, and excluding average daily attendance in adult education programs. All other units of average daily attendance including, but not limited to, special day classes for special education pupils, shall be included.

(1) For purposes of this subdivision, the average daily attendance of summer school programs shall be determined pursuant to subparagraph (F) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(2) For purposes of this subdivision, the average daily attendance of apprenticeship programs shall be determined pursuant to subparagraph (D) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(b) "Foundation program level" means:

(1) For the 1978-79 fiscal year, one thousand two hundred forty-one dollars (\$1,241) for elementary districts, one thousand three hundred twenty-two dollars (\$1,322) for unified districts, and one thousand four hundred twenty-seven dollars (\$1,427) for high school districts.

(2) For the 1979-80 fiscal year through the 1986-87 fiscal year, inclusive, the levels specified in paragraph (1) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(3) For the 1986-87 fiscal year, the levels specified in paragraph (2) increased by one hundred eighty dollars (\$180) for elementary districts, one hundred ninety-one dollars (\$191) for unified districts, and two hundred seven dollars (\$207) for high school districts.

(4) For the 1987-88 fiscal year, the levels specified in paragraph (3) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(5) For the 1988-89 fiscal year and each fiscal year thereafter, the foundation program level shall be the appropriations limit of the school district for the current fiscal year, plus amounts paid for any nonreimbursed court or federal mandates imposed on or after November 6, 1979, less the sum of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current fiscal year, such as parcel taxes or square foot taxes, unless for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current fiscal year, other than local taxes which count towards the revenue limit, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234 of the Education Code.

(c) "Proceeds of taxes" shall be deemed to include subventions received from the state only if those subventions are for one of the following two purposes:

(1) Basic aid subventions of one hundred twenty dollars (\$120) per ADA.

(2) Additional apportionments which, when added to the district's local revenues as defined in Section 42238 of the Education Code, do not exceed the foundation program level for that district. In no case shall subventions received from the state for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979, be considered "proceeds of taxes" for the purposes of this section.

(d) Proceeds of taxes for a fiscal year shall not include any proceeds of taxes within the district's beginning balance or reserve, unless those funds were not appropriated in a prior fiscal year. Funds that were appropriated to a reserve or other fund referenced in Section 5 of Article XIII B of the California Constitution shall be deemed to be appropriated for the purpose of this paragraph.

(e) The remainder of the state apportionments, including special purpose apportionments and categorical aid subventions shall not be considered proceeds of taxes for a school district.

(f) Each school district shall report to the Superintendent of Public Instruction and to the Director of Finance at least annually its appropriation limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the school district, and amounts excluded from its appropriations limit, at a time and in a manner prescribed by the Superintendent of Public Instruction and approved by the Director of Finance.

(g) For the 1988-89 fiscal year and each fiscal year thereafter, nothing in paragraph (2) of subdivision (c) shall be so construed as to require that the amount determined pursuant to subdivision (b) be multiplied by the amount determined pursuant to subdivision (a) for purposes of determining the amount of state aid included in school district "proceeds of taxes" for purposes of this section.

(Added by Stats.1980, c. 1205, p. 4059, § 2. Amended by Stats.1987, c. 134, § 8, eff. July 7, 1987; Stats.1989, c. 82, § 27, eff. June 30, 1989; Stats.1989, c. 83, § 27, eff. June 30, 1989; Stats.1989, c. 1395, § 7, eff. Oct. 2, 1989.)

Sec. 7907. County superintendents of schools; proceeds of taxes; appropriations limit

For county superintendents of schools:

(a) "Proceeds of taxes" shall be deemed to include subventions received from the state only if those subventions are received for one or more of the following programs:

(1) Educational services provided directly to pupils, including, but not limited to, the services described in subdivision (c) of Section 1981 of, Sections 1904, 2550.2, 2551.3, 8152, 48633, 52570, and 58804 of, and Article 1 (commencing with Section 52300) of Chapter 9 of Part 28 of, the Education Code.

(2) Support services provided to school districts, including, but not limited to, the services described in subdivision (b) of Section 2550 of, and Sections 1510, 2509, 2551, 2554, and 2555 of, the Education Code.

(3) Direct services provided to school districts, as described in subdivision (a) of Section 2550 of the Education Code.

(b) For programs identified in paragraph (1) of subdivision (a), an amount shall be calculated equal to the appropriations made for those programs from the proceeds of taxes for the 1978-79 fiscal year, adjusted for the 1979-80 and 1980-81 fiscal years by the lesser of the change in cost of living or change in California per capita personal income applicable to each year and by the percentage change in average daily attendance in those programs for the 1979-80 and 1980-81 fiscal years.

(c) For all other programs operated by the county superintendent of schools, including, but not limited to, the programs identified in paragraphs (2) and (3) of subdivision (a), an amount shall be calculated equal to the appropriations made for those programs from the proceeds of taxes for the 1978-79 fiscal year, adjusted for the 1979-80 and 1980-81 fiscal years by the lesser of the change in cost of living or change in California per capita personal income for each year and by the percentage change in population (as defined by subdivision (d) of Section 7901) for all the districts in the county for the 1979-80 and 1980-81 fiscal years. The "percentage change in population" for the program identified in paragraph (3) of subdivision (a) shall be, for purposes of this subdivision, the percentage change in direct services average daily attendance as calculated pursuant to subdivision (a) of Section 2550 of the Education Code.

(d) The sum of the amounts calculated in subdivisions (b) and (c) shall be the appropriations limit for the county superintendent for the 1980-81 fiscal year.

(e) For the 1981-82 fiscal year and each year thereafter, the appropriations limit for the prior year shall be adjusted by the appropriate average daily attendance and the lesser of the change in cost of living or California per capita personal income.

(f) For the 1981-82 fiscal year through the 1987-88 fiscal year, state apportionments to county superintendents in excess of the amounts in subdivision (d) or (e) shall not be considered proceeds of taxes for a county superintendent of schools.

(g) For the 1988-89 fiscal year and each fiscal year thereafter, the state apportionments to county superintendents which shall be considered "proceeds of taxes" for a county superintendent of schools shall be equal to the lesser of the following:

(1) The total amount of state apportionments received for that fiscal year, excluding amounts paid for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979.

(2) The appropriations limit for the county superintendent for that fiscal year, less the sum of all of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current year, such as parcel taxes or square foot taxes, other than for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current year, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234 of the Education Code.

(E) Local proceeds of taxes received during the current fiscal year which offset state aid.

(3) Amounts paid for court or federal mandates shall be excluded from the appropriations limit.

(Added by Stats.1980, c. 1205, p. 4059, § 2. Amended by Stats.1989, c. 82, § 28, eff. June 30, 1989; Stats.1989, c. 83, § 28, eff. June 30, 1989; Stats.1989, c. 1395, § 7.5, eff. Oct. 2, 1989; Stats.1994, c. 922 (A.B.2587), § 172.)

Sec. 7908. Community college districts; definitions

For community college districts:

(a) As used in this section, "ADA" means the annual average daily attendance reported for students attending the community college district during the fiscal year.

(b) "Proceeds of taxes" shall be deemed to include subventions from the state, including special purpose apportionments, but excluding subventions received from the state for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979, only if those subventions, when added to the district's local resources, as defined in items (2) and (3) of subdivision (a) of Section 84904 of the Education Code, do not exceed:

(1) For the 1978-79 fiscal year, the lesser of the statewide average revenues or the actual revenues received per ADA, as defined in paragraph (1) of subdivision (c) of Section 84700 of the Education Code, multiplied by the ADA in the district for the 1978-79 fiscal year.

(2) For the 1979-80 through the 1987-88 fiscal years, the amount specified in paragraph (1) adjusted by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year and the percentage change in the district's ADA for that fiscal year.

(3) For the 1988-89 fiscal year and each fiscal year thereafter, the appropriations limit of that district, plus amounts paid for any nonreimbursed court or federal mandates imposed on or after November 6, 1979, less the sum of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current fiscal year, such as parcel taxes or square foot taxes, unless for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current fiscal year, other than local taxes which count towards the revenue limit, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234.

(c) Each community college district shall report to the Chancellor of the California Community Colleges and to the Director of Finance at least annually its appropriations limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the district, and amounts excluded from the appropriations limit, at a time and in a manner prescribed by the Chancellor of the California Community Colleges and approved by the Director of Finance.

(Added by Stats.1980, c. 1205, p. 4059, § 2. Amended by Stats.1989, c. 82, § 29, eff. June 30, 1989; Stats.1989, c. 83, § 29, eff. June 30, 1989; Stats.1989, c. 1395, § 8, eff. Oct. 2, 1989.)

Sec. 7909. Cost of living or California per capita personal income changes; notice

No later than May 1 of each year, the Department of Finance shall notify each local agency of the change in the cost of living or change in California per capita personal income, whichever is less, and population for each local agency for the prior calendar year.

No later than May 1 of each year, the Department of Finance shall notify the Department of Education and the Chancellor's Office of the California Community Colleges of the change in the cost of living or change in California per capita personal income, whichever is less. These agencies shall inform the school districts, county superintendents of schools, and community college districts for which they are respectively responsible.

(Added by Stats.1980, c. 1205, p. 4059, § 2. Amended by Stats.1982, c. 1638, p. 6658, § 2, eff. Oct. 1, 1982.)

Sec. 7910. Local jurisdiction; appropriations limit; establishment; resolution; meeting; action to attack or review; limitations; preference on calendar

Each year the governing body of each local jurisdiction shall, by resolution, establish its appropriations limit and make other necessary determinations for the following fiscal year pursuant to Article XIII B at a regularly scheduled meeting or noticed special meeting. Fifteen days prior to the meeting documentation used in the determination of the appropriations limit and other necessary determinations shall be available to the public. The determinations made pursuant to this section are legislative acts.

Any judicial action or proceeding to attack, review, set aside, void, or annul the action of the governing body taken pursuant to this section for the 1980-81 fiscal year shall be commenced within 60 days of the effective date of the resolution or the effective date of the act which added this section to the Government Code, whichever date is later.

For the 1981-82 fiscal year and each fiscal year thereafter, any judicial action or proceeding to attack, review, set aside, void, or annul the action of the governing body taken pursuant to this section shall be commenced within 45 days of the effective date of the resolution.

All courts wherein such actions are or may be hereafter pending, including any court reviewing such action on appeal from the decision of a lower court, shall give such actions preference over all other civil actions therein, in the manner of setting the same for hearing or trial and in hearing the same to the end that all such actions shall be quickly heard and determined.

(Added by Stats.1980, c. 1205, p. 4059, § 2. Amended by Stats.1988, c. 1203, § 1.)

Sec. 7911. Return of excess revenues; method; determination; judicial review; preference on calendar

For the purposes of Section 2 of Article XIII B, a local jurisdiction may return excess revenues by granting a tax credit or refund, by providing a temporary suspension of tax rates or fee schedules, or by any other means consistent with the intent of that section. The determination by the governing body of such entity of the means by which such excess revenues are to be returned is a legislative act.

Judicial review of such determination may be obtained only by a proceeding for a writ of mandate which shall be brought within 30 days after the governing body's determination.

All courts wherein such actions are or may be hereafter pending, including any court reviewing such action on appeal from the decision of a lower court, shall give such actions preference over all other civil actions therein, in the manner of setting the same for hearing or trial and in hearing the same, to the end that all such actions shall be quickly heard and determined.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7912. Estimate of state's appropriations limit for budget year; inclusion in budget submitted by Governor; establishment in Budget Bill

Each year, the Governor shall include in the budget as submitted to the Legislature an estimate of the state's appropriations limit for the budget year. This estimate shall be subject to the budget process, and shall be established in the Budget Bill.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7913. Transfer of financial responsibility of providing services to proceeds from regulatory licenses, or user charges or fees

For purposes of subdivision (b) of Section 3 of Article XIII B of the California Constitution, the financial responsibility of providing services is transferred in whole or in part from other revenues of an entity of government to proceeds from regulatory licenses, user charges, or user fees only when the dollar amount allocated from other revenues of a local jurisdiction or the state to the provision of such services is decreased.

(Added by Stats.1980, c. 1205, p. 4059, § 2.)

Sec. 7914. Appropriations for qualified capital outlay project

An appropriation for a "qualified capital outlay project," as used in subdivision (d) of Section 9 of Article XIII B of the California Constitution, means an appropriation for a fixed asset (including land and construction) with a useful life of 10 or more years and a value which equals or exceeds one hundred thousand dollars (\$100,000).

(Added by Stats.1990, c. 60 (S.B.88), § 7, operative July 1, 1990.)

Local Agency Investment Fund

Sec. 16429.1. Creation of fund; investments; proceeds of bonds, etc.; distributions; report of investments

There is in the State Treasury the Local Agency Investment Fund, which fund is hereby created. Notwithstanding Section 13340, all money in the fund is hereby appropriated without regard to fiscal years to carry out the purpose of this section. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide

information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of one-half of 1 percent of the earnings of this fund, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies having incurred costs in carrying out the provisions of this section.

The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

As used in this section, "local agency," "local governmental unit," and "local governmental official" includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

(Added by Stats.1976, c. 730, p. 1756, § 1. Amended by Stats.1979, c. 275, § 1; Stats.1980, c. 311, § 1; Stats.1983, c. 751, § 2; Stats.1991, c. 676 (S.B.614), § 1; Stats.1993, c. 857 (A.B.2062), § 1; Stats.1994, c. 519 (A.B.3112), § 1.)

Sec. 16429.2. Local investment advisory board

There is created the Local Investment Advisory Board consisting of five members. The chairman shall be the State Treasurer or his or her designated representative. Two members who are qualified by training and experience in the field of investment or finance, shall be appointed by the State Treasurer. Two members who are treasurers, finance or fiscal officers or business managers, employed by any county, city or local district or municipal corporation of this state, shall be appointed by the Treasurer.

The term of office of each appointed member of the board is two years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership, occurring other than by expiration of term, shall be filled in the same manner as the original appointment, but for the unexpired term only.

Members of the board who are not state officers or employees shall not receive a salary, but shall be entitled to a per diem allowance of fifty dollars (\$50) for each day's attendance at a meeting of the board, not to exceed three hundred dollars (\$300) in any month. All members shall be entitled to reimbursement for expenses incurred in the performance of their duties under this part, including travel and other necessary expenses.

The board's primary purpose shall be to advise and assist the State Treasurer in formulating the investment and reinvestment of moneys in the Local Agency Investment Fund, and the acquisition, retention, management, and disposition of investments of the fund. The board, from time to time, shall review those policies and advise therein as it considers necessary or desirable. The board shall advise the State Treasurer in the management of the fund and consult the State Treasurer on any matter relating to the investment and reinvestment of moneys in the fund.

(Added by Stats.1976, c. 730, p. 1756, § 1.)

Sec. 16429.3. Deposits; prohibited transfers and loans; impoundment or seizure

Moneys placed with the Treasurer for deposit in the Local Agency Investment Fund by cities, counties, special districts, nonprofit corporations, or qualified quasi-governmental agencies shall not be subject to either of the following:

- (a) Transfer or loan pursuant to Sections 16310, 16312, or 16313.
- (b) Impoundment or seizure by any state official or state agency.

Added by Stats.1976, c. 730, p. 1756, § 1. Amended by Stats.1980, c. 311, § 2; Stats.1996, c. 833 (A.B.1197), § 8.)

Criminal Justice Administrative Fees

Sec. 29550. Reimbursement of county expenses; booking or detaining arrested persons; invoice

(a)(1) Notwithstanding any other provision of law, a county may impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. A county may submit an invoice to a city, special district, school district, community college district, college, or university for these expenses incurred by the county on and after July 1, 1990. Counties shall fully disclose the costs allocated as federal Circular A-87 overhead.

(2) Any increase in a fee charged pursuant to this section shall be adopted by a county prior to the beginning of its fiscal year and may be adopted only after the county has provided each city, special district, school district, community college district, college, or university 45 days written notice of a public meeting held pursuant to Section 54952.2 on the fee increase and the county has conducted the public meeting.

(3) Any county that imposes a fee pursuant to this section shall negotiate a reduced fee with any city, special district, school district, community college district, college, or university within the county for any services that are performed by the arresting agency in the processing of arrestees that do not have to be duplicated by the county.

(4) This subdivision shall not apply to counties that are under a contractual agreement with a city, special district, school district, community college district, college, or university within the county that is subject to the fee.

(b) The exemption of a local agency from the payment of a fee pursuant to this subdivision does not exempt the person arrested from the payment of fees for booking or other processing.

(1) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests on any bench warrant for failure to appear in court, nor on any arrest warrant issued in connection with a crime not committed within the entity's jurisdiction.

(2) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for a person who is ordered by a court to be remanded to the county jail except that a county may charge a fee to recover those direct costs for those functions required to book a person pursuant to subdivision (g) of Section 853.6 of the Penal Code.

(3) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests made pursuant to arrest warrants originating outside of its jurisdiction.

(4) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university on parole violation arrests or probation-ordered returns to custody, unless a new charge has been filed for a crime committed in the jurisdiction of the arresting city, district, college, or university.

(5) An agency making a mutual aid request shall pay fees that result from arrests made in response to the mutual aid request except that in the event the Governor declares a state of emergency, no agency shall be charged fees for any arrest made during any riot, disturbance, or event that is subject to the declaration.

(6) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for the arrest of a prisoner who has escaped from a county, state, or federal detention or corrections facility.

(7) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for arrestees held in temporary detention at a court facility for purposes of arraignment when the arrestee has been previously booked at an entity detention facility.

(8) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university as the result of an arrest made by its officer assigned to a formal multiagency task force in which the county is a participant. For the purposes of this section, "formal task force" means a task force that has been established by written agreement of the participating agencies.

(9) In those counties where the cities and the county participate in a consolidated booking program and where prior to arraignment an arrestee is transferred from a city detention facility to a county detention facility, the city shall not be charged for those tasks listed in subdivision (d) that are a part of the consolidated booking program which were completed by the city prior to delivering the arrestee to the county detention facility. However, the county may charge the actual administrative costs for those additional tasks listed in subdivision (d) that are performed in order to receive the arrestee into the county detention facility.

(c) Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons.

(d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency:

(1) A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt.

(2) The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.

(e) As used in this section, "actual administrative costs" include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capitol³ costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating "actual administrative costs." "Actual administrative costs" may include the cost of notifying any local agency, special district, school district, community college district, college or university of any change in the fee charged by a county pursuant to this section. "Actual administrative costs" may include any one or more of the following as related to receiving an arrestee into the county detention facility:

(1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.

(2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.

(3) Warrant service, processing, and detainer.

(4) Inventory of an arrestee's money and creation of cash accounts.

(5) Inventory and storage of an arrestee's property.

(6) Inventory, laundry, and storage of an arrestee's clothing.

(7) The classification of an arrestee.

(8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.

(9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(f) An administrative screening fee of twenty-five dollars (\$25) shall be collected from each person arrested and released on his or her own recognizance upon conviction of any criminal offense related to the arrest other than an infraction. A citation processing fee in the amount of ten dollars (\$10) shall be collected from each person cited and released by any peace officer in the field or at a jail facility upon conviction of any criminal offense, other than an infraction, related to the criminal offense cited in the notice to appear. However, the court may determine a lesser fee than otherwise provided in this subdivision upon a showing that the defendant is unable to pay the full amount. All fees collected pursuant to this subdivision shall be transmitted by the county auditor monthly to the Controller for deposit in the General Fund. This subdivision applies only to convictions occurring on or after the effective date of the act adding this subdivision and prior to June 30, 1996.

(Added by Stats.1990, c. 466 (S.B.2557), § 1. Amended by Stats.1991, c. 331 (S.B.21), § 4, eff. Aug. 5, 1991; Stats.1991, c. 1168 (A.B.2142), § 3, eff. Oct. 14, 1991; Stats.1993, c. 882 (A.B.2286), § 1; Stats.1994, c. 641 (A.B.2735), § 1; Stats.1995, c. 910 (A.B.82), § 1.)

Sec. 29550.1. Arresting agency; entitlement to recovery of fee imposed by county; order for payment

Any city, special district, school district, community college district, college, university, or other local arresting agency whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the city, special district, school district, community college district, college, university, or other local arresting agency for the criminal justice administration fee.

(Added by Stats.1991, c. 331 (S.B.21), § 5, eff. Aug. 5, 1991. Amended by Stats.1993, c. 882 (A.B.2286), § 2; Stats.1997, c. 47 (A.B.211), § 1.)

Sec. 29550.2. Criminal justice administration fee

(a) Any person booked into a county jail pursuant to any arrest by any governmental entity not specified in Section 29550 or 29550.1 is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, as defined in subdivision (c), including applicable overhead costs as permitted by federal Circular A 87 standards, incurred in booking or otherwise processing arrested persons. If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee.

(b) All fees collected by a county as provided in this section and Section 29550, may be deposited into a special fund in that county which shall be used exclusively for the operation, maintenance, and construction of county jail facilities.

(c) As used in this section, "actual administrative costs" include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capital costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating "actual administrative costs." "Actual administrative costs" may include any one or more of the following as related to receiving an arrestee into the county detention facility:

- (1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.
- (2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.
- (3) Warrant service, processing, and detainer.
- (4) Inventory of an arrestee's money and creation of cash accounts.
- (5) Inventory and storage of an arrestee's property.
- (6) Inventory, laundry, and storage of an arrestee's clothing.
- (7) The classification of an arrestee.
- (8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.
- (9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(d) It is the Legislature's intent in providing the definition of "actual administrative costs" for purposes of this section that this definition be used in determining the fees for the governmental entities referenced in subdivision (a) only. In interpreting the phrases "actual administrative costs," "criminal justice administration fee," "booking," or "otherwise processing" in Section 29550 or 29550.1, it is the further intent of the Legislature that the courts shall not look to this section for guidance on what the Legislature may have intended when it enacted those sections.

(Added by Stats.1992, c. 696 (A.B.1344), § 20, eff. Sept. 15, 1992. Amended by Stats.1992, c. 1369 (A.B.3027), § 1, eff. Oct. 27, 1992, operative Jan. 1, 1993; Stats.1993, c. 882 (A.B.2286), § 3; Stats.1997, c. 47 (A.B.211), § 2.)

Sec. 29550.3. City; criminal justice administration fee

(a) A city which books or processes persons to a jail administered by it and which does not otherwise incur an administrative fee from the county, may establish and collect an administrative fee for an arrested person pursuant to the same standards and procedures set forth in Section 29550.1.

(b) Any city whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked.

(c) Any booking fee imposed pursuant to this section shall be charged to the person booked and not to the arresting entity.

(d) Nothing in this section shall be construed to limit the ability of any city to enter into agreements with other local arresting agencies authorizing the imposition of a criminal justice administration fee by that city upon those local arresting agencies for reimbursement of expenses incurred with respect to the booking or other processing of persons into a jail facility operated by that city.

(Added by Stats.1994, c. 641 (A.B.2735), § 2.)

Sec. 29550.4. State reimbursement to cities and qualified special districts

(a) Notwithstanding Section 13340, the sum of up to fifty million dollars (\$50,000,000) is hereby continuously appropriated annually from the General Fund to the Controller commencing with the 1999-2000 fiscal year for allocation to cities and qualified special districts for reimbursement for actual costs incurred by cities and qualified special districts in the payment of booking and processing fees pursuant to this article. For the 1999-2000 fiscal year, this appropriation shall be allocated to cities and qualified special districts for reimbursement for actual costs incurred by them during the period July 1, 1997, to July 1, 1998. If the actual costs incurred by cities and qualified special districts during the period of July 1, 1997, to July 1, 1998, in the payment to counties of booking and processing fees is greater than fifty million dollars (\$50,000,000), then the Controller shall prorate the reimbursement to each city and qualified special district accordingly.

(b) Not later than December 1, 1999, the Controller shall allocate the funds appropriated pursuant to subdivision (a) to all qualified cities and qualified special districts and shall certify to the Director of Finance the actual amount of money allocated to cities and qualified special districts for the payment of booking and processing fees pursuant to subdivision (a).

(c) Notwithstanding any other provision of this article, any city that pays booking and processing fees to another city is eligible for reimbursement pursuant to this section on the same basis as a city that pays booking and processing fees to a county. The amount of reimbursement for a city shall be based on the processing fees charged by the county in which that city is located. This subdivision shall apply to reimbursements beginning in the 2000-01 fiscal year based on costs incurred in the 1997-98 fiscal year.

(d) Any city or qualified special district that applies for reimbursement pursuant to this section shall comply with all requests made by the Controller. Any city or qualified special district that contracts with a county for the payment of those fees shall be ineligible for reimbursement pursuant to this section. A city that has entered into a memorandum of understanding with its county effective May 17, 1994, which agreement allows for the payment of prepaid annual rent to satisfy the city's booking fee obligation, shall be eligible to receive reimbursement pursuant to this section.

(e) Any qualified city that did not apply for reimbursement pursuant to this section at the time required to receive funds allocated by the Controller not later than December 1, 1999, in the 1999-2000 fiscal year may apply for that reimbursement by October 1, 2000. Any qualified special district may apply to the Controller for reimbursement pursuant to this section for the 1999-2000 fiscal year by October 1, 2000.

(f) For the purposes of this section, "qualified special district" means both of the following:

(1) A district that supplants the law enforcement functions of the county within the jurisdiction of that district.

(2) A district that employs peace officers, as described in Section 830.1 of the Penal Code, who are certified as meeting those standards and requirements established pursuant to Article 2 (commencing with Section 13510) of Chapter 1 of Title 4 of Part 4 of the Penal Code.

(Added by Stats.1999, c. 79 (A.B.1662), § 1, eff. July 7, 1999. Amended by Stats.2000, c. 1075 (S.B.225), § 1, eff. Sept. 30, 2000; Stats.2000, c. 1076 (A.B.2219), § 2.)

City Officers

Sec. 36501. Governing officers and employees

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.

(Added by Stats.1949, c. 79, p. 143, § 1. Amended by Stats.1951, c. 1553, p. 3547, § 74; Stats.1955, c. 418, p. 875, § 1; Stats.1955, c. 624, p. 1117, § 24; Stats.1957, c. 674, p. 1873, § 1; Stats.2000, c. 506 (S.B.1350), § 20.)

Sec. 36501.5. Right to inspect records

Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code

(Added by Stats.2000, c. 886 (S.B.1327), § 8.)

Sec. 36502. Councilmember, clerk or treasurer; qualifications; vacancy upon nonresidence; term limits; electoral approval

(a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

(b) Notwithstanding any other provision of law, the city council of a general law or charter city may adopt or the residents of the city may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve. Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only and shall not become operative unless it is submitted to the electors of the city at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. Notwithstanding the provisions of this subdivision, the provisions of any city charter that, on January 1, 1996, impose limitations on the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall remain in effect. Unless otherwise prohibited by a city charter, any city charter may be amended pursuant to this section or pursuant to the procedures specified in the charter, to include the limitation authorized in this subdivision.

(Added by Stats.1949, c. 79, p. 143, § 1. Amended by Stats.1957, c. 635, p. 1842, § 1; Stats.1961, c. 1682, p. 3650, § 1; Stats.1975, c. 1030, p. 2432, § 4, urgency, eff. Sept. 24, 1975; Stats.1994, c. 923 (S.B.1546), § 71; Stats.1995, c. 432 (S.B.2), § 5.)

Sec. 36502.5. City of Tustin; city council; term limitation ordinance; submission to voters

Notwithstanding the provisions of Section 36502, the city council of the City of Tustin may adopt by ordinance a proposal to limit the number of terms a member of the city council may serve on the city council without submitting the proposal to the electors of the city for approval, provided that a proposal containing those same provisions was submitted to the electors of the City of Tustin at a regularly scheduled election and a majority of the votes cast on the question favored the adoption of the proposal.

Any ordinance adopted pursuant to this section shall apply prospectively from the effective date of this section.

(Added by Stats.1996, c. 310 (S.B.1421), § 1.)

Sec. 36503. General election; elective officers; term

Unless otherwise required by Section 57379, a general municipal election shall be held on a date prescribed by Section 1301 of the Elections Code. Except as otherwise provided in this title, all elective city offices shall be filled by the city electorate at a general municipal election. City officers holding elective city office shall hold office for their prescribed terms from the date of the installation of officers following adoption by the council of the official canvass of their election and until their successors are elected and qualified.

(Added by Stats.1949, c. 79, p. 143, § 1. Amended by Stats.1961, c. 535, p. 1637, § 2; Stats.1973, c. 1146, p. 2367, § 21; Stats.1978, c. 1376, p. 4567, § 22; Stats.1979, c. 376, p. 1434, § 2; Stats.1981, c. 1013, p. 3910, § 2, urgency, eff. Sept. 30, 1981; Stats.1982, c. 466, § 67; Stats.1982, c. 218, p. 731, § 1; Stats.1988, c. 1172, § 1; Stats.1990, c. 2 (S.B.1315), § 2, eff. Feb. 6, 1990; Stats.1996, c. 1143 (S.B.1200), § 70, eff. Sept. 30, 1996.)

Sec. 36505. Appointive officers; appointment

The city council shall appoint the chief of police. It may appoint a city attorney, a superintendent of streets, a civil engineer, and such other subordinate officers or employees as it deems necessary.

(Added by Stats.1949, c. 79, p. 143, § 1. Amended by Stats.1951, c. 1553, p. 3547, § 75.)

Sec. 36506. Appointive officers and employees; compensation; term

By resolution or ordinance, the city council shall fix the compensation of all appointive officers and employees. Such officers and employees hold office during the pleasure of the city council.

(Added by Stats.1949, c. 79, p. 144, § 1.)

Sec. 36507. Oath

Before entering upon his duties, each city officer shall take and file with the city clerk the constitutional oath of office, except that the councilmen elected at the incorporation election shall deposit said oath with the county clerk of the county wherein the city is located, to be held by him for delivery to the city clerk at such time as the city clerk officially assumes office.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1959, c. 340, p. 2265, § 1.)

Sec. 36508. Appointment of elective officers; proposition; election

At any municipal election, or a special election held for that purpose, the city council may submit to the electors the question whether the elective officers, or any of them except councilmen, shall be appointed by the city council; provided, however, that the city council shall not submit such question to the electors more often than once in an 11-month period.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1977, c. 609, p. 1998, § 2.)

Sec. 36509. Appointment of elective officers; ballot

The question shall be printed on the ballots used at the election substantially in one of the following forms:

- (a) "Shall the offices of city clerk and city treasurer be appointive?"; or
- (b) "Shall the office of city clerk be appointive?"; or
- (c) "Shall the office of city treasurer be appointive?"

The words "yes" and "no" shall be so printed on the ballots that the voters may express their choice.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1951, c. 1075, p. 2805, § 1; Stats.1957, c. 765, p. 1979, § 1.)

Sec. 36510. Appointment of elective officers; vote; appointment; term; residence

If a majority of the votes cast on the proposition is for it, the city council shall appoint such officers at the expiration of the terms of the officers then in office, and on a vacancy in any such office. Such officers shall hold office during the pleasure of the city council and, notwithstanding Section 36502 to the contrary, are not required to be residents or electors in the city. The city council may by ordinance vest in the city manager its authority to appoint such officers.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1953, c. 491, p. 1735, § 2; Stats.1963, c. 509, p. 1371, § 1.)

Sec. 36511. Appointment of elective officers; provision in petition for incorporation

The petition for incorporation of a city may provide for the appointment of the elective officers, or any of them except councilmen. If it does, a separate election upon the question need not be held, and upon incorporation the city council shall appoint such officers.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1955, c. 624, p. 1117, § 25.)

Sec. 36512. Vacancies; fill by appointment or special election; term; ordinances governing appointments or elections; restrictions

(a) If a vacancy occurs in an appointive office provided for in this chapter, the council shall fill the vacancy by appointment. A person appointed to fill a vacancy holds office for the unexpired term of the former incumbent.

(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 30 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. The special election shall be held on the next regularly established election date not less than 114 days from the call of the special election. A person appointed or elected to fill a vacancy holds office for the unexpired term of the former incumbent.

(c) Notwithstanding subdivision (b) and Section 34902, a city may enact an ordinance which:

(1) Requires that a special election be called immediately to fill every city council vacancy and the office of mayor designated pursuant to Section 34902. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

(2) Requires that a special election be held to fill a city council vacancy and the office of mayor designated pursuant to Section 34902 when petitions bearing a specified number of verified signatures are filed. The ordinance shall provide that the special election shall be held on the next regularly established election date not less than 114 days from the filing of the petition. A governing

body which has enacted such an ordinance may also call a special election pursuant to subdivision (b) without waiting for the filing of a petition.

(3) Provides that a person appointed to fill a vacancy on the city council holds office only until the date of a special election which shall immediately be called to fill the remainder of the term. The special election may be held on the date of the next regularly established election or regularly scheduled municipal election to be held throughout the city not less than 114 days from the call of the special election.

(d)(1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1975, c. 283, p. 703, § 1; Stats.1977, c. 1205, p. 4076, § 89; Stat.1992, c. 136 (A.B. 2295), § 1; Stats.1993, c.229 (A.B. 1282), § 12, eff. July 29, 1993.)

Sec. 36513. Council member; vacancy for absence

(a) If a city councilmember is absent without permission from all regular city council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

(b) Notwithstanding subdivision (a), if a city council meets monthly or less frequently than monthly and a city councilmember is absent without permission from all regular city council meetings for 70 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy.

(Added by Stats.1949, c. 79, p. 144, § 1. Amended by Stats.1990, c. 1558 (S.B.1821), § 2.)

Sec. 36514.5. Councilmen; reimbursement for expenses

City councilmen may be reimbursed for actual and necessary expenses incurred in the performance of official duties.

(Added by Stats.1966, 1st Ex.Sess., c. 12, p. 276, § 3, eff. April 11, 1966.)

Sec. 36515. Councilmen; compensation; filling vacancies

The compensation of a city councilman appointed or elected to fill a vacancy is the same as that payable to the member whose office was vacated.

(Added by Stats.1949, c. 79, p. 145, § 1.)

Sec. 36516. Council members; ordinance providing salary; salary schedule; compensation for council members, municipal election; increase or decrease

(a) A city council may enact an ordinance providing that each member of the city council shall receive a salary, the amount of which shall be determined by the following schedule:

(1) In cities up to and including 35,000 in population, up to and including three hundred dollars (\$300) per month.

(2) In cities over 35,000 up to and including 50,000 in population, up to and including four hundred dollars (\$400) per month.

(3) In cities over 50,000 up to and including 75,000 in population, up to and including five hundred dollars (\$500) per month.

(4) In cities over 75,000 up to and including 150,000 in population, up to and including six hundred dollars (\$600) per month.

(5) In cities over 150,000 up to and including 250,000 in population, up to and including eight hundred dollars (\$800) per month.

(6) In cities over 250,000 population, up to and including one thousand dollars (\$1,000) per month.

For the purposes of this section the population shall be determined by the last preceding federal census, or a subsequent census, or estimate validated by the Department of Finance.

(b) At any municipal election, the question of whether city council members shall receive compensation for services, and the amount of compensation, may be submitted to the electors. If a majority of the electors voting at the election favor it, all of the council members shall receive the compensation specified in the election call. Compensation of council members may be increased beyond the amount provided in this section or decreased below the amount in the same manner.

(c) Compensation of council members may be increased beyond the amount provided in this section by an ordinance or by an amendment to an ordinance but the amount of the increase may not exceed an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. No salary ordinance shall be enacted or amended which provides for automatic future increases in salary.

(d) Any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary under this section provided the same benefits are available and paid by the city for its employees.

(Added by Stats.1949, c. 79 p. 145, § 1. Amended by Stats.1963, c. 1998, p. 4077, § 2; Stats.1965, c. 286, p. 1287, § 3; Stats.1966, 1st Ex.Sess., c. 12, p. 276, § 4, eff. April 11, 1966; Stats.1968, c. 642, § 1; Stats.1972, c. 591, p. 1053, § 1; Stats.1974, c. 1378, p. 3000, § 2; Stats.1984, c. 100, § 2.)

Sec. 36516.1. Elective mayor; additional compensation

A mayor elected pursuant to Sections 34900 to 34904, inclusive, of the Government Code may be provided with compensation in addition to that which he receives as a councilman. Such additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election.

(Added by Stats.1966, 1st Ex.Sess., c. 45, p. 359, § 1.)

Sec. 36516.5. Prohibition against change in compensation during term of office; staggered terms

A change in compensation does not apply to a councilman during his term of office; however, the prohibition herein expressed shall not prevent the adjustment of the compensation of all members of a council serving staggered terms whenever one or more members of such council becomes eligible for a salary increase by virtue of his beginning a new term of office.

(Added by Stats.1966, 1st Ex.Sess., c. 12, p. 276, § 5, eff. April 11, 1966.)

Sec. 36517. Clerk and treasurer; compensation

The city clerk and the city treasurer shall receive, at stated times, a compensation fixed by ordinance or resolution.

(Added by Stats.1949, c. 79, p. 145, § 1. Amended by Stats.1955, c. 750, p. 1244, § 1; Stats.1971, c. 275, p. 580, § 1.)

Sec. 36518. Bonds; clerk and treasurer

Before entering upon the duties of their offices, the city clerk and city treasurer shall each execute a bond to the city. Except as otherwise provided, the bonds shall conform to the provisions of this code relating to bonds of public officers. The penal sum of the bond shall be in a reasonable amount recommended by the city attorney and fixed by the city council, by resolution, and may be changed during their terms of office.

(Added by Stats.1949, c. 79, p. 145, § 1. Amended by Stats.1965, c. 457, p. 1766, § 1.)

Sec. 36519. Bonds; officers and employees

The city council may require bonds of any other officer or employee of the city.

(Added by Stats.1949, c. 79, p. 145, § 1.)

Sec. 36520. Bonds; approval; filing

The city council shall approve all bonds. When approved, the clerk's bond shall be filed with the mayor, and other bonds shall be filed with the city clerk.

(Added by Stats.1949, c. 79, p. 145, § 1.)

Sec. 36521. Bonds; laws applicable

Except as otherwise provided, all laws relating to the official bonds of officers apply to bonds required by this chapter.

(Added by Stats.1949, c. 79, p. 145, § 1.)

Sec. 36522. City money; deposit; report; accounting

Any officer or employee collecting or receiving any money belonging to, or for the use of, the city shall deposit it immediately in the treasury in the manner prescribed by ordinance for the benefit of the funds to which it belongs. He shall report such deposits to, and settle with, the city clerk, or director of finance if that office has been established by ordinance, on the first Monday in each month or at such shorter intervals as are prescribed by ordinance.

(Added by Stats.1949, c. 79, p. 145, § 1. Amended by Stats.1959, c. 1294, p. 3445, § 1.)

Sec. 36523. Treasurer's departmental trust fund; deposits

By ordinance or resolution, the city council may provide for a treasurer's departmental trust fund into which collections of the police department and other officers authorized to make collections may be deposited at frequent intervals during each month. Officers or employees shall advise the city treasurer upon making each deposit.

(Added by Stats.1949, c. 79, p. 145, § 1. Amended by Stats.1951, c. 1553, p. 3548, § 76.)

Sec. 36524. Treasurer's department trust fund; withdrawals; purposes

The city treasurer shall make withdrawals from such a fund only on order signed by the proper department head and for the following purposes:

- (a) Making a refund of bail, which has been exonerated, or other refundable deposits.
- (b) Revolving fund advances authorized by the city council.
- (c) Correction of clerical or ministerial errors in the receipt of payments to the city.
- (d) Making settlements with city funds at the end of each calendar month for collections accumulated during the month.

(Added by Stats.1949, c. 79, p. 145, § 1.)

Financial Powers

Sec. 37200. Annual budgets; appropriations limit

If the legislative body adopts an annual budget, the budget document shall include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title 1.

(Added by Stats.1987, c. 1025, § 6.)

Sec. 37201. Demands against city for money or damages; law governing

Demands against the city for money or damages are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1, except as provided therein, or by other statutes or regulations expressly applicable thereto.

(Added by Stats.1949, c. 79, p. 154, § 1. Amended by Stats.1959, c. 1726, p. 4142, § 1; Stats.1963, c. 1715, p. 3397, § 18; Stats.1982, c. 454, p. 1857, § 77.)

Sec. 37202. Demands; audit; submission; certification

Except as provided in Section 37208, the legislative body shall approve or reject demands only after such demands have been audited in the manner prescribed by ordinance or resolution. Such audited demands may be submitted separately or a register of audited demands may be submitted to the legislative body for approval or rejection and shall have attached thereto the affidavit of the officer submitting the demands certifying as to the accuracy of the demands and the availability of funds for payment thereof.

(Added by Stats.1949, c. 79, p. 154, § 1. Amended by Stats.1951, c. 1248, p. 3095, § 1; Stats.1970, c. 261, p. 525, § 1.)

Sec. 37203. Demands; warrants for payment; signature

Upon allowing a demand or approving a register of audited demands, the mayor shall draw a warrant or warrants upon the city treasurer specifying the purpose for which drawn and the fund from which payment is to be made. The city clerk shall countersign the warrant. The legislative body, by ordinance or resolution, may prescribe an alternative method of drawing warrants and checks.

(Added by Stats.1949, c. 79, p. 154, § 1. Amended by Stats.1951, c. 1248, p. 3095, § 2; Stats.1980, c. 770, p. 2286, § 1.)

Sec. 37204. Orders or demands not approved for want of funds; endorsement

When an order or demand is not approved for want of funds and its amount does not exceed the income and revenue for the year in which the indebtedness was incurred, the city clerk shall endorse on it: "Not approved for want of funds," with the date of presentation and his signature.

(Added by Stats.1949, c. 79, p. 154, § 1.)

Sec. 37205. Orders or demands not approved for want of funds; registration; interest; priority of payment

The clerk shall number the endorsement, register the order or demand in his records, and deliver it to the claimant, or his order. From delivery the order or demand bears interest at 6 percent a year. Orders or demands shall be paid in the order they are registered.

(Added by Stats.1949, c. 79, p. 154, § 1.)

Sec. 37206. Salaries and wages

By ordinance or resolution, the legislative body shall prescribe the time and method of paying salaries and wages of officers and employees.

(Added by Stats.1949, c. 79, p. 154, § 1.)

Sec. 37207. Certification of pay rolls

Department heads shall certify or approve departmental pay rolls or attendance records for employees in their departments. The city clerk shall certify or approve pay rolls or attendance records of other officers and employees.

(Added by Stats.1949, c. 79, p. 154, § 1.)

Sec. 37208. Payroll warrants or checks; warrants or checks in payment of budgeted demands; audit; ratification and approval

(a) Payroll warrants or checks need not be audited by the legislative body prior to payment. Payrolls shall be presented to the legislative body for ratification and approval at the first meeting after delivery of the payroll warrants or checks.

(b) Warrants or checks drawn in payment of demands certified or approved by the city clerk as conforming to a budget approved by ordinance or resolution of the legislative body need not be audited by the legislative body prior to payment.

(c) Notwithstanding subdivisions (a) and (b), budgeted payrolls and demands paid by warrants or checks may be presented to the legislative body for ratification and approval in the form of an audited comprehensive annual financial report.

(Added by Stats.1949, c. 79, p. 154, § 1. Amended by Stats.1959, c. 1775, p. 4259, § 1; Stats.1970, c. 261, p. 525, § 2; Stats.1980, c. 770, p. 2286, § 2; Stats.1986, c. 982, § 14.)

Sec. 37209. Transfer of city clerk's duties to director of finance; ordinance

The duties imposed upon the city clerk by this article may be transferred to a director of finance when such office has been established and the powers and duties thereof defined by ordinance. Such an ordinance shall require the execution by the director of finance of the bond required of the city clerk by Section 36518 of this Code.

(Added by Stats.1955, c. 1754, p. 3242, § 1.)

Sec. 37210. Newly incorporated cities; issuance of temporary nonnegotiable notes; repayment

Newly incorporated cities that have not received revenues from property taxes may issue temporary non-negotiable notes bearing interest at a rate not exceeding 6 percent per annum to pay lawfully incurred current expenses and the salaries and wages of officers and employees. Said notes must be repaid on or before the last day of the fiscal year in which the money is borrowed and the maturity date of said notes shall not be later than said last day. The aggregate amount of said notes shall not exceed 85 percent of the anticipated revenues for the fiscal year in which the money is borrowed. Said notes shall be repaid only from revenues received during or allocable to the fiscal year in which the money is borrowed.

(Added by Stats.1957, c. 1740, p. 3122, § 1.)

City Property

Sec. 37354. Gifts, bequests, and devises

The legislative body may accept or reject any gift, bequest, or devise made to or for the city, or to or for any of its officers in their official capacity or in trust for any public purpose.

It may hold and dispose of the property and the income and increase from the property for such uses as are prescribed in the terms of the gift, bequest, or devise.

(Added by Stats.1949, c. 79, p. 155, § 1.)

Sec. 37355. Gifts, bequests, and devises; use

If the terms of a gift, bequest, or devise do not prescribe or limit the uses to which the property received or the income or increase from it may be put, it may be put to such uses as the legislative body prescribes.

(Added by Stats.1949, c. 79, p. 156, § 1.)

Cemetaries

Sec. 37681. Acquisition and maintenance

The city legislative body may acquire and maintain cemeteries, situated outside or inside of the city.

(Added by Stats.1949, c. 79, p. 164, § 1.)

Sec. 37682. Contributions; fund

The legislative body may accept contributions of at least fifty dollars (\$50) to be held in trust and the income used for the perpetual care of designated plots in the local city or community cemetery. The contributions shall be placed in the city treasury in a "cemetery fund."

(Added by Stats.1949, c. 79, p. 164, § 1.)

Sec. 37683. Fund; administrator; compensation

The legislative body shall appoint the city clerk or a competent resident of the city to administer the fund. The person appointed shall execute an official bond in the amount prescribed by the legislative body. He shall receive one dollar (\$1) annually for each plot cared for, to be paid only from the income of the fund.

(Added by Stats.1949, c. 79, p. 164, § 1.)

Sec. 37684. Fund; use

Money remaining in the fund after expenditures for care of the plots and payment to the person administering the fund shall be used for care of the roads, walks, or other portions of the cemetery.

(Added by Stats.1949, c. 79, p. 164, § 1.)

Sec. 37685. Fund; transfer on disincorporation of city

If the city disincorporates, the trust fund shall be turned over to the board of supervisors of the county in which the cemetery is located. The board of supervisors shall act as trustees until they appoint a suitable organization to take charge of the fund.

(Added by Stats.1949, c. 79, p. 165, § 1.)

City Treasurer

Sec. 41001. Money; keeping

The city treasurer shall receive and safely keep all money coming into his hands as treasurer.

(Added by Stats.1949, c. 79, p. 215, § 1.)

Sec. 41002. Deposit and security of funds; compliance with laws

He shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in his possession.

(Added by Stats.1949, c. 79, p. 215, § 1.)

Sec. 41003. Disbursements

He shall pay out money only on warrants signed by legally designated persons.

(Added by Stats.1949, c. 79, p. 215, § 1.)

Sec. 41004. Monthly reports

Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. He shall file a copy with the legislative body.

(Added by Stats.1949, c. 79, p. 215, § 1.)

Sec. 41005. Collection of taxes and license fees

The city treasurer shall perform such duties relative to the collection of city taxes and license fees as are prescribed by ordinance.

(Added by Stats.1949, c. 79, p. 215, § 1.)

Sec. 41006. Deputies; appointment

The city treasurer may appoint deputies for whose acts he and his bondsmen are responsible.

(Added by Stats.1949, c. 79, p. 215, § 1.)

Sec. 41007. Deputies; term; compensation

The deputies shall hold office at the pleasure of the city treasurer and receive such compensation as is provided by the legislative body.

(Added by Stats.1949, c. 79, p. 216, § 1.)

Powers and Duties Common to Cities and Counties

Sec. 50050. Unclaimed money; local agency; publication of notice; restitution money

For purposes of this article, "local agency" includes all districts. Except as otherwise provided by law, money, excluding restitution to victims, that is not the property of a local agency that remains unclaimed in its treasury or in the official custody of its officers for three years is the property of the local agency after notice if not claimed or if no verified complaint is filed and served. At any time after the expiration of the three-year period, the treasurer of the local agency may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the local agency. Money representing restitution collected on behalf of victims shall be either deposited into the Restitution Fund or used by the local agency for purposes of victim services after the expiration of the three-year period. However, with respect to moneys deposited with the county treasurer pursuant to Section 7663 of the Probate Code, this three-year period to claim money held by a local agency is extended for an infant or person of unsound mind until one year from the date his or her disability ceases.

For purposes of this section, "infant" and "person of unsound mind" have the same meaning as given to those terms as used in Section 1441 of the Code of Civil Procedure.

(Added by Stats.1949, c. 81, p. 257, § 1. Amended by Stats.1969, c. 655, p. 1329, § 1; Stats.1972, c. 246, p. 496, § 1. Amended by Stats. 1984, c. 866, § 1; Stats.1995, c. 105 (S.B.481), § 2; Stats.1995, c. 313 (A.B.817), § 3, eff. Aug. 3, 1995; Stats.1995, c. 876 (S.B.911), § 1.)

Sec. 50051. Unclaimed money; notice; contents

The notice shall state the amount of money, the fund in which it is held, and that it is proposed that the money will become the property of the local agency on a designated date not less than forty-five days nor more than sixty days after the first publication of the notice.

(Added by Stats.1949, c. 81, p. 257, § 1.)

Sec. 50052. Unclaimed money; filing of claim; requisites; acceptance or rejection; court proceedings

Upon or prior to publication, a party of interest may file a claim with the treasurer which must include the claimant's name, address, amount of claim, the grounds on which the claim is founded, and any other information that may be required by the treasurer. The claim shall be filed before the date the unclaimed money becomes the property of the local agency as provided under Section 50051 and the treasurer shall accept or reject that claim. If the claim is rejected by the treasurer, the party who submitted the claim may file a verified complaint seeking to recover all, or a designated part, of the money in a court of competent jurisdiction within the county in which the notice is published, and serves a copy of the complaint and the summons issued thereon upon the treasurer. The copy of the complaint and summons shall be served within 30 days of receiving notice that the claim was rejected. The treasurer shall withhold the release of the portion of unclaimed money for which a court action has been filed as provided in this section until a decision is rendered by the court.

(Added by Stats.1949, c. 81, p. 257, § 1. Amended by Stats.1984, c. 866, § 2.)

Sec. 50052.5. Unclaimed money; release; value; liability

(a) Notwithstanding Section 50052, the treasurer may release to the depositor of the unclaimed money, their heir, beneficiary, or duly appointed representative, unclaimed money if claimed prior to the date the money becomes the property of the local agency upon submitting proof satisfactory to the treasurer, unless the unclaimed money is deposited pursuant to Section 7663 of the Probate Code.

(b) Notwithstanding Section 50052, the treasurer may release unclaimed money deposited with the county treasurer pursuant to Section 7663 of the Probate Code, to any adult blood relative of either the decedent or the decedent's predeceased spouse.

(c) Notwithstanding Section 50052, the treasurer may release unclaimed money deposited with the county treasurer pursuant to Section 7663 of the Probate Code to the parent who has legal and physical custody of a minor who is a blood relative of either the decedent or the decedent's predeceased spouse without the need to appoint a legal guardian for the minor as follows:

(1) If the value of the unclaimed money deposited with the county treasurer is five thousand dollars (\$5,000) or less, the treasurer may release the money according to Section 3401 of the Probate Code.

(2) If the value of the unclaimed money deposited with the county treasurer is sixty thousand dollars (\$60,000) or less, and the money is not released under paragraph (1), the unclaimed money may be released by the treasurer to the parent who shall, after payment of any costs incurred in making the claim, hold the money in trust, to be used only for the care, maintenance, and education of the minor, and the parent shall be liable therefor to the minor under the fiduciary laws of this state. The money held in trust shall be released to the minor when the minor reaches the age of majority.

(d) The claim shall be presented to the county treasurer in affidavit form and signed under penalty of perjury. Notwithstanding Section 13101 of the Probate Code, the claimant, to be entitled to the entire escheated estate, needs only to establish with documentary proof the existence of a blood relationship to either the decedent or of the predeceased spouse, if any, and the documentary proof, if regular on its face, need not be certified. Notwithstanding Section 13101 of the Probate Code, the claimant shall not be required to declare that no other person has an equal or superior claim to the escheated estate.

The county treasurer may rely in good faith on the sworn statements made in the claim and shall have no duty to inquire into the truth or credibility of evidence submitted.

In paying out the escheated estate, the county treasurer shall be held harmless to all. Payment shall act as total acquittance and shall completely discharge the county treasurer from any liability.

If the county treasurer rejects any claim made hereunder, the claimant may take his or her grievance to the Superior Court of the county holding the escheated estate.

Any claim paid hereunder shall be paid without interest.

(Added by Stats.1984, c. 866, § 3. Amended by Stats.1996, c. 401 (S.B.1582), § 1; Stats.2000, c. 333 (A.B.2525), § 1.)

Sec. 50053. Unclaimed money; transfer to general fund on acquisition of ownership

When any such money becomes the property of a local agency and is in a special fund, the legislative body may transfer it to the general fund.

(Added by Stats.1949, c. 81, p. 257, § 1.)

Sec. 50054. Performance of construction services or construction of public works by governmental body; charge

Whenever any city or county or city and county renders construction services or constructs public works for any city, county, city and county or any other governmental agency below the level of the state government, the price charged for such services or construction shall be sufficient to reimburse the governmental body performing such services for the full cost thereof including labor, material, equipment costs or rentals and a reasonable allowance for overhead. In computing overhead, without limitation on

other factors properly includable, there shall be allocated to the overhead cost its proportionate share of indirect labor and administrative costs.

(Added by Stats.1971, c. 558, p. 1071, § 1.)

Sec. 50055. Unclaimed money; transfer to general fund

Any other provision of this article notwithstanding, any individual items of less than fifteen dollars (\$15), or any amount if the depositor's name is unknown, which remain unclaimed in the treasury or in the official custody of an officer of a local agency for the period of one year or upon an order of the court may be transferred to the general fund by the legislative body without the necessity of publication of a notice in a newspaper.

(Added by Stats.1972, c. 246, p. 496, § 2. Amended by Stats.1985, c. 506, § 1; Stats.1991, c. 40 (A.B.657), § 1; Stats.1996, c. 89 (A.B.896), § 1, eff. July 1, 1996.)

Sec. 50056. Unclaimed money; delegation of responsibilities by treasurer

The responsibilities of the treasurer as provided under this article may be delegated by the treasurer to the agency, district, or department that maintains the supporting records of the unclaimed money based on the initial receipt or deposit of that money or both.

(Added by Stats.1984, c. 866, § 4.)

Authority To Impose Special Taxes

Sec. 50075. Legislative intent

It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution.

(Added by Stats.1979, c. 903, p. 3112, § 1, eff. Sept. 22, 1979. Amended by Stats.1980, c. 672, § 1, eff. July 20, 1980.)

Sec. 50075.1. Accountability measures

On or after January 1, 2001, any local special tax measure that is subject to voter approval that would provide for the imposition of a special tax by a local agency shall provide accountability measures that include, but are not limited to, all of the following:

- (a) A statement indicating the specific purposes of the special tax.
- (b) A requirement that the proceeds be applied only to the specific purposes identified pursuant to subdivision (a).
- (c) The creation of an account into which the proceeds shall be deposited .
- (d) An annual report pursuant to Section 50075.3.

(Added by Stats.2000, c. 535 (S.B.165), § 2.)

Sec. 50075.5. Definitions

As used in this article:

(a) "Local agency" means any county, city, city and county, including a charter city or county, or any special district.

(b) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the performance of governmental or proprietary functions, with limited geographic boundaries, including, but not limited to, a school district and a community college district.

(Added by Stats.2000, c. 535 (S.B.165), § 4.)

Sec. 50076. Definition

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.

(Added by Stats.1979, c. 903, p. 3112, § 1, eff. Sept. 22, 1979.)

Sec. 50077. Ordinance or resolution; election; collection

(a) Except as provided in Section 7282 of the Revenue and Taxation Code, the legislative body of any city, county, or district may, following notice and public hearing, propose by ordinance or resolution the adoption of a special tax. The ordinance or resolution shall include the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held to approve the levy of the tax. The proposition shall be submitted to the voters of the city, county, or district, or a portion thereof, and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the city, county, or district may levy the tax.

(b) The legislative body of a city, or district, may provide for the collection of the special tax in the same manner and subject to the same penalty as, or with, other charges and taxes fixed and collected by the city, or district, or, by agreement with the county, by the county on behalf of the city, or district. If the special taxes are collected by the county on behalf of the city, or district, the county may deduct its reasonable costs incurred for the service before remittal of the balance to the city.

(c) The legislative body of a local agency which is conducting proceedings for the incorporation of a city, the formation of a district, a change of organization, a reorganization, a change of organization of a city, or a municipal reorganization, may propose by ordinance or resolution the adoption of a special tax in accordance with the provisions of subdivision (a) on behalf of an affected city or district.

(d) As used in this section "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(Added by Stats.1979, c. 903, p. 3112, § 1, eff. Sept. 22, 1979. Amended by Stats.1980, c. 672, § 2, eff. July 20, 1980; Stats.1982, c. 1420, § 2; Stats.1985, c. 529, § 2.)

Sec. 50077.5. Ordinance or resolution effective on or after January 1, 1986; levy of special tax; automatic adjustments; judicial actions or proceedings; appeal

(a) Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure applies to any judicial action or proceeding to validate, attack, review, set aside, void, or annul an ordinance or resolution approved by the voters pursuant to this article on or after January 1, 1986, that levies a special tax, or modifies or amends an existing ordinance or resolution that levies a special tax. If an ordinance or resolution adopted pursuant to this article on or after January 1, 1986, provides for an automatic adjustment in the rate or amount of any special tax approved by the voters pursuant to this article, and the automatic adjustment increases the amount of the tax, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 60 days of the effective date of the increase.

(b) Any appeal from the final judgment in an action or proceeding brought pursuant to subdivision (a) shall be filed within 30 days after entry of the judgment.

(Added by Stats.1985, c. 985, § 10.)

Term Limits

Sec. 53077 Term Limits; proposals; electoral approval

(a) Notwithstanding any other provision of law, the governing body of a district may adopt or the residents of a district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing body of the district. Any proposal to limit the number of terms a member of the governing body of the District may serve on the governing body of the district shall apply prospectively and shall not become operative unless it is submitted to the electors of the district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.

(b) For purposes of this section, the term "district" shall mean an agency of the state, formed pursuant to general law or special act, for the performance of governmental or proprietary functions within limited boundaries.

(Added by Stats.1995, c. 432 (S.B. 2), § 6.)

Security Deposit For Construction Projects

Sec. 53079. Local public entity; construction project; security deposit; interest

(a) "Local public entity," as used in this section, means any city or county, whether general law or chartered, district, public authority, public agency, or public corporation but does not include any entity of the state.

(b) If a local public entity requires any person, on or after January 1, 1986, to furnish a security, in the form of cash or a cashier's check made payable to the local public entity, to guarantee the performance of any act or agreement related to a construction project, and if the local public entity invests that cash or the proceeds of that check, the local public entity shall pay interest on all, or any portion, of the amount of the balance of the security deposit which is returned to the person who furnished the security if the security is held by the local public entity for more than 30 days. The local public entity shall pay interest on that amount. The minimum interest rate paid shall be the average rate of return earned by the local public entity on its investments during the four full calendar quarters last preceding the return of the security deposit, less 1 full percentage point. Interest shall be paid from the date the security is provided to the local public entity until the date that all, or any portion, of the balance of the security deposit is returned to the person who furnished the security.

(c) The Legislature finds and declares that the payment of interest by local public entities for security furnished, as described in subdivision (b), is a matter of statewide interest and concern and the Legislature intends by this section to occupy the field of this regulation.

(Added by Stats.1985, c. 247, § 1.)

Sec. 53084. Automobile dealerships or big box retailers relocating to specified areas; financial assistance by local agencies; restrictions and requirements

(a) Notwithstanding any other provision of this part, a local agency shall not provide any form of financial assistance to an automobile dealership or big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, that is relocating from the territorial jurisdiction of one local agency to the territorial jurisdiction of another local agency but within the same market area, unless the legislative body of the local agency to which the relocation will occur offers the contract to the local agency from which the relocation is occurring pursuant to this section.

(b) If the automobile dealership or big box retailer is relocating within the same county, including both incorporated and unincorporated territory, or to an adjacent county or a city within an adjacent county, the local agency proposing to offer financial assistance shall prepare a report that describes the market area for the automobile dealership or big box retailer that is relocating. The report shall include the information required to be contained in the resolution pursuant to subdivision (e). The report shall refer to and cite the independent literature, trade publications, and recognized and established business policies and practices describing the market area for the automobile dealership or big box retailer that is relocating. The report shall conclude that the relocation is occurring either within the same market area or outside the same market area. The report shall be available to the public not later than 45 days prior to the date of the public hearing required by subdivision (d). In addition, the notice of the public hearing and the report shall be mailed to the local agency from which the relocation is occurring.

(c)(1) If the report prepared pursuant to subdivision (b) concludes that the automobile dealership or big box retailer is relocating within the same market area, at least 45 days prior to the public hearing required pursuant to subdivision (d), the agency shall notify the local agency from which the relocation is occurring of its intent to give financial assistance and shall send to that local agency a contract that has been approved by a two-thirds vote of the legislative body of the local agency and that apportions the sales tax generated from the automobile dealership or big box retailer after the relocation between the two local agencies in the following manner:

(A) The annual amount of assistance shall be subtracted from the annual sales tax.

(B) The difference shall be divided equally between the two local agencies for the first 10 fiscal years following the relocation. However, in no event shall the local agency from which the relocation is occurring receive more sales tax than it received from the automobile dealership or big box retailer in the fiscal year prior to the relocation.

(C) After the first 10 fiscal years following the relocation, the contract shall terminate and the apportionment shall end unless the contract is extended by both local agencies.

(2) The local agency from which the relocation is occurring shall have 30 days after receipt of the contract to approve the contract by enacting a resolution or ordinance approved by a two-thirds vote of its legislative body.

(d) Prior to a local agency giving any financial assistance to an automobile dealership or big box retailer that is relocating, the agency shall hold a public hearing. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the local agency at least once per week for at least three successive weeks, as specified in Section 6063 of the Government Code, prior to the hearing.

(e) The resolution approving financial assistance shall do all of the following:

(1) Identify the present name and, if different, the former name of the relocating automobile dealership or big box retailer.

(2) Identify the address, including the local agency, from which the automobile dealership or big box retailer has moved or will move.

(3) Identify the address, including the local agency, to which the automobile dealership or big box retailer will move.

(4) Contain one of the following findings:

(A) That the automobile dealership or big box retailer is not relocating within the same market area.

(B) That the automobile dealership or big box retailer is relocating within the same market area but that a contract containing the terms specified in subdivision (c) has been approved by the local agency's legislative body, and offered to the local agency from which the relocation has occurred, which has approved the agreement, entered into another agreement acceptable to both local agencies, or has not accepted the proposed contract within the 30-day period.

These findings shall be final and conclusive as to all persons except for the automobile dealership or big box retailer that is the subject of the findings and the community from which the relocation has occurred, all of which may bring an action to challenge these findings.

(f) As used in this section, the following terms have the following meaning:

(1) "Big box retailer" means a store of greater than 75,000 square feet of gross buildable area that will generate sales or use tax pursuant to Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code.

(2) "Local agency" means a chartered or general law city, a chartered or general law county, or a city and county. "Local agency" does not include a redevelopment agency that is subject to Section 33426.7 of the Health and Safety Code.

(3) "Financial assistance" includes, but is not limited to, any of the following:

(A) Any appropriation of public funds, including loans, grants, or subsidies or the payment for or construction of parking improvements.

(B) Any tax incentive, including tax exemptions, rebates, reductions, or moratoria of a tax, including any rebate or payment based upon the amount of sales tax generated from the automobile dealership or big box retailer.

(C) The sale or lease of real property at a cost that is less than fair market value.

(D) Payment for, forgiveness of, or reduction of fees.

(4)(A) "Market area" means a geographical area that is described in independent and recognized commercial trade literature, recognized and established business or manufacturing policies or practices, or publications of recognized independent research organizations as being an area that is large enough to support the location of the specific automobile dealership or the specific big box retailer that is relocating.

(B) With respect to an automobile dealership, a "market area" shall not extend further than 40 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the automobile dealership is relocating and ending at the location to which the automobile dealership is relocating.

(C) With respect to a big box retailer, a "market area" shall not extend further than 25 miles, as measured by the most reasonable route on roads between two points, starting from the location from which the big box retailer is relocating and ending at the location to which the big box retailer is relocating.

(5) "Relocating" means the closing of an automobile dealership or big box retailer in one location and the opening of an automobile dealership or big box retailer in another location within a 365-day period when a person or business entity has an ownership interest in both the automobile dealership or big box retailer that has closed or will close and the one that is opening. "Relocating" does not mean and shall not include the closing of an automobile dealership or big box retailer because the automobile dealership or big box retailer has been or will be acquired or has been or will be closed as a result of the use of eminent domain.

(g) This section does not apply to local agency assistance in the construction of public improvements that serve all or a portion of the jurisdiction of the local agency and that are not required to be constructed as a condition of approval of the automobile dealership or big box retailer. This section also does not prohibit assistance in the construction of public improvements that are being constructed for a development other than the automobile dealership or big box retailer.

(h) Notwithstanding Section 7550.5, on or before January 1, 2004, the California Research Bureau shall report to the Legislature and the Governor regarding the implementation of this section. The report shall identify the reports prepared pursuant to subdivision (b), the contracts offered pursuant to subdivision (c), and the resolutions approved pursuant to subdivision (e). The report may include any additional information that the bureau finds relevant. The report may also include recommendations for legislative action, including, but not limited to, amending, or extending the repeal date of, this section.

(i) This section shall not apply to any financial assistance provided by a local agency pursuant to a lease, contract, agreement, or other enforceable written instrument entered into between the local agency and an automobile dealership, big box retailer, or a business entity that sells or leases land to an automobile dealership or big box retailer, if the lease, contract, agreement, or other enforceable written instrument was entered into prior to December 31, 1999.

(j) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

(Added by Stats.1999, c. 462 (A.B.178), § 2. Amended by Stats.2000, c. 471 (A.B.2008), § 1.2.)

Sec. 53085. Applicants for financial assistance; statement that applicant has not been convicted of felony

A local agency, as defined in Section 54951, may require an applicant for economic development loans, grants, or similar financial assistance to sign a statement under penalty of perjury that he or she has not been convicted of a felony.

(Added by Stats.1986, c. 583, § 1.)

Sec. 53086. Companies advertising services relating to sales of public property; notice of relationship to government; failure to notify

(a) Any private person or private company which advertises that it provides information or services regarding the sale or purchase of public property of any kind shall prominently indicate in the advertisement and any other presentation that the person or company is not a government official or a government agency.

(b) Failure on the part of any private person or private company to prominently indicate in the advertisement and any other presentation that the person or company is not a government agency shall constitute an unfair business practice within the meaning and for the purposes of Section 17200 of the Business and Professions Code, but is not a crime.

(Added by Stats.1990, c. 683 (A.B.3116), § 2.)

Sec. 53087.4. Special tax levies; assessment units; misidentification of parcel

(a) In the case of a special tax levied by a local agency on a per parcel basis, both of the following conditions shall apply:

(1) A parcel created by a subdivision map approved in accordance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7) shall be deemed to be a single assessment unit and shall not be deemed, on the basis of multiple assessor's parcel numbers assigned by the assessor, to constitute multiple assessment units.

(2) A parcel that has not been subdivided in accordance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7) may be deemed to constitute a separate assessment unit only to the extent that that parcel has been previously described and conveyed in one or more deeds separating it from all adjoining property.

(b)(1) If the parcel identified pursuant to paragraph (1) or (2) is not consistent with the property's identification by assessor's parcel number, it shall be the responsibility of the parcel owner to provide the local taxing jurisdiction with written notice of the correct assessor's parcel number of taxable parcels pursuant to this section 90 days after the initial tax bill containing the tax levy.

(2) The initial levy of any special tax that is initially imposed by a local agency on a per parcel basis on or after the operative date of the act adding this paragraph shall be billed on the annual property tax bill sent by the county tax collector.

(c) Any parcel identified pursuant to this section shall be for tax purposes only and shall not confer any entitlement on the property.

(d) This section shall not apply to any special tax levied prior to the effective date of this section.

(Added by Stats.1996, c. 1125 (A.B.188), § 1. Amended by Stats.1998, c. 342 (A.B.1933), § 2.)

Sec. 53087.5. Private property; seismic safety improvements; public financing; notice to lienholders

A loan or expenditure of funds by a local public entity, including a charter city, to upgrade or improve privately owned property for purposes of seismic safety or retrofitting, where the provision of funds creates or can create a lien on the property, shall not, when combined with existing liens on the property, exceed 80 percent of the current appraised value of the property, as determined by an independent, certified appraiser, unless the existing lienholders consent in writing to a higher loan-to-value ratio. Notice of the intention to provide financing to the owner of the property shall be given to existing lienholders of record not less than 30 days prior to any vote of the local agency authorizing the provision of financing to the owner of the property.

(Added by Stats.1995, c. 385 (S.B.1010), § 1.)

Investment Of Surplus

Sec. 53600. Local agency

As used in this article, "local agency" means county, city, city and county, including a chartered city or county, school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.

(Added by Stats.1949, c. 81, p. 289, § 1. Amended by Stats.1984, c. 124, § 2; Stats.1984, c. 1226, § 1; Stats.1987, c. 887, § 2.)

Sec. 53600.3. Prudent investor standard; investments on behalf of local agencies

Except as provided in subdivision (a) of Section 27000.3, all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.

(Added by Stats.1995, c. 784 (S.B.866), § 11. Amended by Stats.1996, c. 749 (S.B.109), § 4.)

Sec. 53600.5. Objectives; managing public funds

When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the primary objective of a trustee shall be to safeguard the principal of the funds under its control. The secondary objective shall be to meet the liquidity needs of the depositor. The third objective shall be to achieve a return on the funds under its control.

(Added by Stats.1995, c. 784 (S.B.866), § 12. Amended by Stats.1996, c. 749 (S.B.109), § 5.)

Sec. 53600.6. Legislative findings and declarations; solvency and creditworthiness

The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern.

(Added by Stats.1995, c. 784 (S.B.866), § 13.)

Sec. 53601. Authorized investments; circumstances

The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time

of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 180 days maturity or 40 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars (\$500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money that may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's surplus money, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposits issued by a nationally or state-chartered bank or a state or federal association (as defined by Section 5102 of the Financial Code) or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable

certificates of deposits do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638.

(i)(1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including, the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to December 31, 1994, and was sold using a reverse repurchase agreement or securities lending agreement on December 31, 1994.

(B) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale; the total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement or securities lending agreement may not be entered into with securities not sold on a reverse repurchase agreement or securities lending agreement and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement or securities lending agreement, but may only be entered into with securities owned and previously paid for a minimum of 30 days prior to the settlement of the reverse repurchase agreement or securities lending agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security. Reverse repurchase agreements or securities lending agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements or securities lending agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section .

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(l) Notwithstanding anything to the contrary contained in this section, Section 53635, or any other provision of law, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

(Added by Stats.1949, c. 81, p. 289, § 1. Amended by Stats.1951, c. 1643, p. 3697, § 1; Stats.1953, c. 537, p. 1798, § 2; Stats.1954, 1st Ex.Sess., c. 10, p. 257, § 1, eff. April 6, 1954; Stats.1967, c. 275, p. 1433, § 1; Stats.1967, c. 1316, p. 3140, § 2; Stats.1974, c. 1354, p. 2938, § 1; Stats.1975, c. 649, p. 1406, § 1; Stats.1977, c. 1138, p. 3657, § 1.5; Stats.1978, c. 65, p. 181, § 1; Stats.1979, c. 158, p. 354, § 1; Stats.1979, c. 275, p. 942, § 2.5; Stats.1981, c. 185, § 2; Stats.1982, c. 508, § 2; Stats.1983, c. 550, § 1; Stats.1983, c. 567, § 1.5; Stats.1984, c. 659, § 2; Stats.1984, c. 741, § 1; Stats.1985, c. 983, § 14, eff. Sept. 26, 1985; Stats.1985, c. 983, § 15, eff. Sept. 26, 1985, operative Jan. 1, 1988; Stats.1985, c. 1526, § 1; Stats.1985, c. 1526, § 1.5, operative Jan. 1, 1988; Stats.1986, c. 784, § 1; Stats.1986, c. 784, § 2, operative Jan. 1, 1988; Stats.1986, c. 853, § 1, eff. Sept. 17, 1986; Stats.1986, c. 853, § 2, operative Jan. 1, 1987; Stats.1986, c. 853, § 1.5; Stats.1986, c. 853, § 2.5, operative Jan. 1, 1988; Stats.1987, c. 446, § 1; Stats.1987, c. 887, § 3.5; Stats.1988, c. 294, § 1, eff. July 7, 1988; Stats.1988, c. 491, § 1; Stats.1992, c. 173 (A.B.3576), § 1; Stats.1994, c. 705 (S.B.1804), § 10; Stats.1995, c. 784 (S.B.866), § 14; Stats.1996, c. 156 (S.B.864), § 7, eff. July 12, 1996; Stats.1998, c. 588 (S.B.1793), § 1; Stats.1999, c. 643 (A.B.1679), § 9; Stats.1999, c. 644 (A.B.530), § 1.5; Stats.2000, c. 135 (A.B.2539), § 80; Stats.2000, c. 339 (A.B.2220), § 1.)

Sec. 53601.1. Investment in financial futures or financial option contracts

The authority of a local agency to invest funds pursuant to Section 53601 includes, in addition thereto, authority to invest in financial futures or financial option contracts in any of the investment categories enumerated in that section.

(Added by Stats.1983, c. 534, § 3.)

Sec. 53601.2. Investment in commercial paper

Notwithstanding subdivision (g) of Section 53601, the board of supervisors of a county may invest in commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and have total assets in excess of five hundred million dollars (\$500,000,000) and an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 270 days' maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 40 percent of the agency's surplus money that may be invested pursuant to this section. No more than 10 percent of the agency's surplus money that may be invested pursuant to this section may be invested in the outstanding paper of any single issuing corporation.

(Added by Stats.1999, c. 217 (A.B.343), § 1. Amended by Stats.2000, c. 339 (A.B.2220), § 2.)

Sec. 53601.5. Investments; qualified purchase agent

The purchase by a local agency of any investment authorized pursuant to Section 53601 or 53601.1, not purchased directly from the issuer, shall be purchased either from an institution licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code, or from a member of a federally regulated securities exchange, from a national or state-chartered bank, from a federal or state association (as defined by Section 5102 of the Financial Code) or from a brokerage firm designated as a primary government dealer by the Federal Reserve bank.

(Added by Stats.1984, c. 929, § 1. Amended by Stats.1985, c. 983, § 16, eff. Sept. 26, 1985.)

Sec. 53601.6. Prohibited investments

(a) A local agency shall not invest any funds pursuant to this article in inverse floaters, range notes, or mortgage derived interest-only strips.

(b) A local agency shall not invest any funds pursuant to this article in any security that could result in zero interest accrual if held to maturity. However, a local agency may hold prohibited instruments until their maturity dates. The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, and following) that are authorized for investment pursuant to subdivision (k) of Section 53601.

(Added by Stats.1995, c. 784 (S.B.866), § 15. Amended by Stats.1996, c. 156 (S.B.864), § 8, eff. July 12, 1996.)

Sec. 53602. Investment in legal investments for savings banks; securities of public districts

The legislative body shall invest only in notes, bonds, bills, certificates of indebtedness, warrants, or registered warrants which are legal investments for savings banks in the State, provided, that the board of supervisors of a county may, by a four-fifths vote thereof, invest in notes, warrants or other evidences of indebtedness of public districts wholly or partly within the county, whether or not such notes, warrants, or other evidences of indebtedness are legal investments for savings banks.

(Added by Stats.1949, c. 81, p. 289, § 1. Amended by Stats.1953, c. 537, p. 1799, § 3; Stats.1954, 1st Ex.Sess., c. 10, p. 257, § 2, eff. April 6, 1954.)

Sec. 53603. Direct purchase of securities

The legislative body may make the investment by direct purchase of any issue of eligible securities at their original sale or after they have been issued.

(Added by Stats.1949, c. 81, p. 289, § 1. Amended by Stats.1953, c. 537, p. 1799, § 4.)

Sec. 53604. Sale or exchange of securities; reinvestment of proceeds

The legislative body may sell, or exchange for other eligible securities, and reinvest the proceeds of, the securities purchased.

(Added by Stats.1949, c. 81, p. 289, § 1. Amended by Stats.1953, c. 537, p. 1799, § 5.)

Sec. 53605. Sale of securities; application of proceeds to original purposes

From time to time, the legislative body shall sell the securities so that the proceeds may be applied to the purposes for which the original purchase money was placed in the sinking fund or the treasury of the local agency.

(Added by Stats.1949, c. 81, p. 289, § 1. Amended by Stats.1953, c. 537, p. 1799, § 6.)

Sec. 53606. Cancellation of bonds issued by purchaser; resale

The bonds purchased, which were issued by the purchaser, may be canceled either in satisfaction of sinking fund obligations or otherwise. When canceled, they are no longer outstanding, unless in its discretion, the legislative body holds them uncanceled. While held uncanceled, the bonds may be resold.

(Added by Stats.1949, c. 81, p. 289, § 1.)

Sec. 53607. Delegation of duties to treasurer; monthly report

The authority of the legislative body to invest or to reinvest funds of a local agency, or to sell or exchange securities so purchased, may be delegated for a one-year period by the legislative body to the treasurer of the local agency, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked or expires, and shall make a monthly report of those transactions to the legislative body. Subject to review, the legislative body may renew the delegation of authority pursuant to this section each year.

(Added by Stats.1957, c. 220, p. 882, § 1. Amended by Stats.1996, c. 749 (S.B.109), § 6.)

Sec. 53608. Deposit of securities; receipt; delegation of authority

The legislative body of a local agency may deposit for safekeeping with a federal or state association (as defined by Section 5102 of the Financial Code), a trust company or a state or national bank located within this state or with the Federal Reserve Bank of San Francisco or any branch thereof within this state, or with any Federal Reserve bank or with any state or national bank located in any city designated as a reserve city by the Board of Governors of the Federal Reserve System, the bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants, or other evidences of indebtedness in which the money of the local agency is invested pursuant to this article or pursuant to other legislative authority. The local agency shall take from such financial institution a receipt for securities so deposited. The authority of the legislative body to deposit for safekeeping may be delegated by the legislative body to the treasurer of the local agency; the treasurer shall not be responsible for securities delivered to and received for by a financial institution until they are withdrawn from the financial institution by the treasurer.

(Added by Stats.1959, c. 1392, p. 3670, § 1. Amended by Stats.1967, c. 582, p. 1928, § 1; Stats.1980, c. 689, p. 2080, § 1; Stats.1985, c. 983, § 17, eff. Sept. 26, 1985.)

Sec. 53609. Eligible securities for investment of funds held by local agency pursuant to deferred compensation plans

Notwithstanding the provisions of this chapter or any other provisions of this code, funds held by a local agency pursuant to a written agreement between the agency and employees of the agency to defer a portion of the compensation otherwise receivable by the agency's employees and pursuant to a plan for such deferral as adopted by the governing body of the agency, may be invested in the types of investments set forth in Sections 53601 and 53602 of this code, and may additionally be invested in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, annuities, mortgages, deeds of trust, or other security interests in real or personal property. Nothing herein shall be construed to permit any type of investment prohibited by the Constitution.

Deferred compensation funds are public pension or retirement funds for the purposes of Section 17 of Article XVI of the Constitution.

(Added by Stats.1971, c. 1629, p. 3511, § 2. Amended by Stats.1972, c. 1370, p. 2736, § 12; Stats.1974, c. 544, p. 1254, § 26; Stats.1975, c. 822, p. 1874, § 1; Stats.1979, c. 373, p. 1320, § 162.)

Health Fund Investments

Sec. 53620. Employee retiree health benefits; investment options

Notwithstanding Section 53601 or 53635, the governing body of a local agency may invest funds designated for the payment of employee retiree health benefits in any form or type of investment deemed prudent by the governing body pursuant to Section 53622.

(Added by Stats.1998, c. 996 (A.B.2764), § 7.)

Sec. 53621. Investment or reinvestment authority; delegation

The authority of the governing body to invest or to reinvest funds intended for the payment of employee retiree health benefits, or to sell or exchange securities purchased for that purpose, may be delegated by the governing body to designated officers.

(Added by Stats.1998, c. 996 (A.B.2764), § 7.)

Sec. 53622. Employee retiree health benefits; purpose; governing body or designated officer duties

(a) Funds intended for the payment of employee retiree health benefits shall only be held for the purpose of providing benefits to participants in the retiree health benefit plan and defraying reasonable expenses of administering that plan.

(b) The governing body or designated officer, when making investments of the funds, shall discharge its duties with respect to the investment of the funds.

(1) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants in the retiree health benefit plan, minimizing employer contributions thereto, and defraying reasonable expenses of administering the plan.

(2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(3) Shall diversify the investments of the funds so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

(Added by Stats.1998, c. 996 (A.B.2764), § 7.)

Deposit of Funds

Sec. 53630. Definitions

As used in this article:

(a) "Local agency" means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state.

(b) "Treasurer" means treasurer of the local agency.

(c) "Depository" means a state or national bank, savings association or federal association, a state or federal credit union, or a federally insured industrial loan company, in this state in which the moneys of a local agency are deposited.

(d) "Agent of depository" means a trust company or trust department of a state or national bank located in this state, including the trust department of a depository where authorized, and the Federal Home Loan Bank of San Francisco, which is authorized to act as an agent of depository for the purposes of this article pursuant to Section 53657.

(e) "Security" means any of the eligible securities or obligations listed in Section 53651.

(f) "Pooled securities" means eligible securities held by an agent of depository for a depository and securing deposits of one or more local agencies.

(g) "Administrator" means the Administrator of Local Agency Security of the State of California.

(h) "Savings association or federal association" means a savings association, savings and loan association, or savings bank as defined by Section 5102 of the Financial Code.

(i) "Federally insured industrial loan company" means an industrial loan company licensed under Division 7 (commencing with Section 18000) of the Financial Code, the investment certificates of which are insured by the Federal Deposit Insurance Corporation.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1951, c. 437, p. 1419, § 1; Stats.1965, c. 107, p. 1047, § 1; Stats.1969, c. 1483, p. 3033, § 1, operative July 1, 1970; Stats.1976, c. 349, p. 986, § 17, eff. July 9, 1976; Stats.1977, c. 60, p. 453, § 4, eff. May 18, 1977; Stats.1984, c. 659, § 3; Stats.1984, c. 868, § 18; Stats.1984, c. 1226, § 2; Stats.1985, c. 983, § 18, eff. Sept. 26, 1985; Stats.1986, c. 1132, § 1; Stats.1987, c. 887, § 4; Stats.1988, c. 1004, § 1, operative Jan. 1, 1989; Stats.1995, c. 480 (A.B.1482), § 201, eff. Oct. 2, 1995, operative Oct. 2, 1995.)

Sec. 53630.1. Legislative findings and declarations; solvency and creditworthiness

The Legislature hereby finds that the solvency and creditworthiness of each individual local agency can impact the solvency and creditworthiness of the state and other local agencies within the state. Therefore, to protect the solvency and creditworthiness of the state and all of its political subdivisions, the Legislature hereby declares that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern.

(Added by Stats.1995, c. 784 (S.B.866), § 16.)

Sec. 53630.5. Additional definitions

(a) The definitions in Section 1700 of, and Chapter 1 (commencing with Section 99) of Division 1 of, the Financial Code apply to this section.

(b) In this article, for purposes of being a depository of moneys belonging to or being in the custody of a local agency, the phrases "state or national bank located in this state," "state or national bank," "state or national bank in this state," and "state or national banks in the state" include, without limitation, any of the following:

(1) Any California branch office of a foreign (other state) state bank that the bank is authorized to maintain under the law of its domicile and federal law.

(2) Any California branch office of a foreign (other state) national bank that the bank is authorized to maintain under federal law.

(3) Any California branch office of a foreign (other nation) bank that the bank is licensed to maintain under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 of the Financial Code.

(4) Any California federal branch of a foreign (other nation) bank that the bank is authorized to maintain under federal law.

(Added by Stats.1995, c. 480 (A.B.1482), § 202, eff. Oct. 2, 1995, operative Oct. 2, 1995.)

Sec. 53631. Deposits to pay principal and interest of bonds

Under such conditions as the treasurer of a local agency fixes with the approval of the legislative body, he may deposit money necessary to pay the principal and interest of bonds in a bank within or without the State at the place where they are payable. This article does not apply to deposits for such purposes.

(Added by Stats.1949, c. 81, p. 290, § 1.)

Sec. 53631.5. Prohibited investments

(a) A local agency shall not invest any funds pursuant to this article in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages.

(b) A local agency shall not invest any funds pursuant to this article in any security that could result in zero interest accrual if held to maturity. However, a local agency may hold prohibited instruments until their maturity dates. The limitation in this subdivision shall not apply to local agency investments in shares of beneficial interest issued by diversified management companies registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, and following) that are authorized for investment pursuant to subdivision (k) of Section 53601.

(Added by Stats.1995, c. 784 (S.B.866), § 17.)

Sec. 53632. Classes of deposits

There are three classes of deposits:

- (a) Inactive deposits.
- (b) Active deposits.
- (c) Interest-bearing active deposits.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1983, c. 105, § 1.5.)

Sec. 53632.5. Classes of security for deposits

There are three classes of security for deposits:

- (a) Securities described in subdivision (m) of Section 53651.
- (b) Securities described in subdivision (p) of Section 53651.
- (c) Securities enumerated in Section 53651, except for those described in subdivisions (m) and (p) of that section.

(Added by Stats.1983, c. 105, § 2. Amended by Stats.1986, c. 1132, § 2.)

Sec. 53633. Determination of amounts to be deposited in each class

The treasurer shall determine the amounts of money to be deposited as inactive, active, and interest-bearing active deposits, except as otherwise provided in Section 53679.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1953, c. 670, p. 1938, § 1; Stats.1983, c. 105, § 3.)

Sec. 53634. Transfers from inactive to active deposits

The treasurer may call in money from inactive deposits and place it in active deposits as current demands require. When there is money in his possession for which there is no demand as inactive deposits, he may place it as active deposits.

(Added by Stats.1949, c. 81, p. 290, § 1.)

Sec. 53635. Funds of local agency; deposit or investment

As far as possible, all money belonging to, or in the custody of, a local agency, including money paid to the treasurer or other official to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations, credit unions, or federally insured industrial loan companies in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise directed by the legislative body pursuant to Section 53601, may be invested in the investments set forth below. To be eligible to receive local agency money, a bank, savings association, federal association, or federally insured industrial loan company shall have received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. A local agency purchasing or obtaining any securities described in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of all the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book-entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book-entry account may be used for book-entry delivery. For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase.

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank, the Tennessee Valley Authority, or in obligations, participations, or other instruments of, or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association; or in guaranteed portions of Small Business Administration notes; or in obligations, participations, or other instruments of, or issued by, a federal agency or a United States government-sponsored enterprise.

(f) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances. Purchases of bankers acceptances may not exceed 270 days maturity or 40 percent of the agency's surplus funds which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any surplus money in its treasury in any manner authorized by the Municipal Utility District Act, Division 6 (commencing with Section 11501) of the Public Utilities Code.

(g) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of five hundred million dollars (\$500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 180 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 15 percent of the agency's surplus money which may be invested pursuant to this section. An additional 15 percent, or a total of 30 percent of the agency's money or money in its custody, may be invested pursuant to this subdivision. The additional 15 percent may be so invested only if the dollar-weighted average maturity of the entire amount does not exceed 31 days. 'Dollar-weighted average maturity' means the sum of the amount of each outstanding commercial paper investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5, except that the amount so invested shall be subject to the limitations of Section 53638. For purposes of this section, the legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from depositing or investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or an employee of the administrative officer, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i)(1) Investments in repurchase agreements or reverse repurchase agreements, or securities lending agreements of any securities authorized by this section, so long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements or securities lending agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements may be utilized only when either of the following conditions are met:

(A) The security was owned or specifically committed to purchase, by the local agency, prior to repurchase agreement on December 31, 1994, and was sold using a reverse repurchase agreement or securities lending agreement on December 31, 1994.

(B) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale; the total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency not purchased or committed to purchase, prior to December 31, 1994, does not exceed 20 percent of the base value of the portfolio; and the agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) After December 31, 1994, a reverse repurchase agreement or securities lending agreement may not be entered into with securities not sold on a reverse repurchase agreement or securities lending agreement and purchased, or committed to purchase, prior to that date, as a means of financing or paying for the security sold on a reverse repurchase agreement or securities lending agreement, but may only be entered into with securities owned and previously paid for a minimum of 30 days prior to the settlement of the reverse repurchase agreement or securities lending agreement, in order to supplement the yield on securities owned and previously paid for or to provide funds for the immediate payment of a local agency obligation. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement, on securities originally purchased subsequent to December 31, 1994, shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security. Reverse repurchase agreements or securities lending agreements specified in subparagraph (B) of paragraph (3) may not be entered into unless the percentage restrictions specified in that subparagraph are met, including the total of any reverse repurchase agreements or securities lending agreements specified in subparagraph (A) of paragraph (3).

(5) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security, may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York.

(6)(A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book-entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.

(D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement or securities lending agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's surplus money which may be invested pursuant to this section .

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivision (l) or (m) and that comply with the investment restrictions of this article and Article 1 (commencing with Section 53600). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 and following).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivision (l) or (m) and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section. However, no more than 10 percent of the agency's surplus funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(l) Notes, bonds, or other obligations which are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank which is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(m) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1967, c. 1026, p. 2626, § 1; Stats.1975, c. 643, p. 1396, § 1; Stats.1976, c. 349, p. 986, § 18, eff. July 9, 1976; Stats.1977, c. 1138, p. 3658, § 2; Stats.1978, c. 65, p. 182, § 2; Stats.1979, c. 158, p. 355, § 2; Stats.1979, c. 275, p. 945, § 3.5; Stats.1981, c. 185, § 3; Stats.1982, c. 508, § 3; Stats.1983, c. 550, § 2; Stats.1983, c. 567, § 2.5; Stats.1984, c. 659, § 4; Stats.1984, c. 741, § 2; Stats.1985, c. 983, § 19, eff. Sept. 26, 1985; Stats.1985, c. 1526, § 2; Stats.1986, c. 784, § 3; Stats.1986, c. 853, § 3, eff. Sept. 17, 1986; Stats.1986, c. 853, § 3.5, eff. Sept. 17, 1986, operative Jan. 1, 1987; Stats.1983, c. 597, § 2.5, operative Jan. 1, 1988; Stats.1985, c. 983, § 20, eff. Sept. 26, 1985, operative Jan. 1, 1988; Stats.1985, c. 1526, § 2.5, operative Jan. 1, 1988; Stats.1986, c. 784, § 4, operative Jan. 1, 1988; Stats.1986, c. 853, § 4; Stats.1986, c. 853, § 4.5; Stats.1987, c. 446, § 2; Stats.1987, c. 887, § 5.5; Stats.1988, c. 294, § 2, eff. July 7, 1988; Stats.1988, c. 491, § 2; Stats.1988, c. 1004, § 2; Stats.1992, c. 173 (A.B.3576), § 2; Stats.1995, c. 784 (S.B.866), § 18; Stats.1996, c. 156 (S.B.864), § 9, eff. July 12, 1996; Stats.1996, c. 800 (S.B.1836), § 2; Stats.1998, c. 81 (A.B.1874), § 1; Stats.1998, c. 588 (S.B.1793), § 2; Stats.1999, c. 643 (A.B.1679), § 10; Stats.1999, c. 644 (A.B.530), § 2.5; Stats.2000, c. 135 (A.B.2539), § 81; Stats.2000, c. 339 (A.B.2220), § 3; Stats.2000, c. 1036 (A.B.2708), § 3.)

Sec. 53635.2. Investment in commercial paper

Notwithstanding subdivision (g) of Section 53635, the board of supervisors of a county may invest in commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Eligible paper is

further limited to issuing corporations that are organized and operating within the United States and have total assets in excess of five hundred million dollars (\$500,000,000) and an "A" or higher rating for the issuer's debt, other than commercial paper, if any, as provided for by Moody's Investors Service, Inc., or Standard and Poor's Corporation. Purchases of eligible commercial paper may not exceed 270 days' maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. Purchases of commercial paper may not exceed 40 percent of the agency's surplus money that may be invested pursuant to this section. No more than 10 percent of the agency's surplus money that may be invested pursuant to this section may be invested in the outstanding paper of any single issuing corporation.

(Added by Stats.1999, c. 217 (A.B.343), § 2. Amended by Stats.2000, c. 339 (A.B.2220), § 4.)

Sec. 53635.7. Borrowing funds; meetings; separate consideration

In making any decision that involves borrowing in the amount of one hundred thousand dollars (\$100,000) or more, the legislative body of the local agency shall discuss, consider, and deliberate each decision as a separate item of business on the agenda of its meeting as prescribed in Chapter 9 (commencing with Section 54950). As used in this section, "borrowing" does not include bank overdrafts.

(Added by Stats.1996, c. 749 (S.B.109), § 7.)

Sec. 53636. Deposited money as in treasury of local agency

Money so deposited is deemed to be in the treasury of the local agency.

(Added by Stats.1949, c. 81, p. 290, § 1.)

Sec. 53637. Selection of depository; interest

The money shall be deposited in any bank, savings association or federal association, state or federal credit union, or federally insured industrial loan company with the objective of realizing maximum return, consistent with prudent financial management, except that money shall not be deposited in any state or federal credit union if a member of the legislative body of a local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1976, c. 349, p. 987, § 20, eff. July 9, 1976; Stats.1978, c. 489, p. 1619, § 1; Stats.1984, c. 659, § 5; Stats.1986, c. 248, § 89; Stats.1986, c. 1132, § 6; Stats.1988, c. 1004, § 2.5, operative Jan. 1, 1989; Stats.1998, c. 81 (A.B.1874), § 2.)

Sec. 53638. Maximum deposits

(a) The deposit shall not exceed the shareholder's equity of any depository bank. For the purposes of this subdivision, shareholder's equity shall be determined in accordance with Section 118 of the Financial Code, but shall be deemed to include capital notes and debentures.

(b) The deposit shall not exceed the total of the net worth of any depository savings association or federal association, except that deposits not exceeding a total of five hundred thousand dollars (\$500,000) may be made to a savings association or federal association without regard to the net worth of that depository, if such deposits are insured or secured as required by law.

(c) The deposit to the share accounts of any regularly chartered credit union shall not exceed the total of the unimpaired capital and surplus of the credit union, as defined by rule of the Commissioner of Financial Institutions, except that the deposit to any credit union share account in an amount not exceeding five hundred thousand dollars (\$500,000) may be made if the share accounts of that credit union are insured or guaranteed pursuant to Section 14858 of the Financial Code or are secured as required by law.

(d) The deposit in investment certificates of a federally insured industrial loan company shall not exceed the total of the unimpaired capital and surplus of the insured industrial loan company.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1953, c. 537, p. 1798, § 1; Stats.1970, c. 358, p. 770, § 1; Stats.1976, c. 349, p. 987, § 20.5, eff. July 9, 1976; Stats.1982, c. 1224, § 1; Stats.1984, c. 659, § 6; Stats.1986, c. 248, § 90; Stats.1986, c. 1132, § 8; Stats.1988, c. 1004, § 3, operative Jan. 1, 1989; Stats.1996, c. 1064 (A.B.3351), § 788, operative July 1, 1997.)

Sec. 53639. Expense of transporting money

Except as otherwise provided in Section 53682, the depository shall bear the expenses of transportation of money to and from the depository.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1983, c. 105, § 4; Stats.1986, c. 248, § 91.)

Sec. 53640. Checks, drafts, and other exchange

Except as otherwise provided in Section 53682, the depository shall handle, collect, and pay all checks, drafts, and other exchange without cost to the local agency.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1983, c. 105, § 5; Stats.1986, c. 248, § 92.)

Sec. 53641. Receipt or other evidence of deposit

When money is deposited in a depository, the treasurer or other authorized official shall take and preserve a receipt, certificate of deposit, or other evidence of the deposit as he or she requires.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1953, c. 670, p. 1938, § 2; Stats.1986, c. 248, § 93.)

Sec. 53642. Withdrawals; check or order

The money deposited may be drawn out by check or order of the treasurer or other official authorized to make such deposit.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1953, c. 670, p. 1938, § 3.)

Sec. 53643. Deposit by treasurer

The treasurer may deposit any part of the money as agreed upon between the treasurer and the depository.

(Added by Stats.1949, c. 81, p. 290, § 1. Amended by Stats.1978, c. 489, p. 1619, § 2; Stats.1979, c. 50, p. 125, § 1; Stats.1983, c. 105, § 6; Stats.1986, c. 248, § 94.)

Sec. 53644. Withdrawals on demand; penalties; notice

If an agreement is not made:

(a) Active deposits and interest thereon are subject to withdrawal upon the demand of the treasurer or other authorized official, subject to any penalties which may be prescribed by federal law or regulation.

(b) Inactive deposits are subject to notice of at least thirty days before withdrawal.

(Added by Stats.1949, c. 81, p. 291, § 1. Amended by Stats.1983, c. 105, § 7.)

Sec. 53645. Interest; computation; payment

Interest shall be computed and paid by the depository, as follows:

(a) For active deposits upon which interest is payable, interest shall be computed on the average daily balance for the calendar quarter, and shall be paid quarterly.

(b) For inactive deposits, interest shall be computed on a 360-day basis, and shall be paid quarterly.

(Added by Stats.1949, c. 81, p. 291, § 1. Amended by Stats.1975, c. 523, p. 1088, § 1; Stats.1986, c. 248, § 95; Stats.1992, c. 523 (S.B.1683), § 5.3.)

Sec. 53646. Investment policy statement; review and approval; legislative body or oversight committee; reports

(a) (1) In the case of county government, the treasurer shall annually render to the board of supervisors and any oversight committee a statement of investment policy, which the board shall review and approve at a public meeting. Any change in the policy shall also be reviewed and approved by the board at a public meeting.

(2) In the case of any other local agency, the treasurer or chief fiscal officer of the local agency shall annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting. Any change in the policy shall also be considered by the legislative body of the local agency at a public meeting.

(b) (1) The treasurer or chief fiscal officer shall render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency. The quarterly report shall be so submitted within 30 days following the end of the quarter covered by the report. Except as provided in subdivisions (e) and (f), this report shall include the type of investment, issuer, date of maturity par and dollar amount invested on all securities, investments and moneys held by the local agency, and shall additionally include a description of any of the local agency's funds, investments, or programs, that are under the management of contracted parties, including lending programs. With respect to all securities held by the local agency, and under management of any outside party that is not also a local agency or the State of California Local Agency Investment Fund, the report shall also include a current market value as of the date of the report, and shall include the source of this same valuation.

(2) The quarterly report shall state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance.

(3) The quarterly report shall include a statement denoting the ability of the local agency to meet its pool's expenditure requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

(4) In the quarterly report, a subsidiary ledger of investments may be used in accordance with accepted accounting practices.

(c) Pursuant to subdivision (b), the treasurer or chief fiscal officer shall report whatever additional information or data may be required by the legislative body of the local agency.

(d) The legislative body of a local agency may elect to require the report specified in subdivision (b) to be made on a monthly basis instead of quarterly.

(e) For local agency investments that have been placed in the Local Agency Investment Fund, created by Section 16429.1, in National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, in a county investment pool, or any combination of these, the treasurer or chief fiscal officer may supply to the governing body, chief executive officer, and the auditor of the local agency the most recent statement or statements received by the local agency from these institutions in lieu of the information required by paragraph (1) of subdivision (b) regarding investments in these institutions.

(f) The treasurer or chief fiscal officer shall not be required to render a quarterly report, as required by subdivision (b), to a legislative body or any oversight committee of a school district or county office of education for securities, investments, or moneys held by the school district or county office of education in individual accounts that are less than twenty-five thousand dollars (\$25,000).

(g) Except as provided in subdivisions (h) and (i), each city, county, or city and county shall submit copies of its second and fourth quarter reports to the California Debt and Investment Advisory Commission within 60 days after the close of the second and fourth quarters of each calendar year. Any city, county, or city and county not required to submit a report pursuant to subdivision (h) or (i) shall file with the commission a certification within 60 days of the end of the second and fourth quarters of the calendar year stating the distribution and amount of its investment portfolio and that it is therefore not subject to this reporting requirement. This subdivision shall become inoperative on January 1, 2007.

(h) A city shall not be required to submit a quarterly report to the commission if, during the entire reporting period, the city has maintained 100 percent of its investment portfolio in (1) the treasury of the county in which it is located for investment by the county treasurer pursuant to Section 53684, (2) the Local Agency Investment Fund created by Section 16429.1, (3) National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, or (4) in any combination of these.

(i) A county or city and county shall not be required to submit a quarterly report to the commission if, during the entire reporting period, the county has maintained 100 percent of its investment portfolio in (1) the Local Agency Investment Fund created by Section 16429.1, (2) National Credit Union Share Insurance Fund-insured accounts in a credit union, in accounts insured or guaranteed pursuant to Section 14858 of the Financial Code, or in Federal Deposit Insurance Corporation-insured accounts in a bank or savings and loan association, or (3) in any combination of these.

(Added by Stats.1995, c. 783 (S.B.564), § 3. Amended by Stats.1996, c. 156 (S.B.864), § 10, eff. July 12, 1996; Stats.1996, c. 749 (S.B.109), § 8; Amended by Stats.1997, c. 825 (A.B.287), § 36, eff. Oct. 9, 1997; Stats.1998, c. 82 (A.B.1898), § 1; Stats.2000, c. 687 (A.B.943), § 2.)

Sec. 53647. Interest; payment into fund

(a) Interest on all money deposited belongs to, and shall be paid quarterly into the general fund of, the local agency represented by the officer making the deposit, unless otherwise directed by law.

(b) Notwithstanding the provisions of subdivision (a), and except as otherwise directed by law, if the governing body of the local agency represented by the officer making the deposit so directs, such interest shall be paid to the fund which contains the principal on which the interest accrued.

(Added by Stats.1949, c. 81, p. 291, § 1. Amended by Stats.1978, c. 126, p. 334, § 1.)

Sec. 53647.5. Interest on bail money on deposit

Notwithstanding any other provision of law, interest earned on any bail money deposited in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the board of supervisors so directs, be allocated for the support of the courts in that county.

(Added by Stats.1982, c. 809, § 1.)

Sec. 53648. Deposits and contracts pursuant to federal law or rule

Notwithstanding this article, the treasurer may deposit moneys in, and enter into contracts with, a state or national bank, savings association or federal association, federal or state credit union, or federally insured industrial loan company, pursuant to a federal law or a rule of a federal department or agency adopted pursuant to the law if the law or rule conflicts with this article in regulating the payment of interest on deposits of public moneys by any of the following:

(a) Banks which are Federal Reserve System members or whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) Savings associations or federal associations which are federal home loan bank members or whose deposits are insured by the Federal Savings and Loan Insurance Corporation.

(c) State or federal credit unions whose accounts are insured by the National Credit Union Share Insurance Fund or guaranteed by the California Credit Union Share Guaranty Corporation or insured or guaranteed pursuant to Section 14858 of the Financial Code, unless a member of the legislative body of a local agency, or any person with investment decisionmaking authority of the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the state or federal credit union.

(d) A federally insured industrial loan company.

(Added by Stats.1949, c. 81, p. 291, § 1. Amended by Stats.1965, c. 107, p. 1047, § 2; Stats.1976, c. 349, p. 987, § 21, eff. July 9, 1976; Stats.1984, c. 659, § 7; Stats.1986, c. 1132, § 10; Stats.1988, c. 1004, § 4, operative Jan. 1, 1989; Stats.1998, c. 81 (A.B.1874), § 3.)

Sec. 53648.5. Termination of agreement with depository

Upon the removal by federal law of the conflicting federal law or rule the agreement between the treasurer or other authorized official and a depository may be terminated by either party.

(Added by Stats.1986, c. 1132, § 11.)

Sec. 53649. Contracts with depositories; contents; filing

The treasurer is responsible for the safekeeping of money in his or her custody and shall enter into any contract with a depository relating to any deposit which in his or her judgment is to the public advantage. The depository, and the agent of depository to the extent the agent of depository has been notified of deposits and the amount thereof, are responsible for securing moneys deposited pursuant to such a contract in accordance with Section 53652. One copy of each contract shall be filed with the auditor, controller, secretary, or corresponding officer of the local agency. The contract shall:

(a) Fix the duration of deposits, if appropriate.

(b) Fix the interest rate, if any.

(c) Provide conditions for withdrawal and repayment.

(d) Provide for placement of pooled securities in a named agent of depository in accordance with Section 53656.

(e) Grant authority for agent of depository to place securities for safekeeping in accordance with Section 53659.

(f) Set forth in accordance with Section 53665 the conditions upon which the administrator shall order pooled securities converted into money for the benefit of the local agency, and the procedure therefor.

(g) Provide for compliance in all respects with the provisions of this article and other applicable provisions of law.

(h) Provide, upon notice to the treasurer from the administrator, that a treasurer may withdraw deposits in the event a depository fails to pay the assessments, fines, or penalties assessed by the administrator or may withdraw authorization for the placement of pooled securities in an agent of depository in the event that the agent of depository fails to pay the fines or penalties assessed by the administrator.

(Added by Stats.1949, c. 81, p. 291, § 1. Amended by Stats.1953, c. 670, p. 1938, § 4; Stats.1969, c. 1483, p. 3034, § 2, operative July 1, 1970; Stats.1970, c. 84, p. 96, § 2, eff. April 30, 1970, operative July 1, 1970; Stats.1972, c. 756, p. 1350, § 1; Stats.1983, c. 105, § 9; Stats.1986, c. 1132, § 12; Stats.1987, c. 841, § 1.)

Sec. 53651. Eligible securities

Eligible securities are any of the following:

(a) United States Treasury notes, bonds, bills or certificates of indebtedness, or obligations for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as the loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937)⁴ for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes or assessments to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation or assessment by the local agency or district, and in addition, limited obligation bonds pursuant to Article 4 (commencing with Section 50665) of Chapter 3 of Division 1, senior obligation bonds pursuant to Article 5 (commencing with Section 53387) of Chapter 2.7, and revenue bonds and other obligations payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state, local agency or district or by a department, board, agency or authority thereof.

(d) Bonds of any public housing agency (as defined in the United States Housing Act of 1937, as amended)⁵ as are secured by a pledge of annual contributions under an annual contribution contract between the public housing agency and the Public Housing Administration if such contract shall contain the covenant by the Public Housing Administration which is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in the contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

(e) Registered warrants of this state.

(f) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks⁶ or federal intermediate credit banks⁷ established under the Federal Farm Loan Act, as amended,⁸ debentures and consolidated debentures issued by the Central Bank for Cooperatives⁹ and banks for cooperatives established under the Farm Credit Act of 1933,¹⁰ as amended, consolidated obligations of the federal home loan banks established under the Federal Home Loan Bank Act,¹¹ bonds, debentures and other obligations of the Federal National Mortgage Association¹² or of the Government National Mortgage Association¹³ established under the National Housing Act, as amended,¹⁴ bonds of any federal home loan bank established under that act, bonds, debentures and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970,¹⁵ and obligations of the Tennessee Valley Authority.¹⁶

(g) Notes, tax anticipation warrants or other evidence of indebtedness issued pursuant to Article 7 (commencing with Section 53820), Article 7.5 (commencing with Section 53840) or Article 7.6 (commencing with Section 53850) of this Chapter 4.

(h) State of California notes.

(i) Bonds, notes, certificates of indebtedness, warrants or other obligations issued by: (1) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or any local agency thereof having the power to levy taxes, without limit as to rate or amount, to pay the principal and interest of such obligations, or (2) any state of the United States (except this state), or the Commonwealth of Puerto Rico, or a department, board, agency or authority thereof except bonds which provide for or are issued pursuant to a law which may contemplate a subsequent legislative appropriation as an assurance of the continued operation and solvency of the department, board, agency or authority but which does not constitute a valid and binding obligation for which the full faith and credit of such state or the Commonwealth of Puerto Rico are pledged, which are payable solely out of the revenues from a revenue-producing source owned, controlled or operated thereby; provided the obligations issued by an entity described in (1), above, are rated in one of the three highest grades, and such obligations issued by an entity described in (2), above, are rated in one of the two highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years.

(j) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, Inter-American Development Bank, the Government Development Bank of Puerto Rico, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

(k) Participation certificates of the Export-Import Bank of the United States.

(l) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 51350) of Part 3 of Division 31 of the Health and Safety Code.

(m) Promissory notes secured by first mortgages and first trust deeds which comply with Section 53651.2.

(n) Any bonds, notes, warrants, or other evidences of indebtedness of a nonprofit corporation issued to finance the construction of a school building or school buildings pursuant to a lease or agreement with a school district entered into in compliance with the provisions of Section 39315 or 81345 of the Education Code, and also any bonds, notes, warrants or other evidences of indebtedness issued to refinance those bonds, notes, warrants, or other evidences of indebtedness as specified in Section 39317 of the Education Code.

(o) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 U.S.C. Sec. 78, as amended), which are issued by this state or any local agency thereof.

(p) With the consent of the treasurer, letters of credit issued by the Federal Home Loan Bank of San Francisco which comply with Section 53651.6.

(Added by Stats.1949, c. 81, p. 291, § 1. Amended by Stats.1951, c. 437, p. 1419, § 2; Stats.1955, c. 1953, p. 3584, § 1; Stats.1963, c. 1374, p. 2916, § 2; Stats.1965, c. 293, p. 1291, § 2; Stats.1968, c. 26, p. 170, § 1; Stats.1969, c. 1483, p. 3034, § 3, operative July 1, 1970; Stats.1970, c. 944, p. 1703, § 2; Stats.1971, c. 223, p. 344, § 3, eff. June 28, 1971; Stats.1971, c. 434, p. 841, § 1; Stats.1972, c. 756, p. 1350, § 2; Stats.1973, c. 464, p. 935, § 4; Stats.1975, 1st Ex.Sess., c. 1, p. 3856, § 4; Stats.1975, c. 894, p. 1976, § 1; Stats.1976, c. 633, p. 1498, § 1; Stats.1977, c. 60, p. 454, § 5, eff. May 18, 1977; Stats.1978, c. 1021, p. 3153, § 4; Stats.1979, c. 1084, p. 3915, § 3; Stats.1980, c. 1288, p. 4368, § 4; Stats.1982, c. 844, § 2; Stats.1984, c. 997, § 5, eff. Sept. 11, 1984; Stats.1986, c. 1132, § 14; Stats.1987, c. 841, § 2; Stats.1988, c. 1112, § 1; Stats.1991, c. 1206 (S.B.1015), § 7.)

Sec. 53651.2. Eligible security; promissory note

(a) To be an eligible security under subdivision (m) of Section 53651, a promissory note placed in a securities pool on or after January 1, 1987, shall comply with all of the following provisions:

(1) Each promissory note shall be secured by a first mortgage or first trust deed on improved 1 to 4 unit residential real property located in California, shall be fully amortized over the term of the note, and shall have a term of no more than 30 years. Any first mortgage or first trust deed which secures a promissory note providing for negative amortization shall be removed from the securities pool and replaced with an eligible security under subdivision (m) of Section 53651 if the loan to value ratio exceeds 85 percent of the original appraised value of the security property as a consequence of negative amortization.

(2) Each promissory note shall be eligible for sale to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation; provided, however, that up to 25 percent of the total dollar amount of any promissory note securities pool established pursuant to Section 53658 may consist of promissory notes with loan amounts which exceed the maximum amounts eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, but which do not exceed: (i) five hundred thousand dollars (\$500,000) in the case of a single family dwelling; (ii) one million dollars (\$1,000,000) in the case of a 2, 3, or 4 unit dwelling.

(b) The following shall not constitute eligible securities under subdivision (m) of Section 53651:

(1) Any promissory note on which any payment is more than 60 days past due.

(2) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust. For the purposes of this paragraph, no lien specified in Section 766 of the Financial Code shall be considered a prior encumbrance unless any installment or payment thereunder (other than a rental or royalty under a lease) is due and delinquent.

(3) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(c) The depository may exercise, enforce, or waive any right granted to it by the promissory note, mortgage, or deed of trust.

(d) For purposes of this article, the market value of a promissory note which is an eligible security under subdivision (m) of Section 53651, shall be determined in accordance with the regulations adopted by the Treasurer under paragraph (2) of subdivision (m) of Section 53651, as the regulations and statute were in effect on December 31, 1986. However, if and when regulations on the subject are adopted by the administrator, the market value shall be determined in accordance with those regulations of the administrator.

(Added by Stats.1986, c. 1132, § 15. Amended by Stats.1987, c. 56, § 86; Stats.1988, c. 294, §3, eff. July 7, 1988; Stats.1996, c. 1063 (A.B.3012), § 81.)

Sec. 53651.4. Report of independent certified public accountant; depository using eligible securities; state bank; national bank; fee

(a) A depository that uses eligible securities of the class described in subdivision (m) of Section 53651 shall, within 90 days after the close of each calendar year or within a longer period as the administrator may specify, file with the administrator a report of an independent certified public accountant regarding compliance with this article and with regulations and orders issued by the administrator under this article with respect to eligible securities of that class. The report shall be based upon the audit, shall contain the information, and shall be in the form the administrator may prescribe. The depository shall provide a copy of the report to the treasurer on request.

(b) If a depository that is a state bank files with the administrator, not less than 90 days before the beginning of the calendar year, a notice that it elects to be examined by the administrator instead of filing a report of an independent certified public accountant under subdivision (a) for that calendar year, the depository shall be exempt from subdivision (a) for that calendar year and shall for that calendar year be subject to examination by the administrator regarding compliance with this article and with regulations and orders under this article with respect to eligible securities of the class described in subdivision (m) of Section 53651. The administrator shall provide a report to a treasurer with deposits in the examined state bank upon request of the treasurer.

(c) A national bank may apply to the administrator to be examined, and the administrator, in his or her discretion, may examine a national bank for the purposes of satisfying the requirements of subdivision (a). The administrator shall provide a report to a treasurer with deposits in the examined national bank upon request of the treasurer.

(d) Whenever the administrator examines a depository pursuant to subdivision (b) or (c), the depository shall pay, within 30 days after receipt of a statement from the administrator, a fee of seventy-five dollars (\$75) per hour for each examiner engaged in the examination.

(Added by Stats.1986, c. 1132, § 16. Amended by Stats.1987, c. 841, § 3; Stats.1997, c. 375 (A.B.1432), § 18.)

Sec. 53651.6. Letter of credit; terms

(a) To be an eligible security under subdivision (p) of Section 53651, a letter of credit shall be in such form and shall contain such provisions as the administrator may prescribe, and shall include all of the following terms:

(1) The administrator shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable and shall provide that the administrator may draw upon it up to the total amount in the event of the failure of the depository savings association or federal association or if the depository savings association or federal association refuses to permit the withdrawal of funds by a treasurer.

(Added by Stats.1986, c. 1132, § 17.)

Sec. 53652. Value required to secure active or inactive deposits; market value

To secure active or inactive deposits a depository shall at all times maintain with the agent of depository eligible securities in securities pools, pursuant to Sections 53656 and 53658, in the amounts specified in this section. Uncollected funds shall be excluded from the amount deposited in the depository when determining the security requirements for the deposits.

(a) Eligible securities, except eligible securities of the classes described in subdivisions (m) and (p) of Section 53651, shall have a market value of at least 10 percent in excess of the total amount of all deposits of a depository secured by the eligible securities.

(b) Eligible securities of the class described in subdivision (m) of Section 53651 shall have a market value at least 50 percent in excess of the total amount of all deposits of a depository secured by those eligible securities.

(c) Eligible securities of the class described in subdivision (p) of Section 53651 shall have a market value of at least 5 percent in excess of the total amount of all deposits of a depository secured by those eligible securities. For purposes of this article, the market value of a letter of credit which is an eligible security under subdivision (p) of Section 53651 shall be the amount of credit stated in the letter of credit.

(Added by Stats.1986, c. 1132, § 19.)

Sec. 53653. Waiver of security; federally insured deposits; interest

When in his or her discretion local conditions so warrant, the treasurer may waive security for the portion of any deposits as is insured pursuant to federal law, notwithstanding this article. For deposits equivalent to and not less than the maximum amount insured pursuant to federal law for which a treasurer has waived security under this section, a treasurer at his or her discretion may also waive security for the interest accrued on the deposits which, when added to the deposits, would cause the sum of the interest and deposits to exceed the maximum amount insured pursuant to federal law, provided that the interest is computed by the depository on the average daily balance of the deposits, paid monthly and computed on a 360-day basis.

(Added by Stats.1986, c. 1132, § 21. Amended by Stats.1988, c. 156, § 1.)

Sec. 53654. Addition or substitution of securities; withdrawal or release of securities

(a) The depository may add securities to the pool or substitute securities of equal value for those in the pool at any time, but shall not interchange classes of security, as defined in Section 53632.5, without prior approval of the treasurer.

(b) Withdrawal of securities from the pool without replacement at equal value may be ordered only by two duly authorized officers or employees of the depository who satisfy the requirements as may be set by the administrator.

(c) The agent of depository is responsible for the safekeeping and disbursement of securities placed in its custody by a depository. It shall release securities only upon presentation by the depository of the most reasonably current statement of the total deposits subject to this article held by the depository, such statement to be verified and countersigned by two duly authorized officers, other than those who ordered the withdrawal of securities. A copy of this statement shall be forwarded to the administrator concurrently by the agent of depository.

(Added by Stats.1969, c. 1483, p. 3035, § 6, operative July 1, 1970. Amended by Stats.1971, c. 434, p. 842, § 2; Stats.1982, c. 537, § 1; Stats.1983, c. 105, § 10; Stats.1986, c. 1132, § 22.)

Sec. 53655. Perfection of security interest in favor of local agencies

A placement of securities by a depository with an agent of depository pursuant to this article shall have the effect of perfecting a security interest in those securities in the local agencies having deposits in that depository notwithstanding provisions of the Uniform Commercial Code to the contrary and notwithstanding that the agent of depository may be the trust department of the depository.

(Added by Stats.1969, c. 1483, p. 3036, § 8, operative July 1, 1970.)

Sec. 53656. Authorization for holding of security by agent of depository; agents of depository; securities subject to order of depository; exception; release of security; conditions

(a) At the time the treasurer enters into a contract with the depository pursuant to Section 53649, he or she shall authorize the agent of depository designated by the depository, but including the trust department of the depository only when acceptable to both the treasurer and the depository, to hold securities of the depository in accordance with this article to secure the deposit of the local agency.

(b) Only those trust companies and trust departments, or the Federal Home Loan Bank of San Francisco, which have been authorized by the administrator pursuant to Section 53657 shall be authorized by treasurers to act as agents of depository.

(c) The securities are subject to order of the depository in accordance with Section 53654 except when the provisions of subdivision (i) of Section 53661 and Section 53665 are in effect.

(d) An agent of depository shall not release any security held to secure a local agency deposit in a depository unless the administrator issues an order authorizing the release where either of the following occurs:

(1) A state or federal regulatory agency has taken possession of the depository.

(2) A conservator, receiver, or other legal custodian has been appointed for the depository.

(Added by Stats.1969, c. 1483, p. 3036, § 9, operative July 1, 1970. Amended by Stats.1986, c. 1132, § 23; Stats.1998, c. 1035 (A.B.2128), § 10, eff. Sept. 30, 1998.)

Sec. 53657. Authorization to act as agent of depository; application; form; fee; approval or denial

(a) No person shall act as an agent of depository unless that person is a trust company located in this state, the trust department of a bank located in this state, or the Federal Home Loan Bank of San Francisco, and is authorized by the administrator to act as an agent of depository.

(b)(1) An application for authorization shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the administrator so requires) be verified in such manner, as the administrator may prescribe.

(2) The fee for filing an application for authorization with the administrator shall be five hundred dollars (\$500).

(3) If the administrator finds, with respect to an application for authorization, that the applicant is competent to act as an agent of depository and that it is reasonable to believe the applicant will comply with all applicable provisions of this article and of any regulation or order issued under this article, the administrator shall approve the application. If the administrator finds otherwise, the administrator shall deny the application.

(4) When an application for authorization has been approved, the applicant shall file with the administrator an agreement to comply with all applicable provisions of this article and of any regulation or order issued under this article. The agreement shall be in such form, shall contain such provisions, and shall be signed in such manner as the administrator may prescribe.

(5) When an application for authorization has been approved, the applicant has complied with paragraph (4), and all conditions precedent to authorizing the applicant to act as agent of depository have been fulfilled, the administrator shall authorize the applicant to act as agent of depository.

(Added by Stats.1986, c. 1132, § 25. Amended by Stats.1996, c. 1063 (A.B.3012), § 82.)

Sec. 53658. Maintenance of separate pool for each depository; security interest of local agency

An agent of a depository may hold and pool securities to secure deposits for one or more depositories pursuant to Section 53656, but shall maintain a separate pool for each said depository. Each local agency shall have an undivided security interest in the pooled securities in the proportion that the amount of its deposits bears to the total amount of deposits secured by the pooled securities.

(Added by Stats.1969, c. 1483, p. 3036, § 12, operative July 1, 1970. Amended by Stats.1970, c. 84, p. 96, § 3, eff. April 30, 1970, operative July 1, 1970.)

Sec. 53659. Placement of securities with federal reserve or other approved bank; authority by contract

Whenever an agent of depository accepts securities pursuant to Section 53656 it may, with the authorization of the depository, place such securities for safekeeping with a Federal Reserve Bank or branch thereof or with any bank located in a city designated as a reserve city by the Board of Governors of the Federal Reserve System or with the Federal Home Loan Bank of San Francisco or with a trust company located in this state. Authority for such placement together with the names of the banks or, including the Federal Home Loan Bank of San Francisco, trust companies to be so used, shall be contained in the contract between the treasurer and the depository required in Section 53649.

(Added by Stats.1949, c. 81, p. 292, § 1. Amended by Stats.1969, c. 1483, p. 3037, § 13, operative July 1, 1970; Stats.1970, c. 84, p. 96, § 4, eff. April 30, 1970, operative July 1, 1970; Stats.1976, c. 349, p. 987, § 22, eff. July 9, 1976.)

Sec. 53660. Certification and report by agent of depository

When deposits of a local agency are secured by pooled securities pursuant to Section 53656, the agent of depository shall make available to the treasurer for review at a mutually agreed upon time and location all of the following information which may be in the form of a copy of the report required in subdivision (e) of Section 53661:

(a) A certification that there are securities in the pool in the amounts required by Section 53652 to secure deposits.

(b) A certified report of the individual securities then on deposit in the pool with the location and total market value thereof.

(c) The total amount of deposits then reported by the depository to be secured by the pool.

(Added by Stats.1969, c. 1483, p. 3037, § 15, operative July 1, 1970. Amended by Stats.1972, c. 756, p. 1353, § 3; Stats.1986, c. 1132, § 26.)

Sec. 53661. Administrator

(a) The Commissioner of Financial Institutions shall act as Administrator of Local Agency Security and shall be responsible for the administration of Sections 53638, 53651, 53651.2, 53651.4, 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659, 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

(b) The administrator shall have the powers necessary or convenient to administer and enforce the sections specified in subdivision (a).

(c)(1) The administrator shall issue regulations consistent with law as the administrator may deem necessary or advisable in executing the powers, duties, and responsibilities assigned by this article. The regulations may include regulations prescribing standards for the valuation, marketability, and liquidity of the eligible securities of the class described in subdivision (m) of Section 53651, regulations prescribing procedures and documentation for adding, withdrawing, substituting, and holding pooled securities, and regulations prescribing the form, content, and execution of any application, report, or other document called for in any of the sections specified in subdivision (a) or in any regulation or order issued under any of those sections.

(2) The administrator, for good cause, may waive any provision of any regulation adopted pursuant to paragraph (1) or any order issued under this article, where the provision is not necessary in the public interest.

(d) The administrator may enter into any contracts or agreements as may be necessary, including joint underwriting agreements, to sell or liquidate eligible securities securing local agency deposits in the event of the failure of the depository or if the depository fails to pay all or part of the deposits of a local agency.

(e) The administrator shall require from every depository a report certified by the agent of depository listing all securities, and the market value thereof, which are securing local agency deposits together with the total deposits then secured by the pool, to determine whether there is compliance with Section 53652. These reports may be required whenever deemed necessary by the administrator, but shall be required at least four times each year at the times designated by the Comptroller of the Currency for reports from national banking associations. These reports shall be filed in the office of the administrator by the depository within 20 business days of the date the administrator calls for the report.

(f) The administrator may have access to reports of examination made by the Comptroller of the Currency insofar as the reports relate to national banking association trust department activities which are subject to this article.

(g)(1) The administrator shall require the immediate substitution of an eligible security, where the substitution is necessary for compliance with Section 53652, if (i) the administrator determines that a security listed in Section 53651 is not qualified to secure public deposits, or (ii) a treasurer, who has deposits secured by the securities pool, provides written notice to the administrator and the administrator confirms that a security in the pool is not qualified to secure public deposits.

(2) The failure of a depository to substitute securities, where the administrator has required the substitution, shall be reported by the administrator promptly to those treasurers having money on deposit in that depository and, in addition, shall be reported as follows:

- (A) When that depository is a national bank, to the Comptroller of the Currency of the United States.
- (B) When that depository is a state bank, to the Commissioner of Financial Institutions.
- (C) When that depository is a federal association, to the Office of Thrift Supervision.

- (D) When that depository is a savings association, to the Commissioner of Financial Institutions.
- (E) When that depository is a federal credit union, to the National Credit Union Administration.
- (F) When that depository is a state credit union or a federally insured industrial loan company, to the Commissioner of Financial Institutions.

(h) The administrator may require from each treasurer a registration report and at appropriate times a report stating the amount and location of each deposit together with other information deemed necessary by the administrator for effective operation of this article. The facts recited in any report from a treasurer to the administrator are conclusively presumed to be true for the single purpose of the administrator fulfilling responsibilities assigned to him or her by this article and for no other purpose.

(i) (1) If, after notice and opportunity for hearing, the administrator finds that any depository or agent of depository has violated or is violating, or that there is reasonable cause to believe that any depository or agent of depository is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued under any of those sections, the administrator may order the depository or agent of depository to cease and desist from the violation or may by order suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(2) (A) If the administrator makes any of the findings set forth in paragraph (1) with respect to any depository or agent of depository and, in addition, finds that the violation or the continuation of the violation is likely to seriously prejudice the interests of treasurers, the administrator may order the depository or agent of depository to cease and desist from the violation or may suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(B) Within five business days after an order is issued under subparagraph (A), the depository or agent of depository may file with the administrator an application for a hearing on the order. The administrator shall schedule a hearing at least 30 days, but not more than 40 days, after receipt of an application for a hearing or within a shorter or longer period of time agreed to by a depository or an agent of depository. If the administrator fails to schedule the hearing within the specified or agreed to time period, the order shall be deemed rescinded. Within 30 days after the hearing, the administrator shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded. The right of a depository or agent of depository to which an order is issued under subparagraph (A) to petition for judicial review of the order shall not be affected by the failure of the depository or agent of depository to apply to the administrator for a hearing on the order pursuant to this subparagraph.

(3) Whenever the administrator issues a cease and desist order under paragraph (1) or (2), the administrator may in the order restrict the right of the depository to withdraw securities from a security pool; and, in that event, both the depository to which the order is directed and the agent of depository which holds the security pool shall comply with the restriction.

(4) In case the administrator issues an order under paragraph (1) or (2) suspending or revoking the authorization of an agent of depository, the administrator may order the agent of depository at its own expense to transfer all pooled securities held by it to such agent of depository as the administrator may designate in the order. The agent of depository designated in the order shall accept and hold the pooled securities in accordance with this article and regulations and orders issued under this article.

(j) In the discretion of the administrator, whenever it appears to the administrator that any person has violated or is violating, or that there is reasonable cause to believe that any person is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued thereunder, the administrator may bring an action in the name of the people of the State of California in the superior court to enjoin the violation or to enforce compliance with those sections or any regulation or order issued thereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and the court may not require the administrator to post a bond.

(k) In addition to other remedies, the administrator shall have the power and authority to impose the following sanctions for noncompliance with the sections specified in subdivision (a) after a hearing if requested by the party deemed in noncompliance. Any fine assessed pursuant to this subdivision shall be paid within 30 days after receipt of the assessment.

(1) Assess against and collect from a depository a fine not to exceed two hundred fifty dollars (\$250) for each day the depository fails to maintain with the agent of depository securities as required by Section 53652.

(2) Assess against and collect from a depository a fine not to exceed one hundred dollars (\$100) for each day beyond the time period specified in subdivision (b) of Section 53663 the depository negligently or willfully fails to file in the office of the administrator a written report required by that section.

(3) Assess against and collect from a depository a fine not to exceed one hundred dollars (\$100) for each day beyond the time period specified in subdivision (e) that a depository negligently or willfully fails to file in the office of the administrator a written report required by that subdivision.

(4) Assess and collect from an agent of depository a fine not to exceed one hundred dollars (\$100) for each day the agent of depository fails to comply with any of the applicable sections specified in subdivision (a) or any applicable regulation or order issued thereunder.

(l)(1) In the event that a depository or agent of depository fails to pay a fine assessed by the administrator pursuant to subdivision (k) within 30 days of receipt of the assessment, the administrator may assess and collect an additional penalty of 5 percent of the fine for each month or part thereof that the payment is delinquent.

(2) If a depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(3) If an agent of depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers who have authorized the agent of depository as provided in Sections 53649 and 53656, and may by order revoke the authorization of the agent of depository as provided in subdivision (i).

(m) The amendments to this section enacted by the Legislature during the 1999-2000 Regular Session shall become operative on January 1, 2001.

(Added by Stats.1986, c. 1132, § 29. Amended by Stats.1987, c. 841, § 4; Stats.1988, c. 1004, § 5, operative Jan. 1, 1989; Stats.1996, c. 1064 (A.B.3351), § 789, operative July 1, 1997; Stats.1997, c. 375 (A.B.1432), § 19; Stats.2000, c. 127 (A.B.2866), § 21, eff. July 10, 2000, operative Jan. 1, 2001.)

Sec. 53663. Determination of amounts to be deposited as inactive and active deposits

(a) Each agent of depository shall report in writing to the administrator within two business days after any withdrawal, substitution or addition of pooled securities and shall state the name and market value of the securities withdrawn, substituted or added together with the total deposits then secured by the pool. This information shall be available from the administrator to the treasurer upon request.

(b) Each depository shall report in writing to the administrator weekly, giving the total amount of all deposits held by such depository pursuant to this article. Such report shall be as of close of business on Wednesday of each week and shall be delivered to the office of the administrator or deposited in the United States mail, postage prepaid, addressed to the office of the administrator, within five business days. Where there has occurred no change in the deposits required to be held by the depository pursuant to this article, the report required by this subdivision need only state that fact.

(Added by Stats.1969, c. 1483, p. 3038, § 20, operative July 1, 1970. Amended by Stats.1971, c. 434, p. 844, § 4; Stats.1972, c. 756, p. 1353, § 4; Stats.1982, c. 844, § 3.)

Sec. 53664. Individual reports; privileged status

The individual reports specified in Sections 53654, 53660, 53661, and 53663 are not public documents and are not open to inspection by the public.

(Added by Stats.1969, c. 1483, p. 3038, § 21, operative July 1, 1970. Amended by Stats.1987, c. 841, § 5.)

Sec. 53665. Default by depository; payment by agent of depository; excess funds; drawing on letter of credit

If a depository fails to pay all or part of the deposits of a local agency secured by pooled securities in accordance with the contract provided for in Section 53649, and on demand of its treasurer or other authorized official and the treasurer files a report with the administrator, or if the depository fails:

(a) In case the pooled securities consist of securities other than securities of the class described in subdivision (p) of Section 53651, the administrator shall order the agent of depository holding the pooled securities to convert into money that portion of the pooled securities necessary to produce an amount equal to the sum of (i) the deposits of the local agency, (ii) any accrued interest due on the deposits, and (iii) the reasonable expenses of the agent of depository in complying with the order of the administrator and to pay the sum of items (i) and (ii) to the treasurer in satisfaction of the deposits. The agent of depository shall be reimbursed out of the proceeds of the conversion for its reasonable expenses in complying with the order of the administrator, as approved by the administrator. Any excess moneys resulting from the conversion shall be retained by the agent of depository as part of the securities pool until the depository substitutes for the excess moneys securities having a market value sufficient to bring the total of pooled securities up to the amount required by Section 53652.

(b) In case the pooled securities consist of a security of the class described in subdivision (p) of Section 53651, the administrator shall draw on the letter of credit an amount equal to the sum of (i) the deposits of the local agency, (ii) any accrued interest on the deposits, and (iii) the reasonable expenses of the administrator in paying the deposits and pay the sum of items (i) and (ii) to the treasurer in satisfaction of the deposits.

(Added by Stats.1969, c. 1483, p. 3039, § 23, operative July 1, 1970. Amended by Stats.1972, c. 756, p. 1353, § 5; Stats.1986, c. 1132, § 30.)

Sec. 53666. Liability of administrator

The only liability that shall attach to the administrator as the result of the operation of this article is that which would attach as a result of other laws of this state.

(Added by Stats.1969, c. 1483, p. 3039, § 25, operative July 1, 1970.)

Sec. 53667. Expenses of administrator; levy of assessment on depositories; payments; penalty

(a) Expenses incurred by the administrator in carrying out the duties and responsibilities assigned to the administrator by the sections specified in subdivision (a) of Section 53661, shall be borne by the Local Agency Deposit Security Fund, which is hereby created and continuously appropriated to the administrator for the administration of the sections specified in subdivision (a) of Section 53661. This fund shall consist of fines levied pursuant to Section 53661, fees collected pursuant to the sections specified in subdivision (a) of Section 53661, and assessments levied pursuant to this section.

(b) Each fiscal year the administrator shall levy an assessment on a pro rata basis on those depositories which at any time during the preceding fiscal year held local agency deposits. The total assessment levied on all of those depositories shall be in an amount which, when added to the amount of fines and fees that the administrator estimates will be collected during the fiscal year when the assessment is levied, is sufficient in the judgment of the administrator to meet the expenses of the administrator in administering the sections specified in subdivision (a) of Section 53661 and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the depositories assessed shall be the proportion that the average amount of local agency deposits held by each of those depositories bears to the average total amount of local agency deposits held by all of those depositories as shown by the reports of depositories to the administrator for the preceding fiscal year, as required in subdivision (e) of Section 53661; provided, however, that the amount of the assessment levied on each of those depositories shall be not less than twenty-five dollars (\$25).

(c) The administrator shall notify each depository by mail of the amount levied against it. The depository shall pay the amount levied within 20 days after such notice into the Local Agency Deposit Security Fund for the administration of the sections specified in subdivision (a) of Section 53661. If payment is not made to the administrator within such time, the administrator shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent. If a depository fails to pay the assessment or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(Added by Stats.1969, c. 1483, p. 3039, § 26, operative July 1, 1970. Amended by Stats.1975, c. 536, p. 1102, § 1, operative July 1, 1976; Stats.1980, c. 1288, p. 4372, § 7; Stats.1986, c. 1132, § 31; Stats.1987, c. 841, § 6.)

Sec. 53669. Responsibility for money on deposit

The treasurer or other authorized official is not responsible for money while it is deposited pursuant to this article.

(Added by Stats.1949, c. 81, p. 293, § 1. Amended by Stats.1953, c. 670, p. 1939, § 7.)

Sec. 53676. Treasurer's responsibility for securities

The treasurer is not responsible for securities delivered to and receipted for by any bank, savings and loan association, credit union, federally insured industrial loan company, or trust company.

(Added by Stats.1949, c. 81, p. 294, § 1. Amended by Stats.1951, c. 437, p. 1421, § 15; Stats.1976, c. 349, p. 988, § 23, eff. July 9, 1976; Stats.1984, c. 659, § 10; Stats.1988, c. 1004, § 6, operative Jan. 1, 1989.)

Sec. 53678. Charges for handling and safekeeping of securities

The charges for the handling and safekeeping of any such securities are not a charge against the treasurer but shall be paid by the depository owning the securities.

(Added by Stats.1949, c. 81, p. 294, § 1. Amended by Stats.1951, c. 437, p. 1421, § 17; Stats.1976, c. 349, p. 988, § 24, eff. July 9, 1976.)

Sec. 53679. Money under control or coming into possession of officers and employees other than treasurer

So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer or a judge or officer of a municipal court shall, and all money coming into the possession of a judge or officer of a municipal court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a municipal court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit union if an officer or employee of the local agency, or a judge or officer of a municipal court, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article.

For deposits in excess of the amount insured under any federal law a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

(b) Interest is not required on money deposited in an active deposit by a judge or officer of a municipal court.

(c) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to Articles 5 (commencing with Section 29400) or 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

(Added by Stats.1949, c. 81, p. 294, § 1. Amended by Stats.1949, c. 942, p. 1716, § 3; Stats.1951, c. 1553, p. 3548, § 80; Stats.1953, c. 420, p. 1670, § 1; Stats.1953, c. 670, p. 1939, § 8; Stats.1969, c. 1483, p. 3040, § 36, operative July 1, 1970; Stats.1970, c. 84, p. 97, § 5, eff. April 30, 1970, operative July 1, 1970; Stats.1976, c. 349, p. 988, § 25, eff. July 9, 1976; Stats.1984, c. 659, § 11; Stats.1985, c. 983, § 25, eff. Sept. 26, 1985; Stats.1988, c. 1004, § 7, operative Jan. 1, 1989; Stats.1998, c. 931 (S.B.2139), § 219, eff. Sept. 28, 1998.)

Sec. 53679.1. Accounting practices; declaration of existing law

Notwithstanding any other provision of law, the accounting practices of each county utilized prior to the effective date of this section relating to interest on trust funds shall be deemed appropriate and to have been made under the direction of the board of supervisors of that county. This section is declaratory of the law in existence prior to the enactment of this section.

(Added by Stats.1992, c. 1032 (S.B.1926), § 1.)

Sec. 53680. Money under control of tax collectors

A tax collector of a local agency shall immediately deposit with the treasurer all money under his control, unless he deposits the money in a depository pursuant to this article under permission and instructions of the treasurer having authority to make such deposit.

(Added by Stats.1949, c. 81, p. 294, § 1.)

Sec. 53681. Deposit in other than prescribed manner; forfeiture of office

An officer or employee of a local agency who deposits money belonging to, or in the custody of, the local agency in any other manner than that prescribed in this article is subject to forfeiture of his office or employment.

(Added by Stats.1949, c. 81, p. 294, § 1.)

Sec. 53682. Contracts for services by depository; requirements

Notwithstanding any other provision in this article except Section 53652, the treasurer may deposit moneys in and enter into contracts with any depository, as defined in subdivision (c) of Section 53630, for services to be rendered by that depository that in the treasurer's judgment are to the public advantage. One copy of each contract entered into under this section shall be filed with the auditor or corresponding officer of the local agency. The contract shall:

- (a) Fix the duration of compensating deposits, if any.
- (b) Fix the interest rate of that compensating deposit, if any.
- (c) Specify the services to be rendered by the depository.
- (d) Indicate whether the depository shall bear the expenses of transportation of the money to and from the depository.
- (e) Fix the consideration payable by the agency for such services.
- (f) Specify who may deposit moneys into the treasurer's active account and how those persons are to make those deposits.

(Added by Stats.1975, c. 498, p. 1022, § 1. Amended by Stats.1994, c. 705 (S.B.1804), § 11.)

Sec. 53683. Consideration as costs applied pro rata against earned interest

Notwithstanding any other provision in this article, the consideration payable by the agency as specified in subdivision (e) of Section 53682 shall be paid by the treasurer by applying such consideration as costs applied on a pro rata basis against the interest earned by all the agencies for which the treasurer invests.

(Added by Stats.1975, c. 498, p. 1023, § 2. Amended by Stats.1976, c. 723, p. 1739, § 1.)

Sec. 53684. Local agencies; excess funds; investment by county treasurer

(a) Unless otherwise provided by law, if the treasurer of any local agency, or other official responsible for the funds of the local agency, determines that the local agency has excess funds which are not required for immediate use, the treasurer or other official may, upon the adoption of a resolution by the legislative or governing body of the local agency authorizing the investment of funds pursuant to this section and with the consent of the county treasurer, deposit the excess funds in the county treasury for the purpose of investment by the county treasurer pursuant to Section 53601 or 53635.

(b) The county treasurer shall, at least quarterly, apportion any interest or other increment derived from the investment of funds pursuant to this section in an amount proportionate to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool. In apportioning and distributing that interest or increment, the county treasurer may use the cash method, the accrual method, or any other method in accordance with generally accepted accounting principles.

Prior to distributing that interest or increment, the county treasurer may deduct the actual costs incurred by the county in administering this section in proportion to the average daily balance of the amounts deposited by the local agency and to the total average daily balance of deposits in the investment pool.

(c) The county treasurer shall disclose to each local agency that invests funds pursuant to this section the method of accounting used, whether cash, accrual, or other, and shall notify each local agency of any proposed changes in the accounting method at least 30 days prior to the date on which the proposed changes take effect.

(d) The treasurer or other official responsible for the funds of the local agency may withdraw the funds of the local agency pursuant to the procedure specified in Section 27136.

(e) Any moneys deposited in the county treasury for investment pursuant to this section are not subject to impoundment or seizure by any county official or agency while the funds are so deposited.

(f) This section is not operative in any county until the board of supervisors of the county, by majority vote, adopts a resolution making this section operative in the county.

(g) It is the intent of the Legislature in enacting this section to provide an alternative procedure to Section 51301 for local agencies to deposit money in the county treasury for investment purposes. Nothing in this section shall, therefore, be construed as a limitation on the authority of a county and a city to contract for the county treasurer to perform treasury functions for a city pursuant to Section 51301.

(Added by Stats.1986, c. 582, § 1, eff. Aug. 26, 1986. Amended by Stats.1996, c. 81 (A.B.2845), § 1, eff. July 1, 1996; Stats.1997, c. 204 (S.B.1287), § 2; Stats.2000, c. 168 (S.B.1493), § 1.)

Sec. 53686. Local agency fund audit reports

(a) Any audit conducted relating to the investment of local agency funds and other funds by the county treasurer in the county fund maintained pursuant to Section 53684 shall be rendered to the depository, the auditor, the controller, the secretary, or the corresponding officer of the local agency, the treasurer or other official responsible for the funds of any local agency that has funds on deposit in the county treasury, and the presiding judge of any superior court that has ordered, pursuant to Section 3412, Section 3413, or Section 3611 of the Probate Code, that assets of an estate be deposited with the county treasurer for deposit or investment.

(b) Any report rendered pursuant to Section 53646 shall be provided to the treasurer or other official responsible for the funds of any local agency that has funds on deposit in the county treasury.

(Added by Stats.1996, c. 81 (A.B.2845), § 2, eff. July 1, 1996.)

Public Library Special Taxes

Sec. 53717. Public library facilities and services; special taxes; definition

(a) Pursuant to Section 4 of Article XIII A of the California Constitution and Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1, and consistent with Article 3.7 (commencing with Section 53720), any city, county, city or county, or library district may impose special taxes for the purpose of providing public library facilities and services as described in Chapter 1.5 (commencing with Section 18010) of Part 11 of the Education Code.

(b) As used in this section, "special taxes" means special taxes that apply uniformly to all taxpayers or all real property within the city, county, city and county, or library district.

(Added by Stats.1988, c. 1344, § 1, eff. Sept. 26, 1988.)

Sec. 53717.2. Special tax; basis for apportionment

A tax imposed pursuant to this article is a special tax and not a special assessment, and there is no requirement that the tax be apportioned on the basis of benefit to any property. However, a special tax levied pursuant to this article may be on or based on benefit received by parcels of real property, the cost of making facilities or authorized services available to each parcel, or other reasonable basis as determined by the city, county, city or county, or library district. A special tax apportioned on any of these bases shall not be construed to be on or based upon the ownership of real property.

(Added by Stats.1988, c. 1344, § 1, eff. Sept. 26, 1988.)

Sec. 53717.4. Application of article; special taxes imposed under Chapter 2.5

This article does not apply to any special tax or other charge imposed under Chapter 2.5 (commencing with Section 53311).

(Added by Stats.1988, c. 1344, § 1, eff. Sept. 26, 1988.)

Sec. 53717.6. Application of article; special tax imposed prior to effective date

This article does not apply to any special tax imposed prior to the effective date of this article.

(Added by Stats.1988, c. 1344, § 1, eff. Sept. 26, 1988.)

Voter Approval Of Taxes

Sec. 53720. Definitions

As used in this Article:

(a) "local government" means any county, city, city and county, including a chartered city or county, or any public or municipal corporation; and,

(b) "district" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53721. Special and general taxes; purposes

All taxes are either special taxes or general taxes. General taxes are taxes imposed for general governmental purposes. Special taxes are taxes imposed for specific purposes.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53721.5. San Joaquin County regional justice facilities financing agency; transactions and use tax; general or special tax

A transactions and use tax imposed by an ordinance adopted pursuant to Chapter 13.6 (commencing with Section 26290) of Part 2 of Division 2 of Title 3 shall be deemed to be a general tax for the purposes of this article, unless the transactions and use tax ordinance, or an amendment thereto, either declares the tax to be a special tax or requires the proceeds of the tax to be placed in a fund other than the general fund of the San Joaquin County Regional Justice Facilities Financing Agency, or a similar fund, and irrevocably restricts the use of the proceeds to specific purposes of more limited scope and type than the general governmental purposes of the San Joaquin County Regional Justice Facilities Financing Agency set forth in Section 26291.7. The receipt or retention of the proceeds of the transactions and use tax, imposed by an ordinance adopted pursuant to Chapter 13.6 (commencing with Section 26290) of Part 2 of Division 2 of Title 3 by a bond trustee for bonds secured by the proceeds of the tax shall not cause a general tax to become a special tax.

(Added by Stats.1988, c. 1634, § 2.)

Sec. 53721.6. County regional justice facilities financing; transactions and use tax; general or special tax

(a) A retail transactions and use tax imposed by an ordinance adopted pursuant to Chapter 13.7 (commencing with Section 26295) or 13.8 (commencing with Section 26299.000) of Part 2 of Division 2 of Title 3 shall be deemed to be a general tax for the purposes of this article unless the transactions and use tax ordinance, or an amendment thereto, either declares the tax to be a special tax or requires the proceeds of the tax to be placed in a fund other than the general fund of the county regional justice facilities financing agency, or a similar fund, and irrevocably restricts the use of the proceeds to specific purposes of more limited scope and type than the general governmental purposes of the county regional justice facilities financing agency set forth in Section 26298.18 or 26299.031.

(b) The receipt or retention of the proceeds of the transactions and use tax, imposed by an ordinance adopted pursuant to Chapter 13.7 (commencing with Section 26295) or 13.8 (commencing with Section 26299.000) of Part 2 of Division 2 of Title 3 by a bond trustee for bonds secured by the proceeds of the tax shall not cause a general tax to become a special tax.

(Added by Stats.1989, c. 1335, § 2. Amended by Stats.1990, c. 527 (S.B.2661), § 4.)

Sec. 53722. Special tax; imposition; voter approval

No local government or district may impose any special tax unless and until such special tax is submitted to the electorate of the local government, or district and approved by a two-thirds vote of the voters voting in an election on the issue.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53723. General tax; imposition; voter approval

No local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53724. Tax proposal; ordinance or resolution; requirements

(a) A tax subject to the vote requirements prescribed by Section 53722 or Section 53723 shall be proposed by an ordinance or resolution of the legislative body of the local government or district. The ordinance or resolution proposing such tax shall include the type of tax and rate of tax to be levied, the method of collection, the date upon which an election shall be held on the issue, and, if a special tax, the purpose or service for which its imposition is sought.

(b) No tax subject to the vote requirement prescribed by Section 53723 shall be presented at an election unless the ordinance or resolution proposing such tax is approved by a two-thirds vote of all members of the legislative body of the local government or district.

(c) Except as provided in subdivision (d), the election on any tax proposed pursuant to this Article shall be consolidated with a statewide primary election, a statewide general election, or a regularly scheduled local election at which all of the electors of the local government or district are entitled to vote.

(d) Notwithstanding subdivision (c), the legislative body of the local government or district may provide that the election on any tax proposed pursuant to this Article shall be held at any date otherwise permitted by law. The local government or district shall bear the cost of any election held pursuant to this subdivision. An election held pursuant to this subdivision shall be deemed at the request of the local government or district calling such election, and shall not be deemed a state mandate.

(e) The revenues from any special tax shall be used only for the purpose or service for which it was imposed, and for no other purpose whatsoever.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53725. Ad valorem, transaction or sales taxes; restrictions on imposition

(a) Except as permitted in Section 1 of Article XIII A of the California Constitution, no local government or district may impose any ad valorem taxes on real property. No local government or district may impose any transaction tax or sales tax on the sale of real property within the city, county or district.

(b) Taxes permitted by Subdivision (b) of Section 1 of Article XIII A of the California Constitution shall not be subject to the vote requirements prescribed by this Article.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53726. Effect of article on prior authorized special tax

Except as set forth in Section 53727, this Article shall not be construed to repeal or affect any statute enacted prior to August 1, 1985 which authorizes the imposition of a special tax.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53727. Restrictions on authority to impose general or special taxes; exception for prior imposed taxes if voter approval obtained

(a) Neither this Article, nor Article XIII A of the California Constitution, nor Article 3.5 of Division 1 of Title 5 of the Government Code (commencing with Section 50075) shall be construed to authorize any local government or district to impose any general or special tax which it is not otherwise authorized to impose; provided, however, that any special tax imposed pursuant to Article 3.5 of Division 1 of Title 5 of the Government Code prior to August 1, 1985 shall not be affected by this section.

(b) Any tax imposed by any local government or district on or after August 1, 1985, and prior to the effective date of this Article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of imposition, which election shall be held within two years of the effective date of this Article. Any local government or district which fails to seek or obtain such majority approval shall cease to impose such tax on and after November 15, 1988.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53728. Reduction in property tax allocations equal to revenues derived from failure to comply with article

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.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53729. Amendment of article

This Article may only be amended by vote of the electorate of the State of California.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Sec. 53730. Severability

If any provision of this Article, or the application thereof to any person, organization, local government, district, or circumstance is held invalid or unconstitutional, the provision to other persons, organizations, local governments, districts, or circumstances shall not be affected thereby but shall remain in full force and effect.

(Added by Initiative Measure, approved Nov. 4, 1986.)

Capital Outlay Fund

Sec. 53730.5. Local agency; definition

As used in this article, "local agency" means a city, county, or district empowered to levy and collect assessments or taxes.

(Formerly § 53730, added by Stats.1949, c. 81, § 1. Renumbered § 53730.5 and amended by Stats.1987, c. 56, § 87.)

§ 53731. Assessments or taxes for creation and accumulation of fund

By ordinance, the legislative body of a local agency may provide for the levy and collection of assessments or taxes for the creation and accumulation of a fund for capital outlays.

(Added by Stats.1949, c. 81, p. 295, § 1.)

§ 53732. Tax limitation prescribed by law

In making a levy, the legislative body shall not exceed any limitation upon its right to impose taxes prescribed by law except as authorized by law.

(Added by Stats.1949, c. 81, p. 295, § 1. Amended by Stats.1951, c. 808, p. 2298, § 1.)

§ 53733. Tax limitation imposed by charter

If the local agency is a city or county operating under a charter, the limitations upon the levying of taxes imposed by the charter apply.

(Added by Stats.1949, c. 81, p. 295, § 1.)

§ 53734. Budget designation; reserves

In a local agency required to adopt a budget, all or part of the fund may be shown in the budget as reserves for future expenditures in subsequent years and when so shown shall be identified as to purpose, but need not be itemized.

(Added by Stats.1949, c. 81, p. 295, § 1.)

§ 53735. Transfer of unencumbered surplus funds

At any time after the creation of the fund the legislative body may transfer to the fund any unencumbered surplus funds remaining on hand at the end of a fiscal year.

(Added by Stats.1949, c. 81, p. 295, § 1. Amended by Stats.1979, c. 373, p. 1320, § 163.)

§ 53737. Scope of capital outlays; utilities

The term "capital outlays" does not include the construction, acquisition, extensions of, or additions to utilities other than utilities for the furnishing of water supply. The term "utilities" shall not include sewage or sanitation facilities or airports.

(Added by Stats.1949, c. 81, p. 296, § 1. Amended by Stats.1949, c. 14, p. 28, § 2, eff. Feb. 3, 1949.)

§ 53739. Rates or amounts; voter-approved ordinances or resolutions; adjustments

(a) An ordinance or resolution presented for voter approval pursuant to this article or to Article XIII C or XIII D of the California Constitution may state a range of rates or amounts. If the ordinance or resolution is approved by the requisite number of votes at an election held for that purpose, the governing board of the adopting local government may thereafter impose the tax, assessment, or property-related fee or charge at any rate or amount that is less than or equal to the maximum amount authorized by the voter-approved ordinance or resolution.

(b) (1) Except as provided in paragraph (2), an ordinance or resolution presented for voter approval pursuant to Article XIII C or XIII D of the California Constitution may provide that the tax, assessment, or property-related fee or charge rates or amounts stated in that ordinance or resolution may be adjusted for inflation pursuant to a clearly identified formula stated in that ordinance or resolution. If an ordinance or resolution described in the preceding sentence is approved by the requisite number of votes at an election held for that purpose, the governing board of the adopting local government may thereafter impose the tax, assessment, or property-related fee or charge at any rate or amount that is less than or equal to the inflation-adjusted maximum amount authorized by the voter-approved ordinance or resolution.

(2) Notwithstanding the authority established in paragraph (1), if the amount or rate of a tax, assessment, or property-related fee or charge is determined by using a percentage calculation, the ordinance imposing the tax, assessment, or property-related fee or charge may not provide that the percentage will be adjusted for inflation.

(Added by Stats.1997, c. 38 (S.B.919), § 4, eff. July 1, 1997.)

Proposition 218 Omnibus Implementation Act

§ 53750. Definitions

For purposes of Article XIII C and Article XIII D of the California Constitution and this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C of the California Constitution.

(b) "Assessment" means any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance a sssessment," and "special assessment tax."

(c) "District" means an area that is determined by an agency to contain all of the parcels that will receive a special benefit from a proposed public improvement or service.

(d) "Drainage system" means any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage.

(e) "Extended," when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(f) "Flood control" means any system of public improvements that is intended to protect property from overflow by water.

(g) "Identified parcel" means a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.

(h)(1) "Increased," when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

(A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.

(B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(2) A tax, fee, or charge is not deemed to be "increased" by an agency action that does either or both of the following:

(A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

(B) Implements or collects a previously approved tax, or fee or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee or charge is not deemed to be "increased" in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, or fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

(i) "Notice by mail" means any notice required by Article XIII C or XIII D of the California Constitution that is accomplished through a mailing, postage prepaid, deposited in the United States Postal Service and is deemed given when so deposited. Notice by mail may be included in any other mailing to the record owner that otherwise complies with Article XIII C or XIII D of the California Constitution and this article, including, but not limited to, the mailing of a bill for the collection of an assessment or a property-related fee or charge.

(j) "Record owner" means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency.

(k) "Registered professional engineer" means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(l) "Vector control" means any system of public improvements or services that is intended to provide for the surveillance and control of vectors as defined in subdivision (f) of Section 2200 of the Health and Safety Code and a pest as defined in Division 4 (commencing with Section 5001) and Division 5 (commencing with Section 9101) of the Food and Agricultural Code.

(m) "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.

(Added by Stats.1997, c. 38 (S.B.919), § 5, eff. July 1, 1997. Amended by Stats.1998, c. 876 (S.B.1649), § 10.)

53753. Notice, protest, and hearing requirements

(a) The notice, protest, and hearing requirements imposed by this section supersede any statutory provisions applicable to the levy of a new or increased assessment that is in existence on the effective date of this section, whether or not that provision is in conflict with this article. Any agency that complies with the notice, protest, and hearing requirements of this section shall not be required to comply with any other statutory notice, protest, and hearing requirements that would otherwise be applicable to the levy of a new or increased assessment, with the exception of Division 4.5 (commencing with Section 3100) of the Streets and Highways Code. If the requirements of that division apply to the levy of a new or increased assessment, the levying agency shall comply with the notice, protest, and hearing requirements imposed by this section as well as with the requirements of that division.

(b) Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment.

(c) Each notice given pursuant to subdivision (b) shall contain an assessment ballot that includes the agency's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. Each assessment ballot shall be in a form that conceals its contents once it is sealed by the person submitting the assessment ballot. Each assessment ballot shall be signed and either mailed or otherwise delivered to the address indicated on the assessment ballot. Regardless of the method of delivery, all assessment ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to subdivision (e). Assessment ballots shall remain sealed until the tabulation of ballots pursuant to subdivision (e) commences, provided that an assessment ballot may be submitted, or changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing required pursuant to subdivision (d). An agency may provide an envelope for the return of the assessment ballot, provided that if the return envelope is opened by the agency prior to the tabulation of ballots pursuant to subdivision (e), the enclosed assessment ballot shall remain sealed as provided in this section.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any interested person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person, including, but not limited to, the clerk of the agency, designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Section 6252, and equally available for inspection by the proponents and the opponents of the proposed assessment.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the agency by documentation provided by those record owners.

(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(3) If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the agency shall not impose, extend, or increase the assessment.

(4) The majority protest proceedings described in this subdivision shall not constitute an election or voting for purposes of Article II of the California Constitution or of the California Elections Code.

(Added by Stats.1997, c. 38 (S.B.919), § 5, eff. July 1, 1997. Amended by Stats.2000, c. 220 (S.B.1477), § 1.)

§ 53753.5. Exempt assessments; application of notice, protest, and hearing requirements; subsequent increases

(a) If an agency has complied with the notice, protest, and hearing requirements of Section 53753, or if an agency is not required to comply with those requirements because the assessment is exempt from the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, then those requirements shall not apply in subsequent fiscal years unless the assessment methodology is changed to increase the assessment, or the amount of that assessment is proposed to exceed an assessment formula or range of assessments adopted by an agency in accordance with Article XIII D of the California Constitution or Section 53753.

(b) Notwithstanding subdivision (a), the following assessments existing on the effective date of Article XIII D of the California Constitution shall be exempt from the procedures and approval process set forth in Section 4 of that article:

(1) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems, or vector control.

(2) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed.

(3) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(4) Any assessment that previously received majority voter approval from the voters voting in an election on the issue of the assessment.

Any subsequent increases in an assessment listed in paragraph (1), (2), or (4) shall be subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution.

(c) For purposes of this section, the following words and phrases shall have the following meanings:

(1) "Assessments existing on the effective date of Article XIII D of the California Constitution" means assessments levied by the legislative body of the agency on or before November 6, 1996.

(2) "Procedures and approval process set forth in Section 4 of Article XIII D" means all of the requirements set forth in Section 4 of Article XIII D of the California Constitution, including, but not limited to, the requirement to separate general and special benefits and the requirement to assess parcels that are owned or used by an agency, the State of California, or the United States of America.

(Added by Stats.1997, c. 38 (S.B.919), § 5, eff. July 1, 1997.)

§ 53753.5. Exempt assessments; application of notice, protest, and hearing requirements; subsequent increases

(a) If an agency has complied with the notice, protest, and hearing requirements of Section 53753, or if an agency is not required to comply with those requirements because the assessment is exempt from the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution, then those requirements shall not apply in subsequent fiscal years unless the assessment methodology is changed to increase the assessment, or the amount of that assessment is proposed to exceed an assessment formula or range of assessments adopted by an agency in accordance with Article XIII D of the California Constitution or Section 53753.

(b) Notwithstanding subdivision (a), the following assessments existing on the effective date of Article XIII D of the California Constitution shall be exempt from the procedures and approval process set forth in Section 4 of that article:

(1) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems, or vector control.

(2) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed.

(3) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(4) Any assessment that previously received majority voter approval from the voters voting in an election on the issue of the assessment.

Any subsequent increases in an assessment listed in paragraph (1), (2), or (4) shall be subject to the procedures and approval process set forth in Section 4 of Article XIII D of the California Constitution.

(c) For purposes of this section, the following words and phrases shall have the following meanings:

(1) "Assessments existing on the effective date of Article XIII D of the California Constitution" means assessments levied by the legislative body of the agency on or before November 6, 1996.

(2) "Procedures and approval process set forth in Section 4 of Article XIII D" means all of the requirements set forth in Section 4 of Article XIII D of the California Constitution, including, but not limited to, the requirement to separate general and special benefits and the requirement to assess parcels that are owned or used by an agency, the State of California, or the United States of America.

(Added by Stats.1997, c. 38 (S.B.919), § 5, eff. July 1, 1997.)

Temporary Borrowing

Sec. 53820. Local agency; definition

As used in this article, "local agency" means county, city, regional park district, school district, community college district, or any other municipal or public corporation or district.

(Added by Stats.1949, c. 81, p. 296, § 1. Amended by Stats.1953, c. 1151, p. 2650, § 1, eff. June 16, 1953; Stats.1978, c. 380, p. 1146, § 63.)

Sec. 53821. Immediate requirements funds; authorization

Subsequent to approval of the final budget and levy of taxes, if funds are needed for the immediate requirements of a local agency in any fiscal year to pay obligations lawfully incurred in the fiscal year and before the receipt of income for the fiscal year sufficient to meet the payments, money may be borrowed by:

(a) The legislative body of a county on the recommendation of the auditor and treasurer.

(b) The legislative body of the county having the largest area within the regional park district on the recommendation of the auditor and treasurer.

(c) A school district, county board of education, or community college district on the request of two-thirds of the members of its governing board, approved by the county auditor and treasurer.

(d) A regional park district on the request of four-fifths of the members of its legislative body, approved by the auditor and treasurer of the county having the largest area within the district.

(e) The legislative body of a city on the recommendation of the city treasurer and chief accounting officer.

(f) The legislative body of any other municipal or public corporation or district on the recommendation of the officers performing the functions of auditor and treasurer.

(Added by Stats.1949, c. 81, p. 296, § 1. Amended by Stats.1953, c. 1151, p. 2650, § 2, eff. June 16, 1953; Stats.1978, c. 380, p. 1146, § 64; Stats.1980, c. 447, p. 937, § 1.)

Sec. 53821.5. Funds set aside for note repayments; investment terms

Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

(Added by Stats.1995, c. 784 (S.B.866), § 19.)

Sec. 53822. Evidences of indebtedness; limit of borrowing

Money may be borrowed on notes, tax anticipation warrants, or other evidences of indebtedness on behalf of the local agency in an amount not to exceed 50 percent of:

(a) The revenue from taxes for the current fiscal year or that portion of the taxes not collected at the time of borrowing, where the borrowing is by a county, city, or municipal or public corporation or district, other than a school district, county board of education, or community college district.

(b) The estimated income and revenue for the current fiscal year or that portion not collected at the time of borrowing, where the borrowing is by a school district, county board of education, or community college district.

(Added by Stats.1949, c. 81, p. 297, § 1. Amended by Stats.1953, c. 1151, p. 2650, § 3, eff. June 16, 1953; Stats.1978, c. 380, p. 1147, § 65; Stats.1980, c. 447, p. 938, § 2.)

Sec. 53823. School or Community College districts; borrowing on basis of state apportionments; repayment

In addition, a school district, county board of education, or community college district may borrow money at any time between July 15th and August 30th of any fiscal year in an amount not to exceed 25 percent of the estimated income and revenue to be received during the current fiscal year by the district or county office of education from apportionments of the state, high school, or community college fund and of the State General Fund, based on the average daily attendance of pupils in the schools or colleges of the district or in schools operated by the county board of education for the preceding school year. The notes shall be repaid not later than December 31st in the fiscal year exclusively from the state apportionments.

(Added by Stats.1949, c. 81, p. 297, § 1. Amended by Stats.1978, c. 380, p. 1147, § 66; Stats.1980, c. 447, p. 938, § 3.)

Sec. 53824. Resolution, required vote

All such notes, tax anticipation warrants, or other evidences of indebtedness shall be issued only after the adoption of a resolution by a four-fifths vote of all members of the legislative body.

(Added by Stats.1949, c. 81, p. 297, § 1.)

Sec. 53825. Resolution; contents

The resolution shall state the necessity for the borrowing and:

(a) The amount of revenue from taxes provided for the county, city, or municipal or public corporation or district, other than a school district, county board of education, or community college district, for the current fiscal year.

(b) The amount of income and revenue provided for the current fiscal year for the school or community college district or the estimated amount of income and revenue to be received during the current fiscal year from apportionments from the State School Fund, high school fund, or community college fund and from the State General Fund, if the borrowing is by a school district, county board of education, or community college district and occurs before taxes are levied.

(Added by Stats.1949, c. 81, p. 297, § 1. Amended by Stats.1953, c. 1151, p. 2651, § 4, eff. June 16, 1953; Stats.1978, c. 380, p. 1147, § 67; Stats.1980, c. 447, p. 938, § 4.)

Sec. 53826. Notes and other evidences of indebtedness; public sale; advertisement

All such notes, tax anticipation warrants, or other evidences of indebtedness shall be offered at public sale by the legislative body after not less than two days advertising in a newspaper of general circulation within the county, within the county having the largest area within the regional park district, or within the city, as the case may be, and not less than three days after the last day on which the advertisement is published.

(Added by Stats.1949, c. 81, p. 297, § 1.)

Sec. 53827. Best bid; maximum rate of interest

The sale shall be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the local agency. Notwithstanding the provision of Section 53531, the rate of interest shall not exceed 15 percent a year.

(Added by Stats.1949, c. 81, p. 298, § 1. Amended by Stats.1975, c. 130, p. 215, § 17; Stats.1980, c. 278, p. 562, § 4, eff. June 30, 1980; Stats.1983, c. 489, § 1.)

Sec. 53828. Notes or other evidences of indebtedness; signatures

The notes, tax anticipation warrants, or other evidences of indebtedness shall be signed by:

(a) The chairman of the board of supervisors and countersigned by the auditor and treasurer of the county or of the county having the largest area within the regional park district.

(b) The mayor, and countersigned by the city treasurer and chief accounting officer, for a city.

(c) The presiding officer of the legislative body, and countersigned by the officers performing the functions of auditor and treasurer of the municipal or public corporation or district.

(Added by Stats.1949, c. 81, p. 298, § 1. Amended by Stats.1953, c. 1151, p. 2651, § 5, eff. June 16, 1953.)

Sec. 53829. Repayment by county, city, corporations, and certain districts; first lien

The repayment of money borrowed by a county, city, or municipal or public corporation or district other than a school district, county board of education, or community college district constitutes a first lien and charge against the taxes levied for the fiscal year in which it was borrowed and shall be repaid from the first money received by the county, city, or municipal or public corporation or district other than a school district, county board of education, or community college district from the taxes.

(Added by Stats.1949, c. 81, p. 298, § 1. Amended by Stats.1953, c. 1151, p. 2651, § 6, eff. June 16, 1953; Stats.1978, c. 380, p. 1148, § 68; Stats.1980, c. 447, p. 939, § 5.)

Sec. 53830. Repayment by school or community college districts; first lien

The repayment of money borrowed by any school district, county board of education, or community college district constitutes a first lien and charge against the taxes, revenue, and other income collected during the fiscal year in which the money was borrowed and shall be repaid from the first money received by such school district, county board of education, or community college district from the taxes, revenue, and income.

(Added by Stats.1949, c. 81, p. 298, § 1. Amended by Stats.1978, c. 380, p. 1148, § 69; Stats.1980, c. 447, p. 939, § 6.)

Sec. 53830.5. Payment guarantee; evidences of indebtedness by school districts and education boards; procedure; construction with other laws and contracts

(a) As to any notes, tax anticipation warrants, or other evidences of indebtedness issued by a school district, county board of education, or community college district pursuant to this article on or after January 1, 1993, the governing board may elect, by the adoption of a resolution by affirmative vote of the number of governing board members required for the adoption of the resolution described in Section 53825, to guarantee payment in accordance with the following:

(1) The governing board making the election authorized by this subdivision shall so notify the Controller. That notice shall include a schedule of payment for the notes, tax anticipation warrants, or other evidences of indebtedness, and shall identify the trustee appointed by the governing board for the purposes of paragraphs (2) and (3). For purposes of this section, "notes, tax anticipation warrants, or other evidences of indebtedness" means any debt with a maximum maturity not exceeding one year from the date of issue and a maturity date that is within the fiscal year of issue.

(2) If, for any reason, the funds otherwise available to the agency for any payment due under the terms of the notes, tax anticipation warrants, or other evidences of indebtedness will not be sufficient for that purpose at the time payment is required as to any one or more of the notes, tax anticipation warrants, or other evidences of indebtedness, the agency shall so notify the trustee. The trustee immediately shall communicate that information to the affected person or persons holding the notes, tax anticipation warrants, or other evidences of indebtedness, and to the Controller. If the agency is a school district, the trustee also shall communicate that information immediately to the county superintendent of schools.

(3) When the Controller receives from the trustee the notice described in paragraph (2), or the agency fails to make any payment of one or more of the notes, tax anticipation warrants, or other evidences of indebtedness at the time that payment is required, the Controller shall make one or more apportionments to the trustee, subject to paragraph (4), in a total amount equal to the amount of the required payment from moneys appropriated to the State School Fund, and the trustee thereupon shall make that payment. The Controller shall withhold the amount of any payment made under this paragraph, including reimbursement of the Controller's administrative costs as determined under a schedule approved by the California Debt Advisory Commission, from any subsequent apportionment or apportionments to be made to the agency from the State School Fund.

(4) The amount apportioned to a trustee pursuant to paragraph (3) in any month shall not exceed the amount that otherwise would be apportioned to the agency for that month from the State School Fund. This paragraph does not prohibit the Controller from making two or more apportionments to a trustee pursuant to paragraph (3) as necessary to satisfy a required payment in accordance with that paragraph.

(5) The resolution shall state both of the following:

(A) That the agency maintains an overall positive fund equity as of the date of the adoption of the resolution, and that the governing board anticipates that the agency will maintain an overall positive fund equity at the end of the fiscal year in which the notes, tax anticipation warrants, or other evidences of indebtedness are issued. For purposes of this section, "overall positive fund equity" means that the sum of the cash available to the agency and its accounts receivable exceeds the amount of the accounts payable by the agency.

(B) That the governing board of the agency understands, in authorizing the Controller to make the payment described in paragraph (3) and, accordingly, to withhold certain funds that otherwise would be apportioned to the agency, that the nonpayment of salaries or other obligations of the agency may result.

(6) Upon the adoption of a resolution as described in this section by the governing board of a school district, that governing board shall file a copy of the resolution with the appropriate county superintendent of schools at least 20 days prior to the sale of any notes, tax anticipation warrants, or other evidences of indebtedness authorized pursuant to the resolution. At the request of the school district governing board, the county superintendent of schools may waive or reduce the 20-day requirement described in this paragraph.

(b) This section shall not be construed to obligate the State of California to make any payment to or on behalf of any school district, county board of education, or community college district from the State School Fund in any amount, or pursuant to any particular allocation formula, or to make any other payment to or on behalf of a school district, county board of education, or community college district, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a school district, county board of education, or community college district pursuant to this section or any other provision of this article.

(c) This section shall not be applied so as to impair the obligation of any contract that is in effect as of January 1, 1993, in a manner that would violate either Section 9 of Article I of the California Constitution or Section 10 of Article I of the United States Constitution.

(d) Any apportionment made by the Controller pursuant to paragraph (3) of subdivision (a) shall be deemed to be an allocation to a school district for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, and for purposes of Chapter 2 (commencing with Section 41200) of Part 24 of the Education Code.

(Added by Stats.1992, c. 1051 (A.B.3002), § 1. Amended by Stats.1993, c. 589 (A.B.2211), § 77.)

Sec. 53831. Repayment, date

All such notes, tax anticipation warrants, or other evidences of indebtedness issued for funds borrowed prior to December 31st in any fiscal year shall be repaid not later than that date. All other evidences of indebtedness for funds borrowed in any fiscal year shall be repaid not later than May 30th of such fiscal year. Notes, tax anticipation warrants, or other evidences of indebtedness shall not be issued after December 31st in any fiscal year if funds borrowed prior to December 31st are not repaid prior to that date.

(Added by Stats.1949, c. 81, p. 298, § 1.)

Sec. 53832. Purpose of loans; basis for credit

Loans made pursuant to this article shall be made solely for the purpose of anticipating income. In the case of a county, a city, or a municipal or public corporation or district other than a school district, county board of education, or community college district, the loans shall be made solely upon the credit of revenue from taxes provided for the fiscal year in which loans are made. In the case of a school district, county board of education, or community college district, the loans shall be made solely upon the credit of income and revenue provided for the fiscal year in which loans are made.

(Added by Stats.1949, c. 81, p. 298, § 1. Amended by Stats.1953, c. 1151, p. 2651, § 7, eff. June 16, 1953; Stats.1978, c. 380, p. 1148, § 70; Stats.1980, c. 447, p. 939, § 7.)

Sec. 53833. Budget, anticipated interest payments

The legislative body of each local agency may include in its budget, separately stated, amounts of anticipated disbursement to meet the interest to be paid on any funds borrowed pursuant to this article.

(Added by Stats.1949, c. 81, p. 298, § 1.)

Alternate Procedure For Temporary Borrowing

Sec. 53840. Legislative intent; authority to borrow to meet current obligations; notes evidencing indebtedness; lien

It is hereby declared the intention of the Legislature by the enactment of this article to provide an alternative procedure under which short term loans may be procured by those counties in which the board of supervisors has declared it to be county policy to make advances of current operating requirements to subsidiary political subdivisions required by law to deposit their funds in the county treasury as such advances are authorized by the provisions of Section 25 of Article XIII of the State Constitution. In any such county the board of supervisors, upon recommendation of the county treasurer with the approval of the county auditor, may borrow on July 1st or thereafter such amounts as may be required to meet current obligations payable by the county treasury, pending collection of the revenue provided for the year in progress. Amounts so borrowed shall be evidenced by notes signed by the chairman of the board of supervisors, the county auditor and the county treasurer, and the liability created thereby shall be secured by a lien on all revenue to accrue to the county treasury from any source during the year then in progress.

(Added by Stats.1957, c. 706, p. 1899, § 1, eff. June 1, 1957. Amended by Stats.1974, c. 544, p. 1254, § 27.)

Sec. 53841. Limit on borrowing

Any amounts borrowed by a county as provided in the preceding section shall not exceed 85 percent of the total of taxes levied for all purposes on said county's tax roll for the next preceding fiscal year, and at no time during the year for which borrowed shall the unpaid total of the amounts so borrowed as shown by the auditor's accounts at the close of any month be allowed to remain at more than 85 percent of the uncollected balance of taxes for the current year as shown by said accounts.

(Added by Stats.1957, c. 706, p. 1899, § 1, eff. June 1, 1957.)

Sec. 53841.5. Funds set aside for note repayments; investment terms

Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

(Added by Stats.1995, c. 784 (S.B.866), § 20.)

Sec. 53842. Entry of amount borrowed to credit of general reserve fund; use; payment of notes

Amounts borrowed as above provided shall be entered to the credit of the county's general reserve fund and may be used to make advances to operating funds in the county treasury as authorized by Section 25 of Article XIII of the State Constitution. Payment of the notes upon their due dates shall be made by warrants drawn by the county auditor on the general reserve fund.

(Added by Stats.1957, c. 706, p. 1899, § 1, eff. June 1, 1957. Amended by Stats.1974, c. 544, p. 1254, § 28.)

Sec. 53843. Advertisement for bids; contents; interest cost; exceptions

In any county which finds it necessary to borrow current operating requirements, as provided in the foregoing sections, the board of supervisors shall either:

(1) Advertise for bids by publication for two weeks in a newspaper of general circulation in the county, setting forth the date upon which the amount will be required, which shall be not less than three weeks following the date of the first publication, the amount required and the repayment date. Bids shall be opened at the time set forth in the notice which shall be during a regular meeting of the board; and the board, unless it rejects all bids, shall accept the bid which offers the loan to the county at the lowest net interest cost not in excess of 10 percent, or

(2) After finding that time is of the essence, direct the county treasurer to negotiate for a loan to the county and to solicit and receive bids without advertising for them. The board of supervisors, unless it rejects all bids, shall accept the bid which offers the loan to the county at the lowest net interest cost not in excess of 10 percent, or

(3) After finding that any political subdivision subject to this article periodically requires advances of current operating requirements prior to receipt of tax revenues, direct the county treasurer, upon request of such political subdivision, to solicit and receive bids for loans from time to time without advertising for them. The board of supervisors, unless it rejects all bids, shall accept the bid which offers the loan to the county at the lowest net interest cost not in excess of 10 percent.

(Added by Stats.1957, c. 706, p. 1900, § 1, eff. June 1, 1957. Amended by Stats.1968, c. 26, p. 171, § 2; Stats.1973, c. 222, § 1; Stats.1975, c. 130, p. 215, § 18; Stats.1980, c. 278, p. 562, § 5, eff. June 30, 1980.)

Sec. 53844. Interest payments; crediting interest earned on funds in county treasury

In any county which qualifies as set forth in Section 53840 to use the foregoing procedure for short-term financing, all interest payments on the loans may, in the discretion of the board of supervisors, be charged to the general fund of any district or fund for which loans have been made. All interest earned on funds in the county treasury shall be credited to said general fund of the county, excepting therefrom the interest on deposits of school districts which shall accrue to the general funds of the respective school districts, the interest earned on specific investments of a local agency as authorized by Section 53601 of this code or by Section 5007 of the Education Code,¹⁷ and moneys on deposit in court in eminent domain actions pursuant to Article 1 (commencing with Section 1255.010) of Chapter 6 of, or Article 2 (commencing with Section 1268.110) of Chapter 11 of, Title 7 of Part 3 of the Code of Civil Procedure.

(Added by Stats.1957, c. 706, p. 1900, § 1, eff. June 1, 1957. Amended by Stats.1967, c. 744, p. 2115, § 1; Stats.1975, c. 1240, p. 3169, § 39, operative July 1, 1976.)

Sec. 53850. Local agency

As used in this article, "local agency" means county, city and county, city, school district of any type, community college district, county board of education, or any other municipal or public corporation or district.

(Added by Stats.1963, c. 748, p. 1760, § 2, eff. June 4, 1963. Amended by Stats.1978, c. 380, p. 1148, § 71; Stats.1983, c. 1077, § 1.)

Sec. 53851. Powers additional and alternative to other laws

The powers conferred by this article are in addition to and an alternative to any power conferred by any other law for borrowing by a local agency and any amount borrowed hereunder shall not be considered in any limitation on the amount which may be borrowed by any such local agency under any other law.

(Added by Stats.1963, c. 748, p. 1761, § 2, eff. June 4, 1963.)

Sec. 53852. Authority to borrow on notes; use of moneys

On or after the first day of any fiscal year a local agency may borrow money pursuant to this article, the indebtedness to be represented by a note or notes issued to the lender pursuant to this article. The money borrowed may be used and expended by the local agency for any purpose for which the local agency is authorized to use and expend moneys, including but not limited to current expenses, capital expenditures, investment and reinvestment, and the discharge of any obligation or indebtedness of the local agency.

(Added by Stats.1963, c. 748, p. 1761, § 2, eff. June 4, 1963. Amended by Stats.1965, c. 107, p. 1047, § 4; Stats.1987, c. 1388, § 1.4.)

Sec. 53852.5. Funds set aside for note repayments; investment terms

Proceeds of sales or funds set aside for the repayment of any notes issued pursuant to this article shall not be invested for a term that exceeds the term of the notes.

(Added by Stats.1995, c. 784 (S.B.866), § 21.)

Sec. 53853. Issuance of notes; resolution; time limit; fiduciary responsibilities

(a) The note or notes shall be issued pursuant to a resolution authorizing the issuance thereof adopted by the legislative body of the local agency, except that the note or notes of a county board of education, school district, or community college district that has not been accorded fiscal accountability status pursuant to Section 1080, 42647, 42650, or 85266 of the Education Code shall be issued in the name of the school district or community college district by the board of supervisors of the county, the county superintendent of which has jurisdiction over the school district or community college district, as soon as possible following receipt of a resolution of the governing board of the school district or community college district requesting the borrowing and the note or notes of a county board of education shall be issued in the name of the county board of education by the board of supervisors of the county as soon as possible following receipt of a resolution of the county board of education requesting that the county assist in that borrowing. The school district, community college district, or county board of education that submits that resolution to the county board of supervisors shall simultaneously provide a copy of the resolution to the county superintendent of schools and the county treasurer.

(b) Notwithstanding subdivision (a), if the appropriate county board of supervisors fails to authorize, by resolution, the issuance of a note or notes in the name of a county board of education, school district, or community college district as specified by that subdivision within 45 calendar days following its receipt

of the resolution of the county board of education, or of the governing board of the school district or community college district, requesting that issuance, or if the county board of supervisors notifies the county board of education, school district, or community college district that it will not authorize that issuance within that 45-day period, then the note or notes may be issued by the county board of education, school district, or community college district in its name pursuant to the previously adopted resolution. The resolution adopted by the governing board of the school district or community college district, or by the county board of education, shall not contain direction to the county treasurer for the investment of any proceeds of the note or notes while deposited in the county treasury, but may direct the investment of proceeds of the note or notes held by a trustee and any other amounts held by that trustee or pledged for repayment or security of the note or notes. This subdivision applies only in the case of a note or notes of a county board of education, school district, or community college district to be issued in conjunction with a note or notes of one or more other county board of education, school district, or community college district. No county board of supervisors, county treasurer, or county auditor shall be deemed to have any fiduciary responsibility with regard to any note or notes issued pursuant to this subdivision. This subdivision shall not apply to a county board of education, school district, or community college district that is under the authority of a trustee as a result of accepting an emergency apportionment.

(c) Notes authorized to be issued may be issued from time to time as provided in the resolution. The resolution of the county board of education, school district, or community college district shall set forth the form and the manner of execution of the note or notes.

(Added by Stats.1963, c. 748, p. 1761, § 2, eff. June 4, 1963. Amended by Stats.1978, c. 380, p. 1148, § 72; Stats.1983, c. 1077, § 2; Stats.1985, c. 584, § 1; Stats.1987, c. 1452, § 526; Stats.1990, c. 1103 (A.B.4217), § 1.)

Sec. 53854. Negotiability; payee; denomination; maturity; interest

Any note issued under this article may be negotiable, may be payable to order or to bearer and may be in any denomination. Such note shall be payable not later than the last day of the fiscal year in which it is issued; provided that such note may be made payable during the fiscal year succeeding the fiscal year in which issued, but in no event later 15 months after the date of issue, when such note is payable only from revenue received or accrued during the fiscal year in which issued, Such note may bear interest not to exceed 10 percent per annum, payable as provided therein. Such interest may be represented by coupons attached to said note.

(Added by Stats.1963, c. 748, p. 1761, § 2, eff. June 4, 1963. Amended by Stats.1969, c. 307, p. 674, § 1; Stats.1970, c. 232, p. 487, § 1, eff. June 22, 1970; Stats.1975, c. 130, p. 216, § 19; Stats.1980, c. 278, p. 562, § 6, eff. June 30, 1980.)

Sec. 53855. Call and redemption; notice

The resolution authorizing the issuance of any note may provide that such note shall be subject to call and redemption prior to maturity, at the option of the local agency, at such price or prices as may be fixed in the resolution, not exceeding a premium of 3 percent of the par value of the note so subject to redemption. The resolution shall fix the method of giving notice of redemption to the holder of the note to be redeemed and the price or prices at which the note shall be subject to redemption. A note so subject to call and redemption prior to maturity shall contain a recital to that effect on its face, and no note shall be subject to call or redemption prior to its fixed maturity date unless it contains such recital.

(Added by Stats.1963, c. 748, p. 1761, § 2, eff. June 4, 1963.)

Sec. 53856. Pledge of revenues; restriction; specification; lien

Any taxes, income, revenue, cash receipts, or other moneys of the local agency, including moneys deposited in inactive or term deposits, may be pledged to the payment of the note or notes and the interest thereon, except, however, that no moneys which, when received by the local agency, will be encumbered for a special purpose may be pledged for the payment of the note or notes or the interest thereon unless an equivalent amount of the proceeds from said note or notes is set aside for and used for said special purpose. The resolution authorizing the issuance of the note or notes shall specify what taxes, income, revenue, cash receipts or other moneys are pledged for the payment thereof. The note or notes and the interest thereon shall be a first lien and charge against, and shall be payable from the first moneys received by the local agency from, such pledged moneys.

For the purposes of this section, "revenue" includes, but is not limited to, revenue from the state and federal governments.

(Added by Stats.1963, c. 748, p. 1761, § 2, eff. June 4, 1963. Amended by Stats.1965, c. 107, p. 1048, § 5; Stats.1970, c. 232, p. 487, § 2, eff. June 22, 1970; Stats.1972, c. 552, p. 953, § 1, eff. Aug. 4, 1972; Stats.1976, c. 390, p. 1040, § 1; Stats.1982, c. 274, § 1, eff. June 16, 1982.)

Sec. 53856.1. Orange County; issuance of notes; guaranteed payment election; payments from Motor Vehicle License Fee Account

(a) The Board of Supervisors of Orange County, in the resolution authorizing the issuance of any note or notes, may provide that the board elects to guarantee payment of the note or notes in accordance with the following:

(1) If Orange County elects to participate under this section, it shall provide notice to the Controller of that election, which notice shall include a schedule for the repayment of principal and interest on the notes, and identify a note trustee appointed by Orange County for the purposes of this section.

(2) In the event that, for any reason, the funds made available pursuant to this article for the payment of principal and interest of the notes will not be sufficient for that purpose at the time payment on principal, interest, or both, is required as to any one or more of those notes, Orange County shall so notify the trustee. The trustee shall immediately communicate that information to the affected noteholders and to the Controller.

(3) When the Controller receives notice from the trustee as described in paragraph (2) that the funds made available pursuant to this article for the payment of principal and interest of the notes is not sufficient for that purpose at the time payment on principal, interest, or both, is required as to any one or more of those notes, the Controller shall make an apportionment to the trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which Orange County is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2 of the Revenue and Taxation Code, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which Orange County would otherwise be entitled under that chapter.

(4) As an alternate to the procedure set forth in paragraphs (2) and (3), Orange County may specify in the notice provided to the Controller pursuant to paragraph (1) a schedule of payments to be made on specified dates to the trustee, and the Controller shall, subject to the limitation in the second sentence of paragraph (3), make apportionments to the trustee in the amount of the required payments on the specified dates.

(b) This section shall not be construed to obligate the State of California to make any payment to Orange County from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to Orange County, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by Orange County in accordance with this section.

(Added by Stats.1995-96, 2nd Ex.Sess., c. 2 (S.B.8), § 3, eff. May 15, 1995.)

Sec. 53857. General obligation; taxation

Notwithstanding the provisions in Section 53856, any note issued pursuant to this article shall be a general obligation of the local agency, and, to the extent not paid from the taxes, income, revenue, cash receipts or other moneys of the local agency pledged for the payment thereof shall be paid with the interest thereon from any other moneys of the local agency lawfully available therefor; provided, however, that any tax levied by a county for interest on notes for borrowed money shall be in addition to all other taxes and shall not be less than sufficient to pay the interest on notes for borrowed money as is to become due before the time for making the next general tax levy.

(Added by Stats.1963, c. 748, p. 1762, § 2, eff. June 4, 1963. Amended by Stats.1965, c. 107, p. 1048, § 6; Stats.1972, c. 1384, p. 2875, § 2.)

Sec. 53858. Limit on amount of notes; revenue defined

Notes shall not be issued pursuant to this article in any fiscal year in an amount which, when added to the interest payable thereon, shall exceed 85 percent of the estimated amount of the then uncollected taxes, income, revenue, cash receipts, and other moneys of the local agency which will be available for the payment of said notes and the interest thereon; provided, however, that to the extent that any principal or interest on such notes is secured by a pledge of the amount in any inactive or term deposit of the local agency, the term of which will terminate during said fiscal year, such principal and interest may be disregarded in computing said limit.

For the purposes of this section, "revenue" includes, but is not limited to, revenue from the state and federal governments.

(Added by Stats.1963, c. 748, p. 1762, § 2, eff. June 4, 1963. Amended by Stats.1965, c. 107, p. 1048, § 7; Stats.1970, c. 232, p. 488, § 3, eff. June 22, 1970; Stats.1972, c. 552, p. 953, § 2, eff. Aug. 4, 1972; Stats.1982, c. 274, § 2, eff. June 16, 1982.)

Financial Reports

Sec. 53891. Time; form; uniform procedures

The officer of each local agency who has charge of the financial records shall furnish to the Controller a report of all the financial transactions of the local agency during the next preceding fiscal year. The report shall be furnished within 90 days after the close of each fiscal year and shall be in the form required by the Controller. If the report is filed in electronic format as prescribed by the Controller, the report shall be furnished within 110 days after the close of each fiscal year. However, in the case of local agencies filing annual financial materials with the California Health Facilities Commission or any successor thereto pursuant to Section 441.18 of the Health and Safety Code, the audited report shall be furnished within 120 days after the close of each fiscal year. Further, in the case of community redevelopment agencies filing annual reports with the Controller pursuant to Section 33080 of the Health and Safety Code, the report shall be furnished within six months of the end of the agency's fiscal year.

The Controller shall prescribe uniform accounting and reporting procedures which shall be applicable to all local agencies except cities, counties, and school districts, and except for local agencies which substantially follow a system of accounting prescribed by the Public Utilities Commission of the State of California or the Federal Power Commission. The procedures shall be adopted under the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The Controller shall prescribe the procedures only after consultation with and approval of a local governmental advisory committee established pursuant to Section 12463.1. Approval of the procedures shall be by majority vote of the members present at a meeting of the committee called by the chairperson thereof.

(Added by Stats.1949, c. 1521, p. 2706, § 5. Amended by Stats.1963, c. 1760, p. 3512, § 1; Stats.1979, c. 316, p. 1135, § 1; Stats.1985, c. 617, § 24.; Stats.1997, c. 165 (A.B.311), § 1.)

Sec. 53892. Contents

The report shall state:

(a) The aggregate amount of taxes levied and assessed against the taxable property in the local agency, which became due and payable during the next preceding fiscal year.

(b) The aggregate amount of taxes levied and assessed against such property collected by or for, the local agency during the fiscal year.

(c) The aggregate income during the preceding fiscal year, a general statement of the sources of the income, and the amount received from each source.

(d) The total expenditures made by administrative departments during the preceding fiscal year, a general statement of the purposes of the expenditures, and the amounts expended by each department.

(e) The assessed valuation of all of the taxable property in the local agency as set forth on the assessment roll of the local agency equalized for the fiscal year, or, if the officers of the county in which the city or district is situated have collected for the city or district the general taxes levied by the city or district for the fiscal year, the assessed valuation of all taxable property in the city or district as set forth on the assessment rolls for the county equalized for the fiscal year.

(f) The information required by Section 53892.2, as of the end of the fiscal year.

(g) The approximate population at the close of the fiscal year and the population as shown by the last regular federal census.

(h) Other information which the Controller requires.

(i) Any other matters necessary to complete and keep current the statistical information on assessments, revenues and taxation, collected and compiled by any Senate or Assembly committee on revenue and taxation.

(j) In the case of cities, the information required by Section 53892.3.

(k) In the case of community redevelopment agencies, the information required by subdivisions (a), (b), and (d) of Section 33080.1 of the Health and Safety Code. The Controller shall forward the information required pursuant to subdivision (c) of Section 33080.1 of the Health and Safety Code to the Department of Housing and Community Development for publication pursuant to Section 33080.6 of the Health and Safety Code.

(Added by Stats.1949, c. 1521, p. 2706, § 5. Amended by Stats.1967, c. 1138, p. 2809, § 5; Stats.1969, c. 212, p. 541, § 1; Stats.1984, c. 1523, § 4; Stats.1990, c. 1608 (S.B.1822), § 6.)

Sec. 53892.2. Bonds; lease-obligations; construction contracts; additional contents of report

Pursuant to Section 53892, the report shall also contain the following information:

(a) For all issues of general obligation bonds, revenue bonds, improvement district bonds, limited obligation bonds, and special assessment bonds state:

- (1) The purpose of the bonds.
- (2) The amount of issued and unmatured bonds.
- (3) The amount of any delinquent principal and interest payments which are due upon issued and matured bonds.
- (4) The amount of authorized but unissued bonds.

(b) For each issue of general obligation bonds and improvement district bonds where the revenues of any revenue-producing enterprise have been pledged as additional security for such bonds, state the nature and extent of such pledge.

(c) For each issue of revenue bonds where any income, other than the revenues of the enterprise financed by said revenue bonds, has been pledged as additional security for said bonds, state the nature and extent of such pledge.

(d) For each issue of improvement district bonds state the assessed valuation of all taxable property in such improvement district, determined in the manner provided in subdivision (e) of Section 53892.

(e) For each issue of limited obligation bonds, state the nature and source of taxes from which principal and interest is payable.

(f) For special assessment bonds which are payable, directly or indirectly, from any source other than special assessments, state the nature and extent of such sources.

(g) For all lease-obligations state:

- (1) The purpose of the lease-obligation.
- (2) The nature of the lease-obligation, whether by lease, contract, or otherwise, and the parties thereto.
- (3) The person, partnership, corporation, legal entity or governmental agency providing any moneys expended for making any acquisition or improvement authorized or required for the purpose of such lease-obligation.
- (4) The total future rentals or other payments which would be required if the local agency completed the unexpired term of the lease-obligation.

(h) For construction financed by the United States or the State of California pursuant to a contract with, or a loan or grant to, the local agency:

- (1) The date or purpose of the contract or grant.
- (2) The maximum repayment obligation under the contract, and the amount expended by the United States or the State of California to date.
- (3) The estimated payment schedule.
- (4) The payments to date and delinquencies, if any.

The following definitions shall apply to this section:

“Bonds” means all bonds, warrants, notes or other evidences of indebtedness or liability for which the reporting local agency is liable for payment of principal and interest thereon.

“General obligation bonds” means bonds payable, both principal and interest, from the proceeds of ad valorem taxes or ad valorem assessments which may be levied within the entire territory of the local agency, without limitation as to rate or amount, upon all property subject to taxation or assessment.

“Revenue bonds” means bonds issued by a local agency payable, both principal and interest, from the revenues of a revenue-producing enterprise.

“Improvement district bonds” means bonds payable, both principal and interest, from the proceeds of ad valorem taxes or ad valorem assessments which may be levied within a fixed and defined portion or portions of the local agency, without limitation as to rate or amount, upon all property subject to taxation or assessment.

“Limited obligation bonds” means any bonds payable, both principal and interest, from any taxes, other than taxes or assessments levied upon property.

“Special assessment bonds” means any bonds issued to represent unpaid assessments upon lands in an area fixed and defined by the local agency, the lands within such area being specially benefited by and assessed or to be assessed to pay the costs and expenses of a public acquisition or improvement.

“Lease-obligations” means (i) leases for a term of more than 10 years under which the local agency is the lessee and has the right, by option or otherwise, to acquire ownership of the property leased or (ii) contracts whereby a local agency is obligated to make installment payments for a period of more than 10 years for an acquisition or improvement, such payments being made from a special fund, provided, that revenue bonds or any contract, indenture, resolution or ordinance providing for the issuance of revenue bonds shall not be deemed a lease-obligation.

The information required by this section shall be submitted in such form and detail as may be prescribed by the uniform reporting procedures adopted pursuant to Section 53891.

(Added by Stats.1967, c. 1138, p. 2810, § 6.)

Sec. 53892.3. Cities; additional contents of report

Pursuant to Section 53892, the report shall, in the case of cities, also contain the following information:

(a) Total expenditures made during the next preceding fiscal year for the construction of public projects other than streets and highways.

(b) The total amount expended pursuant to competitive bidding during the next preceding fiscal year for the construction of public projects other than streets and highways.

The Legislature declares that in enacting this section there is no express or implied obligation on the part of cities to include costs of administrative overhead or any costs other than those directly expended for construction of public projects.

(Added by Stats.1969, c. 212, p. 542, § 2.)

§ 53893. Copies; distribution; charges

Upon the completion of the report the legislative body shall cause copies of the report to be prepared and the clerk of the legislative body shall furnish a copy to any person requesting it. A charge not to exceed twenty-five cents (\$0.25) for each copy may be imposed.

(Added by Stats.1949, c. 1521, p. 2707, § 5.)

§ 53894. Falsification; offense

An officer of a local agency wilfully and knowingly rendering a false report is guilty of a misdemeanor.

(Added by Stats.1949, c. 1521, p. 2707, § 5.)

§ 53895. Failure to report after notice; forfeiture

(a) An officer of a local agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller shall forfeit to the state:

(1) One thousand dollars (\$1,000), in the case of a local agency with total revenue, in the prior year, of less than one hundred thousand dollars (\$100,000), as reported in the Controller's annual financial reports.

(2) Two thousand five hundred dollars (\$2,500) in the case of a local agency with total revenue, in the prior year, of at least one hundred thousand dollars (\$100,000) but less than two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(3) Five thousand dollars (\$5,000) in the case of a local agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(b) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

(Added by Stats.1949, c. 1521, p. 2707, § 5. Amended by Stats.1990, c. 1608 (S.B.1822), § 7.5; Stats.1999, c. 442 (A.B.634), § 1.)

Sec. 53895.5. Failure to file after written notice; forfeiture payment amounts

(a) An officer of a community redevelopment agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller shall forfeit to the state:

(1) One thousand dollars (\$1,000) in the case of a community redevelopment agency with total revenue, in the prior year, of less than one hundred thousand dollars (\$100,000), as reported in the Controller's annual financial reports.

(2) Two thousand five hundred dollars (\$2,500) in the case of a community redevelopment agency with total revenue, in the prior year, of at least one hundred thousand dollars (\$100,000), but less than two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(3) Five thousand dollars (\$5,000) in the case of a community redevelopment agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(b) An officer of a community redevelopment agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller in the second or more consecutive year shall forfeit to the state:

(1) Two thousand dollars (\$2,000) in the case of a community redevelopment agency with total revenue, in the prior year, of less than one hundred thousand dollars (\$100,000), as reported in the Controller's annual financial reports.

(2) Five thousand dollars (\$5,000) in the case of a community redevelopment agency with total revenue, in the prior year, of at least one hundred thousand dollars (\$100,000) but less than two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(3) Ten thousand dollars (\$10,000) in the case of a community redevelopment agency with total revenue, in the prior year, of at least two hundred fifty thousand dollars (\$250,000), as reported in the Controller's annual financial reports.

(c) In the case of a community redevelopment agency that fails or refuses to make and file its report within 20 days after receipt of a written notice of the failure from the Controller in the third or more consecutive year, the Controller shall conduct or cause to be conducted an independent financial audit report consistent with the requirements of Section 33080.1 of the Health and Safety Code. The community redevelopment agency shall reimburse the Controller for the cost of complying with this subdivision. The community redevelopment agency shall not use any of the money in the Low and Moderate Income Housing Fund to reimburse the Controller.

(d) Upon the request of the Controller, the Attorney General shall prosecute an action for the forfeiture in the name of the people of the State of California.

(e) A community redevelopment agency that makes a forfeiture or payment pursuant to this section shall still file the report required pursuant to Section 53891.

(Added by Stats.1998, c. 39 (S.B.258), § 2.)

Sec. 53896. Refusal to report; offense

An officer of a local agency wilfully refusing to make such a report is guilty of a misdemeanor.

(Added by Stats.1949, c. 1521, p. 2707, § 5.)

School Facilities

Sec. 65970. Legislative findings and declaration

The Legislature finds and declares as follows:

(a) Adequate school facilities should be available for children residing in new residential developments.

(b) Public and private residential developments may require the expansion of existing public schools or the construction of new school facilities.

(c) In many areas of the state, the funds for the construction of new classroom facilities are not available when new development occurs, resulting in the overcrowding of existing schools.

(d) New housing developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.

(e) That, for these reasons, new and improved methods of financing for interim school facilities necessitated by new development are needed in California.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

Sec. 65971. Findings by school district; notice to city or county; mitigation measures

(a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 1; Stats.1985, c. 1498, § 1.5; Stats.1994, c. 1228 (S.B.1735), § 6.)

Sec. 65972. Findings by city council or board of supervisors

Within the attendance area where it has been determined pursuant to Section 65971 that conditions of overcrowding exist, the city council or board of supervisors shall not approve an ordinance rezoning property to a residential use, grant a discretionary permit for residential use, or approve a tentative subdivision map for residential purposes, within such area, unless the city council or board of supervisors makes one of the following findings:

- (1) That an ordinance pursuant to Section 65974 has been adopted, or
- (2) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the city council or board of supervisors would benefit the city or county, thereby justifying the approval of a residential development otherwise subject to Section 65974.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

Sec. 65973. Definitions

As used in this chapter the following terms means¹⁸:

(a) "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of the school as determined by the governing body of the district.

(b) "Reasonable methods for mitigating conditions of overcrowding" shall include, but are not limited to, agreements between a subdivider or builder and the affected school district whereby temporary-use buildings will be leased to the school district or temporary-use buildings owned by the school district will be used and agreements between the affected school district and other school districts whereby the affected school district agrees to lease or purchase surplus or underutilized school facilities from other school districts.

(c) "Residential development" means a project containing residential dwellings, including mobilehomes, of one or more units or a subdivision of land for the purpose of constructing one or more residential dwelling units.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 2; Stats.1985, c. 1498, § 2.5.)

Sec. 65974. Land or fees for interim classroom facilities where overcrowding exists; conditional approval of residential development; developer fees under school facilities master plans

(a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.

(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for

the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1979, c. 282, p. 1023, § 53, eff. July 24, 1979; Stats.1982, c. 923, § 3, eff. Sept. 13, 1982; Stats.1985, c. 150, § 1; Stats.1985, c. 1498, § 3; Stats.1986, c. 887, § 10; Stats.1994, c. 1228 (S.B.1735), § 7.)

Sec. 65974.5. Expenditure of funds for construction or reconstruction purposes

Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

(Added by Stats.1989, c. 1209, § 24, eff. Oct. 1, 1989.)

Sec. 65975. Interim facility fees; fair market value of dedicated land; use for capital outlay project payments

(a) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976, (Ch. 22 (commencing with Section 17700), Pt. 10, Ed.C.) of a school project to be constructed in an attendance area where fees have been collected pursuant to Section 65974, all or a portion of the fees so collected for interim facilities may be used by the district to provide its 10 percent of the project as required by item (1) of Section 17761 of the Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to Section 65974.

(b) Whenever a school district has received approval, under the State School Building Lease-Purchase Law of 1976 (Ch. 22 (commencing with Section 17700), Pt. 10, Ed.C.), of a school project to be constructed in an attendance area where land has been received pursuant to Section 65974, the district may use the fair market value of the land to provide all or a portion of its 10 percent of the school project as required by item (1) of subdivision (a) of Section 17761. In order to use the value of land to meet the 10 percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full 10 percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the Education Code.

(Added by Stats.1983, c. 1254, § 5.)

Sec. 65976. Schedule by school district; solution of conditions of overcrowding; contents; modifications

As a part of the notice required by Section 65971, or in any event before the city council or board of supervisors make a decision to require the dedication of land or the payment of fees, or both, or to increase the amount of land to be dedicated or the fees to be paid, or both, the governing body of the school district shall submit a schedule to the city council or board of supervisors specifying how the school district will use the land or fees, or both, to solve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the governing body of the school district cannot meet the schedule, it shall submit modifications to the city council or board of supervisors and the reasons for the modifications.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1985, c. 836, § 3; Stats.1985, c. 1498, § 4.5.)

Sec. 65977. Agreement with two separate school districts; distribution of revenues

Where two separate school districts operate schools in an attendance area where overcrowding conditions exist for both school districts, the governing body of the city or county shall enter into an agreement with the governing body of each school district for the purpose of determining the distribution of revenues from the fees levied pursuant to this chapter.

(Added by Stats.1977, c. 955, p. 2902, § 1.)

Sec. 65978. Fees; separate accounting; reports

Any school district receiving funds pursuant to this chapter shall maintain a separate account for any fees paid and shall file a report with the city council or board of supervisors on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed; and the dedication of land during the previous fiscal year. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the board of supervisors or city council.

The board of supervisors or city council may approve a 30-day extension for the filing of the report in the case of extenuating circumstances, as determined by the board of supervisors or city council.

During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

If overcrowding conditions no longer exist, the city or county shall cease levying any fee or requiring the dedication of any land pursuant to this chapter.

(Added by Stats.1977, c. 955, p. 2902, § 1. Amended by Stats.1981, c. 201, § 1; Stats.1984, c. 1062, § 1.)

Sec. 65979. Receipt of apportionment pursuant to building lease-purchase law; fee or dedication; determination of overcrowding

(a) One year after receipt of an apportionment pursuant to the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700 of Part 10 of the Education Code)¹⁹ for the construction of a school, the city or county shall not be permitted thereafter, pursuant to this chapter or pursuant to any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt

of the apportionment there may be a determination of overcrowding pursuant to Section 65971, if both of the following further findings are made:

(1) That during the period of construction, or after construction has been completed, additional overcrowding would occur from continued residential development.

(2) That any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the school district.

(b) Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

(Added by Stats.1979, c. 282, p. 1024, § 54, eff. July 24, 1979. Amended by Stats.1980, c. 1354, p. 4883, § 62.5, eff. Sept. 30, 1980; Stats.1985, c. 1498, § 5; Stats.1986, c. 136, § 1.)

Sec. 65980. Definitions

For the purposes of Section 65974 the following terms mean:

(a) "Approval of a residential development" means any approval for the development prior to and including the issuance of a building permit for the development.

(b) "Classroom facilities," "classroom and related facilities," and "elementary or high school facilities" mean "interim facilities" and shall include no other facilities.

(c) "Interim facilities" are limited to any of the following:

(1) Temporary classrooms not constructed with permanent foundation and defined as a structure containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.

(2) Temporary classroom toilet facilities not constructed with permanent foundations.

(3) Reasonable site preparation and installation of temporary classrooms.

(4) Land necessary for the placement thereon of any of the facilities described in paragraph (1) or (2).

(Added by Stats.1979, c. 282, p. 1024, § 55, eff. July 24, 1979. Amended by Stats.1980, c. 1354, p. 4884, § 62.6, eff. Sept. 30, 1980; Stats.1985, c. 1498, § 6.)

Sec. 65980.1. Lodi Unified School District; leased residential dwellings as interim facilities

Notwithstanding Section 69580, for the purposes of Section 65974, interim facilities shall include leased residential dwellings used by the Lodi Unified School District for school purposes.

(Added by Stats.1983, c. 82, § 1, eff. June 14, 1983.)

Sec. 65981. Recommendation of fees to provide interim facilities; submission to city or county; failure to provide as waiver

If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for the development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter.

(Added by Stats.1979, c. 282, p. 1024, § 56, eff. July 24, 1979.)

Payment of Fees, Charges, Dedications, or Other Requirements Against a Development Project

Sec. 65995. Levies against development projects for construction or reconstruction of school facilities

(a) Except for a fee, charge, dedication, or other requirement authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), a fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities may not be levied or imposed in connection with, or made a condition of, any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073.

(b) Except as provided in Sections 65995.5 and 65995.7, the amount of any fees, charges, dedications, or other requirements authorized under Section 17620 of the Education Code, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, may not exceed the following:

(1) In the case of residential construction, including the location, installation, or occupancy of manufactured homes and mobilehomes, one dollar and ninety-three cents (\$1.93) per square foot of assessable space. "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters. "Manufactured home" and "mobilehome" have the meanings set forth in subdivision (f) of Section 17625 of the Education Code. The application of any fee, charge, dedication, or other form of requirement to the location, installation, or occupancy of manufactured homes and mobilehomes is subject to Section 17625 of the Education Code.

(2) In the case of any commercial or industrial construction, thirty-one cents (\$0.31) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the construction, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 2000, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting.

(c) (1) Notwithstanding any other provision of law, during the term of a contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential construction, neither Section 17620 of the Education Code nor this chapter applies to that residential construction.

(2) Notwithstanding any other provision of state or local law, construction that is subject to a contract entered into between a person and a school district, city, county, or city and county, whether general law or chartered, after January 1, 1987, and before the operative date of the act that adds paragraph (3) that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of construction, may not be affected by the act that adds paragraph (3).

(3) Notwithstanding any other provision of state or local law, until January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, shall be required to comply with that condition.

Notwithstanding any other provision of state or local law, on and after January 1, 2000, any construction not subject to a contract as described in paragraph (2) that is carried out on real property for which residential development was made subject to a condition relating to school facilities imposed by a state or local agency in connection with a legislative act approving or authorizing the residential development of that property after January 1, 1987, and before the operative date of the act adding this paragraph, may not be subject to a fee, charge, dedication, or other requirement exceeding the amount specified in paragraphs (1) and (2) of subdivision (b), or, if a district has increased the limit specified in paragraph (1) of subdivision (b) pursuant to either Section 65995.5 or 65995.7, that increased amount.

(4) Any construction that is not subject to a contract as described in paragraph (2), or to paragraph (3), and that satisfies both of the requirements of this paragraph, may not be subject to any increased fee, charge, dedication, or other requirement authorized by the act that adds this paragraph beyond the amount specified in paragraphs (1) and (2) of subdivision (b).

(A) A tentative map, development permit, or conditional use permit was approved before the operative date of the act that amends this subdivision.

(B) A building permit is issued before January 1, 2000.

(d) For purposes of this chapter, "construction" means new construction and reconstruction of existing building for residential, commercial, or industrial. "Residential, commercial, or industrial construction" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial construction" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the financing of school facilities and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities are matters of statewide concern. For this reason, the Legislature hereby occupies the subject matter of requirements related to school facilities levied or imposed in connection with, or made a condition of, any land use approval, whether legislative or adjudicative act, or both, and the mitigation of the impacts of land use approvals, whether legislative or adjudicative, or both, on the need for school facilities, to the exclusion of all other measures, financial or nonfinancial, on the subjects. For purposes of this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities. However, the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 may not be required as a condition of approval of any legislative or adjudicative act, or both, if the purpose of the community facilities district is to finance school facilities.

(g)(1) The refusal of a person to agree to undertake or cause to be undertaken an act relating to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5, including formation of, or annexation to, a community facilities district, voting to levy a special tax, or authorizing another to vote to levy a special tax, may not be a factor when considering the approval of a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, if the purpose of the community facilities district is to finance school facilities.

(2) If a person voluntarily elects to establish, or annex into, a community facilities district and levy a special tax approved by landowner vote to finance school facilities, the present value of the special tax specified in the resolution of formation shall be calculated as an amount per square foot of assessable space and that amount shall be a credit against any applicable fee, charge, dedication, or other requirement for the construction or reconstruction of school facilities. For purposes of this paragraph, the calculation of present value shall use the interest rate paid on the United States Treasury's 30-year bond on the date of the formation of, or annexation to, the community facilities district, as the capitalization rate.

(3) For purposes of subdivisions (f), (h), and (i), and this subdivision, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(h) The payment or satisfaction of a fee, charge, or other requirement levied or imposed pursuant to Section 17620 of the Education Code in the amount specified in Section 65995 and, if applicable, any amounts specified in Section 65995.5 or 65995.7 are hereby deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073, on the provision of adequate school facilities.

(i) A state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property, or any change in governmental organization or reorganization as defined in Section 56021 or 56073 on the basis of a person's refusal to provide school facilities mitigation that exceeds the amounts authorized pursuant to this section or pursuant to Section 65995.5 or 65995.7, as applicable.

(Added by Stats.1986, c. 887, § 11. Amended by Stats.1988, c. 29, § 3, eff. March 14, 1988; Stats.1989, c. 1209, § 25, eff. Oct. 1, 1989; Stats.1992, c. 1354 (S.B.1287), § 3; Stats.1998, c. 407 (S.B.50), § 19, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

Sec. 65995.1. Senior citizen and migrant worker housing; conversions; approval

(a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (k) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Notwithstanding any other provision of law, as to any development project for the construction of agricultural migrant worker housing financed in whole or part pursuant to Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code, no fees, charges, dedications, or other forms of requirements that are levied under Section 53080 shall be applied to new construction, reconstruction, or rehabilitation of this housing. The exemption provided by this subdivision shall be applicable only to that agricultural migrant worker housing which is owned by the state and which is subject to a contract ensuring compliance with the requirements of Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 31 of the Health and Safety Code.

(c) Any development project against which school facilities fees or other requirements have been levied or waived in accordance with the limit or exemption set forth in subdivision (a) or (b) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a) or (b).

(Added by Stats.1988, c. 29, § 4, eff. March 14, 1988. Amended by Stats.1989, c. 1209, § 26, eff. Oct. 1, 1989; Stats.1990, c. 633 (A.B.530), § 3, eff. Sept. 11, 1990; Stats.1991, c. 536 (S.B.1095), § 1, eff. Oct. 7, 1991.)

Sec. 65995.2. Manufactured home or mobilehome located within park or subdivision limited to older persons; changes in age limit; fees and other requirements

(a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

(Added by Stats.1989, c. 1209, § 27, eff. Oct. 1, 1989.)

Sec. 65995.5. Alternative calculation of amounts

(a) The governing board of a school district may impose the amount calculated pursuant to this section as an alternative to the amount that may be imposed on residential construction calculated pursuant to subdivision (b) of Section 65995.

(b) To be eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section, a governing board shall do all of the following:

(1) Make a timely application to the State Allocation Board for new construction funding for which it is eligible and be determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) and Article 3 (commencing with Section 17071.75) of Chapter 12.5 of Part 10 of the Education Code. A governing board that submits an application to determine the district's eligibility for new construction funding shall be deemed eligible if the State Allocation Board fails to notify the district of the district's eligibility within 120 days of receipt of the application.

(2) Conduct and adopt a school facility needs analysis pursuant to Section 65995.6.

(3) Until January 1, 2000, satisfy at least one of the requirements set forth in subparagraphs (A) to (D), inclusive, and, on and after January 1, 2000, satisfy at least two of the requirements set forth in subparagraphs (A) to (D), inclusive:

(A) The district is a unified or elementary school district that has a substantial enrollment of its elementary school pupils on a multitrack year-round schedule. "Substantial enrollment" for purposes of this paragraph means at least 30 percent of district pupils in kindergarten and grades 1 to 6, inclusive, in the high school attendance area in which all or some of the new residential units identified in the needs analysis are planned for construction. A high school district shall be deemed to have met the requirements of this paragraph if either of the following apply:

(i) At least 30 percent of the high school district's pupils are on a multitrack year-round schedule.

(ii) At least 40 percent of the pupils enrolled in public schools in kindergarten and grades 1 to 12, inclusive, within the boundaries of the high school attendance area for which the school district is applying for new facilities are enrolled in multitrack year-round schools.

(B) The district has placed on the ballot in the previous four years a local general obligation bond to finance school facilities and the measure received at least 50 percent plus one of the votes cast.

(C) The district meets one of the following:

(i) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 15 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners prior to November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(ii) The district has issued debt or incurred obligations for capital outlay in an amount equivalent to 30 percent of the district's local bonding capacity, including indebtedness that is repaid from property taxes, parcel taxes, the district's general fund, special taxes levied pursuant to Section 4 of Article XIII A of the California Constitution, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of registered voters, special taxes levied pursuant to Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 that are approved by a vote of landowners after November 4, 1998, and revenues received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Indebtedness or other obligation to finance school facilities to be owned, leased, or used by the district, that is incurred by another public agency, shall be counted for the purpose of calculating whether the district has met the debt percentage requirement contained herein.

(D) At least 20 percent of the teaching stations within the district are relocatable classrooms.

(c) The maximum square foot fee, charge, dedication, or other requirement authorized by this section that may be collected in accordance with Chapter 6 (commencing with Section 17620) of Part 10.5 of the Education Code shall be calculated by a governing board of a school district, as follows:

(1) The number of unhoused pupils identified in the school facilities needs analysis shall be multiplied by the appropriate amounts provided in subdivision (a) of Section 17072.10. This sum shall be added to the site acquisition and development cost determined pursuant to subdivision (h).

(2) The full amount of local funds the governing board has dedicated to facilities necessitated by new construction shall be subtracted from the amount determined pursuant to paragraph (1). Local funds include fees, charges, dedications, or other requirements imposed on commercial or industrial construction.

(3) The resulting amount determined pursuant to paragraph (2) shall be divided by the projected total square footage of assessable space of residential units anticipated to be constructed during the next five-year period in the school district or the city and county in which the school district is located. The estimate of the projected total square footage shall be based on information available from the city or county within which the residential units are anticipated to be constructed or a market report prepared by an independent third party.

(d) A school district that has a common territorial jurisdiction with a district that imposes the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7, may not impose a fee, charge, dedication, or other requirement on residential construction that exceeds the limit set forth in subdivision (b) of Section 65995 less the portion of that amount it would be required to share pursuant to Section 17623 of the Education Code, unless that district is eligible to impose the fee, charge, dedication, or other requirement up to the amount calculated pursuant to this section or Section 65995.7.

(e) Nothing in this section is intended to limit or discourage the joint use of school facilities or to limit the ability of a school district to construct school facilities that exceed the amount of funds authorized by Section 17620 of the Education Code and provided by the state grant program, if the additional costs are funded solely by local revenue sources other than fees, charges, dedications, or other requirements imposed on new construction.

(f) Except as provided in paragraph (5) of subdivision (a) of Section 17620 of the Education Code, a fee, charge, dedication, or other requirement authorized under this section and Section 65995.7 shall be expended solely on the school facilities identified in the needs analysis as being attributable to projected enrollment growth from the construction of new residential units. This subdivision does not preclude the expenditure of a fee, charge, dedication, or other requirement, authorized pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 17620, on school facilities identified in the needs analysis as necessary due to projected enrollment growth attributable to the new residential units.

(g) "Residential units" and "residences" as used in this section and in Sections 65995.6 and 65995.7 means the development of single-family detached housing units, single-family attached housing units, manufactured homes and mobilehomes, as defined in subdivision (f) of Section 17625 of the Education Code, condominiums, and multifamily housing units, including apartments, residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, and stock cooperatives, as defined in Section 1351 of the Civil Code.

(h) Site acquisition costs shall not exceed half of the amount determined by multiplying the land acreage determined to be necessary under the guidelines of the State Department of Education, as published in the "School Site Analysis and Development Handbook," as that handbook read as of January 1, 1998, by the estimated cost determined pursuant to Section 17072.12 of the Education Code. Site development costs shall not exceed the estimated amount that would be funded by the State Allocation Board pursuant to its regulations governing grants for site development costs.

(Added by Stats.1998, c. 407 (S.B.50), § 20, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 16.)

Sec. 65995.6. School facilities needs analysis

(a) The school facilities needs analysis required by paragraph (2) of subdivision (b) of Section 65995.5 shall be conducted by the governing board of a school district to determine the need for new school facilities for unhoused pupils that are attributable to projected enrollment growth from the development of new residential units over the next five years. The school facilities needs analysis shall project the number of unhoused elementary, middle, and high school pupils generated by new residential units, in each category of pupils enrolled in the district. This projection of unhoused pupils shall be based on the historical student generation rates of new residential units constructed during the previous five years that are of a similar type of unit to those anticipated to be constructed either in the school district or the city or county in which the school district is located, and relevant planning agency information, such as multiphased development projects, that may modify the historical figures. For purposes of this paragraph, "type" means a single family detached, single family attached, or multifamily unit. The existing school building capacity shall be calculated pursuant to Article 2 (commencing with Section 17071.10) of Chapter 12.5 of Part 10 of the Education Code. The existing school building capacity shall be recalculated by the school district as part of any revision of the needs analysis pursuant to subdivision (e) of this section. If a district meets the requirements of paragraph (3) of subdivision (b) of Section 65995.5 by having a substantial enrollment on a multitrack year-round schedule, the determination of whether the district has school building capacity area shall reflect the additional capacity created by the multitrack year-round schedule.

(b) When determining the funds necessary to meet its facility needs, the governing board shall do each of the following:

(1) Identify and consider any surplus property owned by the district that can be used as a schoolsite or that is available for sale to finance school facilities.

(2) Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities.

(3) Identify and consider local sources other than fees, charges, dedications, or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units.

(c) The governing board shall adopt the school facility needs analysis by resolution at a public hearing. The school facilities needs analysis may not be adopted until the school facilities needs analysis in its final form has been made available to the public for a period of not less than 30 days during which time the school facilities needs analysis shall be provided to the local agency responsible for land use planning for its review and comment. Prior to the adoption of the school facilities needs analysis, the public shall have the opportunity to review and comment on the school facilities needs analysis and the governing board shall respond to written comments it receives regarding the school facilities needs analysis.

(d) Notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed school facilities needs analysis and any proposed revision of the school facilities needs analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the school district that is conducting the hearing no less than 30 days prior to the hearing. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous public places within the jurisdiction of the school district not less than 30 days prior to the hearing. In addition to these notice requirements, the governing board shall mail a copy of the school facilities needs analysis

and any proposed revision to the school facilities needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The governing board may charge a fee reasonably related to the cost of providing these materials to those persons who request the school facilities needs analysis or revision.

(e) The school facilities needs analysis may be revised at any time in the same manner, and the revision is subject to the same conditions and requirements, applicable to the adoption of the school facilities needs analysis.

(f) A fee, charge, dedication, or other requirement in an amount authorized by this section or Section 65995.7, shall be adopted by a resolution of the governing board as part of the adoption or revision of the school facilities needs analysis and may not be effective for more than one year. Notwithstanding subdivision (a) of Section 17621 of the Education Code, or any other provision of law, the fee, charge, dedication, or other requirement authorized by the resolution shall take effect immediately after the adoption of the resolution.

(g) Division 13 (commencing with Section 21000) of the Public Resources Code may not apply to the preparation, adoption, or update of the school facilities needs analysis, or adoption of the resolution specified in this section.

(h) Notice and hearing requirements other than those provided in this section may not be applicable to the adoption or revision of a school facilities needs analysis or the resolutions adopted pursuant to this section.

(Added by Stats.1998, c. 407 (S.B.50), § 21, eff. Aug. 27, 1998, operative Nov. 4, 1998. Amended by Stats.1999, c. 858 (A.B.695), § 17.)

Sec. 65995.7. State funds unavailable; supplemental amounts authorized

(a) If state funds for new school facility construction are not available, the governing board of a school district that complies with Section 65995.5 may increase the alternative fee, charge, dedication, or other requirement calculated pursuant to subdivision (c) of Section 65995.5 by an amount that may not exceed the amount calculated pursuant to subdivision (c) of Section 65995.5, except that for the purposes of calculating this additional amount, the amount identified in paragraph (2) of subdivision (c) of Section 65995.5 may not be subtracted from the amount determined pursuant to paragraph (1) of subdivision (c) of Section 65995.5. For purposes of this section, state funds are not available if the State Allocation Board is no longer approving apportionments for new construction pursuant to Article 5 (commencing with Section 17072.20) of Chapter 12.5 of Part 10 of the Education Code due to a lack of funds available for new construction. Upon making a determination that state funds are no longer available, the State Allocation Board shall notify the Secretary of the Senate and the Chief Clerk of the Assembly, in writing, of that determination and the date when state funds are no longer available for publication in the respective journal of each house.

(b) A governing board may offer a reimbursement election to the person subject to the fee, charge, dedication, or other requirement that provides the person with the right to monetary reimbursement of the supplemental amount authorized by this section, to the extent that the district receives funds from state sources for construction of the facilities for which that amount was required, less any amount expended by the district for interim housing. At the option of the person subject to the fee, charge, dedication, or other requirement the reimbursement election may be made on a tract or lot basis. Reimbursement of available funds shall be made within 30 days as they are received by the district.

(c) A governing board may offer the person subject to the fee, charge, dedication, or other requirement an opportunity to negotiate an alternative reimbursement agreement if the terms of the agreement are mutually agreed upon.

(d) A governing board may provide that the rights granted by the reimbursement election or the alternative reimbursement agreement are assignable.

(Added by Stats.1998, c. 407 (S.B.50), § 22, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

Sec. 65996. Conditions for approval of development projects; adequacy of school facilities; mitigating environmental effects

(a) Notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, the following provisions shall be the exclusive methods of considering and mitigating impacts on school facilities that occur or might occur as a result of any legislative or adjudicative act, or both, by any state or local agency involving, but not limited to, the planning, use, or development of real property or any change of governmental organization or reorganization, as defined in Section 56021 or 56073:

(1) Section 17620 of the Education Code.

(2) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7.

(b) The provisions of this chapter are hereby deemed to provide full and complete school facilities mitigation and, notwithstanding Section 65858, or Division 13 (commencing with Section 21000) of the Public Resources Code, or any other provision of state or local law, a state or local agency may not deny or refuse to approve a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or any change in governmental organization or reorganization, as defined in Section 56021 or 56073, on the basis that school facilities are inadequate.

(c) For purposes of this section, "school facilities" means any school-related consideration relating to a school district's ability to accommodate enrollment.

(d) Nothing in this chapter shall be interpreted to limit or prohibit the ability of a local agency to utilize other methods to provide school facilities if these methods are not levied or imposed in connection with, or made a condition of, a legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property or a change in governmental organization or reorganization, as defined in Section 56021 or 56073. Nothing in this chapter shall be interpreted to limit or prohibit the assessment or reassessment of property in conjunction with ad valorem taxes, or the placement of a parcel on the secured roll in conjunction with qualified special taxes as that term is used in Section 50079.

(e) Nothing in this section shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of land use approvals other than on the need for school facilities, as defined in this section.

(f) This section shall become inoperative during any time that Section 65997 is operative and this section shall become operative at any time that Section 65997 is inoperative.

(Added by Stats.1986, c. 887, § 11. Amended by Stats.1988, c. 160, § 70; Stats.1989, c. 1209, § 27.5, eff. Oct. 1, 1989; Stats.1992, c. 1354 (S.B.1287), § 6.)

Sec. 65997. Exclusive methods of mitigating environmental effects related to adequacy of school facilities

(a) The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of conditions for the approval of a development project, as defined in Section 17620, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(1) Chapter 12 (commencing with Section 17000) of Part 10 of the Education Code or Chapter 12.5 (commencing with Section 17070.10).

(2) Chapter 14 (commencing with Section 17085) of Part 10 of the Education Code.

(3) Chapter 18 (commencing with Section 17170) of Part 10 of the Education Code.

(4) Article 2.5 (commencing with Section 17430) of Chapter 4 of Part 10.5 of the Education Code.

(5) Section 17620 of the Education Code.

(6) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(7) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

(b) A public agency may not, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

(c) (1) This section shall become operative on or after any statewide election in 2006, if a statewide general obligation bond measure submitted for voter approval in 2006 or thereafter that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved.

(2)(A) This section shall become inoperative if subsequent to the failure of a general obligation bond measure described in paragraph (1) a statewide general bond measure as described in paragraph (1) is approved by the voters.

(B) Thereafter, this section shall become operative if a statewide general obligation bond measure submitted for voter approval that includes bond issuance authority to fund construction of kindergarten and grades 1 to 12, inclusive, public school facilities is submitted to the voters and fails to be approved and shall become inoperative if subsequent to the failure of the general obligation bond measure a statewide bond measure as described in this subparagraph is approved by the voters.

(d) Notwithstanding any other provision of law, a public agency may deny or refuse to approve a legislative act involving, but not limited to, the planning, use, or development of real property, on the basis that school facilities are inadequate, except that a public agency may not require the payment or satisfaction of a fee, charge, dedication, or other financial requirement in excess of that levied or imposed pursuant to Section 65995 and, if applicable, any amounts specified in Sections 65995.5 or 65995.7.

(Added by Stats.1998, c. 407 (S.B.50), § 24, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

Sec. 65998. Scope of chapter

(a) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the authority of a local agency to reserve or designate real property for a schoolsite.

(b) Nothing in this chapter or in Section 17620 of the Education Code shall be interpreted to limit or prohibit the ability of a local agency to mitigate the impacts of a land use approval involving, but not limited to, the planning, use, or development of real property other than on the need for school facilities.

(Added by Stats.1998, c. 407 (S.B.50), § 25, eff. Aug. 27, 1998, operative Nov. 4, 1998.)

Sec. 66000. Definitions

As used in this chapter:

(a) "Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(b) "Fee" means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, 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 specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.²⁰

(c) "Local agency" means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) "Public facilities" includes public improvements, public services and community amenities.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 7; Stats.1990, c. 1572 (A.B.3228), § 14; Stats.1996, c. 549 (A.B.3081), § 1.)

Sec. 66000.5. Mitigation Fee Act; chapters included

This chapter, Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) shall be known and may be cited as the Mitigation Fee Act.

(Added by Stats.1996, c. 799 (S.B.1748), § 6.7.)

Sec. 66001. Fee as condition of approval; agency requirements

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:

- (1) Identify the purpose of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(b) In any action imposing a fee as a condition of approval of a development project by a local agency on or after January 1, 1989, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

(c) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006.

(d) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

(1) Identify the purpose to which the fee is to be put.

(2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

(3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).

(4) Designate the approximate dates on which the funding referred to in paragraph (3) is expected to be deposited into the appropriate account or fund.

When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).

(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon. By means consistent with the intent of this section, a local agency may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means. The determination by the governing body of the local agency of the means by which those revenues are to be refunded is a legislative act.

(f) If the administrative costs of refunding unexpended revenues pursuant to subdivision (e) exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 8; Stats.1996, c. 569 (S.B.1693), § 1.)

Sec. 66002. Capital improvement plan; adoption; updates; hearings

(a) Any local agency which levies a fee subject to Section 66001 may adopt a capital improvement plan, which shall indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

(b) The capital improvement plan shall be adopted by, and shall be annually updated by, a resolution of the governing body of the local agency adopted at a noticed public hearing. Notice of the hearing shall be given pursuant to Section 65090. In addition, mailed notice shall be given to any city or county which may be significantly affected by the capital improvement plan. This notice shall be given no later than the date the local agency notices the public hearing pursuant to Section 65090. The information in the notice shall be not less than the information contained in the notice of public hearing and shall be given by first-class mail or personal delivery.

(c) "Facility" or "improvement," as used in this section, means any of the following:

- (1) Public buildings, including schools and related facilities; provided that school facilities shall not be included if Senate Bill 97 of the 1987-88 Regular Session is enacted and becomes effective on or before January 1, 1988.
- (2) Facilities for the storage, treatment, and distribution of nonagricultural water.
- (3) Facilities for the collection, treatment, reclamation, and disposal of sewage.
- (4) Facilities for the collection and disposal of storm waters and for flood control purposes.
- (5) Facilities for the generation of electricity and the distribution of gas and electricity.
- (6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.
- (7) Parks and recreation facilities.
- (8) Any other capital project identified in the capital facilities plan adopted pursuant to Section 66002.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989.)

Sec. 66003. Reimbursement agreements; inapplicability of §§ 66001 and 66002; operative date of chapter

Sections 66001 and 66002 do not apply to a fee imposed pursuant to a reimbursement agreement by and between a local agency and a property owner or developer for that portion of the cost of a public facility paid by the property owner or developer which exceeds the need for the public facility attributable to and reasonably related to the development. This chapter shall become operative on January 1, 1989.

(Added by Stats.1987, c. 927, § 1, operative Jan. 1, 1989. Amended by Stats.1988, c. 418, § 9; Stats.1989, c. 170, § 2.)

Sec. 66004. Establishment or increase of fees; applicable requirements

The establishment or increase of any fee pursuant to this chapter shall be subject to the requirements of Section 66018.

(Added by Stats.1988, c. 418, § 10. Amended by Stats.1990, c. 1572 (A.B.3228), § 15.)

Sec. 66005. Limitation on imposition of fees or exactions as condition of approval

(a) When a local agency imposes any fee or exaction as a condition of approval of a proposed development, as defined by Section 65927, or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

(b) This section does not apply to fees or monetary exactions expressly authorized to be imposed under Sections 66475.1 and 66477.

(c) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

(Formerly § 65959, added by Stats.1986, c. 1203, § 3. Renumbered § 66005 and amended by Stats.1988, c. 418, § 6.)

Sec. 66006. Local agency improvement fees; public availability of account or fund information

(a) If a local agency requires the payment of a fee specified in subdivision (c) in connection with the approval of a development project, the local agency receiving the fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected. Any interest income earned by moneys in the capital facilities account or fund shall also be deposited in that account or fund and shall be expended only for the purpose for which the fee was originally collected.

(b)(1) For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

(A) A brief description of the type of fee in the account or fund.

(B) The amount of the fee.

(C) The beginning and ending balance of the account or fund.

(D) The amount of the fees collected and the interest earned.

(E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.

(F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

(G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

(2) The local agency shall review the information made available to the public pursuant to paragraph (1) at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public, as required by this subdivision. Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the local agency for mailed notice of the meeting. 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.

(c) For purposes of this section, "fee" means any fee imposed to provide for an improvement to be constructed to serve a development project, or which is a fee for public improvements within the meaning of subdivision (b) of Section 66000, and that is imposed by the local agency as a condition of approving the development project.

(d) Any person may request an audit of any local agency fee or charge that is subject to Section 66023, including fees or charges of school districts, in accordance with that section.

(e) The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on a specific development project, it shall identify the public improvement that the fee will be used to finance.

(Formerly § 53077, added by Stats.1983, c. 921, § 1. Amended by Stats.1987, c. 1002, § 1. Renumbered § 66006 and amended by Stats.1988, c. 418, § 2; Stats.1988, c. 926, § 1; Stats.1989, c. 170, § 3; Stats.1992, c. 169 (A.B.2953), § 1; Stats.1996, c. 569 (S.B.1693), § 2.)

Sec. 66006.5. Right-of-way donations in lieu of fees

(a) A city or county which imposes an assessment, fee, or charge, other than a tax, for transportation purposes may, by ordinance, prescribe conditions and procedures allowing real property which is needed by the city or county for local transportation purposes, or by the state for transportation projects which will not receive any federal funds, to be donated by the obligor in satisfaction or partial satisfaction of the assessment, fee, or charge.

(b) To facilitate the implementation of subdivision (a), the Department of Transportation shall do all of the following:

(1) Give priority to the refinement, modification, and enhancement of procedures and policies dealing with right-of-way donations in order to encourage and facilitate those donations.

(2) Reduce or simplify paperwork requirements involving right-of-way procurement.

(3) Increase communication and education efforts as a means to solicit and encourage voluntary right-of-way donations.

(4) Enhance communication and coordination with local public entities through agreements of understanding that address state acceptance of right-of-way donations.

(Added by Stats.1989, c. 857, § 2.)

Sec. 66007. Construction of public improvements or facilities; payment of fees or charges; residential development; time; definitions

(a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted, include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17017.5 of the Education Code.

(Formerly § 53077.5, added by Stats.1986, c. 685, § 1. Amended by Stats.1987, c. 1184, § 6. Renumbered § 66007 and amended by Stats.1988, c. 418, § 3; Stats.1988, c. 912, § 2; Stats.1989, c. 1209, § 28, eff. Oct. 1, 1989; Stats.1989, c. 1217, § 3; Stats.1992, c. 231 (A.B.1262), § 2; Stats.1998, c. 689 (S.B.1362), § 6.5.)

Sec. 66008. Expenditures; authorized purposes

A local agency shall expend a fee for public improvements, as accounted for pursuant to Section 66006, solely and exclusively for the purpose or purposes, as identified in subdivision (f) of Section 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.

(Added by Stats.1996, c. 569 (S.B.1693), § 3.)

Fees for Development Projects Reconstructed After a Natural Disaster

Sec. 66010. Definitions

As used in this chapter:

(a) "Development project" means a development project as defined in Section 66000.

(b) "Fee" means a monetary exaction or a dedication, other than a tax or special assessment, which is required by a local agency of 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 or approvals.

(c) "Local agency" means a local agency, as defined in Section 66000.

(d) "Public facilities" means public facilities, as defined in Section 66000.

(e) "Reconstruction" means the reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction.

(Added by Stats.1988, c. 162, § 1. Amended by Stats.1990, c. 1572 (A.B.3228), § 18.)

Sec. 66011. Local agency fees; project damaged by declared natural disaster

No fee may be applied by a local agency to the reconstruction of any residential, commercial, or industrial development project that is damaged or destroyed as a result of a natural disaster, as declared by the Governor. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion which exceeds substantially equivalent construction may be assessed a fee. The term substantially equivalent, as used in this section, shall have the same meaning as the term in subdivision (c) of Section 70 of the Revenue and Taxation Code.

(Added by Stats.1988, c. 162, § 1.)

Fees For A Specific Purpose

Sec. 66012. Aerial tramways; fees

(a) Notwithstanding any other provision of law which prescribes an amount or otherwise limits the amount of a fee or charge which may be levied by a city, county, or city and county, a city, county, or city and county shall have the authority to levy any fee or charge in connection with the operation of an aerial tramway within its jurisdiction.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the auditor, or if there is no auditor, the fiscal officer, of the city, county, or city and county shall, upon request of the legislative body of the city, county, or city and county, conduct a study and determine whether the fee or charge is reasonable.

(Added by Stats.1990, c. 1572 (A.B.3228), § 19.)

Sec. 66013. Water or sewer connection fees; definitions; capital facilities fund; disclosure of fund information

(a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed 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) As used in this section:

(1) "Sewer connection" means the connection of a structure or project to a public sewer system.

(2) "Water connection" means the connection of a structure or project to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

(3) "Capacity charge" means a charge for facilities in existence at the time a charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(4) "Local agency" means a local agency as defined in Section 66000.

(5) "Fee" means a fee for the physical facilities necessary to make a water connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.

(c) A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected. Any interest income earned from the investment of moneys in the capital facilities fund shall be deposited in that fund.

(d) For a fund established pursuant to subdivision (c), a local agency shall make available to the public, within 180 days after the last day of each fiscal year, the following information for that fiscal year:

(1) A description of the charges deposited in the fund.

(2) The beginning and ending balance of the fund and the interest earned from investment of moneys in the fund.

(3) The amount of charges collected in that fiscal year.

(4) An identification of all of the following:

(A) Each public improvement on which charges were expended and the amount of the expenditure for each improvement, including the percentage of the total cost of the public improvement that was funded with those charges if more than one source of funding was used.

(B) Each public improvement on which charges were expended that was completed during that fiscal year.

(C) Each public improvement that is anticipated to be undertaken in the following fiscal year.

(5) A description of each interfund transfer or loan made from the capital facilities fund. The information provided, in the case of an interfund transfer, shall identify the public improvements on which the transferred moneys are, or will be, expended. The information, in the case of an interfund loan, shall include the date on which the loan will be repaid, and the rate of interest that the fund will receive on the loan.

(e) The information required pursuant to subdivision (d) may be included in the local agency's annual financial report.

(f) The provisions of subdivisions (c) and (d) shall not apply to any of the following:

(1) Moneys received to construct public facilities pursuant to a contract between a local agency and a person or entity, including, but not limited to, a reimbursement agreement pursuant to Section 66003.

(2) Charges that are used to pay existing debt service or which are subject to a contract with a trustee for bondholders that requires a different accounting of the charges, or charges that are used to reimburse the local agency or to reimburse a person or entity who advanced funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.

(3) Charges collected on or before December 31, 1998.

(g) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or capacity charge subject to this section shall be brought pursuant to Section 66022.

(h) Fees and charges subject to this section are not subject to the provisions of Chapter 5 (commencing with Section 66000), but are subject to the provisions of Sections 66016, 66022, and 66023.

(i) The provisions of subdivisions (c) and (d) shall only apply to capacity charges levied pursuant to this section.

(Added by Stats.1990, c. 1572 (A.B.3228), § 19. Amended by Stats.1996, c. 1023 (S.B.1497), § 103, eff. Sept. 29, 1996; Stats.1998, c. 644 (S.B.1760), § 1.)

Sec. 66014. Local agency zoning and permit fees

(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 Local Government Reorganization Act of 1985, 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, 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) 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.

(Added by Stats.1990, c. 1572 (A.B.3228), § 19.)

Procedures For Adopting Various Fees

Sec. 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, 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.

(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.

(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.)

Sec. 66017. Development projects; adoption or increase of fees and charges

(a) Any action adopting a fee or charge, or increasing a fee or charge adopted, upon a development project, as defined in Section 66000, which applies to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall be enacted in accordance with the notice and public hearing procedures specified in Section 54986 or 66016 and shall be effective no sooner than²¹ 60 days following the final action on the adoption of the fee or charge or increase in the fee or charge.

(b) Without following the procedure otherwise required for the adoption of a fee or charge, or increasing a fee or charge, the legislative body of a local agency may adopt an urgency measure as an interim authorization for a fee or charge, or increase in a fee or charge, to protect the public health, welfare and safety. The interim authorization shall require four-fifths vote of the legislative body for adoption. The interim authorization shall have no force or effect 30 days after its adoption. The interim authority shall contain findings describing the current and immediate threat to the public health, welfare and safety. After notice and public hearing pursuant to Section 54986 or 66016, the legislative body may extend the interim authority for an additional 30 days. Not more than two extensions may be granted. Any extension shall also require a four-fifths vote of the legislative body.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

Sec. 66018. Hearing

(a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee to which this section applies, a local agency shall hold a public hearing, 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, shall be published in accordance with Section 6062a.

(b) Any costs incurred by a local agency in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the fees which were the subject of the hearing.

(c) This section applies only to the adopting or increasing of fees to which a specific statutory notice requirement, other than Section 54954.2, does not apply.

(d) As used in this section, "fees" do not include rates or charges for water, sewer, or electrical service.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

Sec. 66018.5. Local agency defined

“Local agency,” as used in this chapter, has the same meaning as provided in Section 66000.

(Added by Stats.1990, c. 1572 (A.B.3228), § 20.)

Protests, Legal Actions, and Audits

Sec. 66020. Development projects; exactions; protest procedures; refunds

(a) 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 meeting both of the following requirements:

(1) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.

(2) Serving written notice on the governing body of the entity, which notice shall contain all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(B) A statement informing the governing body of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for a local agency to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the development project. This section does not limit the ability of a local agency to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development project.

(c) Where a reviewing local agency makes proper and valid findings that the construction of certain public improvements or facilities, the need for which is directly attributable to the proposed development, is required for reasons related to the public health, safety, and welfare, and elects to impose a requirement for construction of those improvements or facilities as a condition of approval of the proposed development, then in the event a protest is lodged pursuant to this section, that approval shall be suspended pending withdrawal of the protest, the expiration of the limitation period of subdivision (d) without the filing of an action, or resolution of any action filed. This subdivision confers no new or independent authority for imposing fees, dedications, reservations, or other exactions not presently governed by other law.

(d)(1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees, dedications, reservations, or other exactions to be imposed on a development project. Each local agency shall provide to the project applicant a notice in writing at the time of the approval of the project or at the time of the imposition of the fees, dedications, reservations, or other exactions, a statement of the amount of the fees or a description of the dedications, reservations, or other exactions, and notification that the 90-day approval period in which the applicant may protest has begun.

(2) Any party who files a protest pursuant to subdivision (a) 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. Thereafter, notwithstanding any other law to the contrary, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(e) If the court finds in favor of the plaintiff in any action or proceeding brought pursuant to subdivision (d), the court shall direct the local agency to refund the unlawful portion of the payment, with interest at the rate of 8 percent per annum, or return the unlawful portion of the exaction imposed.

(f)(1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of an ordinance or resolution enacting a fee, dedication, reservation, or other exaction, the court shall direct the local agency to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which an ordinance or resolution to establish or modify a fee, dedication, reservation, or other exactions to be imposed on a development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same ordinance or resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(g) Approval or conditional approval of a development occurs, for the purposes of this section, when the tentative map, tentative parcel map, or parcel map is approved or conditionally approved or when the parcel map is recorded if a tentative map or tentative parcel map is not required.

(h) The imposition of fees, dedications, reservations, or other exactions occurs, for the purposes of this section, when they are imposed or levied on a specific development.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22. Amended by Stats.1992, c. 605 (A.B.2945), § 1; Stats.1993, c. 589 (A.B.2211), § 80; Stats.1996, c. 549 (A.B.3081), § 2.)

Sec. 66021. Developments and development projects; protest procedures

(a) 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.

(b) The protest procedures of subdivision (a) do not apply to the protest of any tax or assessment (1) levied pursuant to a principal act that contains protest procedures, or (2) that is pledged to secure payment of the principal of, or interest on, bonds or other public indebtedness.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22. Amended by Stats.1998, c. 689 (S.B.1362), § 7.)

Sec. 66022. Judicial actions to challenge fees and charges

(a) 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.

If an ordinance, resolution, or motion provides for an automatic adjustment in a fee or service charge, and the automatic adjustment results in an increase in the amount of a fee or service charge, any action or proceeding to attack, review, set aside, void, or annul the increase shall be commenced within 120 days of the effective date of the increase.

(b) Any action by a local agency or interested person under this section shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(c) This section shall apply only to fees, capacity charges, and service charges described in and subject to Sections 66013 and 66014.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

Sec. 66023. Requests for audits of local agency fees or charges; independent auditors; costs; local laws superseded

(a) Any person may request an audit in order to determine whether any fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of any product or service provided by the local agency. If a person makes that request, the legislative body of the local agency may retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable.

(b) Any costs incurred by a local agency in having an audit conducted by an independent auditor pursuant to subdivision (a) may be recovered from the person who requests the audit.

(c) Any audit conducted by an independent auditor to determine whether a fee or charge levied by a local agency exceeds the amount reasonably necessary to cover the cost of providing the product or service shall conform to generally accepted auditing standards.

(d) The procedures specified in this section shall be alternative and in addition to those specified in Section 54985.

(e) The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.

(f) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

Sec. 66024. Development fees as special taxes; judicial actions

(a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any ordinance or resolution providing for the imposition of a development fee by any city, county, or district in which there is at issue whether the development fee is a special tax within the meaning of Section 50076, the city, county, or district has the burden of producing evidence to establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed.

(b) No party may initiate any action or proceeding pursuant to subdivision (a) unless both of the following requirements are met:

(1) The development fee was directly imposed on the party as a condition of project approval.

(2) At least 30 days prior to initiating the action or proceeding, the party requests the city, county, or district to provide a copy of the documents which establish that the development fee does not exceed the cost of the service, facility, or regulatory activity for which it is imposed. In accordance with Section 6257, the city, county, or district may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

Sec. 66025. Local agency defined

“Local agency,” as used in this chapter, means a local agency as defined in Section 66000.

(Added by Stats.1990, c. 1572 (A.B.3228), § 22.)

Park Land Dedication and In Lieu Fees

Sec. 66477. Quimby Act; park and recreational purposes

(a) The legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, if all of the following requirements are met:

(1) The ordinance has been in effect for a period of 30 days prior to the filing of the tentative map of the subdivision or parcel map.

(2) The ordinance includes definite standards for determining the proportion of a subdivision to be dedicated and the amount of any fee to be paid in lieu thereof. The amount of land dedicated or fees paid shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Chapter 17 (commencing with Section 40200) of Part 2 of Division 3 of Title 4. However, the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing within a subdivision subject to this section, unless the amount of existing neighborhood and community park area, as calculated pursuant to this subdivision, exceeds that limit, in which case the legislative body may adopt the calculated amount as a higher standard not to exceed five acres per 1,000 persons residing within a subdivision subject to this section.

(A) The park area per 1,000 members of the population of the city, county, or local public agency shall be derived from the ratio that the amount of neighborhood and community park acreage bears to the total population of the city, county, or local public agency as shown in the most recent available federal census. The amount of neighborhood and community park acreage shall be the actual acreage of existing neighborhood and community parks of the city, county,

or local public agency as shown on its records, plans, recreational element, maps, or reports as of the date of the most recent available federal census.

(B) For cities incorporated after the date of the most recent available federal census, the park area per 1,000 members of the population of the city shall be derived from the ratio that the amount of neighborhood and community park acreage shown on the records, maps, or reports of the county in which the newly incorporated city is located bears to the total population of the new city as determined pursuant to Section 11005 of the Revenue and Taxation Code. In making any subsequent calculations pursuant to this section, the county in which the newly incorporated city is located shall not include the figures pertaining to the new city which were calculated pursuant to this paragraph. Fees shall be payable at the time of the recording of the final map or parcel map or at a later time as may be prescribed by local ordinance.

(3) The land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to serve the subdivision.

(4) The legislative body has adopted a general plan or specific plan containing policies and standards for parks and recreation facilities, and the park and recreational facilities are in accordance with definite principles and standards.

(5) The amount and location of land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision.

(6) The city, county, or other local public agency to which the land or fees are conveyed or paid shall develop a schedule specifying how, when, and where it will use the land or fees, or both, to develop park or recreational facilities to serve the residents of the subdivision. Any fees collected under the ordinance shall be committed within five years after the payment of the fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they, without any deductions, shall be distributed and paid to the then record owners of the subdivision in the same proportion that the size of their lot bears to the total area of all lots within the subdivision.

(7) Only the payment of fees may be required in subdivisions containing 50 parcels or less, except that when a condominium project, stock cooperative, or community apartment project, as those terms are defined in Section 1351 of the Civil Code, exceeds 50 dwelling units, dedication of land may be required notwithstanding that the number of parcels may be less than 50.

(8) Subdivisions containing less than five parcels and not used for residential purposes shall be exempted from the requirements of this section. However, in that event, a condition may be placed on the approval of a parcel map that if a building permit is requested for construction of a residential structure or structures on one or more of the parcels within four years, the fee may be required to be paid by the owner of each parcel as a condition of the issuance of the permit.

(9) If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by the ordinance.

(b) Land or fees required under this section shall be conveyed or paid directly to the local public agency which provides park and recreational services on a communitywide level and to the area within which the proposed development will be located, if that agency elects to accept the land or fee. The local agency accepting the land or funds shall develop the land or use the funds in the manner provided in this section.

(c) If park and recreational services and facilities are provided by a public agency other than a city or a county, the amount and location of land to be dedicated or fees to be paid shall, subject to paragraph (2) of subdivision (a), be jointly determined by the city or county having jurisdiction and that other public agency.

(d) This section does not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.

(e) Common interest developments, as defined in Section 1351 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated, or the amount of the fee imposed, pursuant to this section, for the value of private open space within the development which is usable for active recreational uses.

(f) Park and recreation purposes shall include land and facilities for the activity of "recreational community gardening," which activity consists of the cultivation by persons other than, or in addition to, the owner of the land, of plant material not for sale.

(g) This section shall be known and may be cited as the Quimby Act.

(Added by Stats.1974, c. 1536, p. 3484, § 4, operative March 1, 1975. Amended by Stats.1974, c. 1537, p. 3522, § 2; Stats.1975, c. 24, p. 34, § 17, eff. April 4, 1975; Stats.1977, c. 561, p. 1791, § 3; Stats.1978, c. 709, p. 2232, § 1; Stats.1979, c. 1192, p. 4694, § 7; Stats.1982, c. 1467, § 1; Stats.1984, c. 1001, § 1; Stats.1984, c. 1009, § 33.5; Stats.1985, c. 286, § 1; Stats.1986, c. 291, § 1; Stats.1998, c. 689 (S.B.1362), § 8.5.)

Sec. 66477.1. Acceptance or rejection of offers of dedication; acceptance into county road system

(a) At the time the legislative body or the official designated pursuant to Section 66458 approves a final map, the legislative body or the designated official shall also accept, accept subject to improvement, or reject any offer of dedication. The clerk of the legislative body shall certify or state on the map the action by the legislative body or designated official.

(b) The legislative body of a county, or a county officer designated by the legislative body, may accept into the county road system, pursuant to Section 941 of the Streets and Highways Code, any road for which an offer of dedication has been accepted or accepted subject to improvements.

(Added by Stats.1974, c. 1536, p. 3486, § 4, operative March 1, 1975. Amended by Stats.1985, c. 114, § 10, eff. June 28, 1985; Stats.1987, c. 982, § 19; Stats.1988, c. 132, § 1; Stats.1998, c. 604 (S.B.1660), § 3.)

Sec. 66477.2. Offer of dedication; continuation after rejection; termination

(a) [Street, paths, alleys, public utility easements, rights-of-way for local transit facilities, storm drainage easements] If at the time the final map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements are rejected, subject to Section 771.010 of the Code of Civil Procedure, the offer of dedication shall remain open and the legislative body may by resolution at any later date, and without further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, rights-of-way for local transit facilities such as bus turnouts, benches, shelters, landing pads, and similar items, which directly benefit the residents of a subdivision, or storm drainage easements for public use, which acceptance shall be recorded in the office of the county recorder.

(b) [Access to coastline bay shoreline, waterway, river, lake, reservoir; time for acceptance] In the case of any subdivision fronting upon the ocean coastline or bay shoreline, the offer of dedication of public access route or routes from public highways to land below the ordinary high watermark shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any public waterway, river, or stream, the offer of dedication of public access route or routes from public highways to the bank of the waterway, river, or stream and the public easement along a portion of the bank of the waterway, river, or stream shall be accepted within three years after the approval of the final map; in the case of any subdivision fronting upon any lake or reservoir which is owned in part or entirely by any public agency, including the state, the offer of dedication of public access route or routes from public highways to any water of the lake or reservoir shall be accepted within five years after the approval of the final map; all other offers of dedication may be accepted at any time.

(c) [Termination and abandonment; procedure] Offers of dedication which are covered by subdivision (a) may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets by Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

(d) [Abandonment] Offers of dedication which are not accepted within the time limits specified in subdivision (b) shall be deemed abandoned.

(e) [Termination] Except as provided in Sections 66499.16, 66499.17, and 66499.18, if a resubdivision or reversion to acreage of the tract is subsequently filed for approval, any offer of dedication previously rejected shall be deemed to be terminated upon the approval of the map by the legislative body. The map shall contain a notation identifying the offer or offers of dedication deemed terminated by this subdivision.

(Added by Stats.1974, c. 1536, p. 3486, § 4, operative March 1, 1975. Amended by Stats.1975, c. 491, p. 1016, § 2; Stats.1980, c. 1050, p. 3357, § 5; Stats.1982, c. 87, § 23, eff. March 1, 1982; Stats.1994, c. 458 (A.B.1414), § 9.)

Sec. 66477.3. Time of passing title

Acceptance of offers of dedication on a final map shall not be effective until the final map is filed in the office of the county recorder or a resolution of acceptance by the legislative body is filed in such office.

(Added by Stats.1974, c. 1536, p. 3487, § 4, operative March 1, 1975.)

Sec. 66477.5. Certificate of dedication for public improvements or construction of public facilities; contents; recording with county recorder; exceptions; continuance of public purpose; disposal of dedicated property

(a) The local agency to which property is dedicated in fee for public purposes, or for making public improvements or constructing public facilities, other than for open space, parks, or schools, shall record a certificate with the county recorder in the county in which the property is located. The certificate shall be attached to the map and shall contain all of the following information:

(1) The name and address of the subdivider dedicating the property.

(2) A legal description of the real property dedicated.

(3) A statement that the local agency shall reconvey the property to the subdivider if the local agency makes a determination pursuant to this section that the same public purpose for which the property was dedicated does not exist, or the property or any portion thereof is not needed for public utilities, as specified in subdivision (c).

(b) The subdivider may request that the local agency make the determination that the same public purpose for which the dedication was required still exists, after payment of a fee which shall not exceed the amount reasonably required to make the determination. The determination may be made by reference to a capital improvement plan as specified in Section 65403 or 66002, an applicable general or specific plan requirement, the subdivision map, or other public documents that identify the need for the dedication.

(c) If a local agency has determined that the same public purpose for which the dedication was required does not exist, it shall reconvey the property to the subdivider or the successor in interest, as specified in subdivision (a), except for all or any portion of the property that is required for that same public purpose or for public utilities.

(d) If a local agency decides to vacate, lease, sell, or otherwise dispose of the dedicated property the local agency shall give at least 60 days notice to the subdivider whose name appears on the certificate before vacating, leasing, selling, or otherwise disposing of the dedicated property. This notice is not required if the dedicated property will be used for the same public purpose for which it was dedicated.

(e) This section shall only apply to property required to be dedicated on or after January 1, 1990.

(Added by Stats.1989, c. 822, § 1.)

Sec. 66478. School purposes

Whether by request of a county board of education or otherwise, a city or county may adopt an ordinance requiring any subdivider who develops or completes the development of one or more subdivisions in one or more school districts maintaining an elementary school to dedicate to the school district, or districts, within which such subdivisions are to be located, such land as the local legislative body shall deem to be necessary for the purpose of constructing thereon such elementary schools as are necessary to assure the residents of the subdivision adequate public school service. In no case shall the local legislative body require the dedication of an amount of land which would make development of the remaining land held by the subdivider economically unfeasible or which would exceed the amount of land ordinarily allowed under the procedures of the State Allocation Board.

An ordinance adopted pursuant to this section shall not be applicable to a subdivider who has owned the land being subdivided for more than 10 years prior to the filing of the tentative maps in accordance with Article 2 (commencing with Section 66452) of Chapter 3 of this division. The requirement of dedication shall be imposed at the time of approval of the tentative map. If, within 30 days after the requirement of dedication is imposed by the city or county, the school district does not offer to enter into a binding commitment with the subdivider to accept the dedication, the requirement shall be automatically terminated. The required dedication may be made any time before, concurrently with, or up to 60 days after, the filing of the final map on any portion of the subdivision. The school district shall, in the event that it accepts the dedication, repay to the subdivider or his successors the original cost to the subdivider of the dedicated land, plus a sum equal to the total of the following amounts:

(a) The cost of any improvements to the dedicated land since acquisition by the subdivider.

(b) The taxes assessed against the dedicated land from the date of the school district's offer to enter into the binding commitment to accept the dedication.

(c) Any other costs incurred by the subdivider in maintenance of such dedicated land, including interest costs incurred on any loan covering such land.

If the land is not used by the school district, as a school site, within 10 years after dedication, the subdivider shall have the option to repurchase the property from the district for the amount paid therefor.

The school district to which the property is dedicated shall record a certificate with the county recorder in the county in which the property is located. The certificate shall contain the following information:

- (1) The name and address of the subdivider dedicating the property.
 - (2) A legal description of the real property dedicated.
 - (3) A statement that the subdivider dedicating the property has an option to repurchase the property if it is not used by the school district as a school site within 10 years after dedication.
 - (4) Proof of the acceptance of the dedication by the school district and the date of the acceptance.
- The certificate shall be recorded not more than 10 days after the date of acceptance of the dedication. The subdivider shall have the right to compel the school district to record such certificate, but until such certificate is recorded, any rights acquired by any third party dealing in good faith with the school district shall not be impaired or otherwise affected by the option right of the subdivider.

If any subdivider is aggrieved by, or fails to agree to the reasonableness of any requirement imposed pursuant to this section, he may bring a special proceeding in the superior court pursuant to Section 66499.37.

(Added by Stats.1974, c. 1536, p. 3487, § 4, operative March 1, 1975.)

Conflicts of Interest – Political Reform Act

Sec. 87100. Public officials; state and local; financial interest

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 87100.1. Financial interests in governmental decisions; registered professional engineers or licensed land surveyors rendering professional services as consultants

(a) A registered professional engineer or licensed land surveyor who renders professional services as a consultant to a state or local government, either directly or through a firm in which he or she is employed or is a principal, does not have a financial interest in a governmental decision pursuant to Section 87100 where the consultant renders professional engineering or land surveying services independently of the control and direction of the public agency and does not exercise public agency decisionmaking authority as a contract city or county engineer or surveyor.

(b) For purposes of this section, the consultant renders professional engineering or land surveying services independently of the control and direction of the public agency when the consultant is in responsible charge of the work pursuant to Section 6703 or 8703 of the Business and Professions Code.

(c) Subdivision (a) does not apply to that portion of the work that constitutes the recommendation of the actual formula to spread the costs of an assessment district's improvements if both of the following apply:

- (1) The engineer has received income of two hundred fifty dollars (\$250) or more for professional services in connection with any parcel included in the benefit assessment district within 12 months prior to the creation of the district.
- (2) The district includes other parcels in addition to those parcels for which the engineer received the income.

The recommendation of the actual formula does not include preliminary site studies, preliminary engineering, plans, specifications, estimates, compliance with environmental laws and regulations, or the collection of data and information, utilized in applying the formula.

(Added by Stats.1991, c. 887 (S.B.883), § 1, eff. Oct. 14, 1991.)

Sec. 87101. Participation in legal governmental action or decision

Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 87102. Additional requirements; remedies

The requirements of Section 87100 are in addition to the requirements of Articles 2 (commencing with Section 87200) and 3 (commencing with Section 87300) and any Conflict of Interest Code adopted thereunder. Except as provided in Section 87102.5, the remedies provided in Chapters 3 (commencing with Section 83100) and 11 (commencing with Section 91000) shall not be applicable to elected state officers for violations or threatened violations of this article.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Amended by Stats.1980, c. 1029, p. 3299, § 1; Stats.1990, c. 84 (S.B.1738), § 6.)

Sec. 87102.5. Legislative members; use of position to influence governmental decisions; financial interest; remedies

(a) The remedies provided in Chapter 3 (commencing with Section 83100) shall apply to any Member of the Legislature who makes, participates in making, or in any way attempts to use his or her official position to influence any of the following governmental decisions in which he or she knows or has reason to know that he or she has a financial interest:

(1) Any state governmental decision, other than any action or decision before the Legislature, made in the course of his or her duties as a member.

(2) Approval, modification, or cancellation of any contract to which either house or a committee of the Legislature is a party.

(3) Introduction as a lead author of any legislation that the member knows or has reason to know is nongeneral legislation.

(4) Any vote in a legislative committee or subcommittee on what the member knows or has reason to know is nongeneral legislation.

(5) Any rollcall vote on the Senate or Assembly floor on an item which the member knows is nongeneral legislation.

(6) Any action or decision before the Legislature in which all of the following occur:

(A) The member has received any salary, wages, commissions, or similar earned income within the preceding 12 months from a lobbyist employer.

(B) The member knows or has reason to know the action or decision will have a direct and significant financial impact on the lobbyist employer.

(C) The action or decision will not have an impact on the public generally or a significant segment of the public in a similar manner.

(7) Any action or decision before the Legislature on legislation that the member knows or has reason to know will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a significant segment of the public, from whom the member has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

(b) For purposes of this section, all of the following apply:

(1) "Any action or decision before the Legislature" means any vote in a committee or subcommittee, or any rollcall vote on the floor of the Senate or Assembly.

(2) "Financial interest" means an interest as defined in Section 87103.

(3) "Legislation" means a bill, resolution, or constitutional amendment.

(4) "Nongeneral legislation" means legislation that is described in Section 87102.6 and is not of a general nature pursuant to Section 16 of Article IV of the Constitution.

(5) A Member of the Legislature has reason to know that an action or decision will have a direct and significant financial impact on a person with respect to which disqualification may be required pursuant to subdivision (a) if either of the following apply:

(A) With the knowledge of the member, the person has attempted to influence the vote of the member with respect to the action or decision.

(B) Facts have been brought to the member's personal attention indicating that the action or decision will have a direct and significant impact on the person.

(6) The prohibitions specified in subdivision (a) do not apply to a vote on the Budget Bill as a whole, or to a vote on a consent calendar, a motion for reconsideration, a waiver of any legislative rule, or any purely procedural matter.

(7) A Member of the Legislature has reason to know that legislation is nongeneral legislation if facts have been brought to his or her personal attention indicating that it is nongeneral legislation.

(8) Written advice given to a Member of the Legislature regarding his or her duties under this section by the Legislative Counsel shall have the same effect as advice given by the commission pursuant to subdivision (b) of Section 83114 if both of the following apply:

(A) The member has made the same written request based on the same material facts to the commission for advice pursuant to Section 83114 as to his or her duties under this section, as the written request and facts presented to the Legislative Counsel.

(B) The commission has not provided written advice pursuant to the member's request prior to the time the member acts in good faith reliance on the advice of the Legislative Counsel.

(Added by Stats.1990, c. 84 (S.B.1738), § 7. Amended by Stats.1990, c. 1075 (A.B.4143), § 2.)

Sec. 87102.6. Nongeneral legislation; definitions

(a) "Nongeneral legislation" means legislation as to which both of the following apply:

(1) It is reasonably foreseeable that the legislation will have direct and significant financial impact on one or more identifiable persons, or one or more identifiable pieces of real property.

(2) It is not reasonably foreseeable that the legislation will have a similar impact on the public generally or on a significant segment of the public.

(b) For purposes of this section and Section 87102.5, all of the following apply:

(1) "Legislation" means a bill, resolution, or constitutional amendment.

(2) The term "public generally" includes an industry, trade, or profession.

(3) Any recognized subgroup or specialty of the industry, trade, or profession constitutes a significant segment of the public.

(4) A legislative district, county, city, or special district constitutes a significant segment of the public.

(5) More than a small number of persons or pieces of real property is a significant segment of public.²²

(6) Legislation, administrative action, or other governmental action impacts in a similar manner all members of the public, or all members of a significant segment of the public, on which it has a direct financial effect, whether or not the financial effect on individual members of the public or the significant segment of the public is the same as the impact on the other members of the public or the significant segment of the public.

(7) The Budget Bill as a whole is not nongeneral legislation.

(8) Legislation that contains at least one provision that constitutes nongeneral legislation is nongeneral legislation, even if the legislation also contains other provisions that are general and do not constitute nongeneral legislation.

(Added by Stats.1990, c. 84 (S.B.1738), § 8.)

Sec. 87102.8. Elected state officers; use of position to influence governmental decisions; financial interest; remedies

(a) No elected state officer, as defined in subdivision (f) of Section 14 of Article V of the California Constitution, shall make or participate in the making of, or use his or her official position to influence, any governmental decision before the agency in which the elected state officer serves, where he or she knows or has reason to know that he or she has a financial interest.

(b) An elected state officer knows or has reason to know that he or she has a financial interest in any action by, or a decision before the agency in which he or she serves where either of the following occur:

(1) The action or decision will have a direct and significant financial impact on a lobbyist employer from which the officer has received any salary, wages, commissions, or similar earned income within the preceding 12 months and the action or decision will not have an impact on the public generally or a significant segment of the public in a similar manner.

(2) The action or decision will have a direct and significant financial impact on any person, distinguishable from its impact on the public generally or a significant segment of the public, from whom the officer has received any compensation within the preceding 12 months for the purpose of appearing, agreeing to appear, or taking any other action on behalf of that person, before any local board or agency.

(c) The definitions of "public generally" and "significant segment of the public" contained in Section 87102.6 shall apply to this section.

(d) Notwithstanding Section 87102, the remedies provided in Chapter 3 (commencing with Section 83100) shall apply to violations of this section.

(Added by Stats.1990, c. 1075 (A.B.4143), § 3. Amended by Stats.1991, c. 674 (S.B.595), § 5.)

Sec. 87103. Financial interest in decision by public official

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1979, c. 686, p. 2152, § 2; Stats.1980, c. 183, p. 405, § 2; Stats.1984, c. 931, § 4; Stats.1985, c. 611, § 1.5. Amended by Stats.1994, c. 386 (S.B.1602), § 1; Stats.1997, c. 455 (S.B.946), § 2, eff. Sept. 24, 1997; Stats.2000, c. 130 (A.B.974), § 7.)

Sec. 87103.5. Retail customer of business entity doing retail business

Notwithstanding subdivision (c) of Section 87103, a retail customer of a business entity engaged in retail sales of goods or services to the public generally is not a source of income to an official who owns a 10-percent or greater interest in the entity if the retail customers of the business entity constitute a significant segment of the public generally, and the amount of income received by the business entity from the customer is not distinguishable from the amount of income received from its other retail customers.

(Added by Stats.1984, c. 931, § 5.)

Sec. 87103.6. Persons retained or employed by state or local governmental agencies; payments made to defray costs to process applications, approvals, or other actions

Notwithstanding subdivision (c) of Section 87103, any person who makes a payment to a state agency or local government agency to defray the estimated reasonable costs to process any application, approval, or any other action, including but not limited to, holding public hearings and evaluating or preparing any report or document, shall not by reason of the payments be a source of income to a person who is retained or employed by the agency.

(Added by Stats.1991, c. 887 (S.B.883), § 2, eff. Oct. 14, 1991.)

Sec. 87104. Public officials of state agencies; acting as agent or attorney; limitations

(a) No public official of a state agency shall, for compensation, act as an agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance before, or any oral or written communication to, his or her state agency or any officer or employee thereof, if the appearance or communication is for the purpose of influencing a decision on a contract, grant, loan, license, permit, or other entitlement for use.

(b) For purposes of this section, "public official" includes a member, officer, employee, or consultant of an advisory body to a state agency, whether the advisory body is created by statute or otherwise, except when the public official is representing his or her employing state, local, or federal agency in an appearance before, or communication to, the advisory body.

(Added by Stats.1994, c. 274 (A.B.3444), § 1; Stats.1994, c. 414 (S.B.1075), § 3, eff. Sept. 1, 1994. Amended by Stats.1997, c. 145 (A.B.937), § 1.)

Sec. 87200. Applicability

This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1975, c. 499, § 3, eff. Sept. 5, 1975; Stats.1975, c. 797, §§ 3, 4, eff. Sept. 16, 1975; Stats.1976, c. 129, § 2, eff. May 5, 1976; Stats.1978, c. 537, p. 1696, § 1; Stats.1979, c. 674, p. 2075, § 3; Stats.1983, c. 214, § 1; Stats.1984, c. 727, § 7, operative July 1, 1985; Stats.1985, c. 611, § 2; Stats.1989, c. 403, § 1.)

Sec. 87201. Candidates; statement

Every candidate for an office specified in Section 87200 other than a justice of an appellate court or the Supreme Court shall file no later than the final filing date of a declaration of candidacy, a statement disclosing his or her investments, his or her interests in real property, and any income received during the immediately preceding 12 months.

This statement shall not be required if the candidate has filed, within 60 days prior to the filing of his or her declaration of candidacy, a statement for the same jurisdiction pursuant to Section 87202 or 87203.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1977, c. 1193, p. 3966, § 12; Stats.1980, c. 928, p. 2951, § 1; Stats.1984, c. 931, § 6; Stats.1992, c. 1141 (A.B.1075), § 1.)

Sec. 87202. Elected and appointed officials; statements of economic interests

(a) Every person who is elected to an office specified in Section 87200 shall, within 30 days after assuming the office, file a statement disclosing his or her investments and his or her interests in real property held on the date of assuming office, and income received during the 12 months before assuming office. Every person who is appointed or nominated to an office specified in Section 87200 shall file such a statement not more than 30 days after assuming office, provided, however, that a person appointed or

nominated to such an office who is subject to confirmation by the Commission on Judicial Appointments or the State Senate shall file such a statement no more than 10 days after the appointment or nomination.

The statement shall not be required if the person has filed, within 60 days prior to assuming office, a statement for the same jurisdiction pursuant to Section 87203.

(b) Every elected state officer who assumes office during the month of December or January shall file a statement pursuant to Section 87203 instead of this section, except that:

(1) The period covered for reporting investments and interests in real property shall begin on the date the person filed his or her declarations of candidacy.

(2) The period covered for reporting income shall begin 12 months prior to the date the person assumed office.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1977, c. 1193, p. 3966, § 13; Stats.1978, c. 537, p. 1696, § 2; Stats.1989, c. 499, § 1.)

Sec. 87203. Annual statement

Every person who holds an office specified in Section 87200 shall, each year at a time specified by commission regulations, file a statement disclosing his investments, his interests in real property and his income during the period since the previous statement filed under this section or Section 87202. The statement shall include any investments and interest in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1976, c. 1161, § 3.)

Sec. 87204. Persons leaving office; statement

Every person who leaves an office specified in Section 87200 shall, within thirty days after leaving the office, file a statement disclosing his investments, his interests in real property, and his income during the period since the previous statement filed under Sections 87202 or 87203. The statement shall include any investments and interests in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 87205. Assuming or leaving office; determination

A person who completes a term of an office specified in Section 87200 and within 30 days begins a term of the same office or another such office of the same jurisdiction is not deemed to assume office or leave office.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1977, c. 1193, p. 3966, § 14; Stats.1997, c. 145 (A.B.937), § 2.)

Sec. 87206. Investment or interest in real property; statement; contents

If an investment or an interest in real property is required to be disclosed under this article, the statement shall contain:

(a) A statement of the nature of the investment or interest.

(b) The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged.

(c) The address or other precise location of the real property.

(d) A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2, 000) but does not exceed ten thousand dollars (\$10,000), whether it exceeds ten thousand dollars (\$10,000) but does not exceed one hundred thousand dollars (\$100,000), whether it exceeds one hundred thousand dollars (\$100, 000) but does not exceed one million dollars (\$1,000,000), or whether it exceeds one million dollars (\$1,000,000).

(e) In the case of a statement filed under Sections 87203 or 87204, if the investment or interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the date of acquisition or disposal.

(f) For purposes of disclosure under this article, "interest in real property" does not include the principal residence of the filer or any other property which the filer utilizes exclusively as the personal residence of the filer.

*(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.
Amended by Stats.1980, c. 183, p. 405, § 3; Stats.1980, c. 1000, p. 3188, § 4.5; Stats.1984, c. 931,
§ 7; Stats.2000, c. 130 (A.B.974), § 8.)*

Sec. 87207. Income; statement; contents

(a) When income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least five hundred dollars (\$500) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$ 1,000) but was not greater than ten thousand dollars (\$10,000), whether it was greater than ten thousand dollars (\$10,000) but not greater than one hundred thousand dollars (\$100,000), or whether it was greater than one hundred thousand dollars (\$100,000).

(3) A description of the consideration, if any, for which the income was received.

(4) In the case of a gift, the amount and the date on which the gift was received.

(5) In the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

(b) When the filer's pro rata share of income to a business entity, including income to a sole proprietorship, is required to be reported under this article, the statement shall contain:

(1) The name, address, and a general description of the business activity of the business entity.

(2) The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

(c) When a payment, including an advance or reimbursement, for travel is required to be reported pursuant to this section, it may be reported on a separate travel reimbursement schedule which shall be included in the filer's statement of economic interest. A filer who chooses not to use the travel schedule shall disclose payments for travel as a gift, unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1975, c. 915, § 6, eff. Sept. 20, 1975, operative Jan. 7, 1975; Stats.1979, c. 674, p. 2075, § 4; Stats.1979, c. 686, p. 2153, § 3; Stats.1980, c. 1000, p. 3188, § 6; Stats.1982, c. 29, p. 53, § 2; Stats.1984, c. 931, § 8; Stats.1990, c. 1075 (A.B.4143), § 4; Stats.1997, c. 638 (A.B.627), § 1; Stats.2000, c. 130 (A.B.974), § 9.)

Sec. 87208. Other statements filed in same jurisdiction; incorporation by reference

Except in statements required by Section 87203, investments and interests in real property which have been disclosed on a statement of economic interests filed in the same jurisdiction within the previous 60 days may be incorporated by reference.

(Added by Stats.1976, c. 1161, § 5.)

Sec. 87209. Business position; disclosure

When a statement is required to be filed under this article, every person specified in Section 87200 shall disclose any business positions held by that person. For purposes of this section, "business position" means any business entity in which the filer is a director, officer, partner, trustee, employee, or holds any position of management, if the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction or has done business in the jurisdiction at any time during the two years prior to the date the statement is required to be filed.

(Added by Stats.1997, c. 455 (S.B.946), § 3, eff. Sept. 24,1997.)

Sec. 87210. Disclosure to recipient of name, address and business activity of actual donor, intermediary or agent; amount in calendar year; duty of recipient

No person shall make a gift totaling fifty dollars (\$50) or more in a calendar year to a person described in Article 2 on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the gift both his own full name, street address, and business activity, if any, and the full name, street address, and business activity, if any, of the actual donor. The recipient of the gift shall include in his Statement of Economic Interests the full name, street address, and business activity, if any, of the intermediary or agent and the actual donor.

(Added by Stats.1978, c. 640, p. 2100, § 1. Amended by Stats.1982, c. 29, p. 54, § 3.)

Sec. 87300. Agency; adoption and promulgation; effect of violation

Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 87301. Formulation at decentralized level; intra-departmental review; policy

It is the policy of this act that Conflict of Interest Codes shall be formulated at the most decentralized level possible, but without precluding intra-departmental review. Any question of the level of a department which should be deemed an "agency" for purposes of Section 87300 shall be resolved by the code reviewing body.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 87302. Required provisions; exemptions

Each Conflict of Interest Code shall contain the following provisions:

(a) Specific enumeration of the positions within the agency, other than those specified in Section 87200, which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. An investment, business position, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position.

(b) Requirements that each designated employee, other than those specified in Section 87200, file statements at times and under circumstances described in this section, disclosing reportable investments, business positions, interests in real property and income. The information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by Sections 87206 and 87207. The first statement filed under a Conflict of Interest Code by a designated employee shall disclose any reportable investments, business positions, interests in real property, and income. An initial statement shall be filed by each designated employee within 30 days after the effective date of the Conflict of Interest Code, disclosing investments, business positions, and interests in real property held on the effective date of the Conflict of Interest Code and income received during the 12 months before the effective date of the Conflict of Interest Code. Thereafter, each new designated employee shall file a statement within 30 days after assuming office, or if subject to State Senate confirmation, 30 days after being appointed or nominated, disclosing investments, business positions, and interests in real property held on, and income received during the 12 months before, the date of assuming office or the date of being appointed or nominated, respectively. Each designated employee shall file an annual statement, at the time specified in the Conflict of Interest Code, disclosing reportable investments, business positions, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year. Every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

(c) Specific provisions setting forth any circumstances under which designated employees or categories of designated employees must disqualify themselves from making, participating in the making, or using their official position to influence the making of any decision. Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest as defined in Section 87103, which it is reasonably foreseeable may be affected materially by the decision. No designated employee shall be required to disqualify himself or herself with respect to any matter which could not legally be acted upon or decided without his or her participation.

(d) For any position enumerated pursuant to subdivision (a), an individual who resigns the position within 12 months following initial appointment or within 30 days of the date of a notice mailed by the filing officer of the individual's filing obligation, whichever is earlier, is not deemed to assume or leave office, provided that during the period between appointment and resignation, the individual does not make, participate in making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position. Within 30 days of the date of a notice mailed by the filing officer, the individual shall do both of the following:

(1) File a written resignation with the appointing power.

(2) File a written statement with the filing officer on a form prescribed by the commission and signed under the penalty of perjury stating that the individual, during the period between appointment and resignation, did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.

Amended by Stats.1978, c. 537, p. 1697, § 3; Stats.1979, c. 674, p. 2075, § 5; Stats.1980, c. 765, p. 2279, § 1; Stats.1987, c. 1188, § 1; Stats.1989, c. 499, § 2; Stats.1991, c. 857 (A.B.1271), § 1; Stats.1992, c. 441 (A.B.2941), § 1.)

Sec. 91000. Violations; fines; limitations

(a) Any person who knowingly or willfully violates any provision of this title is guilty of a misdemeanor.

(b) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation.

(c) Prosecution for violation of this title must be commenced within four years after the date on which the violation occurred.

(Added by Stats.2000, c. 102 (S.B.1223), § 73, eff. July 7, 2000, operative Jan. 1, 2001 (Prop. 34, approved Nov. 7, 2000).)

Sec. 91000.5. Administrative actions; commencement more than five years after date of violation; tolling of period

No administrative action brought pursuant to Chapter 3 (commencing with Section 83100) alleging a violation of any of the provisions of this title shall be commenced more than five years after the date on which the violation occurred.

(a) The service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.

(b) If the person alleged to have violated this title engages in the fraudulent concealment of his or her acts or identity, the five-year period shall be tolled for the period of the concealment. For purposes of this subdivision, "fraudulent concealment" means the person knows of material facts related to his or her duties under this title and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under this title.

(c) If, upon being ordered by a superior court to produce any documents sought by a subpoena in any administrative proceeding under Chapter 3 (commencing with Section 83100), the person alleged to have violated this title fails to produce documents in response to the order by the date ordered to comply therewith, the five-year period shall be tolled for the period of the delay from the date of filing of the motion to compel until the date the documents are produced.

(Added by Stats.1997, c. 179 (A.B.938), § 1.)

Sec. 91001. Criminal and civil penalties and remedies; attorney general, district attorneys and fair political practices commission; civil prosecutor

(a) The Attorney General is responsible for enforcing the criminal provisions of this title with respect to state agencies, lobbyists and state elections. The district attorney of any county in which a violation occurs has concurrent powers and responsibilities with the Attorney General.

(b) The civil prosecutor is primarily responsible for enforcement of the civil penalties and remedies of this title. The civil prosecutor is the commission with respect to the state or any state agency, except itself. The Attorney General is the civil prosecutor with respect to the commission. The district attorneys are the civil prosecutors with respect to any other agency. The civil prosecutor may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction. Upon written authorization from a district attorney, the commission may bring any civil action under this title which could be brought by a voter or resident of the jurisdiction. Under such circumstances, Section 91007 shall not apply to the commission.

(c) Whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith shall be considered in applying the remedies and sanctions of this title.

(Added by Stats.1977, c. 230, p. 1028, § 4, eff. July 7, 1977. Amended by Stats.1979, c. 357, p. 1221, § 1.)

Sec. 91001.5. City attorney; charter city; civil and criminal prosecutor

In any case in which a district attorney could act as the civil or criminal prosecutor under the provisions of this title, the elected city attorney of any charter city may act as the civil or criminal prosecutor with respect to any violations of this title occurring within the city.

(Added by Stats.1976, c. 594, § 2, eff. Aug. 27, 1976.)

Sec. 91002. Effect of conviction on candidacy; exception; nolo contendere; felony

No person convicted of a misdemeanor under this title shall be a candidate for any elective office or act as a lobbyist for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for purposes of this section. Any person violating this section is guilty of a felony.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 91003. Injunctions; conflicts of interest

(a) Any person residing in the jurisdiction may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this title. The court may in its discretion require any plaintiff other than the commission to file a complaint with the commission prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

(b) Upon a preliminary showing in an action brought by a person residing in the jurisdiction that a violation of Article 1 (commencing with Section 87100), Article 4 (commencing with Section 87400), or Article 4.5 (commencing with Section 87450) of Chapter 7 of this title or of a disqualification provision of a Conflict of Interest Code has occurred, the court may restrain the execution of any official action in relation to which such a violation occurred, pending final adjudication. If it is ultimately determined that a violation has occurred and that the official action might not otherwise have been taken or approved, the court may set the official action aside as void. The official actions covered by this subsection include, but

are not limited to orders, permits, resolutions and contracts, but do not include the enactment of any state legislation. In considering the granting of preliminary or permanent relief under this subsection, the court shall accord due weight to any injury that may be suffered by innocent persons relying on the official action.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1976, c. 1161, § 7; Stats.1987, c. 628, § 1.)

Sec. 91003.5. Conflicts of interest; discipline

Any person who violates a provision of Article 2 (commencing with Section 87200), 3 (commencing with Section 87300), or 4.5 (commencing with Section 87450) of Chapter 7 is subject to discipline by his or her agency, including dismissal, consistent with any applicable civil service or other personnel laws, regulations, and procedures.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1986, c. 653, § 2.)

Sec. 91004. Reporting requirements; violations; liability

Any person who intentionally or negligently violates any of the reporting requirements of this title shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported.

(Added by Stats.2000, c. 102 (S.B.1223), § 76, eff. July 7, 2000, operative Jan. 1, 2001 (Prop. 34, approved Nov. 7, 2000).)

Sec. 91005. Violations; civil liability

(a) Any person who makes or receives a contribution, gift, or expenditure in violation of Section 84300, 84304, 86203, or 86204 is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to one thousand dollars (\$1,000) or three times the amount of the unlawful contribution, gift, or expenditure, whichever amount is greater.

(b) Any designated employee or public official specified in Section 87200, except an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a conflict of interest code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1978, c. 566, p. 1739, § 2; Stats.1982, c. 727, p. 2899, § 1; Initiative Measure, approved by the electors, June 7, 1988; Stats.1989, c. 1452, § 5; Stats.1990, c. 84 (S.B.1738), § 14.)

Sec. 91005.5. Civil liability

Any person who violates any provision of this title, except Sections 84305, 84307, and 89001, for which no specific civil penalty is provided, shall be liable in a civil action brought by the commission or the district attorney pursuant to subdivision (b) of Section 91001, or the elected city attorney pursuant to Section 91001.5, for an amount up to five thousand dollars (\$5,000) per violation.

No civil action alleging a violation of this title may be filed against a person pursuant to this section if the criminal prosecutor is maintaining a criminal action against that person pursuant to Section 91000.

The provisions of this section shall be applicable only as to violations occurring after the effective date of this section.

(Added by Stats.2000, c. 102 (S.B.1223), § 79, eff. July 7, 2000, operative Jan. 1, 2001 (Prop. 34, approved Nov. 7, 2000).)

Sec. 91006. Joint and several liability

If two or more persons are responsible for any violation, they shall be jointly and severally liable.

(Added by Stats.2000, c. 102 (S.B.1223), § 82, eff. July 7, 2000, operative Jan. 1, 2001 (Prop. 34, approved Nov. 7, 2000).)

Sec. 91007. Civil actions; request to civil prosecutor to commence action; procedure; initial pleadings; dismissal

(a) Any person, before filing a civil action pursuant to Sections 91004 and 91005, must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall include a statement of the grounds for believing a cause of action exists. The civil prosecutor shall respond to the person in writing, indicating whether he or she intends to file a civil action.

(1) If the civil prosecutor responds in the affirmative and files suit within 120 days from receipt of the written request to commence the action, no other action may be brought unless the action brought by the civil prosecutor is dismissed without prejudice as provided for in Section 91008.

(2) If the civil prosecutor responds in the negative within 120 days from receipt of the written request to commence the action, the person requesting the action may proceed to file a civil action upon receipt of the response from the civil prosecutor. If, pursuant to this subdivision, the civil prosecutor does not respond within 120 days, the civil prosecutor shall be deemed to have provided a negative written response to the person requesting the action on the 120th day and the person shall be deemed to have received that response.

(3) The time period within which a civil action shall be commenced, as set forth in Section 91011, shall be tolled from the date of receipt by the civil prosecutor of the written request to either the date that the civil action is dismissed without prejudice or the date of receipt by the person of the negative response from the civil prosecutor, but only for a civil action brought by the person who requested the civil prosecutor to commence the action.

(b) Any person filing a complaint, cross-complaint, or other initial pleading in a civil action pursuant to Section 91003, 91004, 91005, or 91005.5 shall, within 10 days of filing the complaint, cross-complaint, or initial pleading, serve on the commission a copy of the complaint, cross-complaint, or initial pleading or a notice containing all of the following:

(1) The full title and number of the case.

(2) The court in which the case is pending.

(3) The name and address of the attorney for the person filing the complaint, cross-complaint, or other initial pleading.

(4) A statement that the case raises issues under the Political Reform Act of 1974.

(c) No complaint, cross-complaint, or other initial pleading shall be dismissed for failure to comply with subdivision (b).

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats.1985, c. 1200, § 2. Amended by Stats.1999, c. 577 (A.B.1274), § 1, eff. Sept. 29, 1999; Stats.2000, c. 135 (A.B.2539), § 85.)

Sec. 91008. Judgment on the merits; precedence; dismissal

Not more than one judgment on the merits with respect to any violation may be obtained under Sections 91004 and 91005. Actions brought for the same violation or violations shall have precedence for purposes of trial in order of the time filed. Such actions shall be dismissed once judgment has been entered or a settlement approved by the court in a previously filed action. The court may dismiss a pending action without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the civil prosecutor or any plaintiff in an action based on the same violation.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 91008.5. Civil actions; no filing when order issued for same violation

No civil action may be filed under Section 91004, 91005, or 91005.5 with regard to any person for any violations of this title after the commission has issued an order pursuant to Section 83116 against that person for the same violation.

(Added by Stats.1984, c. 670, § 4.)

Sec. 91009. Amount of liability; seriousness of violation and degree of culpability; disposition of recovery

In determining the amount of liability under Sections 91004 or 91005, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered against the defendant or defendants in an action brought under Section 91004 or 91005, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the General Fund of the state. In an action brought by the civil prosecutor, the entire amount recovered shall be paid to the general fund or treasury of the jurisdiction.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 91010. Campaign disclosure violations; time of request to civil prosecutor

No request to the civil prosecutor pursuant to Section 91007 shall be made or filed in connection with a report or statement required by Chapter 4 (commencing with Section 84100) until the time when an audit and investigation could be begun under subdivision (c) of Section 90002.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Amended by Stats.1992, c. 405 (S.B.1802), § 5.)

Sec. 91011. Limitations

(a) No civil action alleging a violation in connection with a report or statement required by Chapter 4 (commencing with Section 84100) of this title shall be filed more than four years after an audit could begin as set forth in subdivision (c) of Section 90002.

(b) No civil action alleging a violation of any provisions of this title, other than those described in subdivision (a), shall be filed more than four years after the date the violation occurred.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Amended by Stats.1978, c. 1411, p. 4670, § 4; Stats.1980, c. 742, p. 2218, § 1; Stats.1997, c. 455 (S.B.946), § 7, eff. Sept. 24, 1997.)

Sec. 91012. Costs; attorney fees; bond

The court may award to a plaintiff or defendant other than an agency, who prevails in any action authorized by this title his costs of litigation, including reasonable attorney's fees. On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Sec. 91013. Late filing of statement or report; fees; penalties; deposit of funds received

(a) If any person files an original statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate's statement filed pursuant to Section 87201, five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting 10 days, or five days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he or she is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

Amended by Stats.1975, c. 915, § 8, eff. Sept. 20, 1975, operative Jan. 7, 1975; Stats.1977, c. 555, p. 1780, § 1; Stats.1985, c. 1200, § 3. Amended by Stats.1993, c. 1140 (S.B.231), § 4.)

Sec. 91013.5. Civil actions to collect unpaid monetary penalties, fees, or civil penalties

In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in small claims, municipal, or superior court, depending on the jurisdictional amount, for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(a) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(b) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(c) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

(Added by Stats.1984, c. 670, § 5.)

Sec. 91014. Applicability of other state laws

Nothing in this chapter shall exempt any person from applicable provisions of any other laws of this state.

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975.)

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- ¹ Government Code § 51200 et seq.
 - ² So in chaptered copy.
 - ³ So in enrolled bill.
 - ⁴ 42 U.S.C.A. § 1437a.
 - ⁵ 42 U.S.C.A. § 1437c.
 - ⁶ 12 U.S.C.A. § 2011 et seq.
 - ⁷ 12 U.S.C.A. § 2071 et seq.
 - ⁸ 12 U.S.C.A. § 2001 et seq.
 - ⁹ 12 U.S.C.A. § 2121 et seq.
 - ¹⁰ 12 U.S.C.A. § 2121 et seq.
 - ¹¹ 12 U.S.C.A. § 1421 et seq.
 - ¹² 12 U.S.C.A. § 1716 et seq.
 - ¹³ 12 U.S.C.A. § 1716 et seq.
 - ¹⁴ 12 U.S.C.A. § 1701 et seq.
 - ¹⁵ 12 U.S.C.A. § 1451 et seq.
 - ¹⁶ 12 U.S.C.A. § 831 et seq.
 - ¹⁷ Repealed; see, now, Education Code § 41015.
 - ¹⁸ So in chaptered copy.
 - ¹⁹ Punctuation as in chaptered copy.
 - ²⁰ Enrolled bill contains no close parenthesis.
 - ²¹ So in chaptered copy.
 - ²² So in chaptered copy.



Appendix C

SECTIONS OF THE SELECTED CODES

OF INTEREST TO THE CITY TREASURER

(Current through 7/01/01)

Appendix C

SECTIONS OF THE SELECTED CODES OF INTEREST TO THE CITY TREASURER

California Penal Code

Sec. 424. Embezzlement and falsification of accounts by public officers; misappropriation; unauthorized loan, use or private profit; failure to pay over or transfer public moneys; punishment

Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,
2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,
3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,
4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,
5. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,
6. Willfully omits to transfer the same, when such transfer is required by law; or,
7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same;-

Is punishable by imprisonment in the state prison for two, three or four years, and is disqualified from holding any office in this state.

As used in this section, "public moneys" includes the proceeds derived from the sale of bonds or other evidence of indebtedness authorized by the legislative body of any city, county, district, or public agency.

(Enacted 1872. Amended by Code Am.1880, c. 88, p. 39, § 1; Stats.1905, c. 59, p. 53, § 1; Stats.1963, c. 344, p. 1134, § 1; Stats.1965, c. 107, p. 1048, § 9; Stats.1976, c. 1139, p. 5118, § 197, operative July 1, 1977.)

Sec. 425. Neglect to keep or pay over public funds

OFFICERS NEGLECTING TO PAY OVER PUBLIC MONEYS. Every officer charged with the receipt, safe keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

(Enacted 1872.)

Sec. 426. Public moneys defined

The phrase "public moneys," as used in Sections 424 and 425, includes all bonds and evidence of indebtedness, and all moneys belonging to the state, or any city, county, town, district, or public agency therein, and all moneys, bonds, and evidences of indebtedness received or held by state, county, district, city, town, or public agency officers in their official capacity.

(Enacted 1872. Amended by Stats.1967, c. 718, p. 2089, § 1; Stats.1987, c. 828, § 29.)

Sec. 428. Obstructing or hindering collection of revenue

OBSTRUCTING OFFICER IN COLLECTING REVENUES. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this State are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

(Enacted 1872.)

Sec. 429. Providers of telecommunications services; failure to collect or remit fees; misdemeanor

Any provider of telecommunications services in this state that intentionally fails to collect or remit, as may be required, the annual fee imposed pursuant to Section 431 of the Public Utilities Code, the universal telephone service surcharge imposed pursuant to Section 879 or 879.5 of the Public Utilities Code, the fee for filing an application for a certificate of public convenience and necessity as provided in Section 1904 of the Public Utilities Code, or the surcharge imposed pursuant to subdivision (d) of Section 2881 of the Public Utilities Code, whether imposed on the provider or measured by the provider's service charges, is guilty of a misdemeanor.

(Added by Stats.1990, c. 390 (S.B.2419), § 2.)

Sec. 431. Receipts for poll tax, road tax, or license; improper issuance or failure to issue; inserting additional names

DELIVERING RECEIPTS FOR POLL TAXES, OTHER THAN PRESCRIBED BY LAW, OR COLLECTING POLL TAXES, ETC., WITHOUT GIVING THE RECEIPT PRESCRIBED BY LAW. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

(Enacted 1872.)

Sec. 432. Possession of blank licenses or poll tax receipts with intent to sell

HAVING BLANK RECEIPTS FOR LICENSES, ETC., OTHER THAN THOSE PRESCRIBED BY LAW. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll tax receipts other than those furnished by the Controller of State or County Auditor, is guilty of felony.

(Enacted 1872.)

Sec. 503. Definition

Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

(Enacted 1872.)

Sec. 504. Officers and deputies, etc., of state, political subdivisions, public or private corporations, societies, or associations

Every officer of this State, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, Director, Trustee, Clerk,¹ servant, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

(Enacted 1872. Amended by Code Am.1880, c. 42, p. 8, § 4.)

Sec. 504a. Fraudulent removal, concealment or disposal of personal property under lease, conditional sale or vendor's lien

Every person who shall fraudulently remove, conceal or dispose of any goods, chattels or effects, leased or let to him by any instrument in writing, or any personal property or effects of another in his possession, under a contract of purchase not yet fulfilled, and any person in possession of such goods, chattels, or effects knowing them to be subject to such lease or contract of purchase who shall so remove, conceal or dispose of the same with intent to injure or defraud the lessor or owner thereof, is guilty of embezzlement.

(Added by Stats.1917, c. 180, p. 273, § 1.)

Sec. 504b. Sale of property covered by security agreement; willful failure to pay secured party and appropriation of proceeds to own use; punishment

Text of section operative July 1, 2001.

Where under the terms of a security agreement, as defined in paragraph (73) of subdivision (a) of Section 9102 of the Commercial Code, the debtor has the right to sell the property covered thereby and is to account to the secured party for, and pay to the secured party the indebtedness secured by the security agreement from, the proceeds of the sale of any of the property, and where the debtor, having sold the property covered by the security agreement and having received the proceeds of the sale, willfully and wrongfully, and with the intent to defraud, fails to pay to the secured party the amounts due under the security agreement, or the proceeds of the sale, whichever is the lesser amount, and appropriates the money to his or her own use, the debtor shall be guilty of embezzlement and shall be punishable as provided in Section 514.

(Added by Stats.1963, c. 1519, p. 3100, § 1. Amended by Stats.1967, c. 189, p. 1293, § 1.)

Revenue And Taxation Code

Sec. 95.2. Apportionment of property tax revenue; fiscal year 1990-91 and after; property tax presumed to be received by county; portion of administrative costs attributable to incorporated cities and other local jurisdictions; intent; application to educational districts and offices

(a) (1) Notwithstanding any other provision of law, for the 1990-91 fiscal year, for the purposes of the computations required by Section 96.1 or its predecessor section, the amount of property tax presumed to have been received by the county in the prior year shall be increased by the amount of 1989-90 property tax administrative costs proportionately attributable to incorporated cities as determined pursuant to paragraph (2).

(2) The auditor shall determine the 1989-90 fiscal year property tax administrative costs proportionately attributable to incorporated cities by adding the 1989-90 fiscal year property tax-related costs of the assessor, tax collector, and auditor, including applicable administrative overhead costs as permitted by federal Office of Management and Budget Circular A-87 standards, and multiplying the sum of those amounts by the ratio of property tax revenue received by all incorporated cities divided by the total property tax revenue for all local jurisdictions in the county for that fiscal year.

(3) The county shall use the additional revenue received pursuant to this subdivision only to fund the actual costs of assessing, collecting, and allocating property taxes. At least once each fiscal year, the county auditor shall report the amount of these actual costs and allowable overhead costs to the legislative body and any other jurisdiction or person that request² the information. To the extent that actual costs for assessing, collecting, and allocating property taxes plus allowable overhead costs are less than the amount determined pursuant to paragraph (2), the county auditor shall apportion the difference to each incorporated city as otherwise required by this section.

(4) The county may retain up to one-half of any increased property tax allocation to which a jurisdiction may be otherwise entitled, until the county receives its additional revenues pursuant to this subdivision.

(5) It is the intent of the Legislature in enacting this subdivision to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for cities. It is further the intent of the Legislature that the adjustments provided for by this subdivision shall constitute charges by a county for the assessment, collection, and allocation of property taxes and shall not exceed the actual costs reasonably borne by a county for those activities.

(b) If so directed by the board of supervisors, the auditor shall determine the 1989-90 fiscal year property tax administrative costs proportionately attributable to local jurisdictions other than the county or city and county, and cities, by adding the property tax-related costs of the assessor, tax collector, and auditor, including applicable administrative overhead costs as permitted by federal Office of Management and Budget Circular A-87 standards, and multiplying the sum of those amounts by the ratio of property tax revenue received by jurisdictions other than the county, city and county, and cities, divided by the total property tax received by all local jurisdictions in the county for that fiscal year. Notwithstanding any other provision of law, this amount may be calculated for each fiscal year commencing with the 1989-90 fiscal year, and the auditor shall, commencing in fiscal year 1990-91, if so directed by the board of supervisors, submit an invoice to these jurisdictions for services rendered in the prior fiscal year.

(c) Notwithstanding subdivision (b), no invoice as described in that subdivision shall be submitted to any school district, community college district, or county office of education, nor shall any of those entities be required to pay any invoice, for property tax administrative costs for services rendered in the 1990-91 fiscal year, or in any subsequent fiscal year. This subdivision shall not be construed to prevent the auditor of any county from collecting from school districts, community college districts, and county offices of education, in accordance with subdivision (b), property tax administrative costs for services rendered to those entities in the 1989-90 fiscal year.

(Added by Stats.1994, c. 1167 (A.B.3347), § 3.)

Sec. 95.3. Administrative cost apportionment factor; attribution of proportionate costs; cost shift from allocations of relevant jurisdiction or community redevelopment agency to county; limitations on use

(a) Notwithstanding any other provision of law, for the 1990-91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction, Educational Revenue Augmentation Fund (ERAF), or community redevelopment agency pursuant to Sections 96.1 and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as the "administrative cost apportionment factor" and shall be multiplied by the sum of the property tax administrative costs incurred in the immediately preceding fiscal year by the assessor, tax collector, county board of equalization and assessment appeals boards, and auditor to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction, ERAF, or community redevelopment agency. For purposes of this paragraph, property tax administrative costs shall also include applicable administrative overhead costs allowed by the federal Office of Management and Budget Circular A-87 standards, but shall not include any amount reimbursed pursuant to Section 75.60 and former Section 98.6, or include any amount in excess of the amounts reimbursable pursuant to Section 75.60, unless a county meets the conditions of paragraph (2) of subdivision (b) of Section 75.60. However, no amount of funds appropriated to counties for purposes of property tax administration in Item 9100-102-001 of the Budget Act of 1994 or any subsequent Budget Act shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to this subdivision.

(b)(1) Each proportionate share of property tax administrative costs determined pursuant to subdivision (a), except for those proportionate shares determined with respect to a school entity or ERAF, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency, and shall be added to the property tax revenue allocation of the county. For purposes of applying this paragraph for the 1990-91 fiscal year, each proportionate share of property tax administrative costs shall be deducted from those amounts allocated to the relevant jurisdiction or community redevelopment agency after January 1, 1991.

(2) It is the intent of the Legislature that the portion of those shares of property tax administrative costs that are calculated by the auditor for each fiscal year pursuant to subdivision (a) for school entities and the county's ERAF, that is attributable to the county's costs in providing boards and hearing officers for the review of property tax assessment appeals, be calculated by local officials and reimbursed by the state in the time and manner specified by a future act of the Legislature that makes an appropriation for purposes of that reimbursement.

(c) Reductions made pursuant to this section to property tax revenue allocations shall be made without regard to Section 907 of the Government Code.

(d) Any additional amounts of property tax revenue allocated to the county pursuant to this section shall be used only to fund costs incurred by the county in assessing, equalizing, and collecting property taxes, and in allocating property tax revenues, and shall constitute charges for those services, not exceeding the actual and reasonable costs incurred by the county in performing those services.

(e) It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this section is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility.

(f) Commencing with the 1992-93 fiscal year and each fiscal year thereafter, this section shall supersede and replace Section 95.2, as authority for a county to recover property tax administrative costs.

(g) This section shall apply to the entire 1993-94 fiscal year, regardless of the operative date of the act adding the predecessor to this section, and to each fiscal year thereafter.

(Added by Stats.1994, c. 1167 (A.B.3347), § 6. Amended by Stats.1996, c. 1073 (A.B.1055), § 2, eff. Sept. 30, 1996.)

§ 95.31. Election of counties to participate in State-County Property Tax Administration Loan Program; loans; funds

(a) (1) Notwithstanding any other provision of law, any eligible county may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of that county adopted not later than December 1 of the fiscal year for which it is to first apply, elect to participate in the State-County Property Tax Administration Loan Program.

(2) Except as specified in paragraph (3), for the purposes of this section, an eligible county shall mean a county in which additional property tax revenue allocated to school entities would reduce the amount of General Fund moneys apportioned to school entities. However, eligibility shall be terminated when, in combination with resources in the Educational Revenue Augmentation Fund, additional property tax revenues allocated to school entities will not result in a reduction in the General Fund apportionments.

(3) Notwithstanding paragraph (2), both the County of Solano and the County of San Benito shall be deemed eligible counties that may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of the county adopted on or before March 31, 1996, elect to participate in the State-County Property Tax Administration Loan Program.

(4) Notwithstanding paragraph (1), any county in which a new assessor is elected in 1998 may, upon the recommendation of the county assessor, and by resolution of the board of supervisors of the county adopted on or before January 31, 1999, elect to participate in the State-County Property Tax Administration Loan Program commencing with the 1998-99 fiscal year.

(b) (1) In each fiscal year from the 1995-96 fiscal year to the 2001-02 fiscal year, inclusive, an eligible county participating in the State-County Property Tax Administration Loan Program may receive a loan for up to the amount listed in paragraph (3). The loan shall be repaid by June 30 of the fiscal year following the year in which the loan is made. However, at the discretion of the Director of Finance, the loan may be renewed once for an additional 12-month period at the request of the participating county board of supervisors. For the Counties of Fresno, Orange, San Benito, and Solano any loan agreement signed on or before July 31, 1996, shall be deemed a loan agreement for the 1995-96 fiscal year for the purposes of

this section. For any county in which a new assessor is elected in 1998, any loan agreement signed on or before January 31, 1999, shall be deemed a loan agreement for the 1998-99 fiscal year for the purposes of this section.

(2) If an eligible county elects to participate in the State-County Property Tax Administration Loan Program, it shall enter into a contractual agreement with the Department of Finance. At a minimum, the contractual agreement shall include the following:

- (A) The loan amount, as determined by the Director of Finance.
- (B) Repayment provisions, including the interception of Motor Vehicle License Fee Account moneys apportioned pursuant to Section 11005 to repay the General Fund.
- (C) A listing of the proposed use of the additional resources including, but not limited to:
 - (i) Proposed new positions.
 - (ii) Increased automation costs.
- (D) An agreement to provide to the Department of Finance, by March 31 of the fiscal year in which the loan is made, a report projecting the impact of the increased funding in the current and subsequent fiscal year.

(3) Upon request of the Department of Finance, the Controller shall provide a loan to the following counties for up to the amount specified by the Director of Finance, not to exceed the following amounts:

Jurisdiction	Amount
Alameda	\$ 2,152,429
Alpine	3,124
Amador	80,865
Butte	381,956
Calaveras	109,897
Colusa	53,957
Contra Costa	2,022,088
Del Norte	36,203
El Dorado	302,795
Fresno	1,165,249
Glenn	59,197
Humboldt	210,806
Imperial	231,673
Inyo	100,080
Kern	1,211,318
Kings	138,653
Lake	117,376
Lassen	54,699
Los Angeles	13,451,670
Madera	212,991

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Marin	790,490
Mariposa	46,476
Mendocino	160,435
Merced	298,004
Modoc	24,022
Mono	47,778
Monterey	795,819
Napa	366,020
Nevada	234,292
Orange	6,826,325
Placer	628,047
Plumas	80,606
Riverside	2,358,068
Sacramento	1,554,245
San Benito	90,408
San Bernardino	2,139,938
San Diego	5,413,943
San Francisco	1,013,332
San Joaquin	818,686
San Luis Obispo	736,288
San Mateo	2,220,001
Santa Barbara	926,817
Santa Clara	4,213,639
Santa Cruz	565,328
Shasta	342,399
Sierra	7,383
Siskiyou	91,164
Solano	469,207
Sonoma	1,035,049
Stanislaus	866,155
Sutter	147,436
Tehama	97,222
Trinity	24,913
Tulare	501,907
Tuolumne	126,067
Ventura	1,477,789
Yolo	278,309
Yuba	88,968

(4) The Department of Finance shall consider any or all of the following items in determining the extent to which a county has satisfied the terms and repaid the loan, pursuant to the contract, as offered under this part:

- (A) County performance as indicated by the State Board of Equalization's sample survey required pursuant to Section 15640 of the Government Code.
- (B) Performance measures adopted by the California Assessors' Association.
- (C) Reduction of backlog of assessment appeals and Proposition 8 declines in value.
- (D) County compliance with mandatory audits required by Section 469.
- (E) Reduction of backlogs in new construction, changes in ownership, and supplemental roll.
- (F) Other measures, as determined by the Director of Finance.

(5) The Director of Finance shall notify the Controller of any participating county that fails to comply with the terms of the agreement, including the repayment of the loan. When the Controller receives notice from the Director of Finance, the Controller shall make an apportionment to the General Fund on behalf of the participating county in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from moneys credited to the Motor Vehicle License Fee Account in the Transportation Tax Fund to which the participating county is entitled at that time under Chapter 5 (commencing with Section 11001) of Part 5 of Division 2, and shall thereupon reduce, by the amount of the payment, the subsequent allocation or allocations to which the county would otherwise be entitled under that chapter.

(c)(1) Funds appropriated for purposes of this section shall be used to enhance the property tax administration system by providing supplemental resources. Amounts provided to any county as a loan pursuant to this section shall not be used to supplant the current level of funding. In order to participate in the State-County Property Tax Administration Loan Program, a participating county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office, independent of the loan proceeds provided pursuant to this act, equal to the levels in the 1994-95 fiscal year exclusive of amounts provided to the assessor's office pursuant to Item 9100-102-001 of the Budget Act of 1994. However, in a county in which the 1994-95 funding level for the assessor's office was higher than the 1993-94 level, the 1993-94 fiscal year staffing and funding levels shall be considered the base year for purposes of this section. Commencing with the 1996-97 fiscal year, if a county was otherwise eligible but was unable to participate in this program in the 1995-96 fiscal year because it did not meet the funding level and staffing requirements of this paragraph, that county shall maintain a base staffing, including contract staff, and total funding level in the county assessor's office equal to the levels in the 1995-96 fiscal year.

(2) Prior to the assessor's recommendation for participation in the State-County Property Tax Administration Loan Program, the assessor shall consult with the county tax collector, and any other county agency directly involved in property tax administration, to discuss the needs of the program for the duration of the contractual agreement.

(d) A participating county may establish a tracking system whereby a work or function number is assigned to each appraisal or administrative activity. That system should provide statistical data on the number of production units performed by each employee and the positive and negative change in assessed value attributable to the activities performed by each employee.

(e) Notwithstanding Section 95.3, no amount of funds provided to an eligible county pursuant to this section shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to Section 95.3.

(f) At the request of the Department of Finance, the board shall assist the Department of Finance in evaluating contracts entered into pursuant to this section.

(Added by Stats.1995, c. 914 (A.B.818), § 4, eff. Oct. 16, 1995. Amended by Stats.1996, c. 308 (S.B.218), § 2, eff. July 29, 1996; Stats.1996, c. 1087 (S.B.1827), § 13; Stats.1997, c. 420 (A.B.719), § 1, eff. Sept. 22, 1997. Amended by Stats.1998, c. 485 (A.B.2803), § 141; Stats.1998, c. 876 (S.B.1649), § 19; Stats.2000, c. 602 (A.B.1036), § 1.)

Sec. 95.4. Invoiced amounts

Amounts invoiced pursuant to subdivision (b) of Section 95.2 or its predecessor shall not include the amount of any costs incurred by the county auditor pursuant to Section 33672.5 of the Health and Safety Code.

(Added by Stats.1994, c. 1167 (A.B.3347), § 3.)

United States Code

Title 42. The Public Health And Welfare

Chapter 21 – Civil Rights

Sec. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284. As amended Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Sec. 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

Sec. 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

(R.S. § 1981.)

Sec. 1987. Prosecution of violation of certain laws

The United States attorneys, marshals, and deputy marshals, the United States magistrate judges appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506 to 5516 and 5518 to 5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

(R.S. § 1982; Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; June 25, 1948, c. 646, § 1, 62 Stat. 909; Oct. 17, 1968, Pub.L. 90-578, Title IV, § 402(b)(2), 82 Stat. 1118; Dec. 1, 1990, Pub.L. 101-650, Title III, § 321, 104 Stat. 5117.)

Sec. 1988. Proceedings in vindication of civil rights

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

(R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330; Pub.L. 102-166, Title I, §§ 103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub.L. 103-141, § 4(a), Nov. 16, 1993, 107 Stat. 1489; Pub.L. 103-322, Title IV, § 40303, Sept. 13, 1994, 108 Stat. 1942. As amended Pub.L. 104-317, Title III, § 309(b), Oct. 19, 1996, 110 Stat. 3853; Pub.L. 106-274, § 4(d), Sept. 22, 2000, 114 Stat. 804.)

¹ So in chaptered copy.

² So in chaptered copy.



Appendix D

INVESTMENT POLICY

CERTIFICATION PROGRAM

(Current through 7/01/01)

MTA US & C

Investment Policy Certification Program

Model Investment
Policy

Application for
Certification

Glossary of Terms

Guidelines for an
Investment
Procedures Manual

Municipal Treasure
Association of the
United States &
Canada

Dear Applicant:

Thank you for your interest in MTA US&C's Investment Policy Certification Program.

The Investment Policy Certification Program provides professional guidance and assistance in developing or improving existing investment policies in the public sector. Entities may request the Investment Policy Certification Committee to review their policy to determine if they have met the standards set forth by the Association. Those jurisdictions who comply with MTA US&C's criteria are presented with the Association's Written Investment Policy Certification.

Enclosed please find the necessary documents to apply for MTA US&C's Written Investment Policy Certification — Application Form and MTA US&C Model Investment Policy.

The application form along with specified documentation must be completed and forwarded directly to MTA US&C. The information solicited will assist the assigned reviewers in analyzing your investment policy.

Program Procedures

1. Submit five copies of the application form and appropriate documentation to MTA US&C. The program fee is \$175 for MTA US&C members (\$275 for non-members). If the first submission is unsuccessful, the application fee will be waived for a second submission. Resubmissions must be made by June 1st of the following year.
2. The submitted investment policy documentation will be forwarded to three reviewers who will evaluate the investment policy and make a recommendation as to certification. Two out of three members must vote in favor of awarding certification in order for the entity to receive MTA US&C's Written Investment Policy Certification. To assist the reviewers, please enclose five copies of your investment policy, including your glossary.
3. Approximately six weeks after receipt of submission, notification of certification will be mailed to the individual identified on the application form (Item 15) as well as the treasurer requesting the review. Comments from the reviewers will be forwarded to both successful and unsuccessful applicants.
4. Investment Policy review and certification occur continually throughout the year. However, investment policies must be submitted by June 1st in order for successful applicants and entities to receive recognition and a plaque at MTA US&C's annual conference in August.

Should you have any questions about the application or the model investment policy, please contact Jeff Cyphert, Investment Policy Certification Chair at (810) 424-2606. We appreciate your comments or suggestions relating to this certification program.

Stacey Crane
Executive Director

Application Form for a Written Investment Policy Certification

Please return this application form along with the program fee of \$175 (\$275 for non-members) to MTA US&C, Investment Policy Certification Program, 1029 Vermont Avenue, NW, Suite 710, Washington, DC 20005. Enclose **five copies of the application form and five copies of your investment policy.**

1. **Name of government:** (as it will appear on your plaque)

Mailing Address: _____

2. Population of government/size of district/retirement system: _____

3. Size of total investment portfolio: _____

4. Indicate below the composition of the current portfolio:

Treasuries	\$ _____	CD's	\$ _____
Agencies	\$ _____	BA's	\$ _____
Govt. Pool	\$ _____	Repos	\$ _____
Mutual Funds	\$ _____	Other	\$ _____

5. What is the average maturity of your investment portfolio? _____ days

6. Are you a member of MTA US&C? yes _____ no _____

7. Has your investment policy been adopted by the appropriate legislative body?

yes _____ no _____

(Not required prior to submission)

8. Does your state/province or jurisdiction specifically mandate the adoption of an investment policy?

State/Province yes _____ no _____

Jurisdiction yes _____ no _____

9. Does your state/province specifically outline types of authorized investments?

yes _____ no _____

(If yes, attach five copies of the legislation or a typed summary of types of authorized investments).

10. Does your entity have a separate investment procedure manual? yes _____ no _____

(It is not required that you send your procedure manual.)

11. List investment staff by title and telephone number:

12. If the policy permits investment in repurchase agreements, does your entity have a signed **Master Repurchase Agreement**? yes_____ no_____ n/a_____
If "Yes" - A Master Repurchase Agreement is required for certification.

13. Do you employ an active or passive approach to investing?
Active_____ Passive_____

14. Treasurer requesting review:
Name: _____
Title: _____
Address: _____

Phone number: _____

15. In addition to the Treasurer requesting review (item 14), who should the formal announcement of the awarding of the **Written Investment Policy Certification** be addressed to?

Name: _____
Title: _____
Address: _____

16. Have you enclosed five copies of the following documents?

- Application Form
• Investment Policy
• Glossary
• State/Province Statutes Listing Authorized Investments

17. Date submitted_____

The MTA US&C Model Investment Policy is intended to provide guidance in the formulation of a structure to govern the investment of public funds. It must be implemented in conjunction with a careful reading of and strict adherence to applicable statutes, judicial decisions and legal opinions. It is not a guarantee against loss due to economic and market conditions or human behavior. MTA US&C strongly recommends updating your policy at least every five (5) years.

MTA use only:

Date Received _____ Reviewers _____
Check # _____
Amount _____
Date Sent for Review _____ Result/Date _____

Model Investment Policy

For permission to reprint the Model Investment Policy, call the MTA US&C at (202) 737-0660.

1.0 Policy: (maximum points: 4)

SAMPLE LANGUAGE:

It is the policy of the (entity) to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow demands of the entity and conforming to all state/province and local statutes governing the investment of public funds.

2.0 Scope: (maximum points: 7)

Rationale:

**An investment policy should explain its scope. Does the policy apply to all funds held in the custody of the government jurisdiction and all of its offices?*

SAMPLE LANGUAGE:

This investment policy applies to all financial assets of the (entity). These funds are accounted for in the (entity's) **Comprehensive Annual Financial Report and include:**

2.1 Funds: (Specifically designate. Following is a sample list.)

2.1.1 General Fund

2.1.2 Special Revenue Funds

2.1.3 Capital Project Funds

2.1.4 Enterprise Funds

2.1.5 Trust and Agency Funds

2.1.6 Retirement/Pension Funds

2.1.7 (Any new fund created by the legislative body, unless specifically exempted.)

3.0 Prudence: (maximum points: 4)

Rationale:

**To burden a conscientious professional with personal responsibility for a default on a single item within a diversified portfolio seems unduly severe. (Accordingly, public entities with portfolios of sufficient size are urged to apply the prudence concept to the overall portfolio.) Following is the prudent person standard:*

SAMPLE LANGUAGE:

Investments shall be made with judgment and care—under circumstances then prevailing—which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

3.1 The standard of prudence to be used by investment officials shall be the “**prudent person**” and/or “**prudent investor**” standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

4.0 Objective: (maximum points: 10)

Rationale:

**Every investment policy should contain a concise and clear statement(s) of objectives. The effectiveness of the investment program is set by the caliber of the staff, the procedures used, the working environment and the policy guidance*

MODEL INVESTMENT POLICY

provided by governing officials. Through its statement of objectives, the governing body sets the tone and direction of the policy and investment program.

SAMPLE LANGUAGE:

The primary objectives, in priority order, of the (*entity's*) investment activities shall be:

4.1 **Safety:** Safety of principal is the foremost objective of the investment program. Investments of the (*entity*) shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, the (*entity*) will diversify its investments by investing funds among a variety of securities offering independent returns and financial institutions.

4.2 **Liquidity:** The (*entity's*) investment portfolio will remain sufficiently liquid to enable the (*entity*) to meet all operating requirements which might be reasonably anticipated.

4.3 **Return on Investments:** The (*entity's*) investment portfolio shall be designed with the objective of attaining a benchmark rate of return throughout budgetary and economic cycles, commensurate with the (*entity's*) investment risk constraints and the cash flow characteristics of the portfolio.

5.0 **Delegation of Authority:** (*maximum points: 4*)

Rationale:

**After the investment objectives have been identified, the next logical element of an investment policy is an explicit delegation of authority to investment officials responsible for conducting transactions and managing the entity's investment program.*

SAMPLE LANGUAGE:

Authority to manage the (*entity's*) investment program is derived from the following: (*e.g., trading resolutions, code citations, ordinances, statutes, etc.*). Management responsibility for the investment program is hereby delegated to the (*designated official*) who shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials, and their procedures in the absence of the (*Designated Official*).

5.1 **Investment Procedures:** (*maximum points: 4*)

The (*designated official*) shall establish written investment policy procedures for the operation of the investment program consistent with this policy. The procedures should include reference to: safekeeping, PSA repurchase agreements, wire transfer agreements, banking service contracts and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the (*designated official*).

See appendix to MTA US&C's Model Investment Policy entitled MTA US&C's Guidelines for an Investment Procedures Manual.

6.0 **Ethics and Conflicts of Interest:** (*maximum points: 4*)

Rationale:

**Some governments have adopted conflict-of-interest legislation that regulates the activities of certain officers and employees. In the investment area, certain conflicts may be governed by general code provisions, so separate policies may be redundant. Some jurisdictions, however, may seek to adopt policies regarding ethical behavior and conflicts of interest.*

SAMPLE LANGUAGE:

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the (*Chief Executive Officer*) any material financial interests in financial institutions that conduct business within their jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the (*entity*).

7.0 Authorized Financial Dealers and Institutions: (maximum points: 7)

Rationale:

**The investment policy should require that a set formal process be used to select depositories and brokers/dealers in money market instruments. Because the policy is intended to endure, it should not mention specific firms or depositories. Rather, it should provide for a process that will screen out institutions that lack economic viability or whose past practices suggest that the safety of public capital would be impaired if transactions were directed to or through such firms.*

SAMPLE LANGUAGE:

The Treasurer will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness who are authorized to provide investment services in the State/Province of (_____). These may include “**primary**” dealers or regional dealers that qualify under **Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule)**. No public deposit shall be made except in a qualified public depository as established by state/province laws.

All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the treasurer with the following: *(e.g. audited financial statements, proof of National Association of Security Dealers certification, trading resolution, proof of state/province registration, completed broker/dealer questionnaire, certification of having read entity’s investment policy and depository contracts.)*

An annual review of the financial condition and registrations of qualified bidders will be conducted by the Treasurer.

A current audited financial statement is required to be on file for each financial institution and broker/dealer in which the (entity) invests.

8.0 Authorized & Suitable Investments: (maximum points: 10)

Rationale:

**The selection of investment instruments to be allowed for investment purposes is a significant policy issue for many governments. Although day-to-day selection of specific instruments should be treated as a management function, the policy should define the general universe.*

From the governing body perspective, special care must be taken to ensure that the list of instruments includes only those allowed by law and those that local investment managers are trained and competent to handle.

SAMPLE LANGUAGE:

The (entity) is empowered by statute to invest in the following types of securities.

(List types of investments authorized by state/province law, ordinance, or charter. Consider appending copies of these specific requirements to the investment policy.)

(In selecting authorized investments, consideration should be given to credit ratings on commercial paper, bankers acceptance, and collateralization of applicable instruments)

8.1 Master Repurchase Agreement: (maximum points: 10)

If repurchase agreements are legal and authorized by policy, a **Master Repurchase Agreement** must be signed with the bank or dealer. *(e.g., a **PSA Master Repurchase Agreement** or equivalent)*

9.0 Investment Pools/Mutual Funds: (maximum points: 7)

Rationale:

Governmental sponsored pools and money market mutual funds are excellent short-term cash management facilities. These pools/funds can provide safety, liquidity and yield in a single investment instrument. However, there is a due diligence standard which applies to the use of pools/funds, as there is no safety net.

MODEL INVESTMENT POLICY

If governmental sponsored pools and/or mutual funds are included in **Authorized Investments**, a section on investigation and due diligence must be included.

SAMPLE LANGUAGE:

A thorough investigation of the pool/fund is required prior to investing, and on a continual basis. There shall be a questionnaire developed which will answer the following general questions:

- A description of eligible investment securities, and a written statement of investment policy and objectives.
- A description of interest calculations and how it is distributed, and how gains and losses are treated.
- A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
- A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
- A schedule for receiving statements and portfolio listings.
- Are reserves, retained earnings, etc. utilized by the pool/fund?
- A fee schedule, and when and how is it assessed.
- Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

NOTE: The topics listed above are not all encompassing, but only a sampling of what might be covered in a questionnaire. MTA US&C will be developing a questionnaire in the near future for use when pools/funds are part of the list of Authorized Investments.

10.0 Collateralization: (maximum points: 7)

Rationale:

**Several states require collateralization of all public funds. In these states a collateralization section must be included for any certificates of deposit. In addition, collateralization must be required on any repurchase agreement or reverse repurchase agreement. For these items, the policy should address such points as market valuation responsibility and timing, specific collateral*

provisions such as type and maturity, safekeeping by a third party, and evidence of ownership.

SAMPLE LANGUAGE:

Collateralization will be required on two types of investments: certificates of deposit and repurchase (and reverse) agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be (102%) of market value of principal and accrued interest.

The entity chooses to limit collateral to the following: — (list) —

Collateral will always be held by an independent third party with whom the entity has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the entity and retained.

The right of collateral substitution is granted.

11.0 Safekeeping and Custody: (maximum points: 10)

Rationale:

**Like private investors, governing officials feel more secure about their entity's investments if they know that the securities are physically safe. Investment policies should include a clause regarding third-party safekeeping and custody of securities and collateral.*

SAMPLE LANGUAGE:

All security transactions, including collateral for repurchase agreements, entered into by the (entity) shall be conducted on a **delivery-versus-payment (DVP)** basis. Securities will be held by a third party custodian designated by the Treasurer and evidenced by safekeeping receipts.

12.0 Diversification: (maximum points: 7)

Rationale:

**...governments should state the purpose of diversification—to reduce overall portfolio risks while attaining benchmark average rate of return. Diversification should be conceptualized in terms of maturity as well as instrument type and issuer. Thus, the diversification concept in a cash*

management fund should include prohibition against over concentration in a specific maturity sector, as well as constraining the reliance on specific risky instruments and issuers.

SAMPLE LANGUAGE:

The (entity) will diversify its investments by security type and institution. With the exception of U.S. Treasury securities and authorized pools, no more than 50% of the (entity's) total investment portfolio will be invested in a single security type or with a single financial institution.

**13.0 Maximum Maturities:
(maximum points: 7)**

Rationale

**To protect public funds from market price losses resulting from rising interest rates, some states and many local governments limit the maximum term to maturity on current operating funds' investments, some limit the maximum term to maturity to current operating funds' investments. Some limit the maximum maturity on cash management funds to 12 months. Others find this unduly restrictive and employ a two-year rule. The latter seems reasonable, provided that only a portion of the assets is invested beyond one year.*

SAMPLE LANGUAGE:

To the extent possible, the (entity) will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the (entity) will not directly invest in securities maturing more than (____) years from the date of purchase. However, the (entity) may collateralize its repurchase agreements using longer-dated investments not to exceed (____) years to maturity.

Reserve funds may be invested in securities exceeding (____) years if the maturity of such investments is made to coincide as nearly as practicable with the expected use of the funds.

**14.0 Internal Control:
(maximum points: 4)**

Rationale:

**The development of internal controls remains a management function. A statement of investment policy therefore should avoid specific internal*

control measures. Instead, policy makers should require that a system of internal controls be established. The policy can also provide for periodic reviews and monitoring of the controls. The review of internal controls might be assigned to a committee or to the independent auditor.

SAMPLE LANGUAGE:

The Treasurer shall establish an annual process of independent review by an external auditor. This review will provide internal control by assuring compliance with policies and procedures.

**15.0 Performance Standards:
(maximum points: 4)**

Rationale:

**Much of the investment policy focus is directed toward control. Yield objectives are just as important, however. The long-run interests of the jurisdiction go beyond simple prudence and safety of funds. The investment policy should provide a formal evaluation of performance and occasional operational audits.*

SAMPLE LANGUAGE:

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs.

15.1 Market Yield (Benchmark): The entity's investment strategy is (*passive or active*). Given this strategy, the basis used by the Treasurer to determine whether market yields are being achieved shall be to identify a comparable benchmark to your portfolio investment duration, *e.g., 90-day US Treasury Bill, 6-month US Treasury Bill, Average Fed Funds Rate.*

16.0 Reporting: (maximum points: 10)

Rationale:

Periodic required investment reports to policymakers and elected officials provide necessary written communication regarding investment performance, risk analysis, adherence to policy provisions, as well as other information.

SAMPLE LANGUAGE:

The Treasurer shall provide (*the legislative authority*) quarterly investment reports which provide a clear picture of the status of the current

MODEL INVESTMENT POLICY

investment portfolio. The management report should include comments on the fixed income markets and economic conditions, discussions regarding restrictions on percentage of investment by categories, possible changes in the portfolio structure going forward and thoughts on investment strategies.

Schedules in the quarterly report should include the following:

- A listing of individual securities held at the end of the reporting period by authorized investment category
- Average life and final maturity of all investments listed
- Coupon, discount or earnings rate
- Par value, Amortized Book Value and Market Value
- Percentage of the Portfolio represented by each investment category

NOTE: Depending on the degree of comprehension of those receiving the reports and their desire, or lack thereof, for detail, you may choose to provide the information in executive summary format.

17.0 **Investment Policy Adoption:** *(maximum points: 4)*

The (*entity's*) investment policy shall be adopted by resolution of the (*entity's*) legislative authority. The policy shall be reviewed annually by the (*legislative authority*) and any modifications made thereto must be approved by the (*legislative authority*).

18.0 **Glossary:** *(maximum points: 4)*

*Because this policy is to be available to the public as well as the governing body, it is important that a glossary of related terminology be part of the policy.

**Rationale: Adapted from Investing Public Funds, Girard Miller, 1986*

GLOSSARY

(**Note:** Entities are encouraged to include a glossary as part of the investment policy. All words of a technical nature should be included. Following is an example of common treasury terminology.)

AGENCIES: Federal agency securities and/or Government-sponsored enterprises.

ASKED: The price at which securities are offered.

BANKERS' ACCEPTANCE (BA): A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BENCHMARK: A comparative base for measuring the performance or risk tolerance of the investment portfolio. A benchmark should represent a close correlation to the level of risk and the average duration of the portfolio's investments.

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

BROKER: A broker brings buyers and sellers together for a commission.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR): The official annual report for the _____ . It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

COUPON: (a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on

a payment date. **DEALER:** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT: There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DERIVATIVES: (1) Financial instruments whose return profile is linked to, or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts based upon notional amounts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, *e.g.*, U.S. Treasury Bills.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, *e.g.*, S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$100,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

GLOSSARY

FEDERAL HOME LOAN BANKS (FHLB):

Government sponsored wholesale banks (currently 12 regional banks) which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLBs is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

FEDERAL NATIONAL MORTGAGE ASSOCIATION

(FNMA): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC):

Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae):

Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FmHA mortgages.

The term "pass-throughs" is often used to describe Ginnie Maes.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL

(LGIP): The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase—reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Asked and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of

market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state—the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORIES: A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond the current income return.

REPURCHASE AGREEMENT (RP OR REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security “buyer” in effect lends the “seller” money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank’s vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC RULE 15C3-1: See Uniform Net Capital Rule.

STRUCTURED NOTES: Notes issued by Government Sponsored Enterprises (FHLB, FNMA, SLMA, etc.) and Corporations which have imbedded options (e.g., call features, step-up coupons, floating rate coupons, derivative-based returns) into their debt structure. Their market performance is impacted by the fluctuation of interest rates, the volatility of the imbedded options and shifts in the shape of the yield curve.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY BONDS: Long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

TREASURY NOTES: Medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD** or **YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

Appendix

Guidelines for an Investment Procedures Manual

For permission to reprint the *Guidelines*, call MTA US&C at (202) 737-0660.

1. Purpose

The purpose of these guidelines is to help create a Procedures Manual to assist Treasury staff with day-to-day investment operations. As each jurisdiction's investment operations are unique, these guidelines are an outline, with individual items to be added or deleted as necessary or appropriate.

Numerical references and subjects at the beginning of each Section refer to elements in MTA's Model Investment Policy.

2. Cash Review

1.0 Policy

5.0 Delegation of Authority

2.0 Scope

The Treasurer or his/her delegate (hereafter referred to as Investment Officer) must review the cash balances and investment portfolio daily, or as needed. Items to be reviewed should include:

- a) Balances, by fund if so deposited, at primary bank.
- b) Balances, by fund if so deposited, at other banks.
- c) Maturing investments (includes Repo's, CD's, Commercial Paper, Bankers' Acceptances and general securities).
- d) Bond sales and other large, periodic receipts.
- e) Bond and coupon payments (debt service) and other large periodic cash disbursements.

3. Investment Selection

3.0 Prudence

12.0 Diversification

4.0 Objective

13.0 Maximum Maturities

8.0 Authorized & Suitable Investments

The Investment Officer determines how much of the cash balance is available for investment and selects the area of the yield curve that most closely matches the required maturity date.

In determining the maturity date, the Investment Officer should consider liquidity, cash flow and expected expenditures. A review of some of the following sources should be made to determine whether the investments should be placed to match projected expenditures or shorter, or to take advantage of current and expected interest rate environments:

APPENDIX

- a) Wall Street Journal or similar daily business publication.
- b) Input from approved broker/dealers.
- c) Input from depository banks.
- d) Publications on general trends of economic statistics.
- e) Input from data services (Telerate, Bloomberg, Reuters, etc.)

4. Purchasing an Investment

- | | | | |
|------|----------------------------------|------|-----------------------------|
| 7.0 | Authorized Financial Dealers | 11.0 | Safekeeping & Custody |
| 8.0 | Authorized & Suitable | 12.0 | Diversification Investments |
| 9.0 | Investment Pools | 13.0 | Maximum Maturities |
| 10.0 | Collateralization & Institutions | | |

Establish with whom the jurisdiction is going to transact business. This should be accomplished through the use of a questionnaire, which helps provide the following evaluation:

- a) Financial condition, strength and capability to fulfill commitments.
- b) Overall reputation with other dealers and investors.
- c) Regulatory status of the broker/dealer (providers).
- d) Background and expertise of the individual representative.

Financial (banking) institutions should be selected through the use of a "Request for Proposal (RFP)." The use of a nationally recognized financial institution rating organization (Lace, Sheshunoff, Thompson Bankwatch, etc.) will assist in the evaluation. Contact an appropriate number of institutions, as specified by policy. The Investment Officer should be as specific as possible in requesting the offering. If a particular type of investment or a particular issuing agency is to be excluded due to policy limitations, that should be stated to the providers. If collateral is required (i.e. for Repo's or CD's), the collateral limitations (excess margin, types of securities, maximum maturity, etc.) should be specified.

The following must be determined *prior* to contacting the providers:

- a) Settlement — cash, regular (next day), corporate (3 business days) or when-issued if a new issue.
- b) Amount — either par value or total dollars to be invested.
- c) Type of security to be purchased, or type to be excluded.
- d) Targeted maturity, or maturity range.
- e) Time limit to show offering — 5 minutes, 15 minutes, etc.

If choosing an external pool or fund as the preferred investment vehicle, the following should be available for inspection prior to purchase and at any reasonable time thereafter:

- a) A written investment policy, if a government-run investment pool.
- b) A prospectus for money-market funds, mutual funds or bank-managed funds.

- c) A schedule of the types of reports and the frequency of distribution.
- d) A clear description of how interest rates are calculated (30/360, actual/365, etc.)
- e) A schedule of when and how income is distributed.
- f) Are the pool or fund types of investments restricted to your own legal and policy limits?
- g) Are the pool or fund investments restricted to your own maturity limits?

Before concluding the transaction, the Investment Officer should validate the following:

- a) The security selected for purchase meets all criteria, including portfolio diversification, collateralization (if appropriate) and maturity. If the security has any imbedded options such as call provisions or coupon adjustments, these should also be reviewed.
- b) Yield calculations should be verified.
- c) Total purchase cost (including accrued interest) does not exceed funds available for investment.
- d) Advise the successful provider that their offering has been selected for purchase.
- e) After confirmation of the purchase, as a courtesy, notify the other broker/dealers that you have placed the investment. Best price may be disclosed, if you choose.

After consummation of the transaction, and prior to settlement date, the Investment Officer and the provider should exchange and review the following information to ensure prompt, and uninterrupted settlement:

- a) Name of third-party safekeeping agent.
- b) ABA number of safekeeping agent.
- c) Safekeeping account number.
- d) Reconfirm amount of transaction.
- e) Reconfirm settlement date.
- f) Acquire CUSIP number of security, if applicable.

5. Settlement & Follow-through

5.0 Delegation of Authority

6.0 The Investment Officer should forward to the safekeeping agent a report of the investment transaction. The report may be verbal, but a written form should be sent and acknowledged. When applicable, the following should be verified:

- a) Provision of receipt or disbursement of funds.
- b) Internal transfer or wiring of funds.
- c) Validation of written "safekeeping receipt".
- d) Notification of discrepancy prior to acceptance or rejection of the transaction.
- e) Immediate notification if a fail has occurred: by provider if they are responsible, by safekeeping agent if they are responsible.



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Appendix E

WEBSITES AND OTHER RESOURCES

FOR TREASURERS

Appendix E

WEBSITES AND OTHER RESOURCES FOR TREASURERS

Timing is often a critical issue to treasurers. Comprehensive information is needed quickly to make decisions about investments and other treasury duties. The World Wide Web can assist treasurers in locating broad or specific sources of background material to make informed, timely decisions. Much of the information is available at no charge. The listing below identifies free sites that Treasurers may find helpful. The list is for informational purposes only. Inclusion on the list does not mean that CMTA endorses the site or the information contained therein. CMTA welcomes your contributions to the list. Please forward to the CMTA office for future handbook updates.

Government Listings:

Federal:

Links to Federal Departments, Agencies and Commissions: www.whitehouse.gov

Department of Treasury: www.ustreas.gov

Department of Commerce: www.doc.gov

Federal Reserve System: www.federalreserve.gov

Federal Reserve Bank of San Francisco: <http://www.frbsf.org>

Internal Revenue Service: www.irs.ustreas.gov

Library of Congress: <http://lcweb.loc.gov>

Thomas Guide US Congress: <http://thomas.loc.gov>

Securities and Exchange Commission: www.sec.gov

Bureau of Labor Statistics: <http://stats.bls.gov/>

US Census Bureau: www.census.gov/

State:

Links to California Government Offices and Information: www.ca.gov

State Treasurers Office: www.treasurer.ca.gov

California Debt and Investment Advisory Commission: www.treasurer.ca.gov/cdiac/cdiac

Local Agency Investment Fund: www.treasurer.ca.gov/laiif/laiif.htm

Legislature: www.leginfo.ca.gov

Legislative Analyst's Office: www.lao.ca.gov

Department of Finance: www.dof.ca.gov

Controller: www.sco.ca.gov

Secretary of State: www.ss.ca.gov

Related Associations:

California Municipal Treasurers Association: www.cmta.org
 Municipal Treasurers of United States and Canada: www.mtausc.org
 League of California Cities: www.cacities.org
 California State Association of Counties: www.counties.org
 California Society of Municipal Finance Officers: www.csmfo.org
 Government Accounting Standards Board: <http://accounting.rutgers.edu/raw/gasb/index.html>
 Financial Accounting Standards Board: <http://accounting.rutgers.edu/raw/fasb/>
 California Municipal Business Tax Association: www.cmbta.org
 Government Finance Officers Association: www.gfoa.org
 National Federation of Municipal Analysts: <http://www.nfma.org/>
 National Association of Securities Dealers: <http://www.nasd.com/>
 Electronics Payment Association: www.nacha.org
 Council of State Governments: www.statesnews.org/
 National League of Cities: www.nlc.org
 Municipal Securities Rulemaking Board: www.msrb.org/
 National Association of State Auditors, Comptrollers and Treasurers: www.sso.org/nasact/nasact.htm
 Association for Financial Professionals: www.afponline.org
 Bond Markets Association: www.psa.com

Financial and News Updates

Financial

CNBC: www.cnbc.com
 CNN Financial: <http://cnfn.cnn.com/>
 Yahoo: Government Directory: <http://dir.yahoo.com/government/index.html>
 Business Week Magazine: www.businessweek.com
 The Dismal Scientist: www.dismal.com
 Bloomberg: www.bloomberg.com
 Depository Transfer Corporation: www.dtc.org
 Investor's Business Daily: www.investors.com
 Finance Net: www.financenet.gov
 Government PX: <http://govpx.com>
 Briefing.Com: www.briefing.com
 Investor Links: www.investorlinks.com
 Yahoo! Finance: <http://finance.yahoo.com>
 Raging Bull: www.ragingbull.com

General News

New York Times: www.nytimes.com
Wall Street Journal: <http://public.wsj.com/home.html>
Washington Post: www.washingtonpost.com
 Daily California Statewide Policy and Politics Updates: www.rtumble.com
 National Daily Government News Briefs: <http://governing.com/news.htm>

Other Sources of Information

Government Finance Officers Association (<http://www.gfoa.org>)
A Guide for Preparing a Debt Policy
A Guide for Selecting Financial Advisors and Underwriters: Writing RFPs and Evaluating Proposals
A Public Investor's Guide to Money Market Instruments
An Elected Official's Guide to Debt Issuance
An Elected Official's Guide to Internal Controls and Fraud Prevention
An Elected Official's Guide to Investing
An Introduction to Broker/Dealer Relations for State and Local Governments
An Introduction to Collateralizing Public Deposits for State and Local Governments
An Introduction to Electronic Commerce: Government Cash Management Programs
An Introduction to Investment Advisors for State and Local Governments
An Introduction to Treasury Agreements
An Introduction to Treasury Management Practices
Banking Relations: A Guide for Government
Catalog of Public Fees and Charges
Collecting Delinquent Revenues
Competitive vs. Negotiated: How to Choose the Method of Sale for Tax-Exempt Bonds
Debt Issuance and Management: A Guide for Smaller Governments
Evaluating Internal Controls: A Local Government Manager's Guide
Guide to Arbitrage Requirements for Government Bond Issues
Investing Public Funds
Public Investor
Purchasing Credit Enhancement: How to Decide if Bond Insurance Makes Sense
Revenue Collection Administration: A Guide for Smaller Governments
Sample Investment Policy
League of California Cities (<http://www.cacities.org>)
Library and Inquiry Services
Facts At A Glance
Fax On Demand
Cities on Line
CMTA Library of Articles (<http://www.cmta.org>)
GASB-3 As It Relates to Bank Holding Companies by Gregory Irvine
Investment Planning by Benjamin Finkelstein

Publications:

The Local Agency Investment Fund Answer Book (Sacramento, CA: Local Agency Investment Fund)
The Bond Buyer's Municipal Marketplace Directory (Skokie, IL: Thomson Financial Publishing)
The Handbook of Fixed Income Securities (Surr Ridge, IL: Irwin Professional Publishing)
Consideration of the Internal Control Structure in a Financial Statement Audit (New York, NY: American Institute of Certified Public Accountants, Inc.)
Principles of Auditing (Homewood, IL: Richard Irwin, Inc.)

Appendix F

GLOSSARY OF COMMONLY USED

FINANCIAL TERMS

(Current through 7/01/01)

Appendix F

GLOSSARY OF COMMONLY USED FINANCIAL TERMS

The following definitions are provided through the courteous cooperation of the Bank of America. These definitions relate specifically to the meanings used in the money market and are primarily from the Bank of America publication, *Money Market Investments and Investment Vocabulary*.

Investment Vocabulary

A

ACCRETION (OF DISCOUNT): a straight-line accumulation of capital gains on discount bonds in anticipation of being paid par at maturity.

ACCRUED INTEREST: the interest accumulated on a security since the issue date or the last coupon payment. The buyer of the security pays the market price plus accrued interest.

ACTIVE MARKET: a securities market where there is consistent trading.

ADVANCE REFUNDING: a treasury operation offering owners of outstanding federal obligations the opportunity to exchange security issues for long-term issues, which may bear a higher yield to maturity. Advance refunding on a municipal bond refers to the sale of a refunding issue several years prior to the issue's first call date, with the proceeds held in trust.

ADVANCING MARKET: a market in which prices are generally rising.

AGENT: a firm or individual which executes orders for others or acts on behalf of others (the principal). The agent is subject to the control of the principal and does not have title to the principal's property. The agent may charge a fee or commission for this service.

AGREEMENT: an arrangement or understanding between individual traders to honor market quotes within predetermined limits on dollar amount and size.

ALL OR NONE ORDER (AON): an offering usually of new securities issues which, if not sold in its entirety by a certain date under the specified terms, none of it will be sold.

AMERICAN STOCK EXCHANGE: a leading securities exchange located in New York City. Also called AMEX or ASE.

AMORTIZATION: a straight-line reduction of debt by means of periodic payments sufficient to meet current interest charges and to pay off the debt at maturity.

AMORTIZATION OF PREMIUM: the periodic charges made against the interest received on bonds in order to offset any premium price paid for the bonds.

ARBITRAGE: a technique used to take advantage of price differences in separate markets. This is accomplished by purchasing securities, negotiable instruments or currencies in one market for immediate sale in another market at a better price.

ARREARS: refers to amounts, such as interest or preferred stock dividends, that are overdue.

ASKED PRICE: (*See: Bid and Asked.*)

ASSESSED VALUATION: the valuation placed on property for the purpose of taxation. In some areas, the property is assessed below 100 percent of the market value. (See: Assessment Ratio.)

ASSESSMENT RATIO: the ratio of the assessed value of property to the full or actual property value. Full value is the fair market value at the bid side of the market, less an allowance for sales and other expenses. The normal standard in California is of full value.

AT THE MARKET: a trading term for the buying or selling of securities at the current market price rather than at a predetermined price.

AT THE OPENING ORDER: trading term for an order which is to be executed at the opening of the market or not at all.

AUCTION COVERAGE: ratio of the total bids offered in an auction to the number of accepted bids. This ratio is used to evaluate general interest in any given auction.

AUTHORIZED CAPITAL STOCK: the total amount of stock that a company is permitted to issue under its charter.

AVERAGING UP OR DOWN: the practice of purchasing the same security at various prices to arrive at a higher or lower average cost than the first commitment.

B

BABY BONDS: bonds whose face value is usually \$100 or less.

BALLOON MATURITY: a bond issue where bonds which come due close to the maturity date of the issue have a substantially larger value than those bonds which came due earlier in the issue. Very often, a provision is made for the redemption of part or all of these bonds by purchase or call prior to maturity.

BANKER'S ACCEPTANCE (B A): a time draft drawn on and accepted by a bank for a specified amount payable on a specified date. Generally drawn for effecting payment for merchandise sold in import-export transactions. The BA is collateralized by commodity products.

BASIS BOOK: a book of mathematical tables used to convert yield-to-maturity to the equivalent dollar prices at different rates of interest. (See: Discount Book.)

BASIS POINT: one-hundredth of one percent. One hundred basis points equals one percent.

BASIS PRICE: price expressed in yield-to-maturity or the annual rate of return on the investment.

BEAR MARKET: a period of generally pessimistic attitudes and declining market prices.
(Compare: *Bull Market*.)

BEARER FORM: a negotiable instrument format which has no registered owner. The instrument is therefore payable to the person with physical possession of the security.

BEARER SECURITY: a security which does not have the owner's name registered on the books of the issuer. This allows the proceeds (principal and/or interest) to be paid to the current holder of the security.

BELOW THE MARKET: a price below the current market price for a particular security.

BEST EFFORTS BASIS: selling as much of a security as can be sold (as opposed to underwriting an issue) or the buying or selling of a certain amount of securities at the best available price, or within a certain price range.

BID AND ASKED OR BID AND OFFER: the price at which an owner offers to sell (asked or offer) and the price at which a prospective buyer offers to buy (bid). It is often referred to as a quotation or a quote. The difference between the two is called the spread.

BIG BOARD: the New York Stock Exchange (NYSE).

BLANKET BOND: a bond secured by the general assets of a company, as opposed to an unsecured bond or one secured by specific assets. (*See: Bond.*)

BLOCK: a large number of securities dealt with as a unit.

BLOTTER: a journal used to list, in chronological order, transactions (purchases and sales) which occurred during a specific day.

BLUE CHIP STOCKS: the securities of major companies known nationally for their continued record of earnings, dividend payments and general price stability. This term denotes high esteem on the part of investors.

BLUE LIST: a trade publication which shows current municipal bond offerings by banks and municipal bond dealers throughout the country. The "Blue List" is published each business day.

BLUE SKY LAW: laws enacted by states to regulate the issuance and sale of stocks to avoid fraudulent transactions.

BOND: an interest-bearing security issued by a corporation, government, governmental agency or other body, which can be executed through a bank or trust company. A bond is a form of debt with an interest rate, maturity, and face value, and is usually secured by specific assets. Most bonds have a maturity of greater than one year, and generally pay interest semiannually. (*See: Debenture.*)

BOND ANTICIPATION NOTE (BAN): short-term notes sold by states and municipalities to obtain interim financing for projects which will eventually be financed by the sale of bonds.

BOND AVERAGES: the average price of certain bonds over a specific period. This usually reflects the trend of the bond market.

BOND BUYER: a trade publication which describes upcoming municipal bond sales, posts the results of those sales and carries news items of special interest to the municipal bond industry.

BOND BUYER INDEX: an index published weekly by the Bond Buyer to indicate the level of long-term municipal bond yields.

BOND DISCOUNT: the difference between a bond's face value and a selling price, when the selling price is lower than the face value.

BOND POWER: a "power of attorney" used in connection with the sale and transfer of registered bonds. It is necessary to obtain bond powers whenever registered bonds are pledged as collateral. (See: Power of Attorney.)

BOND RATING: the classification of a bond's investment quality. (*See: Rating.*)

BOND RESOLUTION: a legal order or contract by a governmental unit to authorize a bond issue. A bond resolution carefully details the rights of the bondholders and the obligations of the issuer.

BOOK VALUE: the amount at which a security is carried on the books of the holder or issuer. The book value is often the cost, plus or minus amortization/accretion, and may differ significantly from the market value.

BROKER: a middleman who brings buyers and sellers together and handles their orders, generally charging a commission for this service. In contrast to a principal or a dealer, the broker does not own or take a position in securities.

BROKER OR DEALER LOANS: loans made to securities brokers and dealers, mainly by money-center banks, and secured by securities. These are usually call loans made on a day-to-day basis to finance stock inventories, underwriting activities and/or brokers' credit.

BULL MARKET: a period of generally optimistic attitudes and increasing market prices.
(*Compare: Bear Market.*)

BUYER'S MARKET: a market where supply is greater than demand, giving buyers an advantage in purchase price and terms.

C

CALL: an option to buy a specific asset at a certain price within a particular period.

CALLABLE: a feature which states a bond or preferred stock may be redeemed by the issuer prior to maturity under terms designated prior to issuance.

CALL DATE: the date on which a bond may be redeemed before maturity at the option of the issuer.

CALLED BONDS: bonds redeemed before maturity.

CALL LOANS: loans which may be terminated on demand by the lender or by prepayment at the discretion of the borrower.

CALL MONEY: money loaned to brokers by banks which is subject to call at the discretion of the lender. (See: *Call Loans.*)

CALL PREMIUM: the excess paid for a bond or security over its face value.

CALL PRICE: the price paid for a security when it is called. The call price is equal to the face value of the security, plus the call premium.

CALL PROVISION: the call provision describes the details by which a bond may be redeemed by the issuer, in whole or in part, prior to maturity. A security with such a provision will usually have a higher interest rate than comparable, but noncallable securities.

CAPITAL GAIN OR LOSS: the amount that is made or lost, depending upon the difference between the sale price and the purchase price of any capital asset or security

CAPITAL MARKET: the market in which buyers and sellers, including institutions, banks, governments, corporations and individuals, trade debt and equity securities.

CARRY: the cost incurred in interest charges for financing and holding a securities inventory. (See: *Positive Carry, Negative Carry.*)

CASH SALE: a transaction calling for the delivery and payment of the securities on the same day that the transaction takes place.

CERTIFICATE OF DEPOSIT (CD): debt instrument issued by a bank that usually pays interest. Institutional CD's are issued in denominations of \$100,000 or more. Interest rates are set by competitive forces in the marketplace.

CIRCLED: a buyer may indicate an interest in a specified amount of bonds, subject to price or on a firm basis, by "circling" them. It is basically a commitment to buy the issue and may become the actual final sale binding to both parties.

CLEAR: proper delivery of securities. (See: *Fail.*)

CLEARING HOUSE FUNDS: clearing house funds are monies within the New York Clearing House Interbank Payments System which are transferred from bank to bank for settlement through the areas served by a particular clearing house. Clearing house funds are available on a same-day basis.

COLLATERAL: securities or other property which a borrower pledges for the repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COLLATERAL NOTE: a promissory note which specifically mentions the collateral pledged by the borrower for the repayment of an obligation.

COLLATERAL TRUST BONDS: bonds which are secured by a lien on specified securities pledged as collateral and held by a trustee as collateral.

COMMERCIAL PAPER: short-term, unsecured, negotiable promissory notes issued by businesses.

COMMISSION: the broker or agent's fee for purchasing or selling securities for a client.

CONDITIONAL BACKING: securities which may be guaranteed by the full faith and credit of the U.S. under certain conditions. Without such a guarantee the securities are backed only by the issuing body.

CONSOLIDATED: a debt in which all of the separate entities of an organization are equally responsible for the obligation.

CONVERTIBLE: a feature of certain bonds, debentures or preferred stocks which allows them to be exchanged for another class of securities, in accordance with the terms of the issue.

CORNER THE MARKET: buying securities on a scale large enough to give a buyer control over the market price. This is an illegal practice.

CORPORATE INDENTURE: an agreement where a bank acts as an intermediary between a corporation making a public bond offering and the buyers.

CORRESPONDENT: a bank, securities firm or other financial organization which regularly performs services for another in a market to which the other does not have direct access.

COUPON: 1) a certificate or series of certificates with consecutive maturities attached to a bond which indicate the interest due on a payment date. The coupons are detached as they come due (usually semi-annually) and are presented for payment of interest. 2) the rate of interest the issuer promises to pay the issue holder.

COUPON RATE: the annual interest rate which the issuer promises to pay to the issue holder.

COUPON YIELD: annual interest rate of a bond, divided by the bond's face value and stated as a percentage. This usually is not equal to the current yield or yield to maturity.

COVENANT: a pledge in the bond resolution or indenture of the issuing government to perform in a way that may benefit the bondholders, or to refrain from doing something that might be disadvantageous to them.

COVER: the spread between the winning bid (or offer) and the next highest bid (or next lowest offer). It is useful as a basis for evaluation of the bids.

COVERAGE RATIO: the ratio of income available to pay a specific obligation versus the total amount obligated. This is a measure of an issuer's financial stability.

COVERING: 1) buying back a security previously sold short in order to "cover" (eliminate) one's short position. (*See: Short Sale.*) 2) the rate of return on a bond holder's investment.

CREDIT ANALYSIS: a critical review and appraisal of the economic and financial condition of a government agency or corporation. The credit analysis evaluates the issuing entity's ability to meet its debt obligations, and the suitability of such obligations for underwriting or investment.

CURRENT MATURITY: amount of time left to the maturity of an obligation. (For example, a one-year bill issued nine months ago has a current maturity of three months.)

CURRENT YIELD: the percentage of coupon payments to its market price.

D

DAY LOAN: a one-day loan which facilitates the purchase of securities. The delivered securities are pledged as collateral to secure a regular call loan for a few hours of the business day in order to finance the securities.

DAY ORDER: an order placed to buy or sell securities on a specific day and which, if not executed, expires at the end of that trading session.

DEALER: an individual or firm which ordinarily acts as a principal in security transactions; typically, a dealer buys for his own account and sells to a customer from his inventory. The dealer's profit is determined by the difference between the price paid and the price received.

DEALER LOANS: (*See: Broker or Dealer Loans.*)

DEALER MARKET: the market for trading government securities.

DEBENTURE: a bond secured by the general credit of the issuer rather than being backed by a specific lien on property as in mortgage bonds. Agency bonds are frequently called debentures.

DEBT COVERAGE: this term is normally used in connection with revenue and corporate bonds. It indicates the margin of safety for payment of debt, reflecting the number of times by which earnings for a certain period of time exceed debt payable during that same period.

DEBT INSTRUMENT: written pledge to repay debt such as bills, notes and bonds.

DEBT LIMIT (OR CEILING): the maximum amount of debt that can legally be acquired under the debt-incurring power of a state or municipality.

DEBT SERVICE: interest and principal obligation on an outstanding debt. This is usually for a one-year period.

DEFAULT: failure to pay principal or interest promptly when due.

DEFEASANCE: provision found in some debt agreements whereby the contract is nullified if specified acts are performed

DELIVERY: there are two methods of delivering securities: Delivery vs. Payment and Delivery vs. Receipt (also called "Dree"). Delivery vs. Payment is delivery of securities with an exchange of money for the securities. Delivery vs. Receipt is delivery of securities with an exchange of a signed receipt for the securities.

DEMAND LOAN: a loan that has no fixed maturity date, but which is payable upon demand by the entity providing the loan.

DIRECT DEBT: debt which is incurred or assumed by an entity in its own name. Occasionally one government assumes the debt of another. When adjoining lands are annexed to a school district, for example, there may be some assumed debt.

DIRECT PLACEMENT: the direct sale of a new security to investors by the issuers, which bypasses the underwriter or middleman.

DERIVATIVE: contracts written a public entity and a counter party such as a bank or brokerage firm. The value is derived from the value of some underlying assets such as Treasury Bonds or a market index such as LIBOR. Derivatives are used to create financial instruments to meet special market needs.

DISCOUNT: a reduction in the price of a security – the difference between the selling price of a security and its face value at maturity when it is selling below face value. A security may sell below face value in return for prompt payment, quantity purchase, etc. “At a discount” refers to a security selling at less than the face value as opposed to at a premium, where it sells for more than the face value. “Have been discounted” refers to the price of a security which reflects certain market conditions resulting in a higher or lower price than if those conditions did not exist.

DISCOUNT BOOK: a book of mathematical tables used to determine the rate of return on a dollar bond for a specified discounted rate at a certain maturity. (*See: Basis Book.*)

DISCOUNT WINDOW: facility provided by the federal reserve enabling member banks to borrow reserves against collateral in the form of government securities or other acceptable instruments.

DISCRETIONARY ORDER: a securities transaction offer placed by a broker who is empowered to act on behalf of a customer with regard to price and timing of execution.

DOLLAR BOND: a bond which is quoted and traded in dollars rather than on a yield basis. This term is not to be confused with the term U.S. Dollar Bonds which is commonly used in the Eurobond market.

DON'T KNOW (DK, DKED): as in, “don't know the trade.” An expression used to denote a lack of knowledge of a particular trade or transaction. Trades are also dked due to conflicting instructions from one party or the other, such as money difference or payment instructions.

DOUBLE EXEMPTION: a term applied to municipal bonds which are exempt from both state and federal income taxes.

DOWNSIDE RISK: the maximum amount that can be lost in an investment.

DUE DILIGENCE: exercising of due professional care in the performance of duties.

DUMPING: selling large amounts of securities without regard to the effect on the marketplace.

E

EQUIPMENT TRUST CERTIFICATES: the securities generally issued by railroads or transit systems to pay for new equipment. Title to the equipment is held by a trustee until the notes are paid off. The certificates are usually secured by a first claim on the equipment.

EX-RIGHTS: to sell a security without the rights to purchase a new issue of that security at a discount. The buyer of a security selling ex-rights is also not entitled to the rights. (*See: Rights.*)

EXEMPTION: section 3(a)(2) of the Securities Act of 1933 provides for the exemption of “[a]ny security issued or guaranteed by the United States...or any public instrumentality..., or by any person controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the congress of the United States...”

EXEMPT SECURITIES: securities which are exempt from the registration requirements of the Securities and Exchange Commission.

F

FACE VALUE: the principal amount owed on a debt instrument. It is the amount on which interest is computed and represents the amount that the issuer promises to pay at maturity.

FAIL (FALL): the failure of a seller to deliver securities to the purchaser, or the buyer to deliver the proper funds as contracted.

FANNIE MAE: trade name for the Federal National Mortgage Association.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): federal agency established in 1933 that guarantees (within limits) funds on deposit in member banks and performs others functions such as making loans to or buying assets from member banks to facilitate mergers or prevent failures.

FEDERAL RESERVE REGULATION Q: legislation which set restrictions on the maximum rate banks can pay on savings and time deposits. On deposits of \$100 thousand or more with maturities over 30 days, banks can pay any rate they choose.

FIDUCIARY: an individual or group, such as a bank or trust company, which acts for the benefit of another party or to which certain property is given to hold in trust, according to the trust agreement.

FILL OR KILL: the instructions to exercise or release an option.

FIRM: a term designating a buy or sell order made for a security that will not change in price for a specified period of time. It is sometimes accompanied by a recall within a specified time, such as five or ten minutes.

FIRMING OF THE MARKET: a period of improvement when security prices tend to rise or to stabilize at current levels.

FISCAL YEAR: an accounting or tax period comprising any twelve-month period. The federal government's fiscal year starts October 1, and the fiscal year of national chartered banks on January 1.

FLAT: the price at which a bond is traded, including consideration for all unpaid interest accrued. Bonds in default of interest or principal are traded flat. Income bonds, which pay interest only to the extent earned, are usually traded flat. All other bonds are usually dealt in "and interest," which means that the buyer pays the market price plus interest accrued since the last coupon or payment date.

FLOATING DEBT: temporary or shifting short-term debt that has not been funded by a longer maturity on a permanent basis. This term is generally used in municipal deficit or anticipation situations.

FLOATING RATE NOTE: a note with an interest rate that is subject to the fluctuating money market rates. The security is designed to provide a rate of return to the investor comparable to that prevailing in the current market environment.

FLOATING SUPPLY: the total amount of securities available for immediate purchase from dealers and other investors who wish to sell.

FREDDIE MAC: trade name for the Federal Home Loan Mortgage Corporation.

FREE AND OPEN MARKET: a market which indicates the supply and demand in terms of price.

FREE (VS. RECEIPT): delivery of securities upon presentation of a signed receipt rather than against money payment. Payment is received by debiting or crediting accounts, or by check, wire transfer or other means.

FULL FAITH AND CREDIT: the unconditional guarantee of the United States government backing a debt for repayment.

G

GENERAL OBLIGATION BONDS (GO'S): bonds secured by the pledge of the municipal issuer's full faith and credit, usually including unlimited taxing power.

GENERAL PROPERTY TAXES: taxes placed on real estate and personal property.

GINNIE MAE: trade name for the Government National Mortgage Association.

GOOD DELIVERY: a security which meets all requirements of the stock exchange for delivery to a banker upon sale.

GOOD FAITH CHECK: the check which must be included with a bid on a bond sale. Ordinarily, if the bonds are awarded to a syndicate that does not pick them up as agreed, the good faith check is held as liquidated damages. The good faith checks of unsuccessful bidders are returned.

GOOD 'TIL CANCELLED ORDER (GTC): an order for securities which may be limited as to price, but not as to time. (*See: Open Order.*)

GOVERNMENT BONDS ("GOVERNMENTS"): securities issued by the federal government (U.S. Treasury obligations).

GROSS DEBT: the sum total of a debtor's obligations.

GROSS YIELD: 1) the percentage of return on a security which is determined by dividing the dollar price into the annual interest payment and calculating the return to maturity. 2) the return on an investment before deduction of costs.

GUARANTEED BOND: a bond in which repayment is guaranteed by someone else beside the debtor.

H

HEDGING: a method used by traders to minimize loss due to market price fluctuations. This is done by counterbalancing a present sale or purchase with the purchase or sale of a similar or different security, usually for delivery at some future date. The desired result is that the profit or loss on a current sale or purchase will be offset by the loss or profit on the future purchase or sale.

HOLDER: the person or entity in possession of a negotiable instrument.

HYPOTHECATION: an agreement pledging securities to guarantee a loan without transfer of the title.

I

IMMEDIATE OR CANCEL ORDER: an order at market or limited price which is to be executed in whole, or in part, as soon as it is received. That portion which is not transacted is considered cancelled.

IN-AND-OUT: the purchase and sale of the same security within a short period of time to take advantage of price fluctuations.

INCOME BONDS: bonds on which the payment of interest is due only when the issuer has attained sufficient income. There is no guaranteed return. In some cases, unpaid interest may accumulate as a claim against the issuer when the principal comes due.

INDEBTEDNESS: the obligation assumed by a borrower, guarantor, endorser, etc. to repay funds which have been or will be paid out on the borrower's behalf.

INDENTURE: a written agreement used in connection with a security issue. The document sets the maturity date, interest rate, security and other terms for both the issue holder, issuer and, when appropriate, the trustee.

INTEREST EQUALIZATION TAX: a foreign exchange control established by the U.S. government in the early 1960s. It requires a U.S. resident to pay a special tax on any purchases of overseas securities.

INTEREST RATE: the interest payable each year on borrowed funds, expressed as a percentage of the principal.

INVESTMENT: Use of capital to create more money, either through income-producing vehicles or through more risk-oriented ventures designed to result in capital gains.

INVESTMENT BANKING: also known as underwriting. It is the business of financing corporations or governmental units by marketing their new securities. An investment bank provides securities advisory, negotiation and distribution services for a fee. (*See: Underwriter, Syndicate.*)

INVESTMENT PORTFOLIO: a collection of securities held by a bank, individual, institution or government agency for investment purposes.

INVESTMENT SECURITIES: securities purchased for an investment portfolio as opposed to securities purchased for resale to customers.

INVESTOR: a person who purchases securities with the intention of holding them to make a profit.

IRREVOCABLE LETTER OF CREDIT: instrument or document issued by a bank guaranteeing the payment of a customer's drafts up to a stated amount for a specified period. It substitutes the bank's credit for the buyer's and eliminates the seller's risk. This arrangement may only be changed or terminated with the agreement of the beneficiary.

ISSUE: a group of identical securities or the marketing and selling of such securities.

ISSUE PRICE: the price at which a new issue of securities is put on the market.

ISSUER: any corporation or governmental unit which borrows money through the sale of securities.

ISSUING PRICE: price of a new issue of securities in the original offering.

J

JOINT AND SEVERAL OBLIGATION: a guarantee to the holder in which the liability for a bond or note issue may be enforced against all parties jointly or any one of them individually so that one, several or all may be held responsible for its payment.

L

LAIF: the California State Local Agency Investment Fund.

LEGAL LIST/LEGAL INVESTMENT (LEGALS): a list of securities in which certain institutions and fiduciaries, such as insurance companies and banks, may invest as determined by regulatory agencies. Legal lists are developed individually and are restricted to high-quality securities meeting certain specifications for the protection of depositors or liability holders. (*See: Prudent Man Rule.*)

LEGAL OPINION: an opinion concerning the legality of a bond issue, usually written by a recognized law firm specializing in the approval of public borrowings.

LIMITED ORDER: an order to buy or sell a certain amount of a security at a minimum price within a specific time frame.

LIMITED TAX BOND: a bond guaranteed by a special tax or taxes, or a specified portion of the real estate tax. Such a bond is limited as to rate or amount.

LIQUIDITY: the ability to convert a security into cash promptly with minimum risk of principal.

LISTED SECURITIES: securities which have been admitted for trading on a recognized securities exchange. Unlisted securities are usually sold over the counter.

LOCKED MARKET: a securities market in which the bid price is the same as the asked price.

LONDON INTERBANK OFFERED RATE (LIBOR): the interest rate on Eurodollar deposits traded between banks. The rate differs with the maturity of the deposit and the bank quoting the rate.

LONG: refers to the ability to sell securities one owns, as opposed to short, which is the sale of securities without ownership. (*See: Short Sale.*)

M

MAKING A MARKET: a dealer is said to be making a market in a given security when he stands prepared to buy or sell at the quoted bid and offer prices. The market is maintained when the dealer continues to quote bids and offerings over a period of time.

MARGIN: the difference between the collateral pledged to secure a loan and the amount of the loan itself. Federal Reserve Board requirements for margin on stocks has ranged from 40 to 100 percent of the purchase price. Margin on bonds is less formalized and usually more liberal than on stocks.

MARKETABILITY: the measure of ease with which a security can be sold in the secondary market.

MARKET ORDER: an order to buy or sell securities at the prevailing bid or ask price on the market.

MARKET VALUE: the price at which a security is currently being sold in the market.

MARKET VS. QUOTE: quote designates the current bid and ask on a security, as opposed to the price at which the last security order was sold.

MATURITY: the date that the principal or stated value of a debt instrument becomes due and payable. It is also used as the length of time between the issue date and the due date.

MONEY MARKET INSTRUMENTS: private and government obligations of one year or less.

MONEY MARKET SECURITIES: high-quality securities with market prices which are more closely tied to the current interest rate than to a company's standing or to general business conditions.

MORTGAGE BOND: a bond secured by a mortgage on property. The value of the property used as collateral usually exceeds that of the mortgage bond issued against it.

MUNICIPALS: securities, usually bonds, issued by a state or its agencies. The interest on "munis" is usually exempt from income taxes. Municipal securities may or may not be backed by the issuing agency's taxation powers.

N

NEGATIVE CARRY: the situation occurring when the cost of borrowing to finance the holding of securities is in excess of the income on those securities. (*Compare: Positive Carry.*)

NEGOTIABLE: a term used to designate a security, the title to which is transferable by delivery. Also used to refer to the ability to exchange securities for cash or near-cash instruments.

NEGOTIATED SALE: arrangement where the terms of a securities issue are made privately between the parties involved without competitive public bidding.

NET CHANGE: the difference in the closing price of a security from one day to the next.

NET DEBT: the gross debt of a state or governmental agency, not including the sinking fund accumulations and all self-supporting debt.

NET INTEREST COST (NIC): the average interest rate which an issuer must pay to borrow funds over the life of a bond.

NET YIELD: (*See: Yield.*)

NEW ISSUE: the first offering of security.

NEW ISSUE MARKET: the market for new issues of securities, as opposed to the secondary market which involves securities that have already been issued.

NEW MONEY: a refunding situation where the new issue or issues produces an additional dollar amount in excess of the amount of the maturing issue(s) being refunded.

NEW YORK STOCK EXCHANGE: the oldest and primary securities exchange in the United States. Only listed securities are traded on this exchange.

NO-LITIGATION CERTIFICATE: a statement issued by the bond attorney and the issuer's counsel that there are no legal suits pending against the bond issue, nor is there any knowledge of litigation being planned which might affect the validity of the bonds.

NONCALLABLE: a security that does not contain a call provision. (*See: Call Provision.*)

NO PAR VALUE: a security issued with no stated face or par value.

NON-LEGALS: securities that do not conform to the requirements of a state's "Legal List" of lawful investments for savings banks and for trust funds. (*See: Legal List.*)

NON-NEGOTIABLE: a security whose title or ownership is not transferable through simple delivery or endorsement. (*See: Negotiable.*)

NOTE: a written document promising to pay a specified amount to a certain entity on a particular date.



OBLIGATION: a responsibility for paying back a debt.

ODD LOT: a securities holding of less than the normal trading unit. (*See: Round Lot.*)

ODD-LOT DEALER: a broker or dealer who buys or sells securities in quantities less than the normal trading unit.

OFFER: the price of a security at which a person is willing to sell.

OFFERING: placing securities for sale to buyers. The offering usually states the price and terms.

OFFSET: the buying or selling of a security in an exact amount to counterbalance the sale or purchase of a similar type of security. Upon completion of an offset transaction, the initiator's position remains unchanged.

OPEN ORDER: an order to buy or sell a security at a designated price, usually within a certain time limit. (*See: Good 'Til Cancelled Order.*)

OPTION: the right to trade a security during a certain period of time.

OVERBOUGHT (OVERSOLD): refers to the price level of a security or market which has undergone a sharp rise (fall) due to vigorous buying (selling). This indicates that such buying (selling) may have left prices temporarily too high (low), given all other market conditions.

OVERLAY (OR OVERLEVY): an amount included in the general property tax to cover abatements and taxes that will probably not be collected.

OVER THE COUNTER: a securities market which is conducted directly by dealers through negotiation rather than through an organized securities exchange auction system. This is the primary market for U.S. government and municipal bonds.

P

PAPER GAIN OR LOSS: a term used for unrealized gains or losses on securities being held in a portfolio, based on a comparison of current market quotations and the original costs. This situation exists as long as the security is held while there is a difference between the market value and the purchase price. Actual appreciation or depreciation is not realized until the security is sold. (*Compare: Realized Gain or Loss.*)

PAR VALUE: the stated or face value of a security expressed as a specific dollar amount marked on the face of the security; the amount of money due at maturity. Par value should not be confused with market value.

PAYDOWN: the net reduction in debt that occurs when the amount of a new issue is less than the maturing issue.

PAYING AGENT: the agency, usually a commercial bank, which dispenses the principal and interest payable on a maturing issue.

PLEGGED ASSETS: securities owned by a bank which are pledged as collateral for funds deposited by the U.S., state or municipal governments. These pledged assets are generally U.S. government or municipal obligations and other types specified by law.

PORTFOLIO: the collection of securities held by an individual or institution.

POSITIVE CARRY: a condition where the yield on a security is greater than the interest cost of borrowing funds to hold it. (*Compare: Negative Carry.*)

POWER OF ATTORNEY: the legal authorization for one party to sign for and act on behalf of another party.

PREMIUM: the amount by which the price paid for a security exceeds the par value. Also, the amount that must be paid over the par value to call an issue before maturity.

PRIMARY DISTRIBUTION (OFFERING): the initial sale and distribution of an issuer's securities. (*See: Secondary Distribution.*)

PRIMARY MARKET: the demand for first issues of securities.

PRIMARY RATE: interest rate charged by banks for loans to their "prime" or most credit-worthy customers. This minimum rate takes into consideration the customers' credit standing and deposit balances.

PRINCIPAL: the face or par value of an instrument. It does not include accrued interest.

PRO FORMA STATEMENT: a financial statement which is based on assumptions about future events. The assumptions are usually made on past account relationships, future changes in these relationships and future financial developments. A pro forma would be used, for example, to determine the amount and timing of a company's future cash requirements.

PROSPECTUS: a detailed document issued by a company prior to the sale of new or additional securities issues. The prospectus gives a full description of facts and information about the company, the offering, the prospects and the risks, as required by the Securities and Exchange Commission.

PRUDENT MAN RULE: an investment standard established in 1630. It states that a trustee who is investing for another should behave in the same way as a prudent individual of discretion and intelligence who is seeking a reasonable income and preservation of capital.

PUBLIC DEBT: a term used in regards to the total outstanding debt of the federal government alone, or including the debt of states, municipalities and other political subdivisions.

PUBLIC OFFERING: the offering of securities for sale to the public.

Q

QUOTATION (QUOTE): the highest bid to buy or the lowest offer to sell a security in any market at a particular time. (*See: Bid and Asked.*)

R

RALLY: a brisk rise or recovery in the price of a security or the market.

RATE OF RETURN: 1) the yield which can be attained on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.
2) income earned on an investment, expressed as a percentage of the cost of the investment.

RATING: the designation used by investors' services to rate the quality of a security's creditworthiness. Moody's ratings range from the highest Aaa, down through Aa, A, Baa, Ba, B, etc., while Standard and Poor's ratings range from the highest, AAA, down through AA, A, BBB, BB, B, etc.

REALIZED GAIN OR LOSS: actual profit or loss experienced upon the sale of a security.
(Compare: *Paper Gain or Loss.*)

REDEMPTION: the liquidation of debt by retiring an outstanding obligation. This usually occurs at the issuer's option and prior to a stated final maturity.

REDEMPTION FUND: a fund created for the purpose of retiring a callable obligation which matures in stages, or for purchasing such an obligation as funds become available.

REDEMPTION PRICE: the price at which a bond may be redeemed prior to maturity at the issuer's option.

REFINANCING: rolling over the principal on securities that have reached maturity or replacing them with the sale of new issues. The object may be to save interest costs or to extend the maturity of the loan.
(See: *Refunding.*)

REFUNDING: replacing an outstanding obligation on or before its maturity with a new issue in order to extend the length of the borrowing, change the interest rate, consolidate issues, or to postpone payment until a more opportune time.

REGISTERED BOND: a bond whose principal and/or interest is payable only to that person or organization which is registered with the issuer. This form is not negotiable and it can be transferred only when endorsed by the registered owner.

REGULATION Q: (see *Federal Reserve Regulations Q*)

REGULAR WAY DELIVERY: unless otherwise specified, most government securities sold are to be delivered and paid for on the next business day following the transaction. Regular delivery for municipal and corporate securities is five business days.

REPURCHASE AGREEMENT (REPO): agreement between a seller and a buyer, usually of U.S. Government securities, whereby the seller agrees to repurchase the securities at an agreed upon price and, usually, at a stated time. The flexibility of maturities allows for placement of funds on a very temporary basis. Dealers also arrange reverse repurchase agreements, whereby they agree to buy the securities and the investor agrees to repurchase them at a later date.

RETIRE: withdrawing a security from circulation, usually through redemption.

REVENUE ANTICIPATION NOTES (RAN): short-term notes sold in anticipation of receiving future revenues. The notes are to be paid from the proceeds of those revenues.

REVENUE BOND: a state or local bond secured by revenues derived from the operations of specific public enterprises, such as bridges, toll roads or utilities. Such bonds are not generally backed by the taxation power of the issuer unless otherwise specified in the bond indenture.

RICH: an expression applied to security prices when the current market quotation appears to be high (or the income return low) in comparison with either the past price record of the individual security or the current prices of comparable securities.

RIGHTS: the privilege extended by an issuer to existing security holders to subscribe to new or additional securities, sometimes at a lower price than subscription. This offers current stockholders the opportunity to avoid dilution of their percentage of ownership.

ROLL OVER: reinvesting funds received from a mature security in a new issue of the same or similar security.

ROUND LOT: the normal minimum unit of trading for a particular issue or type of security. (*See Odd Lot*)

S

SAFEKEEPING: a service banks offer to customers for a fee, where securities are held in the bank's vaults for protection.

SALLIE MAE: trade name for the Student Loan Marketing Association.

SCALE: terms on a serial bond issue re-offered to the public showing the prices or yields offered on each maturity in the issue.

SEASONED SECURITIES: securities with a recognized reputation that are generally accepted by the investing public.

SECONDARY DISTRIBUTION (OFFERING): the redistribution of a large block of securities previously sold by the issuer or underwriting group in an initial or primary offering. (*See: Primary Distribution.*)

SECONDARY MARKET: 1) a market for the repurchase and resale of outstanding issues following the initial distribution. (*See: New Issue Market.*) 2) the purchase or sale of securities in a special offering or through a means other than the regular channel of trading.

SECURED DEPOSIT: bank deposits of state or local government funds, which, under the laws of certain jurisdictions, must be secured by the pledge of acceptable securities.

SECURED LOAN: a loan where the borrower promises to repay the loan by pledging assets such as securities as collateral.

SECURITIES: investment instruments such as bonds, stocks and other instruments of indebtedness or equity.

SECURITIES AND EXCHANGE COMMISSION (SEC): an agency created by Congress. Its purpose is to protect investors by administering various securities acts.

SECURITY DEALER: an individual who buys and sells securities for his own account (takes title), acting as principal until the securities are sold to someone else. (*See: Dealer.*)

SELF-LIQUIDATING BONDS: bonds paid for from the earnings of a municipally owned enterprise, usually a utility. The earnings of the enterprise must be sufficient to cover the debt service with a reasonable margin of protection for the bonds to be regarded as entirely self-liquidating.

SELF-SUPPORTING DEBT: the debt of a project which requires only the support of those taxes designated specifically for that purpose and no other.

SELLING BELOW THE MARKET: a security which is currently quoted at a price less than that quoted for similar securities.

SENIOR SECURITIES: securities having priority over other obligations for claims on the issuer's assets and earnings.

SERIAL BOND: bonds of the same issue having different maturities coming due over a number of years rather than all at once. This allows the issuer to retire the issue in small amounts over a long period of time.

SETTLEMENT DATE: date by which an executed order must be settled, either by buyer paying for the securities with cash or by a seller delivering the securities and receiving the proceeds of the sale for them.

SHORT: refers to the sale of a security without ownership. (*Compare: Long.*)

SHORT COVERING: buying back securities which were previously sold to make delivery on a short sale.

SHORT SALE: the sale of a security which is not owned by the seller on the expectation that the security will be bought or borrowed from a broker in time to be delivered to the buyer. The short seller's intent is to buy it back at a lower price than what he sold it for and make a profit.

SINKING FUND: a reserve fund set aside over a period of time for the purpose of liquidating or retiring an obligation, such as a bond issue, at maturity.

SOFT DOLLARS: Method of payment other than actual dollars (brokerage firm may be compensated through commission rather than direct payment; bank may be paid for services through compensating balance in account rather than actual dollars).

SPECIAL ASSESSMENT BONDS: bonds which are paid back from taxes on the property that is benefiting from the improvement being financed. The issuing governmental entity agrees to make the assessments and earmark the tax proceeds to repay the debt on these bonds.

SPREAD: the difference between two figures or percentages. For example, it may be the difference between the bid and asked prices of a quote, or between the amount paid when bought and the amount received when sold.

STOP OUT: the lowest price the Treasury will accept for the new issue of bills, notes or bonds in a particular auction.

SUBSCRIPTION: 1) an agreement to purchase a certain offering for a specific price. The offer is not binding unless accepted by the properly authorized representatives of the issuer. 2) the order made for the purchase of new securities.

SURPLUS MONEY: Treasury funds available for investment per Sec. 53601 "The legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate necessities of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth...".

SWAP: exchange one security for another. A swap may be executed to change the maturities of a bond portfolio or the quality or the issues in a stock or bond portfolio, or because investment objectives have shifted.

SYNDICATE (UNDERWRITING): an organization which undertakes enterprises too large for its members to handle individually. An investment banking syndicate is headed by a manager who has made a successful bid for the wholesale purchase of a securities lot. The syndicate members agree to distribute a specified amount of the securities. The manager may allot the securities to them on a pro rata or other agreed-upon basis. On final distribution of all securities, the syndicate is broken and the obligation of all members to the terms of the agreements is terminated.

T

TAKING A POSITION: the activities of a dealer who purchases a block of a certain security as inventory for the purpose of resale at a profit.

TAX AND LOAN ACCOUNT (TT&L OR T&L): Account in a private-sector depository institution, held in the name of the district Federal Reserve Bank as fiscal agent of the United States, that serves as a repository for operating cash available to the U S Treasury.

TAX ANTICIPATION NOTES (TAN): short-term notes issued by states or municipalities to finance current operations in anticipation of future tax collections to be used to repay the debt.

TAX-EXEMPT BONDS: interest paid on municipal bonds issued by state and local governments or agencies is usually exempt from federal taxes, and in some cases, the state and/or local taxes. The interest rate paid on these bonds is generally lower than rates on non-exempt securities.

TERMS: the conditions of the sale or purchase of a security.

TERM ISSUE: a bond issue which matures all at once on a specific date.

THIN MARKET: a market with very few bids to buy or offers to sell; low trading volume.

TRADER: someone who buys and sells securities for his or his firm's own account for the purpose of making short-term profit.

TRADING MARKET: the secondary market for issued bonds. (See: Secondary Market.)

TREASURY BILL (T-BILL): obligation of the U.S. government with a maturity of one year or less. T-Bills bear no interest, but are sold at discount.

TREASURY BONDS AND NOTES: obligations of the U.S. government which bear interest. Notes have maturities of one to seven years, while bonds have longer maturities.

TRUSTEE: a bank designated as the custodian of funds and the official representative for bondholders. In this capacity, the trustee is responsible for enforcing the bondholders' contract with the issuer.

U

UNDERWRITER: a dealer bank or other financial institution which arranges for the sale and distribution of a large batch of securities and assumes the responsibility for paying the net purchase price. In most instances, the underwriter deals in new issues and with the issuing entity. An investment underwriter guarantees the sale of a securities issue by purchasing the entire issue from the company and then selling it to the public. (See: *Syndicate.*)

UNLIMITED TAX BOND: a bond secured by the pledge of taxes which may be levied by the issuer, with no limitation on rate or amount.

UNLISTED SECURITIES: securities which are traded in the over-the-counter markets rather than through a recognized exchange.

V

VALIDATION PROCEEDINGS: the legal proceedings required in some states whereby the courts decide the validity of proposed bond issues.

VISIBLE SUPPLY: the total dollar volume of new municipal bond issues coming up for sale within the next 30 days.

W

WHEN ISSUED BASIS (WIB): a term applied to securities that are traded before they are actually issued, with the stipulation that the transactions are null and void if the securities are not issued. The term is usually abbreviated to w.i. following a market quotation for such securities.

WINNING BID: the successful bid for a particular issue. Generally, it is the bid which produces the lowest net interest cost (NIC) to a municipal borrower, or offers the highest premium in a single coupon bid.

Y

YIELD: the annual rate of return on an investment, expressed as a percentage of the investment. 1) income yield is obtained by dividing the current dollar income by the current market price for the security. 2) net yield or yield-to-maturity is the current income yield minus any premium above par or plus any discount from par in the purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

YIELD CURVE: graph showing the term structure of interest rates by plotting the yields of all bonds of the same quality with maturities ranging from the shortest to the longest available. The most common version of the yield curve graph plots Treasury securities, showing the range of yields from a three-month Treasury Bill to a 20- or 30-year Treasury Bond.

Appendix G - Standards
for Certification



Appendix G

STANDARDS FOR

CERTIFICATION

(Current through 7/01/01)

Appendix G

STANDARDS FOR CERTIFICATION

100 Points Minimum	Maximum Points
I. Education (Minimum points required – 50) *	
A. College or University degrees at Bachelor level in Public Administration, Accounting, Finance or related field.....	50
B. Satisfactory completion of a course of education approved by CMTA 1/2 point per unit	50
C. AA degree in Accounting, Finance, Public Administration or related field	25
D. Bachelor's degree in unrelated field.....	25
E. University or college general course work approved by CMTA – 1/2 point per unit	20
II. Experience (Minimum points required – 50)	
A. Employed as local government treasurer (see Article IV, CMTA Bylaws), prior ten years (4 points per year)	40
B. Finance Administrative position in local government or in corporate or private business, prior ten years (2 points per year)	20
C. Attendance at CMTA Conference (4 points per year)	20
D. Attendance at CMTA Divisional meetings (1/2 point per meeting)	10
E. Service on Board of one of the CMTA Divisions (2 points per year)	10
F. Service on State Board of CMTA (4 points per year)	20
G. Attendance at M.T.A. National Conference (2 points per year)	20
H. Service on National Board of M.T.A. (2 points per year)	20
I. Satisfactory completion of a course of education approved by CMTA (1/2 point per instruction hour)	20

Requirements For Recertification

Certified Treasurers who desire to keep their certification in effect must apply for recertification every four years showing evidence of completing a total of 40 points: 20 from Section I, Education, and 20 from Section II, Experience.

Must show evidence of continuing education as Municipal Treasurer and membership in CMTA.

	Maximum Points
<hr/>	
I. Education *	
A. Satisfactory completion of course work approved by CMTA (1/2 point per classroom hour)	20
II. Experience	
A. Employed as a local government treasurer (3 points per year)	12
B. Financial administrative position in local government or in corporate or private business (2 points per year)	8
C. Attendance at CMTA Conference (2 points per year)	8
D. Attendance at CMTA Divisional meetings (1/2 point per meeting)	8
E. Service on Board of one of CMTA Divisions (1 point per year)	4
F. Service on State Board of CMTA (2 points per year)	8
G. Attendance at M.T.A. Conference (1 point per year)	4
H. Service on National Board of M.T.A. (1 point per year)	4
I. Satisfactory completion of course work approved by CMTA (1/2 point per unit)	8

**Appropriate documentation must accompany affidavit and fee.*

Appendix H

THE LOCAL AGENCY

INVESTMENT FUND

Appendix H

THE LOCAL AGENCY INVESTMENT FUND

The **Local Agency Investment Fund (LAIF)**, a voluntary program, created by statute, began in 1977 as an investment alternative for California's local governments and special districts and continues today under the State Administration. The enabling legislation for the LAIF is Section 16429.1,2,3 of the California Government Code.

This program offers participating agencies the opportunity to participate in a major portfolio which daily invests hundreds of millions of dollars, using the investment expertise of the Treasurer's Office Investment staff at no additional cost to the taxpayer. This in-house management team is comprised of civil servants who have individually worked for the State Treasurer's Office for over 20 years.

The **LAIF** is part of the Pooled Money Investment Account (PMIA). The PMIA began in 1956 and has oversight provided by the Pooled Money Investment Board (PMIB) and an in-house Investment Committee. The PMIB Board members are the State Treasurer, Director of Finance, and State Controller.

The LAIF has oversight by the Local Investment Advisory Board. The **LAIF** Board consists of five members as designated by Statute. The Chairman is the State Treasurer, or his designated representative. Two members qualified by training and experience in the field of investment of finance, and two members who are Treasurer's, finance or fiscal officers or business managers employed by any County, City or local district or municipal corporation of this state, are appointed by the State Treasurer. The term of each appointment is two years, or at the pleasure of the appointing authority.

All securities are purchased under the authority of the Government Code Section 16430 and 16480.4. The State Treasurer's Office takes delivery of all securities purchased on a delivery versus payment basis to a third party custodian. All investments are purchased at market, and market valuation is conducted quarterly.

Additionally, the PMIA has Policies, Goals, and Objectives for the portfolio to make certain that our goals of Safety, Liquidity and Yield are not jeopardized and prudent management prevails. These policies are formulated by investment staff and reviewed by both the PMIB and Local Investment Advisory Board on an annual basis.

The State Treasurer's Office is audited by the Bureau of State Audits on an annual basis. The resulting opinion is included in the subsequent Pooled Money monthly report following its publication. The Bureau of State Audits also has a continuing audit process throughout the year. All investment and LAIF claims are audited on a daily basis by the State Controller's Office as well as an in-house audit process involving three separate divisions.

It has been determined that the State of California cannot declare bankruptcy under Federal regulations, thereby allowing the Government Code Section 16429.3 to stand. This Section states that "money placed with the State Treasurer for deposit in the LAIF shall not be subject to impoundment or seizure by any State official or State agency."

The LAIF has grown from 293 participants and \$468 million in 1977 to 2,840 participants and \$13.7 billion in 2000.

(For updates: <http://www.treasurer.ca.gov/lair/introduction.htm>)

Appendix I

INTERNAL CONTROLS GUIDELINES

6. Safeguarding of Assets and Records.

The record keeping function should be separated from the custody of related assets to prevent manipulation of records intended to conceal waste, loss or theft of the related asset. In addition, safeguards are necessary to prevent the loss or destruction of records and documentation. These controls would involve custodial controls, which are designed to prevent or detect unauthorized access to or use of assets and records, and accountability controls, which compare accounting records to assets to determine whether recorded assets exist and are properly recorded in accordance with generally accepted accounting principals (G.A.A.P.).

7. Management.

These are the controls exercised by management including day-to-day supervision, overall supervisory controls, management review of significant transactions, management review of accounts and comparison thereof to budgets, management review of the adequacy of internal control and the internal audit function.

8. External Influences

External influences, such as bank regulatory agencies, are established and exercised by parties outside the entity and affect an entity's operations and practices. This includes monitoring and compliance requirements imposed by legislative and regulatory agencies, and review and follow-up by parties outside the entity concerned with the entity's actions. Such influences may require and/or prompt management to establish specific internal control structure policies or procedures.

Internal Control as it Relates to the Treasury Function

With the preceding objectives, limitations and elements of an internal control system in mind, the following matrix has been prepared to assist management, treasurers and accounting officers in establishing an effective system of internal control over the treasury function.

The matrix has been developed for small, medium and large treasury departments. In general, these categories can be defined as follows:

- **Small:** *The Finance Director and the Treasurer are the same individual.*
- **Medium:** *The Finance Director and the Treasurer are separate functions. The Treasurer position may be part-time or may have limited staff resources.*
- **Large:** *The Finance Director and the Treasurer are separate functions. Treasurer staffing is sufficient to meet optimal internal control considerations.*

CMTA Matrix of Recommended Segregation of Responsibilities of the Treasurer Functions

Function	Responsibility		
	LARGE ENTITY	MEDIUM ENTITY	SMALL ENTITY
1. Authorization of investment transactions: <ul style="list-style-type: none"> • Formal Investment Policy should be: <ul style="list-style-type: none"> – prepared by – submitted by 	Treasurer* Governing Board	Treasurer* Governing Board	Treasurer* Governing Board
2. Execution of investment transactions:	Treasurer or Investment Officer	Treasurer or Assistant Treasurer	Treasurer or Assistant Treasurer**
3. Timely recording of investment transactions: <ul style="list-style-type: none"> • Recording of investment transactions in the Treasurer's records: • Recording of investment transactions in the accounting records: 	Treasurer's Clerk #1/Accountant	Treasurer's Clerk #1	Treasurer's Clerk #1
4. Verification of investment, i.e., match broker confirmation to Treasurer's records: <i>(Assistant Treasurer and Deputy Treasurer titles are used interchangeably.)</i>	Accountant/Clerk #1	Accountant/Clerk #1	Accountant/Clerk #1
5. Safeguarding of assets and records: <ul style="list-style-type: none"> • Reconciliation of Treasurer's records to the accounting records: • Reconciliation of Treasurer's records to bank statements and safekeeping records: • Review of (a) financial institution's condition, (b) safety, liquidity and potential yields of investment instruments, and (c) reputation and financial condition of investment brokers • Treasurer's Vault 	Assistant Treasurer***	Treasurer	Treasurer
<ul style="list-style-type: none"> • Periodic reviews of collateral should be performed: 	Accountant	Accountant	Accountant
6. Management's periodic review of the investment portfolio as prepared by the Treasurer – key areas which should be reviewed are investment types, purchase price, market values, maturity dates and investment yields as well as conformance to stated investment policy	Assistant Treasurer/Clerk #2 Investment Officer/Assistant Treasurer Treasurer's approval	Treasurer/Clerk #2 Assistant Treasurer with Treasurer's Approval	Treasurer/Clerk #2 Treasurer
<ul style="list-style-type: none"> • Investment Reporting – Quarterly: 	Should not be used to safekeep investment securities unless there are adequate controls limiting unauthorized access. Investment securities should be held in safekeeping in the Trust Department of the local agency's bank. Internal Audit Department	Should not be used to safekeep investment securities unless there are adequate controls limiting unauthorized access. Investment securities should be held in safekeeping in the Trust Department of the local agency's bank. Internal Audit Department	Should not be used to safekeep investment securities unless there are adequate controls limiting unauthorized access. Investment securities should be held in safekeeping in the Trust Department of the local agency's bank. Internal Audit Department
	Independently assigned reviewing authority	Independently assigned reviewing authority	Independently assigned reviewing authority
	Treasurer to Governing Body	Treasurer to Governing Body	Treasurer to Governing Body

* With input from Finance Director via consultation.
 ** In many small entities, this individual may be an Assistant Finance Director, Accounting Manager or Accounting Supervisor.
 *** Personnel assigned to this task should have capabilities commensurate with their responsibilities. This position requires a knowledge of investments and familiarity with the Formal Investment Policy.

