



# Teachers' Retirement Law

## Volume II

January 1, 2021



Mammoth Lakes, CA

# **TEACHERS' RETIREMENT LAW**

**As of January 1, 2021**

**Volume 2**

**CALSTRS**  
HOW WILL YOU SPEND YOUR FUTURE?



# TEACHERS' RETIREMENT LAW

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## FOREWORD

The Legislature, at the special session of June 1944, revised the State Teachers' Retirement Act. Benefits and contributions were increased and the System was placed on a better financial basis. Amendments to the law were made in 1945, 1947, 1951, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1961, 1963, 1965 and annually starting in 1967. The 1959 session renumbered the sections of the code. The 1969 and 1994 sessions recodified the law. In 1995, the Legislature established the Cash Balance Benefit Program, which is contained in Part 14. In 1999, the Legislature added Part 13.5, which provides for a Health Benefits Program.

Volume 1 of the Teachers' Retirement Law contains all of the provisions set forth in Parts 13, 13.5 and 14 of Division 1 of the California Education Code along with the rules and regulations of the Teachers' Retirement Board, which are in the California Code of Regulations. Volume 2, which is available online only at [www.calstrs.com/information-about-calstrs](http://www.calstrs.com/information-about-calstrs), contains pertinent code sections from California statute. The Teachers' Retirement Law is issued for the convenience of all persons interested in the California State Teachers' Retirement System who have a need to reference or work with the up-to-date provisions of the law. It is intended particularly to assist school administrators and public officials who have duties to perform in connection with the System. In the event that this publication conflicts with actual statute, the statute takes precedence.

TEACHERS' RETIREMENT BOARD

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**EXTRACTS FROM THE CODE OF CIVIL PROCEDURE****§ 473. Amendment of pleadings**

(a) (1) The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

(2) When it appears to the satisfaction of the court that the amendment renders it necessary, the court may postpone the trial, and may, when the postponement will by the amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of any costs as may be just.

(b) The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. However, in the case of a judgment, dismissal, order, or other proceeding determining the ownership or right to possession of real or personal property, without extending the six-month period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, dismissal, order, or other proceeding has been taken, and upon his or her attorney of record, if any, notifying that party and his or her attorney of record, if any, that the order, judgment, dismissal, or other proceeding was taken against him or her and that any rights the party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of the notice, then the application shall be made within 90 days after service of the notice upon the defaulting party or his or her attorney of record, if any, whichever service shall be later. No affidavit or declaration of merits shall be required of the moving party. Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. However, this section shall not lengthen the time within which an action shall be brought to trial pursuant to Section 583.310.

(c)(1) Whenever the court grants relief from a default, default judgment, or dismissal based on any of the provisions of this section, the court may do any of the following:

(A) Impose a penalty of no greater than one thousand dollars (\$1,000) upon an offending attorney or party.

(B) Direct that an offending attorney pay an amount no greater than one thousand dollars (\$1,000) to the State Bar Client Security Fund.

(C) Grant other relief as is appropriate.

(2) However, where the court grants relief from a default or default judgment pursuant to this section based upon the affidavit of the defaulting party's attorney attesting to the attorney's mistake, inadvertence, surprise, or neglect, the relief shall not be made conditional upon the attorney's payment of compensatory legal fees or costs or monetary penalties imposed by the court or upon compliance with other sanctions ordered by the court.

(d) The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.

*Enacted by 1872. Amended by by Code Amdts 1873–74 ch 383 § 60; Code Amdts 1880 ch 14 § 3; Stats 1917 ch 159 § 1; Stats 1933 ch 744 § 34; Stats 1961 ch 722 § 1; Stats 1981 ch 122 § 2; Stats 1988 ch 1131 § 1; Stats 1991 ch 1003 § 1 (SB 882); Stats 1992 ch 427 § 16 (AB 3355), ch 876 § 4 (AB 3296) (ch 876 prevails); Stats 1996 ch 60 § 1 (SB 52).*

**Historical Derivation:** Former CCP § 900a, as added by Stats 1919 ch 353 § 1.

### Amendments

**1873–74 Amendment:** Prior to 1873–74 the section read: “The court may, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceedings, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may, upon like terms, allow an answer to be made after the time limited by this code; and may, upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives, from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any cause satisfactory to the court, or the judge at chambers, the party aggrieved has been unable to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the court, or the judge at chambers, in vacation, may grant the relief upon application made within a reasonable time, not exceeding five months after the adjournment of the term. When, from any cause, the summons and a copy of the complaint in an action have not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant, or his legal representative, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.”1873–74 Amendment amended the section to read: “The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may, upon like terms, allow an answer to be made after the time limited by this Code, and also relieve a party, or his legal representative, from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and when, for any reason satisfactory to the court or the judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the court, or the judge thereof, in vacation, may grant the relief upon application made within a reasonable time, not exceeding six months after the adjournment of the term. When, from any cause, the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant, or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond is sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.”

**1880 Amendment:** Amended the section to read: “The court may in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code; and may, also upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken

against him though his mistake, inadvertence, surprise, or excusable neglect; provided, that application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action. When, in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property, and the officer taking the property, or the sureties on any bond or undertaking is sued for taking the same, the officer or sureties may in their answer set up the true value of the property, and that the person in whose behalf said affidavit was made was entitled to the possession of the same when said affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of said property at the time the affidavit was made.”

**1917 Amendment:** Added a second proviso at the end of the second sentence to read: “and provided, further, that said application must be accompanied by a copy of the answer, or other pleading proposed to be filed therein, otherwise said application shall not be granted.”

**1933 Amendment:** Amended the section to read: “The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.”When it appears to the satisfaction of the court that such amendment renders it necessary, the court may postpone the trial, and may, when such postponement will by the amendment be rendered necessary, require, as a condition to the amendment, the payment to the adverse party of such costs as may be just.”The court may, upon such terms as may be just, relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. Application for such relief must be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and must be made within a reasonable time, in no case exceeding six months, after such judgment, order or proceeding was taken.”The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.”

**1961 Amendment:** Added “; provided, however, that in the case of a judgment, order or other proceeding determining the ownership or right to possession of real or personal property, without extending said six months period, when a notice in writing is personally served within the State of California both upon the party against whom the judgment, order or other proceeding has been taken, and upon his attorney of record, if any, notifying said party and his attorney of record, if any, that such order, judgment or other proceeding was taken against him and that any rights said party has to apply for relief under the provisions of Section 473 of the Code of Civil Procedure shall expire 90 days after service of said notice, then such application must be made within 90 days after service of such notice upon the defaulting party or his attorney of record, if any, whichever service shall be later.” in the third paragraph.

**1981 Amendment:** Amended the third paragraph by adding (1) “or her” wherever it appears; and (2) the last sentence.

**1988 Amendment:** In addition to making technical changes, added (1) the fourth and fifth sentences of the third paragraph; and (2) the fourth paragraph.

**1991 Amendment:** In addition to making technical changes, (1) substituted “shall” for “must” wherever it appears in the second sentence of the third paragraph; (2) substituted “made no more than six months after entry of judgment, is” for “timely,” in the fourth sentence of the third paragraph; (3) added “is” after “form, and” in the fourth sentence of the third paragraph; (4) added “(1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2)” in the fourth sentence of the third paragraph; (5) added “a default or” after “relief from” in the fourth paragraph; and (6) added the fifth paragraph.

**1992 Amendment:** In addition to making technical changes, (1) added “dismissal” wherever it appears; (2) added the last sentence at the end of the third paragraph; and (3) deleted “defaulting” before “party, (2)” in the fourth paragraph.

**1996 Amendment:** (1) Added subdivisions designations (a)(1), (a)(2), (b), (c)(1), (c)(2), and (d); (2) substituted “do any of the following: (A)” for “: (1)”; (3) substituted “. (B)” for “, (2)”; and (4) substituted “. (C)” for “, or (3)”.



## EXTRACTS FROM THE EDUCATION CODE

### § 80. “Any school district” and “all school districts”

“Any school district” and “all school districts” mean school districts of every kind or class, except a community college district.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

#### Notes of Decisions

A school district is an independent and separate governmental agency, distinct from the city, town, or county, in which it is situated. *Gould v. Richmond School Dist.* (1943, Cal App) 58 Cal App 2d 497, 136 P2d 864, 1943 Cal App LEXIS 68.

A school district is a political division of a county, but is not a municipal corporation. *Butler v. Compton Junior College Dist.* (1947, Cal App) 77 Cal App 2d 719, 176 P2d 417, 1947 Cal App LEXIS 1328.

Public school district is public entity with limited powers. *Uhlmann v. Alhambra City High School Dist.* (1963, Cal App 2d Dist) 221 Cal App 2d 228, 34 Cal Rptr 341, 1963 Cal App LEXIS 2135.

School district is agency of limited authority and may exercise only statutory powers. *Yreka Union High School Dist. v. Siskiyou Union High School Dist.* (1964, Cal App 3d Dist) 227 Cal App 2d 666, 39 Cal Rptr 112, 1964 Cal App LEXIS 1226.

School districts are state agencies for local operation of state school system. *Yreka Union High School Dist. v. Siskiyou Union High School Dist.* (1964, Cal App 3d Dist) 227 Cal App 2d 666, 39 Cal Rptr 112, 1964 Cal App LEXIS 1226.

A community college should be considered a school district within the meaning of statutes regulating the processes of making budgets and levying taxes for the benefit of school districts. *San Francisco Community College Dist. v. City and County of San Francisco* (1976, Cal App 1st Dist) 58 Cal App 3d 387, 129 Cal Rptr 918, 1976 Cal App LEXIS 1524.

### § 7000. Enrollment of retired employees and spouses in plan

(a) Notwithstanding Article 1 (commencing with Section 53200) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code, a county superintendent of schools, a school district, or a community college district, which provides health and welfare benefits or dental care benefits for the benefit of its certificated employees, shall permit enrollment in, respectively, the health and welfare benefit plan or dental care benefit plan currently provided for its current certificated employees by any former certificated employee thereof who retired therefrom under any public retirement system and his or her spouse and by any surviving spouse of a former certificated employee thereof who either retired therefrom under any public retirement system or was, at the time of death, both employed thereby in a position requiring contributions to the State Teachers' Retirement System and a member of the State Teachers' Retirement System.

This subdivision does not apply to either the new spouse upon the remarriage of a surviving spouse of a former certificated employee or the children of a certificated or former certificated employee.

(b) A county superintendent of schools or district may develop an experience claims rating for the persons specified in subdivision (a) and may, if appropriate, require those persons to pay different rates as a class. Any plan pursuant to this article shall provide separate single and two-party rates for at least the following classes: for those under 65, for those over 65 who have Medicare A and B, and for those over 65 who do not have Medicare A.

(c) The county superintendent of schools, school district, or community college district shall annually select a one-month period during which persons described by subdivision (a) may elect to enroll in, respectively, the health and welfare benefit plan or the dental care benefit plan or change their enrollment from one to another health and welfare plan or dental care benefit plan, respectively.

(d) A certificated school employee who retired on or before August 24, 1986, the effective date of Chapter 561 of the Statutes of 1986, or the surviving spouse of a certificated employee retired as of

August 25, 1986, shall be permitted to enroll in any district health and dental care plan during the 1986, 1987, and 1988 enrollment periods.

(e) A certificated school employee who retires after August 24, 1986, the effective date of Chapter 561 of the Statutes of 1986, or the surviving spouse of a certificated employee retired as of August 25, 1986, shall be allowed to enroll in the coverage provided by this article within 30 days of losing active employee coverage, but if the retiree does not enroll in a district health or dental care plan during this initial enrollment period, the retiree may be denied further opportunity to do so.

The enrollment period for retirees under this subdivision shall correspond to that provided to active employees, unless a district chooses to offer an additional enrollment period.

(f) This article shall permit enrollment into any district health and dental care plan only once. A retiree or spouse or surviving spouse of a certificated employee who has been previously covered under this article and who has voluntarily terminated that coverage, thereafter may be excluded from obtaining coverage under this article. This subdivision does not apply to a person who is changing plans within a district during an open enrollment period.

(g) Retirees or surviving spouses of certificated employees may be enrolled in a medical care plan pursuant to this section during periods other than those specified therein if they lose their coverage. With documentation of prior coverage, they may be allowed to enroll in a medical care plan, if they do so within 31 days of losing their other coverage.

(h) Any person described by subdivision (a) who elects, pursuant to this article, to be covered by, respectively, a health and welfare benefit plan or dental care benefit plan, may be required to pay all premiums, dues, and other charges, including any increases in the rate of premiums or dues for these persons, and all costs incurred by the district or county superintendent of schools in administering this article.

*Added by Stats 1985 ch 991 § 1. Amended by Stats 1986 ch 235 § 1, ch 561 § 2, effective August 25, 1986, ch 1077 § 1; Stats 1990 ch 1372 § 42 (SB 1854).*

**Former Sections:** Former § 7000, relating to legislative findings, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1981 ch 470 § 11.

**Historical Derivation:** Former Ed C §§ 7001, 7002, as added by Stats 1985 ch 991 § 1.

### Amendments

**1986 Amendment (ch 561):** (1) Added the second paragraph of subd (a); and (2) added the last sentence of subd (b).

**1986 Amendment (ch 1077):** Amended the first paragraph of subd (a) by adding (1) “either” before “retired therefrom”; and (2) “or was, at the time of death, both employed thereby in a position requiring contributions to the State Teachers’ Retirement System and a member of the State Teachers’ Retirement System” at the end.

**1990 Amendment:** Added subds (c)—(h).

### § 7000.3. Prerequisites for enrollment

Enrollment in Medicare A shall not be a prerequisite for enrollment in any district health plan pursuant to this article. However, the purchase of Medicare B may be required for enrollment if the participant qualifies to purchase it. In addition, a district health plan may be restructured to pay benefits as if each participant is enrolled in Medicare B as soon as the participant qualifies to purchase Medicare B.

A health plan may condition eligibility for enrollment on the effective assignment of any Medicare benefits for which the enrollee would be eligible.

*Added by Stats 1986 ch 561 § 3, effective August 25, 1986.*

**§ 7000.5. Exclusions**

(a) Any health benefits plan provided by any county superintendent of schools, school district, or community college district pursuant to this article may contain a preexisting condition exclusion, as follows:

(1) The coverage of any person who has a break in coverage, may, for the first three months after reenrollment, exclude any care received for a condition which is caused by, or results from, a condition existing at the time of reenrollment or for which the person received medical advice or treatment during the six-month period immediately preceding reenrollment.

(2) Coverage of any person who is confined to a hospital or his or her home for medical treatment at the time of enrollment in a health plan pursuant to this section shall exclude any benefits until the period commencing on the 15th day following the termination of that confinement.

(b) This section does not apply to any entity which provides a health benefits plan which contains a preexisting condition exclusion.

(c) This section does not apply to any changes in enrollment by a person currently enrolled in a school district's health benefits plan or due to any change in enrollment or coverage caused by the retirement of a person.

*Added by Stats 1986 ch 561 § 4, effective August 25, 1986.*

**§ 7002.5. Duty to contact retired teachers**

(a) This article does not create a vested retirement right in health and dental care benefits.

(b) The individual districts, the county office, a health plan, an entity providing or arranging a health plan, and the State Teachers' Retirement System do not have any legal duty to contact retired teachers or surviving spouses of certificated employees with regard to this article.

*Added by Stats 1986 ch 561 § 6, effective August 25, 1986. Amended by Stats 1988 ch 985 § 2; Stats 2006 ch 538 § 86 (SB 1852), effective January 1, 2007.*

**Amendments**

**1988 Amendment:** Added "or surviving spouses of certificated employees" in subd (b).

**2006 Amendment:** Substituted "providing" for "proving" after "health plan, an entity" in subd (b).

**§ 7003. Impairment of existing regulations or contracts; Provision of other benefits**

(a) Nothing in this article shall be construed as requiring or permitting the impairment of any contract, board rule, or regulation affecting retired certificated personnel, in existence on the effective date of this article.

(b) Nothing in this article is intended to reduce or conflict with any benefit provided in the federal Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99-272).

(c) Nothing in this article mandates the provision of life insurance or vision care.

*Added by Stats 1985 ch 991 § 1. Amended by Stats 1986 ch 561 § 7, effective August 25, 1986.*

**Former Sections:** Former § 7003, relating to suspension and dismissal, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1981 ch 470 § 11.

**Amendments**

**1986 Amendment:** (1) Designated the former section to be subd (a); and (2) added subds (b) and (c).

**§ 7004. Definitions**

As used in this article:

(a) “Certificated employee” means a member, as defined by Section 22146, of the State Teachers’ Retirement System.

(b) “School district” means that district from which the member of the State Teachers’ Retirement System last made contributions to the system before retirement.

(c) “Spouse” means a spouse as defined by Section 22171.

*Added by Stats 1986 ch 561 § 8, effective August 25, 1986. Amended by by Stats 2004 ch 896 § 5 (AB 2525), effective September 29, 2004.*

**Former Sections:** Former § 7004, relating to appearance before legislative committees, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1981 ch 470 § 11.

**Amendments**

**2004 Amendment:** Substituted (1) “Section 22146” for “Section 22133” in subd (a); and (2) “Section 22171” for “Section 22152” in subd (c).

**§ 7005. Application of article**

This article does not apply to persons receiving benefits pursuant to the Public Employees’ Medical and Hospital Care Act (Chapter 1 (commencing with Section 22750) of Part 5 of Division 5 of Title 2 of the Government Code) and to the employers on which their benefits are based.

For purposes of this section, “employer” means a county superintendent of schools, a school district, or a community college district irrespective of whether employees may be represented by different bargaining groups. Notwithstanding any other provision of this part, this article does not apply to employers for those groups of employees for whom coverage under the Public Employees’ Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code) is provided by contract.

*Added by Stats 1986 ch 1280 § 1. Amended by by Stats 2004 ch 69 § 1 (SB 626), effective June 24, 2004.*

**Former Sections:** Former § 7005, relating to appearance before governing boards, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1981 ch 470 § 11.

**Amendments**

**2004 Amendment:** Substituted “Section 22750” for “Section 22751” throughout the section.

**§ 7007. Health benefits plan for qualified organization**

(a) Any qualified organization, as defined in subdivision (b), in cooperation with the Public Employees’ Retirement System, may develop a health benefits plan which would be available to persons who are members of those organizations, with equal premiums for both active and retired teachers. The plan would be available, on an optional basis, to each school district, county board of education, and a county superintendent of schools which becomes a contracting agency with the Public Employees’ Retirement System pursuant to Section 22857 of the Government Code.

(b) “Qualified organization” means an exclusive representative of the certificated or classified employees, as defined by Section 3540.1 of the Government Code, or any organization with a membership of at least 1,000 members who are retirees of the State Teachers’ Retirement System, or any organization

with a membership of at least 1,000 members who are faculty members in the California Community Colleges.

(c) This section shall not apply to any contracting agency unless and until the agency elects to be subject to this section pursuant to Section 22857 of the Government Code.

*Added by Stats 1987 ch 728 § 11. Amended by Stats 2004 ch 896 § 6 (AB 2525), effective September 29, 2004.*

**Former Sections:** Former § 7007, relating to unprofessional conduct of certificated employees, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1981 ch 470 § 11.

### Amendments

**2004 Amendment:** Substituted "Section 22857" for "Section 22857.1" in subds (a) and (c).

### § 7008. Continuation of coverage following disabling injury resulting from violent act against employee performing duties of employment; School members; Local police officers; Applicability

(a) Notwithstanding any other provision of law, a member of the Defined Benefit Program of the State Teachers' Retirement Plan who is disabled as a result of an injury that is a direct consequence of a violent act perpetrated on his or her person while performing duties in the scope of employment, and the employment is creditable under the provisions of the Teachers' Retirement Law (Part 13 (commencing with Section 22000)), may, upon qualifying for a disability under Section 24001 and while receiving an allowance under Section 24002, continue in the district's health care plan and dental care plan by paying all of the employer's and employee's premiums and all of the related administrative costs of the employer.

(b) Notwithstanding any other provision of law, a school member as defined in Section 20370 of the Government Code, or a local police officer as defined in Section 20430 of the Government Code, who is disabled as a result of an injury that is a direct consequence of a violent act perpetrated on his or her person while performing duties in the scope of employment, and the employment is creditable under the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code), may, upon qualifying for a disability and while receiving an allowance under Chapter 12 (commencing with Section 21060) of Part 3 of Division 5 of Title 2 of the Government Code, continue in the employer's health care plan and dental care plan by paying all of the employer's and employee's premiums and all of the related administrative costs of the employer.

(c) Subdivisions (a) and (b) do not apply to any member who is employed by a school district that contracts with the Public Employees' Retirement System for health care coverage under the Public Employees' Medical and Health Care Act, (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code).

*Added by Stats 1988 ch 1587 § 1. Amended by Stats 1989 ch 177 § 1; Stats 2004 ch 69 § 2 (SB 626), effective June 24, 2004.*

### Amendments

**1989 Amendment:** Added subd (c).

**2004 Amendment:** (1) Amended subd (a) by (a) substituting "a member of the Defined Benefit Program of the State Teachers' Retirement Plan" for "a member of the State Teachers' Retirement System"; (b) deleting "State" before "Teachers' Retirement Law"; (c) substituting "Section 24001 and while receiving an allowance under Section 24002" for "Section 23902 and while receiving an allowance under Section 23903"; and (d) deleting the comma after "dental care plan"; (2) amended subd (b) by (a) substituting "Section 20370 of the Government Code, or a local police officer as defined in Section 20430 of the Government Code" for "Section 20013 of the Government code, or a local policeman as defined in Section 20020.8 of the Government Code"; (b) substituting "Chapter

12 (commencing with Section 21060” for “Chapter 8 (commencing with Section 20950”); and (c) deleting the comma after “dental care plan”; and (3) amended subd (c) by substituting (a) “member who is employed by a school district that contracts” for “member who is employed by a school district which contracts”; and (b) “Section 22750” for “Section 22751”.

**§ 14502.1. Review and report on financial and compliance audits; Contents of audit reports; Audit guide**

(a) The Controller, in consultation with the Department of Finance and the State Department of Education, shall develop a plan to review and report on financial and compliance audits. The plan shall commence with the 2003-04 fiscal year for audits of school districts, other local educational agencies, and the offices of county superintendents of schools. The Controller, in consultation with the Department of Finance, the State Department of Education, and representatives of the California School Boards Association, the California Association of School Business Officials, the California County Superintendents Educational Service Association, the California Teachers Association, the California Society of Certified Public Accountants, shall recommend the statements and other information to be included in the audit reports filed with the state, and shall propose the content of an audit guide to carry out the purposes of this chapter. A supplement to the audit guide may be suggested in the audit year, following the above process, to address issues resulting from new legislation in that year that changes the conditions of apportionment. The proposed content of the audit guide and any supplement to the audit guide shall be submitted by the Controller to the Education Audits Appeal Panel for review and possible amendment.

(b) The audit guide and any supplement shall be adopted by the Education Audits Appeal Panel pursuant to the rulemaking procedures of the Administrative Procedure Act as set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. It is the intent of the Legislature that, for the 2003-04 fiscal year, the audit guide be adopted by July 1 of the fiscal year to be audited. A supplemental audit guide may be adopted to address legislative changes to the conditions of apportionment. It is the intent of the Legislature that supplements be adopted before March 1 of the audit year. Commencing with the 2004-05 fiscal year, and each fiscal year thereafter, the audit guide shall be adopted by July 1 of the fiscal year to be audited. A supplemental audit guide may be adopted to address legislative changes to the conditions of apportionment. The supplements shall be adopted before March 1 of the audit year. To meet these goals and to ensure the accuracy of the audit guide, the process for adopting emergency regulations set forth in Section 11346.1 of the Government Code may be followed to adopt the audit guide and supplemental audit guide. It is the intent of the Legislature that once the audit guide has been adopted for a fiscal year, as well as any supplement for that year, thereafter only suggested changes to the audit guide and any additional supplements need be adopted pursuant to the rulemaking procedures of the Administrative Procedure Act. The audit guide and any supplement shall be issued in booklet form and may be made available by any means deemed appropriate. The Controller and consultants in the development of the suggested audit guide and any supplement shall work cooperatively on a timeline that will allow the Education Audits Appeal Panel to meet the July 1 and March 1 issuance dates. Consistent with current practices for development of the audit guide before the 2003-04 fiscal year, the Controller shall provide for the adoption of procedures and timetables for the development of the suggested audit guide, any supplement, and the format for additions, deletions, and revisions.

(c) For the audit of school districts or county offices of education electing to take formal action pursuant to Sections 22714 and 44929, the audit guide content proposed by the Controller shall include, but not be limited to, the following:

- (1) The number and type of positions vacated.
- (2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714 and 44929.
- (3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement cost, including interest, if any, and postretirement health care benefits costs, incurred by the employer.

(d) The Controller shall annually prepare a cost analysis, based on the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by school districts and county offices of education pursuant to Sections 22714 and 44929, and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(e) All costs incurred by the Controller to implement subdivision (c) shall be absorbed by the Controller.

(f) On or before January 1, 2015, the Controller, in consultation with the State Allocation Board, the Department of Finance, and the State Department of Education, shall submit content to the Education Audits Appeal Panel to be included in the audit guide, Standards and Procedures for Audits of California K-12 Local Educational Agencies beginning in the 2015–16 fiscal year, that is related to the financial and performance audits required for school facility projects, as described in Section 15286.

*Added by Stats 2002 ch 1128 § 4 (AB 2834), operative July 1, 2003. Amended by Stats 2003 ch 313 § 2 (AB 1207), operative July 1, 2003; Stats 2013 ch 167 § 1 (SB 584), effective January 1, 2014.*

### Amendments

**2003 Amendment:** Substituted “Sections 22714, 22714.5, 44929, and 44929.1” for “Section 22714 and 44929” in subds (c), (c)(2), and (d).

**2013 Amendment:** (1) Substituted “educational” for “education” in the second sentence of subd (a); (2) amended subd (b) by (a) adding “audit” in the eighth sentence; and (b) substituting “Education Audits Appeal Panel” for “education audits appeal panel” in the last sentence; (3) substituted “Sections 22714 and 44929” for “Sections 22714, 22714.5, 44929, and 44929.1” in the first paragraph of subd (c) and in subds (c)(2) and (d); and (4) substituted subd (f) for former subd (f) which read: “(f) This section shall become operative July 1, 2003 and shall apply to the preparation of the audit guide for school district audits commencing with the 2003-04 fiscal year.”

### § 37200. School year

The school year begins on the first day of July and ends on the last day of June.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

### Notes of Decisions

There are no constitutional or statutory provisions making the operation of summer school classes or programs a mandatory requirement for a California school district. Under the Education Code the establishment and maintenance of summer school classes and programs is only permissive, rather than mandatory, and provisions of that code make summer school a discretionary matter with the governing board of education for each school district. The mere fact that there has been a traditional offering of summer school, without fee, by a public school district, does not transform the permissive nature of summer school under the statutes permitting the offering of summer school by a school district to a mandatory requirement that summer school be offered by that school district. *California Teachers Assn. v. Board of Education* (1980, Cal App 2d Dist) 109 Cal App 3d 738, 167 Cal Rptr 429, 1980 Cal App LEXIS 2197.

The trial court properly denied the petition of a teacher’s association and students in a school district for a writ of mandate and their motion for a preliminary injunction to compel a school board to operate free summer school classes and programs in lieu of the operation of such classes and programs by a private organization on public school premises, in exchange for tuitional fees, pursuant to the board’s agreement granting the use of the school district facilities for that purpose. The writ and preliminary injunction were sought in connection with the association’s and students’ complaint alleging four causes of action for the compelling of the board’s operation of the summer school classes and programs. In support of the first cause of action for a writ of mandamus and the second cause of action for injunctive relief, the complaint alleged students in the board’s district were being deprived of their constitutional and statutory right to a district-operated free summer school. In support of the third cause of

action for a writ of mandate, the complaint alleged the board's grant of the use of its facilities for a privately operated summer school violated its collective bargaining agreement with the association. In support of the fourth cause of action for declaration relief the complaint alleged as a basis therefor essentially the same facts as alleged in support of the other causes. Implicit in the trial court's denial of a writ of mandate and injunctive relief was its conclusion that the operation of the summer school by the private organization was a completely separate and distinct operation from that of the school district. In the absence of findings, on appeal every intendment is in favor of the judgment, as it is presumed that every act or inference essential to support of the judgment and warranted by the evidence was found by the trial court. *California Teachers Assn. v. Board of Education* (1980, Cal App 2d Dist) 109 Cal App 3d 738, 167 Cal Rptr 429, 1980 Cal App LEXIS 2197.

In serving a teacher with written notice of charges of incompetency on the 87th of 176 student class days scheduled for that school year, a school district whose school year was not divided into terms or semesters fully complied with the requirement of Ed. Code, § 44938 (formerly § 13407) that the teacher be given written notice "during the preceding term of half school year." Under § 44938, which is part of a scheme that contemplates that a school district will have the opportunity to observe a teacher instructing classes prior to a determination to send her a notice of incompetency, the educational year is the appropriate period of time in which to calculate the "preceding half school year", for the notice preliminary to a dismissal proceeding, rather than the defined "school year" in Ed. Code, § 37200, beginning in July and ending in June, which is intended to deal with fiscal considerations. *McKee v. Commission on Professional Competence* (1981, Cal App 2d Dist) 114 Cal App 3d 718, 171 Cal Rptr 81, 1981 Cal App LEXIS 1354.

Teachers were hired for less than a "full school year," as defined in Ed C § 37200, where the agreement stated that the start date was July 28, 2008, and that the service would be deemed terminated no later than May 29, 2009. *Stockton Teachers Assn. CTA/NEA v. Stockton Unified School Dist.* (2012, 3d Dist) 2012 Cal App LEXIS 246, rescinded, *Stockton Teachers Assn. CTA/NEA v. Stockton Unified School Dist.* (2012, Cal. App. 3d Dist.) 204 Cal. App. 4th 446, 139 Cal. Rptr. 3d 55, 2012 Cal. App. LEXIS 372, modified and reh'g denied, *Stockton Teachers Assn. CTA/NEA v. Stockton Unified School Dist.* (2012, Cal. App. 3d Dist.) 2012 Cal. App. LEXIS 371.

### **§ 37201. School month**

(a) A school month is 20 days or four weeks of five days each, including legal holidays but excluding weekend makeup classes. For the purposes of counting attendance only in providing for a school calendar the winter vacation period, or any portion thereof, may be excluded by the school district in the definition of a school month.

(b) The provisions of subdivision (a) of this section are limited to defining a school month for attendance-counting purposes only.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1983 ch 915 § 1; Stats 1987 ch 1452 § 244.*

### **Amendments**

**1983 Amendment:** Divided former subd (a) into the first and second sentences by substituting "but excluding weekend makeup classes pursuant to Section 37228." for "; provided, however, that".

**1987 Amendment:** (1) Amended subd (a) by (a) deleting "pursuant to Section 37228" at the end of the first sentence; and (b) substituting "winter" for "Christmas" before "vacation" in the second sentence; and (2) deleted the former second sentence of subd (b) which read: "A school month for employee pay purposes may be designated by the governing board to begin on any day of the week."

### **§ 41320.1. Acceptance by school district as agreement to specified conditions; Monitoring and review of school district by trustee**

Acceptance by the school district of the apportionments made pursuant to Section 41320 constitutes the agreement by the school district to all of the following conditions:

(a) The county superintendent of schools, the Superintendent, and the president of the state board or his or her designee shall, by majority vote, appoint a trustee from a pool of candidates identified and vetted by the County Office Fiscal Crisis and Management Assistance Team pursuant to subdivision (b)



who has recognized expertise in management and finance and may employ, on a short-term basis, staff necessary to assist the trustee, including, but not limited to, certified public accountants, as follows:

(1) The expenses incurred by the trustee and necessary staff shall be borne by the school district.

(2) The county superintendent of schools, with concurrence from both the Superintendent and the president of the state board or his or her designee, shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall report directly to the county superintendent of schools. The county superintendent of schools shall provide regular updates to the Superintendent and the president of the state board or his or her designee regarding the work of the trustee.

(3) The trustee, and necessary staff, shall serve until the school district has adequate fiscal systems and controls in place, the Superintendent has determined that the school district's future compliance with the fiscal plan approved for the school district pursuant to Section 41320 is probable, and the county superintendent of schools, the Superintendent, and the president of the state board or his or her designee decide to terminate the trustee's appointment, but in no event for less than three years. The county superintendent of schools shall notify the Legislature, the Department of Finance, and the Controller no less than 60 days before the time that the county superintendent of schools expects these conditions to be met.

(4) Before the school district repays the loan, including interest, the recipient of the loan shall select an auditor from a list established by the Superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the county superintendent of schools, with concurrence from both the Superintendent and the president of the state board or his or her designee, may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the school district.

(5) Notwithstanding any other law, all reports submitted to the trustee are public records.

(6) To facilitate the appointment of the trustee and the employment of necessary staff, this section is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(7) If the trustee appointed pursuant to this section is an employee of the department, the salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(b) The County Office Fiscal Crisis and Management Assistance Team, when selecting the pool of candidates for trustee, shall consider candidates' expertise in management and finance, previous experience mitigating fiscal distress in school districts, and ability to meaningfully engage with the community that the school district serves, and shall provide an opportunity for public input on the selection of the pool of candidates for trustee.

(c) (1) The trustee appointed pursuant to this section shall monitor and review the operation of the school district. During the period of his or her service, the trustee may stay or rescind an action of the governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.

(2) After the trustee's period of service, and until the loan is repaid, the county superintendent of schools that has jurisdiction over the school district may stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district. The county superintendent of schools shall notify the Superintendent and the president of the state board or his or her designee, within five business days, if he or she stays or rescinds an action of the governing board of the school district. The notice shall include, but not be limited to, both of the following:

(A) A description of the governing board of the school district's intended action and its financial implications.

(B) The rationale and findings that support the county superintendent of school's decision to stay or rescind the action of the governing board of the school district.

(3) If the county superintendent of schools notifies the Superintendent and the president of the state board or his or her designee pursuant to paragraph (2), the county superintendent of schools shall report to the Legislature, pursuant to Section 9795 of the Government Code, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.

(4) The county superintendent of schools, with concurrence from the Superintendent, may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the school district. The trustee shall approve or reject all reports and other materials required from the school district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce an apportionment to the school district in an amount up to two hundred dollars (\$200) per day for each late or unacceptable report or other material required under this part, and shall report to the Legislature a failure of the school district to comply with the requirements of this section. If the county superintendent of schools determines, at any time, that the fiscal plan approved for the school district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, with concurrence from the Superintendent, and the school district shall comply with the plan as modified.

(d) At the request of the county superintendent of schools, with approval from the Superintendent, the Controller shall transfer to the department, from an apportionment to which the school district would otherwise have been entitled pursuant to Section 42238.02, as implemented by Section 42238.03, the amount necessary to pay the expenses incurred by the trustee and associated costs incurred by the county superintendent of schools.

(e) For the fiscal year in which the apportionments are disbursed and every year thereafter, the Controller, or an auditor that is designated by the Controller as both active and able to perform K-12 local education agency audits, shall cause an audit to be conducted of the books and accounts of the school district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, an auditor that is designated by the Controller as both active and able to perform K-12 local education agency audits, or an auditor selected by the school district and approved by the Controller. The costs of these audits shall be borne by the school district. These audits shall be required until the Controller determines, in consultation with the county superintendent of schools and the Superintendent, that the school district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. The auditor selected pursuant to this subdivision, if any, the county superintendent of schools, a County Office Fiscal Crisis and Management Assistance Team representative, the Superintendent, and the school district superintendent, or their respective designees, shall meet before the audit to discuss the terms of the audit and the timeline under which it will proceed. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(f) For purposes of errors and omissions liability insurance policies, the trustee appointed pursuant to this section is an employee of the local educational agency to which he or she is assigned. For purposes of workers' compensation benefits, the trustee is an employee of the local educational agency to which he or she is assigned, except that a trustee appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for those purposes.

(g) Except for an individual appointed by the vote pursuant to subdivision (a) as a trustee described in paragraph (7) of subdivision (a), the trustee appointed pursuant to this section is a member of the State Teachers' Retirement System, if qualified, for the period of service as trustee, unless the trustee elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the trustee chooses to become a member or is already a member, the trustee shall be placed on the payroll of the school district for the purpose of providing appropriate

contributions to the system. The Superintendent may also require that an individual appointed as a trustee described in paragraph (7) of subdivision (a) be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions. For purposes of workers' compensation benefits, the state-appointed trustee is deemed an employee of the local educational agency to which he or she is assigned, except that a trustee who is described in paragraph (7) of subdivision (a) is an employee of the department for those purposes.

*Added by Stats 1987 ch 990 § 4. Amended by Stats 1988 ch 1461 § 13, ch 1462 § 1.14; Stats 1989 ch 1256 § 5, effective October 1, 1989; Stats 1991 ch 1213 § 9 (AB 1200); Stats 1992 ch 962 § 3 (SB 1996), effective September 26, 1992; Stats 1993 ch 589 § 40 (AB 2211); Stats 1994 ch 1002 § 5 (AB 3627); Stats 2004 ch 52 § 4 (AB 2756), effective June 21, 2004; Stats 2011 ch 296 § 64 (AB 1023), effective January 1, 2012; Stats 2012 ch 429 § 1 (AB 2279), effective January 1, 2013; Stats 2013 ch 76 § 35 (AB 383), effective January 1, 2014; Stats 2015 ch 19 § 34 (SB 78), effective June 24, 2015, ch 331 § 1 (AB 625), effective January 1, 2016; Stats 2018 ch 426 § 7 (AB 1840), effective September 17, 2018.*

### Amendments

**1988 Amendment:** (1) Substituted “the amount” for “such amount as is” after Section 42238,” in subd (c); and (2) added subd (e). (As amended by Stats 1988, ch 1462, compared to the section as it read prior to 1988. This section was also amended by an earlier chapter, ch 1461. See Gov C § 9605.)

**1989 Amendment:** Amended the first paragraph in subd (a) by adding (1) “and the district has adequate fiscal systems and controls in place” at the end of the fourth sentence; and (2) the fifth through seventh sentences.

**1991 Amendment:** (1) Amended the first paragraph of subd (a) by (a) adding “the” before “Public Instruction” in the first sentence; (b) deleting “until the loan called for by this section is repaid and the district has adequate fiscal systems and controls in place” at the end of the fourth sentence; (c) adding the fifth sentence; and (d) substituting “the” for “it” after “district repays” in the sixth sentence; and (2) added the third and last sentence of subd (b).

**1992 Amendment:** (1) Deleted “the” after “The Superintendent of” in the beginning of subd (a); and (2) amended subd (d) by (a) substituting “in” for “ii,” after “financially solvent, but”; and (b) adding the fifth sentence.

**1993 Amendment:** Routine code maintenance.

**1994 Amendment:** (1) Substituted “and may employ, on a short-term basis, any staff necessary to assist the trustee, including, but not limited to, certified public accountants, as follows:” for “, and who shall be bonded.” after “management and finance” in the introductory clause of subd (a); (2) added subdivision designations (a)(1)–(a)(5); (3) substituted “any necessary staff” for “the costs of the bonding” after “by the trustee and” in subd (a)(1); (4) added “, and any necessary staff,” after “The trustee” in subd (a)(3); (5) added subds (a)(6) and (a)(7); (6) deleted “, the costs of the trustee’s bonding,” after “by the trustee” in subd (c); (7) amended subd (e) by adding (a) “policies” after “insurance” in the first sentence; and (b) the second sentence; and (8) added subd (f).

**2004 Amendment:** (1) Substituted “Superintendent” for “superintendent” throughout the section; (2) substituted “Superintendent” for “Superintendent of Public Instruction” throughout the section; (3) substituted “department” for “State Department of Education” throughout the section; (4) substituted “pursuant to Section 41320 constitutes the agreement” for “pursuant to Section 41320 shall constitute agreement” in the introductory clause; (5) amended subd (a)(3) by (a) substituting “until the loan authorized by this section is repaid” for “until the loan called for by this section is repaid” in the first sentence; and (b) adding the last sentence; (6) amended subd (a)(5) by (a) deleting “provision of” before “law”; and (b) substituting “trustee are public records” for “trustee shall be public records”; (7) amended subd (a)(7) by (a) deleting “provisions of” before “law” in the first sentence; and (b) substituting “the employee is an employee” for “the employee shall be deemed an employee” in the third sentence; (8) amended subd (e) by substituting (a) “pursuant to this section is an employee” for “pursuant to this section shall be deemed to be an employee” in the first sentence; (b) “the trustee is an employee” for “the trustee shall be deemed an employee”; and (c) “pursuant to paragraph (7) of subdivision (a) is an employee” for “pursuant to paragraph (7) of subdivision (a) shall be deemed an employee” in the last sentence; and (9) amended subd (f) by (a) substituting “the state-appointed trustee is a member” for “the state-appointed trustee shall be a member” in the first sentence; and (b) deleting “deemed” after “pursuant to paragraph (7) of subdivision (a) is” in the last sentence.

**2011 Amendment:** (1) Substituted “Division 2 of the Public Contract Code” for “the Public Contracts Code” in subd (a)(6); (2) substituted “this part” for “Part 24 (commencing with Section 41000)” in the fifth sentence of

(b); and (3) amended subd (c) by (a) substituting “an” for “any” after “department, from”; and (b) deleting “any” after “the trustee and”.

**2012 Amendment:** (1) Added “school” wherever it appears in the introductory clause, in subds (a)(1), (a)(4), (c), and (d), and in the second sentence of subd (b)(4); (2) amended the introductory clause of subd (a) by deleting (a) “of Public Instruction” after “Superintendent”; and (b) “any” after “short-term basis;”; (3) deleted “any” after “trustee and” in subd (a)(1) and in the first sentence of subd (a)(3); (4) amended the first sentence of subd (a)(3) by (a) substituting “school” for “loan authorized by this section is repaid, the” after “serve until the”; (b) deleting “and” after “controls in place;”; (c) adding “school” after “determined that the” and after “approved for the”; and (d) adding “, and the Superintendent decides to terminate the trustee’s appointment, but in no event, for less than three years”; (5) substituted “before” for “prior to” in the second sentence of subd (a)(3); (6) amended subd (a)(6) by deleting (a) “any” after “the employment of”; and (b) “the” before “purposes of”; (7) amended the second sentence of subd (b)(1) by (a) substituting “governing board of the school district” for “local district governing board”; and (b) adding “school” after “condition of the”; (8) added subds (b)(2) and (b)(3); (9) redesignated former subd (b)(2) to be subd (b)(4); (10) amended the third sentence of subd (b)(4) by substituting (a) “an apportionment to the school district” for “any apportionment to the district”; and (b) “a failure” for “any failure”; (11) added “school” after “necessary, and the” in the last sentence of subd (b)(4); (12) substituted “every year” for “each year” in the first sentence of subd (d); (13) deleted “all” before “purposes of errors” in the first sentence of subd (e); (14) substituted “educational” for “education” in the first and second sentences of subd (e) and in the last sentence of subd (f); (15) substituted “purposes” for “the purpose” in the second sentence of subd (e) and in the last sentence of subd (f); and (16) amended subd (f) by (a) deleting “the” after “school district for” in the third sentence; and (b) substituting “an individual” for “any individual” in the fourth sentence.

**2013 Amendment:** Substituted (1) “those purposes” for “that purpose” in the second sentence of subd (e) and the last sentence of subd (f); and (2) “the purpose” for “purposes” in the third sentence of subd (f).

**2015 Amendment (ch 19):** Substituted “Section 42238.02, as implemented by Section 42238.03” for “Section 42238” in subd (c).

**2015 Amendment (ch 331):** (1) Deleted the comma after “event” in the first sentence of subd (a)(3); and (2) added the next to last sentence of subd (d).

**2018 Amendment:** (1) Rewrote former introductory language of subd (a) which read: “(a) The Superintendent shall appoint a trustee who has recognized expertise in management and finance and may employ, on a short-term basis, staff necessary to assist the trustee, including, but not limited to, certified public accountants, as follows.”; (2) rewrote former subd (a)(2) which read: “The Superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the Superintendent.”; (3) in subd (a)(3), (a) substituted “pursuant to Section 41320 is probable, and the county superintendent of schools, the Superintendent, and the president of the state board or his or her designee decide” for “under Section 41320 is probable, and the Superintendent decides” in the first sentence; and (b) in the second sentence, substituted “The county superintendent of schools shall notify” for “The Superintendent shall notify the county superintendent of schools,” and “county superintendent of schools expects” for “Superintendent expects”; (4) substituted “county superintendent of schools, with concurrence from both the Superintendent and the president of the state board or his or her designee,” for “Superintendent” in subd (a)(4); (5) substituted “this section” for “for purposes of this section, the Superintendent” in subd (a)(6); (6) substituted “If the trustee appointed pursuant to this section is an employee of the department, the” for “Notwithstanding any other law, the Superintendent may appoint an employee of the department to act as trustee for up to the duration of the trusteeship. The” in subd (a)(7); (7) added subd (b); (8) redesignated former subd (b)-(f) as subd (c)-(g); (9) substituted “pursuant to this section” for “by the Superintendent” in subd (c)(1); (10) added “and the president of the state board or his or her designee” in the introductory paragraph of subd (c)(2); (11) rewrote former subd (c)(3) which read: “(3) If the Superintendent is notified by the county superintendent of schools pursuant to paragraph (2), the Superintendent shall report to the Legislature, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.”; (12) in subd (c)(4), (a) substituted “county superintendent of schools, with concurrence from the Superintendent,” for “Superintendent” in the first sentence and in the last sentence; (b) substituted “county superintendent of schools” for “Superintendent”; and (c) added “with concurrence from the Superintendent.”; (13) added “county superintendent of schools, with approval from the” in subd (d); (14) in subd (e), (a) substituted “an auditor that is designated by the Controller as both active and able to perform K–12 local education agency audits,” for “his or her designee,” in the first sentence; (b) added “an auditor that is designated by the Controller as both active and able to perform K–12 local education agency audits,” in the second sentence; (c) added “county superintendent of schools and the” in the fourth sentence; and (d) substituted

“The auditor selected pursuant to this subdivision, if any, the county superintendent of schools, a County Office Fiscal Crisis and Management Assistance Team representative, the” for “For an audit conducted by the Controller, or his or her designee, the Controller, the” in the fifth sentence; and **(15)** in subd (g), in the first sentence, **(a)** substituted “vote pursuant to subdivision (a) as a trustee described in” for “Superintendent as trustee pursuant to” and “trustee appointed pursuant to this section” for “state-appointed trustee”; **(b)** substituted “as a trustee described in” for “as trustee pursuant to” in the fourth sentence; and **(c)** substituted “described in” for “appointed pursuant to” in the last sentence.

**§ 42122. Contents of budget**

Effective July 1, 1988, each budget shall show a complete plan and itemized statement of all proposed expenditures of the school district and of all estimated revenues for the ensuing fiscal year, together with a comparison of revenues and expenditures for the existing fiscal year. The budget shall also 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 of the Government Code. The county superintendent of schools shall from his or her own records supply to the school district any information that the school district may need to make the comparisons required by this section.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1987 ch 917 § 16, ch 1025 § 1.5.*

**Amendments**

**1987 Amendment:** **(1)** Added “Effective July 1, 1988,” at the beginning; **(2)** deleted “, with the actual revenues and expenditures for the last completed fiscal year and the actual and estimated expenditures” after “revenues and expenditures”; **(3)** added the second sentence; and **(4)** added “or her” in the third sentence.

**Notes of Decisions**

The record did not indicate that a budget filed by a community college district was inadequate where the parties, in mandate proceedings questioning the power of the county board of supervisors to levy tax at a lower rate than requested by a community college district, stipulated that the record on appeal be augmented to include a copy of a document entitled “California Community Colleges Annual Financial and Budget Report,” which report met the statutory requirements as a school district’s final budget, where the board of supervisors admitted having received a copy of the report, and where it was stipulated at trial that the community college district’s budget was prepared and filed within the time and in the manner prescribed by law. *San Francisco Community College Dist. v. City and County of San Francisco* (1976, Cal App 1st Dist) 58 Cal App 3d 387, 129 Cal Rptr 918, 1976 Cal App LEXIS 1524.

**§ 42123. Itemization of revenues and expenditures**

Each budget shall be itemized to set forth the necessary revenues and expenditures in each fund to operate the public schools of the district as authorized by law and on forms prescribed by the Superintendent of Public Instruction.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1980 ch 1354 § 37.9, effective September 30, 1980; Stats 1986 ch 1150 § 11.*

**Amendments**

**1980 Amendment:** Added the second paragraph.

**1986 Amendment:** Deleted **(1)** “, by program,” after “expenditures” in the first paragraph; and **(2)** the former second paragraph which read: “In the case of continuation education schools and classes conducted pursuant to Article 3 (commencing with Section 48430) of Chapter 3 of Part 27, the estimated revenue shall include any allowances authorized pursuant to subdivision (a) of Section 41711 and adjustments pursuant to Section 42241.3

which were ultimately subsumed in the districtwide revenue limit. The information shall be separately identified for any public hearing on the school district budget required by Section 42103.”

#### **§ 42124. General reserve**

The budget may also contain an amount to be known as the general reserve in such sum as the governing board may deem sufficient, for the next succeeding fiscal year, to meet the cash requirements to which the district’s credit may be legally extended for that portion of said next succeeding fiscal year until adequate proceeds of the taxes levied for, or apportionment of state funds made to, the district during such succeeding fiscal year are available to the district.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

#### **§ 42125. Designated fund balance**

The budget may contain amounts to be known as the designated fund balance, which may be designated for any specific purpose as determined by the governing board of the school district, and the unappropriated fund balance. These funds shall be available for appropriation by a majority vote of the members of the governing board, to cover expenditures that have not been provided for or that may have been insufficiently provided for, or for unforeseen requirements as they may arise.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1987 ch 917 § 17.*

### **Amendments**

**1987 Amendment:** Substituted (1) the first sentence for the former first sentence which read “The budget may also contain an amount to be known as the undistributed reserve.”; and (2) “These funds shall be available for appropriation by a majority” for “The funds in the undistributed reserve shall be available for appropriation by a two-thirds” in the second sentence.

### **Notes of Decisions**

In an action by a school district and its superintendent for declaratory and injunctive relief, the record contained substantial evidence to support the trial court’s finding that an item in the school district’s budget called an “appropriation for contingencies” was an “appropriation” and not a “reserve” within the meaning of § 5 of the “bailout bill” (Stats. 1978, ch. 332, § 3), which provides state aid to school districts in the aftermath of Proposition 13, providing also for reduction in such aid if the district’s general fund and special reserve fund ending balances exceed 5 percent of the district’s general fund total revenue, and defining general fund and special reserves as not including “reserves established by law or a governing board policy” adopted prior to passage of Proposition 13. Although there was a conflict in the opinion testimony concerning whether under proper accounting principles funds not designated for a specific purpose in a subsequent year may be held as a reserve, that conflict was resolved in favor of the state’s position that such funds may not be held as a reserve. The testimony of one of the state’s witnesses alone was sufficient to establish that the funds designated as an appropriation for contingencies were not restricted for a specific purpose in a subsequent fiscal year but were held as an expenditure account for the existing budget year—the balance of which lost its identity at the end of the fiscal year at issue. *Edison School Dist. v. Ross* (1982, Cal App 3d Dist) 131 Cal App 3d 362, 182 Cal Rptr 312, 1982 Cal App LEXIS 1564.

“Reserve” is not defined in the “bailout bill.” (Stats. 1978, ch. 292 as amended, ch. 332.) However, the bill, enacted as an urgency measure in the immediate aftermath of the passage of Proposition 13, was designed to alleviate the harsh fiscal stringencies imposed upon school districts and local governmental entities by the newly enacted constitutional amendment. The “bailout bill” addressed the immediate fiscal needs of school districts and undertook fairly to apportion available state funds on the basis of the disparate needs of the respective districts in the 1978-1979 fiscal year. To that end the reduction formula of § 5 (Stats. 1978, ch. 332, § 3) was devised to take account of carryover funds available to districts in fiscal year 1978–1979 in the form of unexpended, unallocated appropriations from the preceding year; funds restricted for specific purposes were not counted among those so available for the fiscal year if they were reserved by law or by board policy prior to the passage of Proposition 13. Thus funding for current operations would be state supplemented on the basis of relative need determined without

disrupting long-term fiscal planning undertaken in good faith. In light of the evident purposes of the "bailout bill," the "reserve" excepted by § 5 from the reduction formula consists of restricted year-end balances unavailable for appropriation to other budgetary accounts in a succeeding fiscal year. *Edison School Dist. v. Ross* (1982, Cal App 3d Dist) 131 Cal App 3d 362, 182 Cal Rptr 312, 1982 Cal App LEXIS 1564.

**§ 42126. Form of budget**

Effective July 1, 1988, each budget shall be made on the number of forms and upon the blanks or in the format prescribed by the Superintendent of Public Instruction. It shall be the duty of the Superintendent of Public Instruction to prepare standard forms or a format necessary to show the budgeting items and comparisons required by this article. The required forms or format shall be furnished to the school districts by the county superintendent of schools.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1987 ch 917 § 18.*

**Amendments**

**1987 Amendment:** Substituted (1) the first sentence for the former first sentence which read: "Each budget shall be made in quintuplicate in the form and upon the blanks prescribed by the superintendent of Public Instruction."; (2) "or a format" for "and blanks" in the second sentence; and (3) "The required forms or format" for "Blanks" in the third sentence.

**§ 42127. Procedure for formulation and adoption of budget; Computation of tax rates; Public review**

(a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing conducted in accordance with Section 42103 on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours before the public hearing and shall include the location where the budget will be available for public inspection.

(2) (A) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board of the school district shall file that budget with the county superintendent of schools. The budget and supporting data shall be maintained and made available for public review. If the governing board of the school district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made. For the 2014-15 fiscal year and each fiscal year thereafter, the governing board of the school district shall not adopt a budget before the governing board of the school district adopts a local control and accountability plan, if an existing local control and accountability plan or annual update to a local control and accountability plan is not effective for the budget year. The governing board of a school district shall not adopt a budget that does not include the expenditures necessary to implement the local control and accountability plan or the annual update to a local control and accountability plan that is effective for the budget year.

(B) Commencing with budgets adopted for the 2015-16 fiscal year, the governing board of a school district that proposes to adopt a budget that includes a combined assigned and unassigned ending fund balance in excess of the minimum recommended reserve for economic uncertainties adopted by the state board pursuant to subdivision (a) of Section 33128, shall, at the public hearing held pursuant to paragraph (1), provide all of the following for public review and discussion:

(i) The minimum recommended reserve for economic uncertainties for each fiscal year identified in the budget.

(ii) The combined assigned and unassigned ending fund balances that are in excess of the minimum recommended reserve for economic uncertainties for each fiscal year identified in the budget.

(iii) A statement of reasons that substantiates the need for an assigned and unassigned ending fund balance that is in excess of the minimum recommended reserve for economic uncertainties for each fiscal year that the school district identifies an assigned and unassigned ending fund balance that is in excess of the minimum recommended reserve for economic uncertainties, as identified pursuant to clause (ii).

(C) The governing board of a school district shall include the information required pursuant to subparagraph (B) in its budgetary submission each time it files an adopted or revised budget with the county superintendent of schools. The information required pursuant to subparagraph (B) shall be maintained and made available for public review.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent of schools or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the school district for purposes that exceed apportionments to the school district pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent of schools or the county auditor to compute the amounts. On or before August 15, the county superintendent of schools shall transmit the amounts computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets. The county superintendent of schools shall identify, if necessary, technical corrections that are required to be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the school district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the school district to satisfy its multiyear financial commitments. In addition to the county superintendent of schools' own analysis of the budget of each school district, the county superintendent of schools shall review and consider studies, reports, evaluations, or audits of the school district that were commissioned by the school district, the county superintendent of schools, the Superintendent, and state control agencies and that contain evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that the school district is at moderate or high risk of intervention based on the most common indicators of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team. The county superintendent of schools shall either conditionally approve or disapprove a budget that does not provide adequate assurance that the school district will meet its current and future obligations and resolve any problems identified in studies, reports, evaluations, or audits described in this paragraph.

(3) Determine whether the adopted budget includes the expenditures necessary to implement the local control and accountability plan or annual update to the local control and accountability plan approved by the county superintendent of schools.

(4) Determine whether the adopted budget includes a combined assigned and unassigned ending fund balance that exceeds the minimum recommended reserve for economic uncertainties. If the adopted budget includes a combined assigned and unassigned ending fund balance that exceeds the minimum recommended reserve for economic uncertainties, the county superintendent of schools shall verify that the school district complied with the requirements of subparagraphs (B) and (C) of paragraph (2) of subdivision (a).



**(d) (1)** On or before September 15, the county superintendent of schools shall approve, conditionally approve, or disapprove the adopted budget for each school district. For the 2014-15 fiscal year and each fiscal year thereafter, the county superintendent of schools shall disapprove a budget if the county superintendent of schools determines that the budget does not include the expenditures necessary to implement a local control and accountability plan or an annual update to the local control and accountability plan approved by the county superintendent of schools. If the governing board of a school district does not submit a budget to the county superintendent of schools, the county superintendent of schools shall develop, at school district expense, a budget for that school district by September 15 and transmit that budget to the governing board of the school district. The budget prepared by the county superintendent of schools shall be deemed adopted, unless the county superintendent of schools approves any modifications made by the governing board of the school district. The budget prepared by the county superintendent of schools shall also comply with the requirements of subparagraph (B) of paragraph (2) of subdivision (a). The approved budget shall be used as a guide for the school district's priorities. The Superintendent shall review and certify the budget approved by the county. If, pursuant to the review conducted pursuant to subdivision (c), the county superintendent of schools determines that the adopted budget for a school district does not satisfy that subdivision, the county superintendent of schools shall conditionally approve or disapprove the budget and, not later than September 15, transmit to the governing board of the school district, in writing, the county superintendent of schools' recommendations regarding revision of the budget and the reasons for those recommendations, including, but not limited to, the amounts of any budget adjustments needed before the county superintendent of schools can approve that budget. The county superintendent of schools may assign a fiscal adviser to assist the school district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the county superintendent's review and recommendations, subject to the requirement that the committee report its findings to the county superintendent of schools no later than September 20.

**(2)** Notwithstanding any other provision of this article, for the 2014-15 fiscal year and each fiscal year thereafter, the budget shall not be adopted or approved by the county superintendent of schools before a local control and accountability plan or update to an existing local control and accountability plan for the budget year is approved.

**(3)** If the adopted budget of a school district is conditionally approved or disapproved pursuant to paragraph (1), on or before October 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review and respond to the recommendations of the county superintendent of schools at a regular meeting of the governing board of the school district. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

**(e)** On or before October 22, the county superintendent of schools shall provide a list to the Superintendent identifying all school districts for which budgets may be disapproved.

**(f) (1)** The county superintendent of schools shall examine the revised budget as provided in paragraph (3) of subdivision (d) to determine whether it (A) complies with the standards and criteria adopted by the state board pursuant to Section 33127 for application to final local educational agency budgets, (B) allows the school district to meet its financial obligations during the fiscal year, (C) satisfies all conditions established by the county superintendent of schools in the case of a conditionally approved budget, (D) is consistent with a financial plan that will enable the school district to satisfy its multiyear financial commitments, and, not later than November 8, shall approve or disapprove the revised budget, and (E) whether the revised budget complies with the requirements of subparagraph (B) of paragraph (2) of subdivision (a). If the county superintendent of schools disapproves the budget, the county superintendent of schools shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent of schools immediately has the authority and responsibility provided in

Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by December 31. If no budget is adopted by December 31, the Superintendent may adopt a budget for the school district. The Superintendent shall report to the Legislature and the Director of Finance by January 10 if any school district, including a school district that has received a waiver of the budget review committee process, does not have an adopted budget by December 31. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, the date the adopted budget is anticipated, and whether the Superintendent has or will exercise the Superintendent's authority to adopt a budget for the school district.

(2) Notwithstanding any other law, for the 2014-15 fiscal year and each fiscal year thereafter, if the county superintendent of schools disapproves the budget for the sole reason that the county superintendent of schools has not approved a local control and accountability plan or an annual update to the local control and accountability plan filed by the governing board of the school district pursuant to Section 52070, the county superintendent of schools shall not call for the formation of a budget review committee pursuant to Section 42127.1.

(g) Not later than November 8, the county superintendent of schools shall submit a report to the Superintendent identifying all school districts for which budgets have been disapproved, and whether a budget review committee will be formed or waived. The report shall include a copy of the written response transmitted to each of those school districts pursuant to paragraph (1) of subdivision (d).

(h) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(i) Any school district for which the county board of education serves as the governing board of the school district is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

*Added by Stats 1981 ch 100 § 6.9. Amended by Stats 1985 ch 185 § 1; Stats 1986 ch 1150 § 12; Stats 1987 ch 917 § 19; Stats 1988 ch 1462 § 1.17, operative July 1, 1989; Stats 1991 ch 1213 § 15 (AB 1200); Stats 1992 ch 323 § 6 (AB 2506); Stats 1993 ch 923 § 4 (AB 2185); Stats 2002 ch 1168 § 22 (AB 1818), effective September 30, 2002; Stats 2003 ch 62 § 46 (SB 600); Stats 2004 ch 52 § 12 (AB 2756), effective June 21, 2004; Stats 2005 ch 677 § 19 (SB 512), effective October 7, 2005; Stats 2006 ch 730 § 11 (AB 1967), effective January 1, 2007; Stats 2011 ch 43 § 17 (AB 114), effective June 30, 2011; Stats 2012 ch 589 § 6 (AB 2662), effective January 1, 2013; Stats 2013 ch 47 § 25 (AB 97), effective July 1, 2013, ch 357 § 17 (SB 97), effective September 26, 2013; Stats 2014 ch 32 § 26 (SB 858), effective June 20, 2014, ch 309 § 2 (AB 2585), effective January 1, 2015; Stats 2015 ch 19 § 44 (SB 78), effective June 24, 2015 (ch 19 prevails), ch 303 § 81 (AB 731), effective January 1, 2016; Stats 2020 ch 24 § 24 (SB 98), effective June 29, 2020.*

**Former Sections:** Former § 42127, similar to the present section, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1981 ch 100 § 6.8.

### Amendments

**1985 Amendment:** In addition to making technical changes, substituted “auditor of his or her county” for “board of supervisors, one copy with the auditor of his county, and” in subd (e).

**1986 Amendment:** (1) Deleted former subd (a)(3) which read: “(3) For the 1981–82 fiscal year only, the information specified in paragraphs (1) and (2) may be filed separately, but no later than August 1, 1981.”; (2) added “recommended” near the end of subd (b)(2); (3) substituted “September 15” for “the seventh day of September” in subd (d); (4) substituted subd (e) for former subd (e) which read: “(e) On or before the 15th day of September, the county superintendent shall approve the adopted budget for each school district as officially adopted and submitted by its governing board, and shall file one copy of the adopted budget for each school district with the auditor of his or her county and one copy with the Superintendent of Public Instruction.”; and (5) added subds (f)–(g).

**1987 Amendment:** (1) Added “technical” before “corrections” in subs (b)(1) and (e)(2); (2) added “final” after “the adopted” in the introductory clause of subd (e); and (3) substituted “regularly scheduled meeting” for “public hearing” in subd (g)(1).

**1988 Amendment:** (1) Amended subd (b) by (a) adding “based on standards and criteria for fiscal stability established pursuant to Section 33127,” in the introductory clause; (b) substituting “district’s budget complies with Section 33127” for “proposed expenditures do not exceed the anticipated revenues and that the anticipated revenues are realistic” in subd (b)(2); and (c) deleting “as to anticipated revenues” after “recommendations” in subd (b)(3); (2) substituted “that” for “which” after “district for purposes” in the first sentence of subd (c); (3) amended subd (e) by (a) adding “or disapproves” in the introductory clause; (b) substituting subd (e)(1) for former subd (e)(1) which read: “(1) Examining the adopted final budget to determine that the proposed expenditures do not exceed the anticipated revenues, including prior year ending balances, and that the anticipated revenues are realistic.”; (c) deleting “Examining the adopted final budget and” at the beginning of subd (e)(2); and (d) substituting “the standards and criteria established pursuant to Section 33127” for “school financial and budget reporting requirements as prescribed in the California School Accounting Manual” in subd (e)(2); (4) substituted “it does not comply with the standards and criteria established pursuant to Section 33127” for “proposed expenditures will exceed anticipated revenues, including prior year ending balances, as described in paragraph (1) of subdivision (e), or that specific technical corrections as described in paragraph (2) of subdivision (e) should be made” in subd (f); (5) substituted subd (h) for former subd (h) which read: “(h) On or before November 30, the county superintendent of schools shall transmit a copy of each district’s adopted final budget to the county auditor. Further, he or she shall transmit to the Superintendent of Public Instruction a copy of each district’s adopted final budget, if he or she provided the district governing board recommendations deemed to be significant and the governing board did not take actions he or she deemed appropriate. Accompanying these budgets shall be a copy of the county superintendent’s recommendations and the school district’s response to those recommendations as prescribed by paragraph (2) of subdivision (g).”; and (6) added subd (j).

**1991 Amendment:** Amended the section to read as at present, except for the following amendments.

**1992 Amendment:** (1) Added “accomplish the following:” at the end of the introductory clause of subd (a); (2) added subd (a)(1); (3) added subdivision designations (a)(2); (4) substituted “Not” for “No” in subs (a)(2) and (e); (5) amended subd (g) by adding (a) “(1)”; and (b) “, (2) allows the district to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.”; (6) substituted “county superintendent” for “the Superintendent of Public Instruction” after “elects, and notifies” in the first subd (h); and (7) redesignated former second subd (h) to be subd (i).

**1993 Amendment:** (1) Redesignated former subs (e), (f), (h), (h)(2), (h)(3), and (i) to be subs (h), (e), (i), (i)(3), (i)(4), and (j); (2) added subs (f) and (i)(2); (3) substituted “September 8” for “September 1” in subd (e) and (i)(1); (4) substituted “October 8” for “September 15” in subd (g), for “August 20” in subd (h), and for “five working days” in subd (i)(3); and (5) substituted “(h) for “(g)” after “subdivisions (c) to” in subd (j).

**2002 Amendment:** (1) Added the second sentence of subd (a)(1); (2) added “unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed, and the State Department of Education approves the waiver after determining that a budget review committee is not necessary” in subs (g) and (i)(3); (3) added the last sentence of subs (g) and (i)(3); (4) substituted “or budget review committees waived. The report shall include” for “, including” in subd (h); and (5) amended subd (i)(1) by (a) substituting “If” for “In the event of the disapproval of” at the beginning; and (b) adding “is disapproved” in the first sentence.

**2003 Amendment:** (1) Substituted “and supporting data” for “, and supporting data,” in the second sentence of subd (a)(2) and the last sentence of subd (e); (2) amended subd (b) by (a) substituting “Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1” for “Sections 95 to 100, inclusive,” in the second sentence; and (b) deleting “so” before “computed” in the third and fourth sentences; (3) substituted “are required to” for “must” in the second sentence of subd (c)(1); (4) substituted “the county superintendent of schools” for “the superintendent” in the second sentence of subd (d); (5) amended the second sentences of subs (g) and (i)(3) by (a) adding the comma after “Section 42127.1”; and (b) deleting the comma after “committee be formed”; and (6) deleted the comma after “district so elects” in the first sentence of subd (i).

**2004 Amendment:** (1) Amended subd (c) by adding (a) “county” before “superintendent shall identify” in the last sentence of subd (c)(1); and (b) the last two sentences in subd (c)(2); (2) added “, conditionally approve,” in the first sentence of subd (d); (3) added the second–fifth sentences of subd (d); (4) amended the sixth sentence of subd (d) by adding (a) “conditionally approve or”; and (b) “, including, but not limited to, the amounts of any budget adjustments needed before he or she can conditionally approve that budget” at the end.; (5) amended the

first sentence of subd (g) by (a) adding subd (g)(3); and (b) redesignating former subd (g)(3) to be subd (g)(4); (6) substituted “department” for “State Department of Education” after “formed and the” in the second sentence of subd (g), and in the second sentence of subd (i)(3); (7) substituted the third sentence of subd (g) for the former third sentence which read: “Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.”; (8) added the last four sentences of subd (g); and (9) amended subd (i)(3) by (a) substituting the third sentence for the former third sentence which read: “Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.”; and (b) adding the last three sentences.

**2005 Amendment:** (1) Added the third sentence in subd (e); and (2) deleted “of Public Instruction” after “Superintendent” in subds (f), (h), and (i)(2).

**2006 Amendment (1)** Substituted “state board” for “State Board of Education” after “adopted by the” in subd (c)(1); and (2) amended subd (g) by (a) substituting “state board” for “State Board of Education” after “adopted by the”; (b) adding “immediately” after “the county superintendent”; and (c) deleting “to a budget review committee” after “and responsibility provided”.

**2011 Amendment:** (1) Added subds (a)(1)(A) and (a)(1)(B); (2) substituted “Article XIII A” for “Article XIII A” in the last sentence of subd (a)(2); (3) added the last sentence of subds (d), (g), and (i)(3); and (4) added subds (e)(1) and (e)(2).

**2012 Amendment:** (1) Substituted “before” for “prior to” in the last sentence of the first paragraph of subd (a)(1); (2) added “of the school district” in the second sentence of subd (a)(2), in the second and third sentences of the first paragraph of subd (e), and in subd (j); (3) added “of schools” after “county superintendent” in the second through fourth sentences of subd (b), in the second sentence of subd (c)(1), in the last sentence of subd (d), in the third and last sentences of subd (g), in the first sentence of the first paragraph of subd (i), and in the last sentence of subd (i)(3); (4) added “school” wherever it appears in the last sentence of subd (a)(2), in the second sentence of subd (b), in the first and last sentences of subd (c)(2), in the fourth and seventh sentences of subd (d), in the first and sixth sentences of subd (g), in the second sentence of subd (h), and in the fifth sentence of subd (i)(3); (5) deleted “any” after “if necessary” in the second sentence of subd (c)(1); (6) amended the second sentence of subd (c)(2) by adding (a) “school” after “commissioned by the”; and (b) “of schools” before “the Superintendent”; (7) amended the second sentence of subd (d) by (a) adding “develop” after “schools shall”; (b) adding “school” before “district expense”; and (c) deleting “develop” before “a budget for”; (8) deleted “conditionally” before “approve that” in the sixth sentence of subd (d); (9) amended the eighth sentence of subd (d) by adding (a) “county” after “findings to the”; and (b) “of schools” before “no later than”; (10) Substituted “Before” for “Prior to” in the second sentence of the first paragraph of subd (e); (11) deleted “of this subdivision” after “paragraphs (1), (2), and (3)” in the first sentence of the first paragraph of subd (i); (12) added “of the school district” before “and respond to” in the first sentence of subd (i)(1); and (13) substituted “shall provide” for “will provide” in subd (i)(2).

**2013 Amendment (ch 47):** (1) Amended subd (a)(2) by (a) substituting “The budget” for “That budget” in the third sentence; and (b) adding the last two sentences; (2) added subd (c)(3); and (3) added the second sentence of subd (d).

**2013 Amendment (ch 357):** (1) Substituted “more than 3” for “more than three” in the second sentence of subd (c)(2); (2) added subdivision designations (d)(1) and (g)(1); (3) substituted “paragraph (1), (2), or (3)” for “paragraph (1) or (2)” in the seventh sentence of subd (d)(1); (4) added subds (d)(2) and (g)(2); (5) added “paragraph (1) of” in the second sentence of subd (h); and (6) added “Except as provided in paragraph (2) of subdivision (g),” in the second sentence of subd (i)(3).

**2014 Amendment (ch 32):** (1) Added subdivision designation (a)(2)(A); (2) added subds (a)(2)(B), (a)(2)(C), and (c)(4); (3) amended subd (d)(1) by (a) adding the fifth sentence; and (b) substituting “paragraph (1), (2), (3), or (4)” for “paragraph (1), (2), or (3)” in the eighth sentence; and (4) amended the first sentence of subd (g)(1) by (a) redesignating subds (g)(1)(1)–(g)(1)(4) to be subds (g)(1)(A)–(g)(1)(D); (b) deleting “and” after “conditionally approved budget,”; and (c) adding “, and (E) whether the revised budget complies with the requirements of subparagraph (B) of paragraph (2) of subdivision (a)”.

**2014 Amendment (ch 309):** (1) Added “conducted in accordance with Section 42103” in the first sentence of the first paragraph of subd (a)(1); (2) deleted former subds (a)(1)(A) and (a)(1)(B) which read: “(A) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each school district budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level. (B) For the 2011–12 fiscal year, the school district shall not be required to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.”; (3) substituted “for the budget year” for “during the

subsequent fiscal year” in the last sentence of subd (a)(2)(A); **(4)** amended subd (d)(1) by **(a)** adding “the governing board of” in the third sentence; and **(b)** deleting the former last sentence which read: “For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent of schools, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.”; **(5)** added subd (d)(3); **(6)** deleted former subd (e) which read: “(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Before revising the budget, the governing board of the school district shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. In addition, if the adopted budget is disapproved pursuant to subdivision (d), the governing board of the school district and the county superintendent of schools shall review the disapproval and the recommendations of the county superintendent of schools regarding revision of the budget at the public hearing. The revised budget and supporting data shall be maintained and made available for public review. (1) For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, each school district budget shall project the same level of revenue per unit of average daily attendance as it received in the 2010–11 fiscal year and shall maintain staffing and program levels commensurate with that level. (2) For the 2011–12 fiscal year, the school district shall not be required to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.”; **(7)** redesignated former subds (f)-(h), (i)(4), and (j) to be subds (e)-(i); **(8)** amended subd (f)(1) by **(a)** adding “as provided in paragraph (3) of subdivision (d)” in the first sentence; and **(b)** deleting the former last sentence which read: “For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent of schools, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.”; **(9)** amended subd (f)(2) by **(a)** adding “governing board of the”; and **(b)** substituting “Section 52070” for “Section 52061”; **(10)** deleted the former first paragraph of subd (i) which read: “(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3), rather than by subdivisions (e) and (g), if the governing board of the school district so elects and notifies the county superintendent of schools in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.”; and **(11)** deleted former subds (i)(1)-(i)(3) which read: “(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent’s recommendations at a regular meeting of the governing board of the school district and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations. (2) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent identifying all school districts for which a budget may be tentatively disapproved. (3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. Except as provided in paragraph (2) of subdivision (g), if the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1, unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by November 30. The Superintendent shall report to the Legislature and the Director of Finance by December 10 if any school district, including a school district that has received a waiver of the budget review committee process, does not have an adopted budget by November 30. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated. For the 2011–12 fiscal year, notwithstanding any of the standards and criteria adopted by the state board pursuant to Section 33127, the county superintendent of

schools, as a condition on approval of a school district budget, shall not require a school district to project a lower level of revenue per unit of average daily attendance than it received in the 2010–11 fiscal year nor require the school district to demonstrate that it is able to meet its financial obligations for the two subsequent fiscal years.”

**2015 Amendment:** (1) Deleted “, or revise a budget pursuant to subdivision (e),” after “adopt a budget” in the introductory clause of subd (a)(2)(B); (2) amended subd (d)(1) by substituting (a) “September 15” for “August 15” in the first and eighth sentences; and (b) “September 20” for “August 20” in the last sentence; (3) substituted “October 8” for “September 8” in the first sentence of subd (d)(3); (4) substituted “October 22” for “September 22” in subd (e); (5) substituted “November 8” for “October 8” in the first sentence of subds (f)(1) and (g); and (6) amended subd (f)(1) by substituting (a) “December 31” for “November 30” in the fourth through sixth sentences; and (b) “January 10” for “December 10” in the sixth sentence.

**2020 Amendment:** (1) In (c)(2), in the second sentence, substituted “the county superintendent of schools” for “his or her”, “the school district is at moderate or high risk of intervention based on the most common indicators” for “more than 3 of the 15 most common predictors”, and “Team” for “Team, are present”; (2) in (d)(1), in the eighth sentence, substituted “that subdivision, the county superintendent of schools” for “paragraph (1), (2), (3), or (4) of that subdivision, he or she”, “the county superintendent of schools” for “his or her”, “the county superintendent of schools” for “he or she”, and added “county” before “superintendent’s” in the last sentence; (3) in (f)(1), substituted “the county superintendent of schools” for “he or she” in the second sentence and “the Superintendent’s” for “his or her” in the last sentence; and (4) substituted “disapproved, and whether a budget review committee will be formed or” for “disapproved or budget review committees” in (g).

#### **§ 42127.1. Formation of budget review committee on disapproval of budget; Regional review committee**

(a) Pursuant to subdivision (f) of Section 42127, upon the disapproval of a school district budget by the county superintendent of schools, the county superintendent of schools shall call for the formation of a budget review committee unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed, and the department approves the waiver after determining that a budget review committee is not necessary. Upon the grant of a waiver, the county superintendent of schools has the authority and responsibility provided to a budget review committee in Section 42127.3. Upon approving a waiver of the budget review committee, the department shall ensure that a balanced budget is adopted for the school district by December 31.

(b) The budget review committee shall be composed of three persons selected by the governing board of the school district from a list of candidates provided to the governing board of the school district by the Superintendent. The list of candidates shall be composed of persons who have expertise in the management of a school district or county office of education. Their experience shall include, but not necessarily be limited to, the fiscal and educational aspects of local educational agency management.

(c) Notwithstanding subdivision (b) or any other provision of this article, with the approval of the Superintendent and the governing board of the school district, the county superintendent of schools may select and convene a regional review committee, consisting of persons having the expertise described in subdivision (b). The regional review committee shall operate in place of the budget review committee, in accordance with the provisions of this article governing budget review committees.

(d) Members of the committee shall be reimbursed by the department for their services and associated expenses while on official business at rates established by the state board.

*Added by Stats 1988 ch 1462 § 1.171. Amended by Stats 1991 ch 1213 § 16 (AB 1200); Stats 2002 ch 1168 § 23 (AB 1818), effective September 30, 2002; Stats 2004 ch 52 § 13 (AB 2756), effective June 21, 2004; Stats 2015 ch 19 § 45 (SB 78), effective June 24, 2015; Stats 2016 ch 186 § 44 (AB 2659), effective January 1, 2017.*

### Amendments

**1991 Amendment:** (1) Substituted “subdivision (f)” for “subdivision (h)” in subd (a); (2) amended subd (b) by (a) adding “to the governing board” in the first sentence; and (b) substituting “who” for “that” in the second sentence; (3) added subd (c); and (4) redesignated former subd (c) to be subd (d).

**2002 Amendment:** Amended subd (a) by (1) substituting “subdivision (g) or (i)” for “subdivision (f)”; (2) adding “unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed, and the State Department of Education approves the waiver after determining that a budget review committee is not necessary”; and (3) adding the last sentence.

**2004 Amendment:** (1) Substituted “the department” for “the State Department of Education” in the first sentence of subd (a), and in subd (d); (2) substituted the second sentence of subd (a) for the former second sentence which read: “Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.”; (3) added the last three sentences of subd (a); and (4) deleted “of Public Instruction” after “Superintendent” in the first sentence of subd (c).

**2015 Amendment:** (1) Added “of schools” after the first occurrence of “county superintendent” and before “shall call for” in the first sentence of subd (a); (2) substituted “December 31” for “November 30” in the third and fourth sentences of subd (a); (3) amended the fourth sentence of subd (a) by (a) substituting “January 10” for “December 10”; and (b) adding “school” after “district, including a”; (4) amended the first sentence of subd (b) by (a) adding “of the school district”; and (b) deleting “of Public Instruction” at the end; and (5) substituted “state board” for “State Board of Education” in subd (d).

**2016 Amendment:** (1) Amended subd (a) by (a) substituting “subdivision (f)” for “subdivision (g) or (i)” in the first sentence; (b) adding “of schools” in the second sentence; and (c) deleting the former last two sentences which read: “The Superintendent shall report to the Legislature and the Director of Finance by January 10 if any district, including a school district that has received a waiver of the budget review committee process, does not have an adopted budget by December 31. This report shall include the reasons why a budget has not been adopted by the deadline, the steps being taken to finalize budget adoption, and the date the adopted budget is anticipated.”; (2) added “necessarily” in the last sentence of (b); and (3) substituted “subdivision (b)” for “that subdivision” in the first sentence of subd (c).

#### § 42127.2. Selection of review committee; Review of proposed budget and recommendations

(a) The governing board of a school district shall, no later than five working days after the receipt of a candidate list from the Superintendent pursuant to Section 42127.1, select a budget review committee, and the Superintendent shall convene the committee no later than five working days following that selection. If the governing board of the school district fails to select a committee within the period of time permitted by this subdivision, the Superintendent instead shall select and convene the budget review committee no later than 10 working days after the district’s receipt of the candidate list.

(b) On or before November 30, the budget review committee shall review the proposed budget of the district and the underlying fiscal policies of the school district and transmit to the Superintendent of Public Instruction, the county superintendent of schools, and the governing board of the school district either of the following:

(1) The recommendation that the school district budget be approved.

(2) A report disapproving the school district budget and setting forth recommendations for revisions to the school district budget that would enable the district to meet its financial obligations both in the current fiscal year and with regard to the district’s multiyear financial commitments.

(c) The Superintendent may extend the deadline set forth in subdivision (b) for a period of not more than 15 working days.

(d) The Superintendent shall establish criteria and procedures governing the performance by budget review committees of their duties pursuant to this section.

(e) Upon request of the county superintendent of schools, the Controller’s office may conduct an audit or review of the fiscal condition of the school district in order to assist a budget review committee or regional review committee for the purposes of this section.

*Added by Stats 1988 ch 1462 § 1.172. Amended by Stats 1991 ch 1213 § 17 (AB 1200); Stats 1995 ch 525 § 5 (AB 438); Stats 2015 ch 19 § 46 (SB 78), effective June 24, 2015.*

### Amendments

**1991 Amendment:** Substituted the section for the former section which read: “(a) The district governing board shall, no later than 15 working days after the receipt of a candidate list from the Superintendent of Public Instruction pursuant to Section 42127.1, select and convene a review committee.”(b) The review committee shall, within 15 working days of being convened, review the proposed budget of the district and the underlying fiscal policies of the district and recommend to the Superintendent of Public Instruction, the county superintendent of schools, and the district governing board either of the following.”(c) In the event the committee is unable to respond within 15 working days, the committee shall state the reasons why it was unable to respond within that time frame and establish a time definite and certain, to be approved by the Superintendent of Public Instruction, as to when their recommendations shall be forthcoming.”

**1995 Amendment:** (1) Substituted “governing board of a school district” for “district governing board” near the beginning of subd (a); (2) substituted “governing board of the school district” for “district governing board” in the introductory clause of subd (b); and (3) deleted “Upon request of the budget review committee,” at the beginning of subd (c).

**2015 Amendment:** (1) Deleted “of Public Instruction” after “Superintendent” wherever it appears in subds (a), (c), and (d); (2) added “of the school district” in the second sentence of subd (a); (3) amended the introductory clause of subd (b) by (a) substituting “On or before November 30” for “No later than October 31”; and (b) adding “school” after “policies of the”; and (4) substituted “pursuant to” for “under” in subd (d).

### § 42127.3. Acceptance of recommendation of approval; Proposed alternative budget; Actions by Superintendent

(a) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 recommends approval of the school district budget, the county superintendent of schools shall accept the recommendation of the budget review committee and approve the budget.

(b) If the budget review committee established pursuant to Sections 42127.1 and 42127.2 disapproves the school district budget, the governing board of the school district, not later than five working days after receipt of the report described in paragraph (2) of subdivision (b) of Section 42127.2, may submit a response to the Superintendent, including any revisions to the adopted final budget and any other proposed actions to be taken as a result of the recommendations of the budget review committee. Based upon the recommendations of the budget review committee and any response to those recommendations provided by the governing board of the school district, the Superintendent shall either approve or disapprove the budget. If the Superintendent disapproves the budget, he or she shall notify the governing board of the school district in writing of the reasons for that disapproval and, until the county superintendent of schools certifies the school district’s first interim report pursuant to Section 42131, the county superintendent of schools shall do the following as necessary:

(1) On or before December 31, develop and adopt, in consultation with the Superintendent and the governing board of the school district, a fiscal plan and budget that will govern the district and will allow the district to meet its financial obligations, both in the current fiscal year and with regard to the district’s multiyear financial commitments. The Superintendent may extend the date by which the county superintendent of schools is required to develop and adopt a fiscal plan and budget. The governing board of the school district shall govern the operation of the school district for the current fiscal year in accordance with that adopted budget.

(2) Cancel purchase orders, prohibit the issuance of nonsalary warrants, and otherwise stay or rescind any action that is inconsistent with the budget adopted pursuant to paragraph (1). The county superintendent of schools shall inform the governing board of the school district in writing of his or her justification for any exercise of authority under this paragraph.

(3) Monitor and review the operation of the school district.



(4) Determine the need for additional staff and may employ, subject to approval by the Superintendent, short-term analytical assistance or expertise to validate financial information if the school district staff does not have the expertise or staff.

(5) Require the school district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(6) Determine whether there are any financial problem areas and may employ, subject to approval by the Superintendent, a certified public accounting firm to investigate financial problem areas.

(7) Withhold compensation of the members of the governing board of the school district and the superintendent of the school district for failure to provide requested financial information. A forfeiture may be appealed to the Superintendent pursuant to subdivision (b) of Section 42127.6.

(c) If, during the selection of the budget review committee or during the committee's review of the budget, an agreement is reached between the governing board of the school district and the county superintendent of schools, and the school district revises its budget to comply with this agreement, the county superintendent of schools shall approve the school district budget and the budget review committee selection, or its review of the budget, shall be canceled.

(d) The school district shall pay 75 percent and the county office of education shall pay 25 percent of the actual administrative expenses incurred pursuant to subdivision (b), or costs associated with improving the district's financial management practices. The Superintendent shall develop, and distribute to affected school districts and county offices of education, advisory guidelines regarding the appropriate amount of any fees charged pursuant to this subdivision.

(e) This section shall not be construed to authorize the county superintendent of schools to abrogate any provision of a collective bargaining agreement that was entered into by a school district prior to the date upon which the county superintendent of schools disapproved the budget of the school district pursuant to subdivision (b).

*Added by Stats 1988 ch 1462 § 1.173. Amended by Stats 1991 ch 1213 § 18 (AB 1200); Stats 1992 ch 323 § 7 (AB 2506); Stats 1993 ch 923 § 5 (AB 2185), ch 924 § 9 (AB 1708); 1994 ch 1002 § 9 (AB 3627); Stats 1995 ch 525 § 6 (AB 438); Stats 2006 ch 730 § 12 (AB 1967), effective January 1, 2007; Stats 2015 ch 19 § 47 (SB 78), effective June 24, 2015.*

### Amendments

**1991 Amendment:** Substituted the section for the former section which read: "(a) If the review committee established pursuant to Section 42127.1 recommends approval of the school district budget, the Superintendent of Public Instruction shall accept the recommendation of the review committee and approve the budget."(b) If the review committee established pursuant to Section 42127.1 proposes an alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127, the review committee shall transmit to the district governing board, in writing, the reasons for their recommendations. The district governing board shall have 10 working days from the receipt of the recommendations to either adopt or appeal the review committee's recommendations at a public meeting."(1) If the district governing board chooses to adopt the committee's recommendations, or if the board adopts alternative recommendations that would achieve the same fiscal results and that are accepted by the review committee, the Superintendent of Public Instruction shall accept the budget proposed by the review committee and approve the budget."(c) No later than 15 working days after receiving the written appeal described in subdivision (b), the Superintendent of Public Instruction shall either:"(1) Approve the school district budget."(2) Prepare an alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127. This alternative budget shall be jointly agreed to by the county office of education and the review committee."

**1992 Amendment: (1)** Substituted "not" for "no" in subds (b) and (b)(1); and **(2)** deleted former subd (e) which read: "(e) As necessary for the purposes of subdivision (b), the county superintendent of schools may request funding or other assistance from the Superintendent of Public Instruction as necessary to obtain additional information regarding the district's budget or operations through a financial or management review of the district, a

cash–flow projection for the district, or other appropriate means. Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent of Public Instruction.”

**1993 Amendment:** (1) Added subds (b)(4)–(b)(7) and (c); (2) redesignated former subds (c) and (d) to be subds (d) and (e); and (3) amended subd (d) by (a) substituting “75 percent and the county office of education shall pay 25 percent of the” for “reasonable fees charged by the county superintendent of schools for”; and (b) adding “, or costs associated with improving the district’s financial management practices” after “subdivision (b)”. (As amended by Stats 1993 ch 924, compared to the section as it read prior to 1993. This section was also amended by an earlier chapter, ch 923. See Gov C § 9605.)

**1994 Amendment:** Substituted “the following as necessary” for “all of the following” at the end of the introductory clause of subd (b).

**1995 Amendment:** (1) Substituted “governing board of the school district” for “school district governing board” wherever it appears in subd (b); (2) added the second sentence of subd (b)(1); and (3) added “school” in the last sentence of subd (b)(1) and in subds (b)(3) and (b)(5).

**2006 Amendment (1)** Amended subd (b) by (a) deleting “of Public Instruction” wherever it appears; (b) substituting “until the county superintendent certifies “ for “for the remainder of” after “that disapproval and,”; and (c) substituting “district’s first interim report pursuant to Section 42131” for “current fiscal year” after “superintendent certifies the”; (2) deleted “of Public Instruction” both times it appears in subd (b)(1); (3) deleted “of Public Instruction” after “approval by the Superintendent” in subd (b)(4); (4) deleted “of Public Instruction” after “approval by the Superintendent” in subds (b)(6) and (b)(7); and (5) deleted “of Public Instruction” after “practices. The Superintendent” in subd (d).

**2015 Amendment:** (1) Amended the introductory paragraph of subd (b) by substituting (a) “governing board of the school district” for “school district governing board” in the first sentence; and (b) “of schools certifies the school” for “certifies the” in the last sentence; (2) amended subd (b)(1) by (a) substituting “On or before December 31” for “Not later than November 30” in the first sentence; and (b) adding “school” after “operation of the” in the last sentence; (3) added “school” in subd (b)(4); (4) substituted “of the school district and the superintendent of the school district” for “and the district superintendent” in the first sentence of subd (b)(7); and (5) added “school” after “shall approve the” in subd (c).

#### **§ 42127.4. Continued operation under last adopted budget**

Until a school district receives approval of its budget under this article, the school district shall continue to operate on the basis of whichever of the following budgets contains a lower total spending authority:

(a) The last budget adopted or revised by the governing board of the school district for the prior fiscal year.

(b) The unapproved budget for the current fiscal year, as adopted and revised by the governing board of the school district.

*Added by Stats 1988 ch 1462 § 1.174. Amended by Stats 1991 ch 1213 § 19 (AB 1200).*

#### **Amendments**

**1991 Amendment:** Substituted the section for the former section which read: “Until a school district receives approval of its final budget, the school district shall continue to operate on the basis of the last budget shall be jointly agreed to by the county office of education and the review committee.”

#### **§ 42127.5. Statement concerning negative unrestricted fund balance or negative cash balance**

The governing board of any school district that reported a negative unrestricted fund balance or a negative cash balance in the annual report required by Section 42127 or in the audited annual financial statements required by Section 41020 shall include with the budget submitted in accordance with Section 42127 and the certifications required by Section 35015 a statement that identifies the reasons for the negative unrestricted fund balance or negative cash balance and the steps that have been taken to ensure that the negative balance will not occur at the end of the current fiscal year.

*Added by Stats 1986 ch 1150 § 13.*

**Editor's Notes**—Ed C § 35015, referred to in this section, relating to certification of district's ability to meet financial obligations was repealed by Stats 1991 ch 1213 § 5 (AB 1200).

**Former Sections:** Former § 42127.5, relating to submission of tentative budget, was added by Stats 1979 ch 221 § 5, effective July 6, 1979, and repealed, operative June 30, 1981, by its own terms.

**§ 42127.6. Determination and notice of fiscal distress of district; Report and proposed remedial actions; Appeal; Reorganized school districts; Authority of Superintendent**

(a) (1) A school district shall provide the county superintendent of schools with a copy of a study, report, evaluation, or audit that was commissioned by the school district, the county superintendent, the Superintendent, and state control agencies and that contains evidence that the school district is showing fiscal distress under the standards and criteria adopted in Section 33127, or a report on the school district by the County Office Fiscal Crisis and Management Assistance Team. The county superintendent shall review and consider studies, reports, evaluations, or audits of the school district that contain evidence that the school district is demonstrating fiscal distress under the standards and criteria adopted in Section 33127 or that contain a finding by an external reviewer that the school district is at moderate or high risk of intervention based on the most common indicators of a school district needing intervention, as determined by the County Office Fiscal Crisis and Management Assistance Team. If these findings are made, the county superintendent of schools shall investigate the financial condition of the school district and determine if the school district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification pursuant to Section 42131. If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification pursuant to Section 42131, the county superintendent of schools shall provide a written notice of going concern determination to the governing board of the school district and the Superintendent and the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public. The county superintendent of schools shall report to the Superintendent on the financial condition of the school district and the county superintendent's proposed remedial actions and shall do at least one of the following and all actions that are necessary to ensure that the school district meets its financial obligations:

(A) Assign a fiscal expert, paid for by the county superintendent of schools, to advise the school district on its financial problems.

(B) Conduct a study of the financial and budgetary conditions of the school district that includes, but is not limited to, a review of internal controls. If, in the course of this review, the county superintendent of schools determines that the county superintendent's office requires analytical assistance or expertise that is not available through the school district, the county superintendent of schools may employ, on a short-term basis, with the approval of the Superintendent, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

(C) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as the county superintendent of schools requires.

(D) Require the district to encumber all contracts and other obligations, to prepare appropriate cash-flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.

(E) Direct the school district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the school district may not be able to meet its financial obligations.

**(F)** Withhold compensation of the members of the governing board of the school district and the school district superintendent for failure to provide requested financial information. This action may be appealed to the Superintendent pursuant to subdivision (b).

**(G)** Assign the County Office Fiscal Crisis and Management Assistance Team to review teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district, to provide the school district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers, and to perform any or all of the duties prescribed in subparagraphs (A) to (C), inclusive, or to further review the causes that led to a finding of moderate or high risk of intervention pursuant to subdivision (a) and recommend corrective action. If a review team is assigned to a school district, the school district shall follow the recommendations of the team, unless the school district shows good cause for failure to do so. The County Office Fiscal Crisis and Management Assistance Team may not recommend an action that would abrogate a contract that governs employment.

**(2)** Any contract entered into by a county superintendent of schools for the purposes of this subdivision is subject to the approval of the Superintendent.

**(3)** An employee of a school district who provides information regarding improper governmental activity, as defined in Section 44112, is entitled to the protection provided pursuant to Article 5 (commencing with Section 44110) of Chapter 1 of Part 25.

**(b)** Within five days of the county superintendent of schools making the determination specified in subdivision (a), a school district may appeal the basis of the determination and any of the proposed actions that the county superintendent of schools has indicated that the county superintendent of schools will take to further examine the financial condition of the school district. The Superintendent shall sustain or deny any or all parts of the appeal within 10 days.

**(c)** If, after taking the actions identified in subdivision (a), the county superintendent of schools determines that a school district will be unable to meet its financial obligations for the current or subsequent fiscal year, the county superintendent of schools shall notify the governing board of the school district, the superintendent of the school district, each recognized employee organization of the school district, each recognized parent organization of the school district, the Superintendent of Public Instruction, and the president of the state board or the president's designee in writing of that determination and the basis for that determination. The notification shall include the assumptions used in making the determination.

**(d)** Within five days of the county superintendent of schools making the determination specified in subdivision (c), a school district may appeal that determination to the Superintendent. The Superintendent shall sustain or deny the appeal within 10 days. If the governing board of the school district appeals the determination, the county superintendent of schools may stay any action of the governing board of the school district that the county superintendent of schools determines is inconsistent with the ability of the school district to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the Superintendent.

**(e)** If the appeal described in subdivision (d) is denied or not filed, or if the school district has a negative certification pursuant to Section 42131, the county superintendent of schools, in consultation with the Superintendent, shall take at least one of the actions described in paragraphs (1) to (5), inclusive, and all actions that are necessary to ensure that the school district meets its financial obligations and shall make a report to the Superintendent and the president of the state board or the president's designee about the financial condition of the school district and remedial actions proposed by the county superintendent of schools.

**(1)** Develop and impose, in consultation with the Superintendent and the governing board of the school district, a budget revision that will enable the school district to meet its financial obligations in the current fiscal year.

**(2)** Stay or rescind any action that is determined to be inconsistent with the ability of the school district to meet its obligations for the current or subsequent fiscal year. This includes any actions up to

the point that the subsequent year's budget is approved by the county superintendent of schools. The county superintendent of schools shall inform the governing board of the school district in writing of the county superintendent's justification for any exercise of authority under this paragraph.

**(3)** Assist in developing, in consultation with the governing board of the school district, a multiyear financial recovery plan that will enable the school district to meet its future obligations.

**(4)** Assist in developing, in consultation with the governing board of the school district, a budget for the subsequent fiscal year. If necessary, the county superintendent of schools shall continue to work with the governing board of the school district until the budget for the subsequent year is adopted by the governing board of the school district and approved by the county superintendent of schools.

**(5)** As necessary, appoint a fiscal adviser to perform any or all of the duties prescribed by this section on behalf of the county superintendent of schools.

**(f)** Any action taken by the county superintendent of schools pursuant to paragraph (1) or (2) of subdivision (e) shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support the necessity for these actions.

**(g)** This section does not authorize the county superintendent of schools to abrogate any provision of a collective bargaining agreement that was entered into by a school district before the date that the county superintendent of schools assumed authority pursuant to subdivision (e).

**(h)** The school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative expenses incurred pursuant to subdivision (e) or costs associated with improving the school district's financial management practices. The Superintendent shall develop and distribute to affected school districts and county offices of education advisory guidelines regarding the appropriate amount of administrative expenses charged pursuant to this subdivision.

**(i)** Notwithstanding Section 42647 or 42650 or any other law, a county treasurer shall not honor any warrant if, pursuant to Sections 42127 to 42127.5, inclusive, or pursuant to this section, the county superintendent of schools or the Superintendent, as appropriate, has disapproved that warrant or the order on school district funds for which a warrant was prepared.

**(j)** Effective upon the certification of the election results for a newly organized school district pursuant to Section 35763, the county superintendent of schools may exercise any of the powers and duties of this section regarding the reorganized school district and the other affected school districts until the reorganized school district becomes effective for all purposes in accordance with Article 4 (commencing with Section 35530) of Chapter 3 of Part 21.

**(k)** The Superintendent shall monitor the efforts of a county office of education in exercising its authority under this section and may exercise any of that authority if the Superintendent finds that the actions of the county superintendent of schools are not effective in resolving the financial problems of the school district. Upon a decision to exercise the powers of the county superintendent of schools, the county superintendent of schools is relieved of those powers assumed by the Superintendent, and shall provide support and assistance to the Superintendent in the exercise of those powers. The Superintendent shall also request that the County Office Fiscal Crisis and Management Assistance Team identify the circumstances that led to the ineffectiveness of the county superintendent of schools in resolving the financial problems of the school district, and shall require the county office of education to demonstrate, in a manner determined by the Superintendent, remediation of those deficiencies. In addition to the actions taken by the county superintendent of schools, the Superintendent shall take further actions to ensure the long-term fiscal stability of the school district. The county office of education shall reimburse the Superintendent for all of the Superintendent's costs in exercising the Superintendent's authority under this subdivision. The Superintendent shall promptly notify the county superintendent of schools, the county board of education, the superintendent of the school district, the governing board of the school district, the appropriate policy and fiscal committees of each house of the Legislature, and the Department of Finance of the Superintendent's decision to exercise the authority of the county superintendent of schools.

*Added by Stats 1993 ch 924 § 11 (AB 1708). Amended by Stats 1994 ch 1002 § 10 (AB 3627); Stats 1995 ch 525 § 7 (AB 438); Stats 1998 ch 906 § 4 (AB 2328); Stats 2001 ch 620 § 3 (AB 139); Stats 2004 ch 52 § 14 (AB 2756), effective June 21, 2004, ch 896 § 34 (AB 2525), effective September 29, 2004, ch 902 § 1 (AB 3001), effective September 29, 2004; Stats 2018 ch 426 § 14 (AB 1840), effective September 17, 2018; Stats 2019 ch 497 § 50 (AB 991), effective January 1, 2020; Stats 2020 ch 24 § 25 (SB 98), effective June 29, 2020.*

**Former Sections:** Former § 42127.6, similar to the present section, was added by Stats 1991 ch 1213 § 20, amended by Stats 1992 ch 323 § 8, and repealed by Stats 1993 ch 924 § 10 (AB 1708).

### Amendments

**1994 Amendment:** Added (1) “any or all of” after “and shall do” near the end of the introductory clause of subd (a); and (2) “, not filed,” after “subdivision (d) is denied,” near the beginning of the introductory clause of subd (e).

**1995 Amendment:** (1) Deleted “or negative” after “has a qualified” in the first sentence of subd (a); (2) substituted “governing board of the school district” for “school district governing board” in subds (a) and (e)(3); (3) substituted “and” for a comma after “of that determination” in the first sentence of subd (a); (4) substituted the period for “, and shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:” at the end of the first sentence of subd (a); (5) added the second sentence and introductory clause of subd (a); (6) added the second sentence of subd (c); (7) added the third sentence of subd (d); (8) substituted “or not filed, or if” for “, not filed, or” and “any or all” for “one or more” in the introductory clause of subd (e); (9) substituted “a budget revision that will enable the district to meet its financial obligations in the current fiscal year” for “revisions to the school district budget that will enable the district to meet its financial obligations” in subd (e)(1); (10) substituted the first and second sentences of subd (e)(2) for the former first sentence which read: “Stay or rescind any action that is inconsistent with any revision adopted pursuant to paragraph (1).”; (11) added subds (e)(4) and (e)(5); (12) added subd (f); (13) redesignated former subds (f)—(h) to be subds (g)—(i); and (14) amended subd (i) by (a) deleting “of schools” after “county superintendent”; and (b) substituting “or” for “, or has disapproved” after “that warrant” in subd (i).

**1998 Amendment:** (1) Substituted “Sections 42127 to 42127.5, inclusive, or pursuant to this section,” for “Sections 42127 to 42127.6, inclusive,” in subd (i); and (2) added subd (j).

**2001 Amendment:** Added “that shall include, but not be limited to, a review of internal controls” in the first sentence of subd (a)(2).

**2004 Amendment (ch 52):** (1) Designated former subd (a) to be subd (a)(1) and the former last paragraph of former subd (a) to be subd (a)(2); (2) added the first three sentences of subd (a)(1); (3) amended the fourth sentence of subd (a)(4) by (a) adding “or negative” after “has a qualified”; and (b) substituting “Superintendent” for “Superintendent of Public Instruction” after “district and the”; (4) substituted the introductory clause of subd (a)(1) for the former introductory clause which read: “The county superintendent of schools shall do any or all of the following, as necessary, to ensure that the district meets its financial obligations:”; (5) redesignated former subds (a)(1)—(a)(6) to be subds (a)(1)(A)—(a)(1)(F); (6) amended subd (a)(1)(B) by substituting (a) “includes, but it not” for “shall include, but not be” after “the district that” in the first sentence; and (b) “Superintendent” for “Superintendent of Public Instruction” after “approval of the” in the second sentence; (7) substituted “cashflow” for “cash-flow” after “to prepare appropriate” in subd (a)(1)(D); (8) substituted “Superintendent” for “Superintendent of Public Instruction” after “approval of the” in subd (a)(2), in the last sentence of subd (b), after “board and the” in the first sentence of subd (c), and wherever it appears in subds (d), (e)(1), (h), and (i); (9) added subd (a)(3); (10) substituted “provided to the superintendent of the school district and parent and teacher organization of the district” for “available to the public” in the last sentence of subd (c); (11) substituted “Superintendent, shall take at least one of the actions described in paragraphs (1) to (5), inclusive, and all actions that are necessary to ensure that the district meets its financial obligations and shall make a report to the Superintendent about the financial condition of the district and remedial actions proposed by the county superintendent” for “Superintendent of Public Instruction, shall, as necessary to enable the district to meet its’ financial obligation, so any of the following:” in the first paragraph of subd (e); (12) amended subd (i) by (a) deleting “provision of” after “or any other”; and (b) substituting “when” for “if” after “honor any warrant”; and (13) added subd (k).

**2004 Amendment (ch 896):** (1) Amended subd (a)(1) by substituting (a) “superintendent of schools” for “superintendent” after “district, the county,”; and (b) “superintendent of schools” for “superintendent” in the second

and third sentences; (2) substituted “superintendent of schools” for “superintendent” in subds (a)(1)(A), (a)(1)(B), (e) and (i); (3) substituted “superintendent of schools” for “superintendent” both times it appears in subd (b); (4) substituted “superintendent of schools” for “superintendent” in the first sentence of subd (d); (5) substituted “superintendent of schools” for “superintendent” after “authorize the county” in subd (g); and (6) amended subd (k) by substituting (a) “Superintendent determines that the county superintendent of schools failed to effectively carry out his or her responsibilities for fiscal oversight as required by this code in resolving” for “Superintendent finds that the actions of the county superintendent of schools are not effective in resolving”; and (b) substituting “superintendent of schools” for “superintendent” in the third sentence.

**2004 Amendment (ch 902):** (1) Substituted “Superintendent of Public Instruction” for “Superintendent” wherever it appears in the first paragraph of subd (a)(1), in the second sentence of subd (a)(B), in subd (a)(2), in the last sentence of subd (a)(3), in subd (c), in the first and last sentences of subd (d), after “consultation with the” in the first sentence of subd (e), wherever it appears in subds (e)(1), (h), and (i); (2) substituted “actions and shall do at least one of the following and all actions that are necessary” for “actions, and shall do at least one of the following, and all actions that are necessary,” in the introductory clause of subd (a)(1); (3) added subd (a)(1)(G); (4) deleted the comma after “of the determination” in the first sentence of subd (b); (5) substituted “ability of the district” for “district’s ability” after “inconsistent with the” in the last sentence of subd (d); (6) substituted “ability of the school district” for “school district’s ability” after “inconsistent with the” in subd (e)(2); (7) amended the last sentence of subd (h) by deleting the comma (a) before “and distribute to”; and (b) before “advisory guidelines regarding”; and (8) deleted the comma after “Section 42650” in subd (i). (As amended by Stats 2004 ch 902, compared to the section as it read Stats 2004 ch 52 § 14. This section was also amended by an earlier chapter, ch 896. See Gov C § 9605.)

**2018 Amendment:** (1) In subd (a)(1), substituted (a) “commissioned by the school district” for “commissioned by the district”; and (b) “the school district meets its” for “the district meets its”; (2) added “school” preceding “district” in subd (a)(1)(A); (3) in subd (a)(1)(B), added “school” preceding “district” in the first and second sentences; (4) added “school” preceding “district” twice in subd (a)(1)(E); (5) substituted “governing board of the school district and the school district” for “governing board and the district” in subd (a)(1)(F); (6) in subd (a)(1)(G), (a) added “County Office” following “Fiscal Crisis” in the first and third sentences; (b) added “school” preceding “district with recommendation”; (c) added “school” preceding “district shall follow”; and (d) added “school” preceding “district shows good cause”; (7) added “school” following “financial condition of the” in subd (b); (8) in subd (c), (a) added “school” following “determines that a”; (b) substituted “notify the governing board of the school district, the Superintendent of Public Instruction, and the president of the state board or the president’s designee” for “notify the school district governing board and the Superintendent of Public Instruction”; and (c) added “school” following “teacher organization of the”; (9) in subd (d), (a) added “of the school district” following “governing board”; and (b) added “school” following “the ability of the”; (10) in subd (e), (a) added “school” preceding “district” three times; and (b) added “and the president of the state board or the president’s designee”; (11) in subd (e)(1), (a) substituted “governing board of the school district,” for “school district governing board,”; and (b) added “school” preceding “district”; (12) substituted “the governing board of the school district” for “the school district governing board” in subd (e)(2); (13) added “school” preceding “district to meet” in subd (e)(3); (14) substituted “before the date that” for “prior to the date upon which” in subd (g); (15) added “school” following “with improving the” in subd (h); and (16) in (k), (a) added “Superintendent, and shall provide support and assistance to the Superintendent in the exercise of those powers” in the second sentence; (b) added the third sentence; and (c) added “school” following “stability of the” in the fourth sentence.

**2019 Amendment:** (1) In the introductory language of subd (a)(1), (a) deleted “of Public Instruction” following “the Superintendent” in the first sentence; (b) added “of schools” in the third sentence; (c) substituted “the county superintendent of schools” for “he or she” in the fourth sentence; (d) deleted “of Public Instruction” following “Superintendent” in the fourth sentence; (e) deleted “of Public Instruction” following “the Superintendent” in the last sentence; and (f) substituted “the county superintendent’s” for “his or her” in the last sentence; (2) added “of schools” in subd (a)(1)(A); (3) in the second sentence of subd (a)(1)(B), (a) added “of schools”; (b) substituted “the county superintendent’s” for “his or her”; (c) substituted “the county superintendent of schools” for “he or she”; and (d) deleted “of Public instruction” following “the Superintendent”; (3) substituted “the county superintendent of schools” for “he or she” in subd (a)(1)(C); (4) deleted “of Public Instruction” following “Superintendent” in the second sentence of subd (a)(1)(F); (5) deleted “of Public Instruction” at the end of subd (a)(2); (6) in subd (b), (a) added “of schools” twice in the first sentence; (b) substituted “the county superintendent of schools” for “he or she” in the first sentence; and (c) deleted “of Public Instruction” following “The superintendent” in the second sentence; (7) in the first sentence of subd (c), (a) added “of schools”; (b) substituted “the county

superintendent of schools” for “he or she”; and (c) deleted “of Public Instruction” following “the Superintendent”; (8) in subd (d), (a) added “of schools” in the first sentence; (b) deleted “of Public Instruction” at the end of the first and last sentences; and (c) substituted “the county superintendent of schools” for “he or she” in the last sentence; (9) in subd (e), (a) added “of schools” twice; and (b) deleted “of Public Instruction” following “the Superintendent”; (10) deleted “of Public Instruction” following “the Superintendent” in subd (e)(1); (11) substituted “the county superintendent’s” for “his or her” in the last sentence of subd (e)(2); (12) substituted “behalf of the county superintendent of schools” for “his or her behalf” in subd (e)(5); (13) added “of schools” in subd (g); (14) deleted “of Public Instruction” following “The Superintendent” in the second sentence of subd (h); (15) substituted “of schools or the Superintendent” for “or the Superintendent of Public Instruction” in subd (i); and (16) in subd (k), (a) deleted “of Public Instruction” following “The Superintendent” in the first sentence; (b) substituted “the Superintendent” for “he or she” in the first sentence; (c) added “of schools” in the fourth sentence; (d) deleted “of Public Instruction” following “the Superintendent” in the fourth sentence; (e) deleted “of Public Instruction” following “the Superintendent” in the fifth sentence; (f) substituted “the Superintendent’s” for “his or her” twice in the fifth sentence; (g) deleted “of Public Instruction” following “The Superintendent” in the last sentence; and (h) substituted “the Superintendent’s” for “his or her” in the last sentence.

**2020 Amendment:** (1) In the introductory language of (a)(1), deleted “or any regional team created pursuant to subdivision (i) of Section 42127.8” following “Assistance Team” in the first sentence, in the second sentence, substituted “the school district is at moderate or high risk of intervention based on the most common indicators” for “more than three of the 15 most common predictors”, and deleted “, are present” following “Assistance Team”, and in the fourth sentence, substituted “provide a written notice of going concern determination to” for “notify” and deleted “in writing of that determination” following “and the Superintendent”; (2) in (a)(1)(G), in the first sentence, substituted “district, to” for “district and” and added “, and to perform any or all of the duties prescribed in subparagraphs (A) to (C), inclusive, or to further review the causes that led to a finding of moderate or high risk of intervention pursuant to subdivision (a) and recommend corrective action”; (3) in (c), substituted “superintendent of the school district, each recognized employee organization of the school district, each recognized parent organization of the school district, the Superintendent of Public Instruction,” for “Superintendent” in the first sentence and deleted “and shall be provided to the superintendent of the school district and parent and teacher organization of the school district” at the end of the second sentence; (4) in (e)(3), added “multiyear” and “recovery”; and (5) added “by the governing board of the school district and approved by the county superintendent of schools” in (e)(4).

### Notes of Decisions

Ed C § 42127.6(j) permits a county superintendent of schools to exercise his or her fiscal watchdog powers to protect the fiscal solvency of a reorganized district without making fiscal distress findings or going through the investigative and reporting requirements found elsewhere in § 42127.6. Hence, the superintendent has authority to utilize any of the powers set forth in § 42127.6(e), including the power to rescind any action that might jeopardize the solvency of the new district. *Polster v. Sacramento County Office of Education* (2009, 3d Dist) 180 Cal App 4th 649, 103 Cal Rptr 3d 291, 2009 Cal App LEXIS 2048, review denied, *Polster (Joan) v. Sacramento County Office of Education (Twin Rivers Unified School District)* (2010, Cal.) 2010 Cal. LEXIS 2718.

Because Ed C § 42127.6(j) gives a county superintendent of schools the express authority to rescind any action by the board that he or she deems harmful to the fiscal integrity of a newly formed district, it circumscribes the residual authority granted to an outgoing board under Ed C § 35533. *Polster v. Sacramento County Office of Education* (2009, 3d Dist) 180 Cal App 4th 649, 103 Cal Rptr 3d 291, 2009 Cal App LEXIS 2048, review denied, *Polster (Joan) v. Sacramento County Office of Education (Twin Rivers Unified School District)* (2010, Cal.) 2010 Cal. LEXIS 2718.

Trial court erred in granting a writ of mandate commanding a county superintendent of schools to process payroll requests pursuant to a transition plan adopted by the outgoing board of a high school district, a plan that awarded severance buyout packages to several high school district administrative employees, where it could not be said that the superintendent’s refusal to process the payroll requests was arbitrary, capricious, or entirely without evidentiary support, and plaintiffs thus did not show that the superintendent had a clear, present, and ministerial duty to approve the payroll requests. Letters written by responsible education administrators of the reorganized unified school district itself provided an unimpeachable basis for the superintendent’s decision to halt implementation of the buyout packages on the ground that the “golden parachute” deals were inconsistent with the ability of the school district to meet its financial obligations. *Polster v. Sacramento County Office of Education* (2009, 3d Dist) 180 Cal App 4th 649, 103 Cal Rptr 3d 291, 2009 Cal App LEXIS 2048, review denied, *Polster (Joan) v.*



Sacramento County Office of Education (Twin Rivers Unified School District) (2010, Cal.) 2010 Cal. LEXIS 2718.

**§ 42127.8. Establishment of County Office Fiscal Crisis and Management Assistance Team; Members; Governing board; Functions; Assessments; Reimbursement to department; Regional teams of education finance experts**

(a) The governing board provided for in subdivision (b) shall establish a unit to be known as the County Office Fiscal Crisis and Management Assistance Team. The team shall consist of persons having extensive experience in school district budgeting, accounting, data processing, telecommunications, risk management, food services, pupil transportation, purchasing and warehousing, facilities maintenance and operation, and personnel administration, organization, and staffing. The Superintendent may appoint one employee of the department to serve on the unit. The unit shall be operated under the immediate direction of an appropriate county office of education selected jointly, in response to an application process, by the Superintendent and the president of the state board or the president of the state board's designee.

(b) The unit established under subdivision (a) shall be selected and governed by a 25-member governing board consisting of one representative chosen by the California County Superintendents Educational Services Association from each of the 11 county service regions designated by the association, 11 superintendents of school districts chosen by the Association of California School Administrators from each of the 11 county service regions, one representative from the department chosen by the Superintendent, the Chancellor of the California Community Colleges or the chancellor's designee, and one member of a community college district governing board chosen by the chancellor. The governing board of the County Office Fiscal Crisis and Management Assistance Team shall select a county superintendent of schools to chair the unit.

(c) (1) The Superintendent may request the unit to provide the assistance described in subdivision (b) of Section 1624, Section 1630, subdivision (b) of Section 42127.3, subdivision (c) of Section 42127.6, and Section 42127.9, and with the computation described in subdivision (a) of Section 42238.2, and to review the fiscal and administrative condition of any county office of education, school district, or charter school.

(2) A county superintendent of schools may request the unit to review the fiscal or administrative condition of a school district or charter school under the county superintendent of schools' jurisdiction.

(3) The Board of Governors of the California Community Colleges may request the unit to provide the assistance described in Section 84041.

(d) In addition to the functions described in subdivision (c), the unit shall do all of the following:

(1) Provide fiscal management assistance, at the request of any school district, charter school, or county office of education, or, pursuant to subdivision (g) of Section 84041, at the request of any community college district. Each school district, charter school, or county office of education receiving that assistance shall be required to pay the onsite personnel costs and travel costs incurred by the unit for that purpose, pursuant to rates determined by the governing board established under subdivision (b). The governing board annually shall ensure rate information is posted on the unit's internet website.

(2) Facilitate training for members of the governing board of the school district, district and county superintendents, chief financial officers within the district, and schoolsite personnel whose primary responsibility is to address fiscal issues. Training services shall emphasize efforts to improve fiscal accountability and expand the fiscal competency of local agencies. The unit shall use state professional associations, private organizations, and public agencies to provide guidance, support, and the delivery of any training services.

(3) Facilitate fiscal management training through the 11 county service regions to county office of education staff to ensure that they develop the technical skills necessary to perform their fiduciary duties. The governing board established pursuant to subdivision (b) shall determine the extent of the training that is necessary to comply with this paragraph.

(4) Produce a training calendar that publicizes all of the fiscal training services that are being offered at the local, regional, and state levels, and post that training calendar on the unit's internet website.

(e) The governing board shall reserve not less than 25 percent, nor more than 50 percent, of its revenues each year for expenditure for the costs of contracts and professional services as management assistance to school districts or county superintendents of schools in which the board determines that a fiscal emergency exists.

(f) The governing board established under subdivision (b) may levy an annual assessment against each county office of education that elects to participate under this section in an amount not to exceed twenty cents (\$0.20) per unit of total average daily attendance for all school districts within the county. The revenues collected pursuant to that assessment shall be applied to the expenses of the unit.

(g) The governing board established under subdivision (b) may pay to the department, from any available funds, a reasonable amount to reimburse the department for actual administrative expenses incurred in the review of the budgets and fiscal conditions of school districts, charter schools, and county superintendents of schools.

(h) When employed as a fiscal adviser by the department pursuant to Section 1630, employees of the unit established pursuant to subdivision (a) shall be considered employees of the department for purposes of errors and omissions liability insurance.

*Added by Stats 1991 ch 1213 § 21 (AB 1200). Amended by Stats 1992 ch 323 § 9 (AB 2506); Stats 1993 ch 924 § 12 (AB 1708); Stats 1994 ch 650 § 6 (AB 3141), ch 840 § 13 (AB 3562 (ch 650 prevails); Stats 1995 ch 651 § 2 (SB 793); Stats 1996 ch 1158 § 8 (AB 2964), effective September 30, 1996; Stats 2000 ch 584 § 1 (SB 1331); Stats 2004 ch 52 § 15 (AB 2756), effective June 21, 2004; Stats 2005 ch 357 § 2, (SB 430), effective January 1, 2006, ch 360 § 1.5 (AB 1366), effective January 1, 2006; Stats 2011 ch 347 § 19 (SB 942), effective January 1, 2012; Stats 2015 ch 19 § 48 (SB 78), effective June 24, 2015; Stats 2020 ch 24 § 26 (SB 98), effective June 29, 2020.*

### Amendments

**1992 Amendment:** The amendment made no changes.

**1993 Amendment:** Added subd (h).

**1994 Amendment:** (1) Added "telecommunications," before "risk management" in the second sentence of subd (a); (2) substituted "California County Superintendents Educational Services Association" for "California Association of County Superintendents of Schools" in subd (b); (3) substituted subd (d) for former subd (d) which read: "(d) In addition to the functions described in subd (c), the unit shall provide management assistance at the request of any school district or county office of education. Each district or county office of education receiving that assistance shall be required to pay the onsite personnel costs and travel costs incurred by the unit for that purpose, pursuant to rates determined by the governing board established under subdivision (b). The governing board shall distribute rate information to each school district and county office of education."; (4) substituted "superintendents of schools" for "offices of education" wherever it appears in subds (e) and (g); (5) substituted "that a fiscal emergency exists" for "a fiscal emergency to exist" at the end of subd of subd (e); and (6) deleted "state" before "department for" in subd (h).

**1995 Amendment:** Added "and subdivision (a) of Section 42238.2," in subd (c).

**1996 Amendment:** (1) Added "and" before "personnel administration" in subd (a); and (2) amended subd (b) by (a) substituting "a 23-member" for "an eleven-member" before "governing board"; (b) substituting "11" for "10" before "county service regions"; (c) adding "11 superintendents of school districts chosen by the Association of California School Administrators from each of the 11 county service regions," before "and one representative"; and (d) adding the last sentence.

**2000 Amendment:** (1) Substituted "Secretary for Education" for "Secretary of Child Development and Education" at the end of subd (a); and (2) added "the" before "County Office" in the last sentence of subd (b).

**2004 Amendment:** (1) Deleted "of Public Instruction" after "Superintendent" wherever it appears in subds (a) and (c); (2) substituted "department" for "State Department of Education" in subd (a), and the first time it appears in subds (g) and (h); (3) added ", school district, or charter school" to the end of subd (c); and (4) added subd (i).

**2005 Amendment:** (1) Amended subd (b) by (a) substituting "25-member" for "23-member"; (b) deleting "and" after "regions,"; and (c) substituting "Instruction, the Chancellor of the California Community Colleges or

his or her designee, and one member of a community college district governing board chosen by the chancellor.” for “Instruction.”; **(2)** in subd (c), **(a)** added subdivision designation (1); and **(b)** added subd (2); **(3)** amended subd (d)(1) by **(a)** substituting “district, charter school,” for “district” in two places; and **(b)** substituting “education, or, pursuant to subdivision (g) of Section 84041, at the request of any community college district.” for “education.”; **(4)** amended subd (d)(3) by substituting “11 country service regions” for “10 county service regions” and “duties.” for “duty.”; **(5)** amended subd (g) by substituting “districts, charter schools,” for “districts”; and **(6)** amended subd (i) by **(a)** substituting “districts, charter schools,” for “districts” in two places; and **(b)** substituting “education, and community college districts” for “education” in subd (i)(4). (As amended by Stats 2005 ch 360, compared to the section as it read prior to 2005. This section was also amended by an earlier chapter, ch 357. See Gov C §9605.)

**2011 Amendment:** **(1)** Substituted “president of the state board or his or her designee” for “Secretary for Education” in the last sentence of subd (a); **(2)** amended the first sentence of subd (b) by **(a)** substituting “department” for “State Department of Education”; and **(b)** deleting “of Public Instruction” after “the Superintendent”; and **(3)** deleted “Section 33132,” after “Section 1630,” in subd (c)(1).

**2015 Amendment:** Amended subd (c)(1) by adding **(1)** “and” after “Section 42127.6,”; and **(2)** “with the computation described in”.

**2020 Amendment:** **(1)** Substituted “the president of the state board’s” for “his or her” in (a); **(2)** substituted “the chancellor’s” for “his or her” in the first sentence of (b); **(3)** substituted “the county superintendent of schools” for “his or her” in (c)(2); **(4)** substituted “ensure rate information is posted on the unit’s internet website” for “distribute rate information to each school district, charter school, and county office of education” in the last sentence of (d)(1); **(5)** in (d)(4), deleted “, to be disseminated semiannually to each county service region,” preceding “calendar” and added “, and post that training calendar on the unit’s internet website”; and **(6)** deleted former (i)(1)–(i)(4) which read:“(i)(1) The unit shall request and review applications to establish regional teams of education finance experts throughout the state. (2) To the extent that funding is provided for purposes of this subdivision in the annual Budget Act or through another appropriation, regional teams selected by the Superintendent, in consultation with the unit, shall provide training and technical expertise to school districts, charter schools, and county offices of education facing fiscal difficulties. (3) The regional teams shall follow the standards and guidelines of and remain under the general supervision of the governing board established under subdivision (b). (4) It is the intent of the Legislature that, to the extent possible, the regional teams be distributed geographically throughout the various regions of the state in order to provide timely, cost-effective expertise to school districts, charter schools, county offices of education, and community college districts throughout the state.”

#### **§ 42127.9. Appeal of changes in district’s budget**

**(a)** No later than five days after a school district receives notice of any change or changes adopted by the county superintendent of schools in the school district’s budget pursuant to subdivision (b) of Section 42127.3, subdivision (e) of Section 42127.6, or subdivision (b) of Section 42131, the governing board of the school district may submit an appeal to the Superintendent, based upon the contention that the change or changes would do one or more of the following:

**(1)** Exceed the financial or program changes necessary to allow the school district to meet its financial obligations in the current fiscal year and with regard to its multiyear financial commitments. It is the intent of the Legislature that any change or changes adopted by the county superintendent of schools in a school district’s budget minimize, to the extent possible, any impact upon the educational program of the school district.

**(2)** Require reductions that are unnecessary in view of other reductions that are proposed by the governing board of the school district and that reasonably can be expected to be realized.

**(3)** Make one or more changes in the school district’s operations that are inconsistent with any provision of state or federal law.

**(b)** No later than five days after receiving that appeal, the Superintendent, with the concurrence of the president of the state board or the president’s designee, shall deny or uphold the appeal. If the appeal is denied, the school district shall implement the change or changes adopted by the county superintendent of schools. If the appeal is upheld, the Superintendent may revise the change or changes adopted by the county superintendent of schools or issue guidelines governing the manner in which the governing board of the school district or the county superintendent of schools shall be required to change the school district budget.

*Added by Stats 1991 ch 1213 § 22 (AB 1200). Amended by Stats 1993 ch 924 § 13 (AB 1708); Stats 2018 ch 426 § 15 (AB 1840), effective September 17, 2018; Stats 2019 ch 497 § 51 (AB 991), effective January 1, 2020.*

### Amendments

**1993 Amendment:** Substituted “subdivision (e)” for “subdivision (c)” in subd (a).

**2018 Amendment:** (1) In the introductory language of subd (a), (a) added “school” following “schools in the”; and (b) added “school” following “governing board of the”; (2) in subd (a)(1), (a) added “school” preceding “district to meet”; and (b) substituted “school district” for “district” at the end; (3) added “school” preceding “district” in subd (a)(2); (4) added “school” preceding “district’s” in subd (a)(3); and (5) in subd (b), (a) added “, with the concurrence of the president of the state board or the president’s designee,”; and (b) added “school” preceding “district” three times.

**2019 Amendment:** (1) Deleted “of Public Instruction” following “Superintendent” in the introductory language of subd (a); and (2) deleted “of Public Instruction” following “the Superintendent” twice in subd (b).

### § 42128. Effect of neglect or refusal to make a budget

If the governing board of any school district neglects or refuses to make a school district budget as prescribed by this article, or neglects to file interim reports pursuant to Section 42130, the county superintendent of schools shall not make any apportionment of state or county school money for the particular school district for the current school year, and the county superintendent shall notify the appropriate county official that he or she shall not approve any warrants issued by the school district.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1993 ch 924 § 14 (AB 1708); Stats 1995 ch 525 § 8 (AB 438).*

### Amendments

**1993 Amendment:** Added “, and the county superintendent shall notify the appropriate county official that he or she shall not approve any warrants issued by the school district” at the end.

**1995 Amendment:** Added “or neglects to file interim reports pursuant to Section 42130,”.

### § 42129. Submission of required reports; Delinquent reports

School districts and county offices of education shall transmit to the department, on a timely basis, all budget reports, prior year expenditure reports, qualified and negative financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (l) of Section 1240, subdivision (g) of Section 35035, Sections 1621, 1623, 41020, 42127, 42131, and Chapter 7.2 (commencing with Section 56836) of Part 30, and those reports used to calculate the first, second, and annual principal apportionments and special purpose apportionments for school districts and county offices of education. If the reports are not submitted to the Superintendent of Public Instruction within 14 days after the submission date prescribed in the statute or specified by the Superintendent of Public Instruction, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses, or salaries to the district superintendent, county superintendent, or members of the governing boards, as appropriate. The payments shall be withheld until the delinquent reports have been submitted to the department. If the county superintendent performs the functions of the county auditor, the Superintendent of Public Instruction may direct the county superintendent to withhold the payments specified in this section.

*Added by Stats 1986 ch 1150 § 14. Amended by Stats 1988 ch 1462 § 1.19; Stats 1998 ch 89 § 13 (AB 598), effective June 30, 1998, operative July 1, 1998; Stats 2002 ch 1168 § 24 (AB 1818), effective September 30, 2002; Stats 2004 ch 896 § 36 (AB 2525), effective September 29, 2004.*

### Amendments

**1988 Amendment:** (1) Substituted “reports, prior year expenditure reports, qualified and negative financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (j) of Section 1240, 35014, 41020, 42127, and 56730.5, and” for “and audit reports as prescribed by Sections 1623, 41020, and 42127 of the Education Code and,”; and (2) added the last sentence.

**1998 Amendment:** Substituted “Chapter 7.2 (commencing with Section 56836) of Part 30” for “57730.5” in the first sentence.

**2002 Amendment:** (1) Deleted “35014,” after “1623,”; (2) added “42131,”; and (3) substituted “If” for “In the event that” at the beginning of the second sentence.

**2004 Amendment:** Substituted (1) “department” for “State Department of Education” in the first and third sentences; (2) “subdivision (l) of Section 1240” for “subdivision (j) of Section 1240” in the first sentence; and (3) “payments shall be withheld” for “withholding shall continue only” in the third sentence.

#### § 44041. Deductions in salary payment as requested by employee

(a)(1) The governing board of each school district when drawing an order for the salary payment due to employees of the district shall, without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for any or all of the following purposes:

(A) Paying premiums on any policy or certificate of group life insurance for the benefit of the employee or for group disability insurance, or legal expense insurance, or any of them, for the benefit of the employee or his or her dependents issued by an admitted insurer on a form of policy or certificate approved by the Insurance Commissioner.

(B) Paying rates, dues, fees, or other periodic charges on any hospital service contract for the benefit of the employee, or his or her dependents, issued by a nonprofit hospital service corporation on a form approved by the Insurance Commissioner pursuant to the former provisions of Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Paying periodic charges on any medical and hospital service agreement or contract for the benefit of the employee, or his or her dependents, issued by a nonprofit corporation subject to Part 2 (commencing with Section 5110) of, Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code.

(D) Paying periodic charges on any legal services contract for the benefit of the employee, or his or her dependents issued by a nonprofit corporation subject to Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code.

(2) The requirements of this subdivision shall not apply to subdivision (b).

(b) For purposes of a deferred compensation plan authorized by Section 403(b) or 457 of the Internal Revenue Code or an annuity program authorized by Section 403(b) of the Internal Revenue Code that is offered by the school district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the California Constitution, the governing board of each school district when drawing an order for the salary payment due to an employee of the district shall, with or without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for participating in a deferred compensation plan or annuity program offered by the school district. The governing board shall determine the cost of performing the requested deduction and may collect that cost from the organization, entity, or employee requesting or authorizing the deduction. For purposes of this subdivision, the governing board of a school district is entitled to include in the amounts reducing the order the costs of any compliance or administrative services that are required to perform the requested deduction in compliance with federal or state law, and may collect these costs from the participating employee, the employee's participant account, or the organization or entity authorizing the deduction.

(c) The governing board of the district shall, beginning with the month designated by the employee and each month thereafter until authorization for the deduction is revoked, draw its order upon the funds of the district in favor of the insurer which has issued the policies or certificates or in favor of the

nonprofit hospital service corporation which has issued hospital service contracts, or in favor of the nonprofit corporation which has issued medical and hospital service or legal service agreements or contracts, for an amount equal to the total of the respective deductions therefor made during the month. The governing board may require that the employee submit his or her authorization for the deduction up to one month in advance of the effective date of coverage.

(d) “Group insurance” as used in this section shall mean only a bona fide group program of life or disability or life and disability insurance where a master contract is held by the school district or an employee organization but it shall, nevertheless, include annuity programs authorized by Section 403(b) of the Internal Revenue Code when approved by the governing board.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1978 ch 1305 § 24, operative January 1, 1980. Amended by Stats 2006 ch 780 § 6, effective January 1, 2007; Stats 2007 ch. 130 § 69 (AB 299), effective January 1, 2008, ch 323 § 19 (ch. 323 prevails) (AB 757), effective January 1, 2008.*

**Editor’s Notes**—Ins C § 11491, referred to in this section, was repealed in 1996.

### Amendments

**1978 Amendment:** Amended the first sentence by (1) adding “(commencing with Section 11491)”; (2) substituting “nonprofit corporation subject to Part 2 (commencing with Section 5110) of, Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code” for “nonprofit membership corporation lawfully operating under Section 9200 or 9201 of the Corporations Code”; and (3) substituting “nonprofit corporation subject to Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code” for “nonprofit membership corporation lawfully operating under Section 9200 or 9201.2 of the Corporations Code” at the end of the sentence.

**2006 Amendment:** (1) Added subdivision designations (a)–(a)(1)(D); (2) deleted “participating in a deferred compensation program offered by the school district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the Constitution, or” at the end of subd (a)(1); (3) substituted the period for “, or” at the end of subds (a)(1)(A)–(a)(1)(C); (4) added “or her” after “or his” wherever it appears in the section; (5) added subd (a)(2); and (6) added subd (b).

**2007 Amendment:** (1) Added “former” after “pursuant to the” in subd (a)(1)(B); and (2) substituted “employee” for “employees” after “due to an” in subd (b).

### § 44041.5. Contract with a third-party administrator regarding annuity contract and custodial account or deferred compensation plan

(a) For purposes of this section, the following definitions shall apply:

(1) “Annuity contract” means an annuity contract described in Section 403(b) of the Internal Revenue Code that is available to employees as described in Section 770.3 of the Insurance Code.

(2) “Custodial account” means a custodial account described in Section 403(b)(7) of the Internal Revenue Code.

(3) “Deferred compensation plan” means a plan described in Section 457 of the Internal Revenue Code.

(4) “Employer” means a school district or county office of education.

(5) “Third-party administrator” means a person or entity that provides administrative or compliance services to an employer as described in subdivision (b).

(b) An employer may enter into a written contract with a third-party administrator for services regarding an annuity contract and custodial account or a deferred compensation plan provided by the employer. That contract may include any of the following:

(1) Services to ensure compliance with either Section 403(b) of the Internal Revenue Code regarding the annuity contract and custodial account or Section 457 of the Internal Revenue Code regarding a deferred compensation plan, including, but not limited to, any of the following:

(A) Administer and maintain written plan documents governing the employer’s plan.

**(B)** Review and authorize hardship withdrawal requests under Section 403(b) of the Internal Revenue Code, transfer requests, loan requests, unforeseeable emergency withdrawals under Section 457 of the Internal Revenue Code and other disbursements permitted under either Section 403(b) or 457 of the Internal Revenue Code.

**(C)** Review and determine domestic relations orders as qualified domestic relations orders as described in Section 414(p) of the Internal Revenue Code.

**(D)** Provide notice to eligible employees that is consistent with Title 26 of the Code of Federal Regulations that those employees may participate in an annuity contract and custodial account.

**(E)** Administer and maintain specimen salary reduction agreements for the employer and employees of that employer to initiate payroll deferrals.

**(F)** Monitor, from information provided either directly from the employee, as part of the common remitting services provided pursuant to paragraph (2), through information provided by the employer, or through information provided by vendors authorized by the employer to provide investment products, the maximum contributions allowed by employees participating in either the annuity contract and custodial account as described in Sections 402(g), 414(v), and 415 of the Internal Revenue Code or the deferred compensation plan as described in Section 414(v) or 457 of the Internal Revenue Code.

**(G)** Calculate and maintain vesting information for contributions made by the employer to the annuity contract and custodial account or deferred compensation plan.

**(H)** Identify and notify employees that are required to take a minimum distribution of the funds in that employee's annuity contract and custodial account or deferred compensation plan as described in Section 401(a)(9) of the Internal Revenue Code.

**(I)** Coordinate responses to the Internal Revenue Service if there is an Internal Revenue Service audit of the annuity contract and custodial account or deferred compensation plan.

**(2)** Services to administer the annuity contract and custodial account or a deferred compensation plan that includes, but is not limited to, all of the following:

**(A)** Common remitting services.

**(B)** General educational information to employees about the annuity contract and custodial account or the deferred compensation plan that includes, but is not limited to, the enrollment process, program eligibility, and investment options.

**(C)** Internal reports for the employer to ensure compliance with either Section 403(b) or 457 of the Internal Revenue Code and compliance with Title 26 of the Code of Federal Regulations.

**(D)** Consulting services related to the design, operation, and administration of the plan.

**(E)** Internal audits, on behalf of an employer, of a provider's plan compliance procedures with respect to the provider's annuity contract or custodial account offered under the employer's plan. These audits shall not be conducted more than once per year for any provider's plan unless documented evidence indicates a problem in complying with either Section 403(b) or 457 of the Internal Revenue Code.

**(c)(1)** If an employer elects to contract with a third-party administrator for the administrative or compliance services to employers described in subdivision (b), the employer shall do all of the following:

**(A)** Require the third-party administrator to provide proof of liability insurance and a fidelity bond in an amount determined by the employer to be sufficient to protect the assets of participants and beneficiaries in the annuity contract and custodial account or deferred compensation plan.

**(B)** Require the third-party administrator to provide evidence of a safe chain-of-custody of assets process for ensuring fulfillment of fiduciary responsibilities and timely placement of participant investments.

**(C)** Require evidence, if the third-party administrator is related to or affiliated with a provider of investment products pursuant to Section 403(b) or 457 of the Internal Revenue Code, that data generated from the services provided by the third-party administrator are maintained in a manner that prevents the provider of investment products from accessing that data unless access to the data is required to provide the services in accordance with the contract entered into with the employer pursuant to subdivision (b).

**(2)** This subdivision shall apply to any administrative or compliance services provided pursuant to a contract for services between an employer and the State Teachers' Retirement System if the system does

not contract with a third-party administrator to provide those administrative and compliance services on behalf of the system.

**(d)** A third-party administrator shall disclose to any employer seeking his or her services any fees, commissions, cost offsets, reimbursements, or marketing or promotional items received by the administrator, a related entity, or a representative or agent of the administrator or related entity from any plan provider selected as a vendor of an annuity contract, custodial account, or deferred compensation plan by the employer. A third-party administrator that is affiliated with or has a contractual relationship with a provider of annuity contracts, custodial accounts, or deferred compensation plans shall disclose the existence of the relationship to each employer and each individual participant in the annuity contract, custodial account or deferred compensation plan.

**(e)** Any personal information obtained by the third-party administrator in providing services pursuant to this section shall be used by the third-party administrator only to provide those services for the employer in accordance with the contract entered into with the employer pursuant to subdivision (b).

**(f)** Nothing in this section shall be construed to interfere with either of the following:

**(1)** The rights of employees or beneficiaries as described in Section 770.3 of the Insurance Code.

**(2)** The ability of the employer to establish nonarbitrary requirements upon providers of an annuity contract that, in the employer's discretion, aid in the administration of its benefit programs and do not unreasonably discriminate against any provider of an annuity contract or interfere with the rights of employees or beneficiaries as described in Section 770.3 of the Insurance Code.

**(g)** This section shall not apply to any services provided by a third-party administrator pursuant to a contract for services between an employer and the State Teachers' Retirement System. Any services provided by a third-party administrator pursuant to a contract for services between an employer and the State Teachers' Retirement System shall be subject to either Section 24953, in the case of an annuity contract or custodial account, or Section 24977, in the case of a deferred compensation plan.

*Added by Stats 2006 ch 780 § 7 (AB 2462), effective January 1, 2007. Amended by Stats 2007 ch. 130 § 70 (AB 299), effective January 1, 2008.*

### Amendments

**2007 Amendment:** **(1)** Added "For" at the beginning of subd (a); **(2)** amended subd (b)(1)(F) by substituting **(a)** "paragraph (2)" for "subparagraph (2)"; and **(b)** "Section 414(v) or 457" for "Sections 414(v) or 457"; and **(3)** added "of the following" at the end of the introductory clause in subd (f).

### § 44043. Temporary disability

Any school employee of a school district who is absent because of injury or illness which arose out of and in the course of the person's employment, and for which the person is receiving temporary disability benefits under the workers' compensation laws of this state, shall not be entitled to receive wages or salary from the district which, when added to the temporary disability benefits, will exceed a full day's wages or salary.

During such periods of temporary disability so long as the employee has available for the employee's use sick leave, vacation, compensating time off or other paid leave of absence, the district shall require that temporary disability checks be endorsed payable to the district. The district shall then cause the employee to receive the person's normal wage or salary less appropriate deductions including but not limited to employee retirement contributions.

When sick leave, vacation, compensating time off or other available paid leave is used in conjunction with temporary disability benefits derived from workers' compensation, as provided in this section, it shall be reduced only in that amount necessary to provide a full day's wage or salary when added to the temporary disability benefits.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*



**Notes of Decisions**

**1. Generally**

Given that Ed C § 44043 payments are in part temporary disability benefits under workers' compensation laws, temporary disability payments commence when a school district pays an injured employee his or her normal wages under § 44043; accordingly, where a school district sought to terminate further liability for an employee's temporary disability indemnity based on Lab C § 4656(c)(1), the employee had received exactly what she was entitled to under Ed C § 44043, and although the district admitted that it did not precisely follow the procedure outlined in § 44043, or the alternate procedure set forth in Ed C § 44044, the legislature would likely not have been concerned with a slight administrative deviation that was mutually beneficial to the parties and achieved the same end result. *Mt. Diablo Unified School Dist. v. Workers' Comp. Appeals Bd.* (2008, 1st Dist) 165 Cal App 4th 1154, 2008 Cal App LEXIS 1222.

Ed C § 44043 provides a different and inferior benefit than Lab C § 4850. *Mt. Diablo Unified School Dist. v. Workers' Comp. Appeals Bd.* (2008, 1st Dist) 165 Cal App 4th 1154, 2008 Cal App LEXIS 1222.

**§ 44044. Retention of temporary disability checks**

Notwithstanding the provisions of Sections 44043, 44984 and 45192, a school district may waive the requirement that temporary disability checks be endorsed payable to the district, and may in lieu thereof, permit the employee to retain his temporary disability check, providing that notice be given to the district that such check has been delivered to the employee. In such cases, the district shall then cause the employee to receive his normal wage or salary less appropriate deductions, including, but not limited to, employee retirement contributions, and an amount equivalent to the face amount of the temporary disability check, which the employee has been permitted to retain. In all cases, employee benefits are to be computed on the basis of the employee's regular wage or salary prior to the deduction of any amounts for temporary disability payments.

Nothing contained herein shall be deemed to in any way diminish those rights and benefits which are granted to a school employee pursuant to the provisions of Sections 44043, 44984 and 45192.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**Notes of Decisions**

**1. Generally**

Given that Ed C § 44043 payments are in part temporary disability benefits under workers' compensation laws, temporary disability payments commence when a school district pays an injured employee his or her normal wages under § 44043; accordingly, where a school district sought to terminate further liability for an employee's temporary disability indemnity based on Lab C § 4656(c)(1), the employee had received exactly what she was entitled to under Ed C § 44043, and although the district admitted that it did not precisely follow the procedure outlined in § 44043, or the alternate procedure set forth in Ed C § 44044, the legislature would likely not have been concerned with a slight administrative deviation that was mutually beneficial to the parties and achieved the same end result. *Mt. Diablo Unified School Dist. v. Workers' Comp. Appeals Bd.* (2008, 1st Dist) 165 Cal App 4th 1154, 2008 Cal App LEXIS 1222.

**§ 44252.5. Administering state basic skills assessment test; Agreements with other states; Proficiency**

(a) The commission shall administer the state basic skills proficiency test pursuant to Sections 44227, 44252, and 44830 in accordance with rules and regulations adopted by the commission. A fee shall be charged to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test. The amount of the fee shall be established by the commission to recover the cost of examination administration and development pursuant to Section 44235.3.

(b) The commission may enter into agreements with other states permitting the use of the state basic skills proficiency test as a requirement for the issuance of credentials or for teacher preparation program admission in those other states, provided that the use would advance the interests of the State of California and that the other states reimburse the Teacher Credentials Fund for a proportionate share of costs of the development and administration of the test.

(c) An individual who passes the state basic skills proficiency test, as adopted by the Superintendent, shall be considered proficient in the skills of reading, writing, and mathematics, and shall not be required to be retested by this test for purposes of meeting the proficiency requirements of Sections 44227, 44252, and 44830.

(d) An individual who passes one or more components of the state basic skills proficiency test in the subjects of basic reading, writing, or mathematics shall be deemed to have demonstrated his or her proficiency in these subject areas and shall not be required to be retested in these subjects during subsequent test administrations.

*Added by Stats 1981 ch 1136 § 2. Amended by Stats 1982 ch 206 § 2, effective May 18, 1982; Stats 1983 ch 536 § 2, effective July 28, 1983; Stats 1986 ch 989 § 2; Stats 1999 ch 704 § 1 (AB 1282); Stats 2006 ch 517 § 5 (SB 1209), effective January 1, 2007; Stats 2008 ch 518 § 3 (SB 1186), effective January 1, 2009.*

### Amendments

**1982 Amendment:** (1) Amended subd (a) by (a) substituting “in accordance with rules and regulations adopted” for “at existing centers administered” in the first sentence; (b) adding the second sentence; (c) adding “in the 1982–83 fiscal year, thirty–five dollars (\$35) in the 1983–84 fiscal year, and forty dollars (\$40) in subsequent fiscal years” in the fifth sentence; and (d) substituting “receive” for “collect” after “commission shall” in the last sentence; and (2) deleted the former second sentence of subd (b) which read: “An individual who passes a proficiency test in basic skills in another state shall be considered to meet the proficiency requirements of this section only if the commission determines that the test covers the same skills as the state assessment instrument and that the test is equivalent to the state instrument in difficulty.”

**1983 Amendment:** (1) Substituted “test”, “proficiency test”, and “basic skills proficiency test” for references to “assessment instrument”, “assessment”, and “assessment instrument to measure proficiency in basic reading, writing, and mathematics skills” in subds (a) and (b); (2) substituted “44227, 44252,” for “44252” in the first sentence of subd (a) and near the end of subd (b); (3) deleted the former last sentence of subd (a) which read: “The commission shall receive the fee from the individuals being assessed, and reimburse the State Department of Education for any costs the department incurs in the process of adopting the assessment instrument and overseeing the implementation of these provisions.”; (4) added the comma after “Public Instruction” in subd (b); and (5) added subd (c).

**1986 Amendment:** (1) Added subd (b); and (2) redesignated former subds (b) and (c) to be subds (c) and (d).

**1999 Amendment:** Amended subd (a) by (1) substituting “for the 1984–85 fiscal year to January 1, 2002” for “in subsequent fiscal years” in the fifth sentence; and (2) adding the last sentence.

**2006 Amendment:** (1) Amended subd (a) by (a) deleting the former second sentence which read: “The adopted rules and regulations shall be promulgated by the commission before January 1, 1983, and shall be exempt from the requirements of Section 44232.”; and (b) deleting “commission shall establish the amount of this fee. However, the fee shall not exceed thirty dollars (\$30) in the 1982 fiscal year, thirty five dollars (\$35) in the 1983-84 fiscal year, and forty dollars (\$40) for the 1984-85 fiscal year to January 1, 2002. Subsequent to January 1, 2002, the” after “grading the test. The”; (2) deleted “of Public Instruction” after “by the Superintendent” in subd (c); and (3) added subd (e).

**2008 Amendment:** (1) Substituted “An individual” for “Any individual” at the beginning of subds (c) and (d); (2) deleted the comma after “writing, or mathematics” in subd (d); and (3) deleted former subd (e) which read: “(e) Any individual who achieves a passing score, as determined by the Superintendent, on any of the tests specified in subdivision (d) of Section 44252 shall be considered proficient in the skills of reading, writing, and mathematics, and shall not be required to pass the state basic skills proficiency test or be retested for purposes of meeting the proficiency requirements of Sections 44227, 44252, and 44830.”

**§ 44830. Employment of certificated persons; Basic skills proficiency test; Emergency substitute teachers; Exemptions**

(a) The governing board of a school district shall employ for positions requiring certification qualifications, only persons who possess the qualifications for those positions prescribed by law. It is contrary to the public policy of this state for a person or persons charged, by the governing boards, with the responsibility of recommending persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for that employment.

(b) The governing board of a school district shall not initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the capacity designated in his or her credential unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or is exempted from the requirement by subdivision (c), (d), (e), (f), (g), (h), (i), (j), or (k).

(1) The governing board of a school district, with the authorization of the Commission on Teacher Credentialing, may administer the state basic skills proficiency test required under Sections 44252 and 44252.5.

(2) The Superintendent, in conjunction with the commission and local governing boards, shall take steps necessary to ensure the effective implementation of this subdivision.

It is the intent of the Legislature that in effectively implementing this subdivision, the governing boards of school districts shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. The governing board of a school district shall make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.

(3) Demonstration of proficiency in reading, writing, and mathematics by a person pursuant to Section 44252 satisfies the requirements of this subdivision.

(c) A certificated person is not required to take the state basic skills proficiency examination if he or she has taken and passed it at least once, achieved a passing score on any of the tests specified in subdivision (b) of Section 44252, or possessed a credential before the enactment of the statute that made the test a requirement.

(d) This section does not require a person employed solely for purposes of teaching adults in an apprenticeship program, approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

(e) This section does not require the holder of a child care permit or a permit authorizing service in a development center for the handicapped to take the state basic skills proficiency test, so long as the holder of the permit is not required to have a baccalaureate degree.

(f) This section does not require the holder of a credential issued by the commission who seeks an additional credential or authorization to teach, to take the state basic skills proficiency test.

(g) This section does not require the holder of a credential to provide service in the health profession to take the state basic skills proficiency test if that person does not teach in the public schools.

(h) This section does not require the holder of a designated subjects special subjects credential to pass the state basic skills proficiency test as a condition of employment unless the requirements for the specific credential require the possession of a baccalaureate degree. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs the holder of a designated subjects special subjects credential shall establish its own basic skills proficiency for these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(i) This section does not require the holder of a preliminary or clear designated subjects career technical education teaching credential to pass the state basic skills proficiency test.

(j) This section does not require certificated personnel employed under a foreign exchange program to take the state basic skills proficiency test. The maximum period of exemption under this subdivision shall be one year.

(k) Notwithstanding any other law, a school district or county office of education may hire certificated personnel who have not taken the state basic skills proficiency test if that person has not yet been afforded the opportunity to take the test. The person shall take the test at the earliest opportunity and may remain employed by the school district pending the receipt of his or her test results.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1981 ch 1136 § 13; Stats 1982 ch 206 § 6, effective May 18, 1982, ch 1388 § 5, effective September 24, 1982; Stats 1983 ch 536 § 3, effective July 28, 1983, ch 1038 § 2; Stats 1985 ch 747 § 1; Stats 1986 ch 989 § 5; Stats 1996 ch 948 § 2 (AB 1068), effective September 26, 1996, operative February 11, 1997; Stats 1998 ch 547 § 6 (AB 1620), effective September 18, 1998; Stats 2004 ch 113 § 1 (SB 1208); Stats 2007 ch 191 § 2 (SB 112), effective January 1, 2008; Stats 2008 ch 518 § 8 (SB 1186), effective January 1, 2009.*

### Amendments

**1981 Amendment:** (1) Designated the former section to be subd (a); (2) substituted “the” for “said” wherever it appears in the second sentence of subd (a); and (3) added subds (b) and (c).

**1982 Amendment:** (1) Substituted the first paragraph of subd (b) for the former first paragraph which read: “(b) Commencing on March 1, 1982, no certificated person shall be hired initially to serve in any school district on a permanent, temporary, or substitute basis, unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills in the English language.”; (2) added subd (b)(1); (3) redesignated former subd (b)(1) to be subd (b)(2); (4) added the second paragraph of subd (b)(2); (5) substituted subd (b)(3) for former subd (b)(3) which read: “(3) If a certificated person does not pass a proficiency assessment in basic skills pursuant to this section, he or she shall be given one year to master these basic skills, and then shall be given one additional opportunity to be reassessed. Failure to pass an assessment in basic skills on the second opportunity shall be grounds for dismissal under procedures established in Article 3 (commencing with Section 44930) of Chapter 4.”; (6) added subd (c); (7) redesignated former subd (c) to be subd (d); and (8) added subds (e)–(h). (As amended by Stats 1982, ch 1388, compared to the section as it read prior to 1982. This section was also amended by an earlier chapter, ch 206. See Gov C § 9605.)

**1983 Amendment:** (1) Amended subd (a) by substituting (a) “A governing board of a school district” for “Governing boards of school districts”; and (b) “is” for “shall be” after “It” at the beginning of the second sentence; (2) amended subd (b) by substituting (a) “(g), (h), (i), (j), (k), (l), (m), and (n)” for “and (g)”; (b) “Commission on Teacher Credentialing” for “Commission on Teacher Preparation and Licensing” in subd (b)(1); and (c) “ensure” for “insure” in subd (b)(2); (3) substituted “any” for “another” after “certification in” in subd (c); (4) added subds (e)–(g); (5) redesignated former subds (e) and (f) to be subds (h) and (i); (6) added subd (j); (7) redesignated former subd (g) to be subd (k); (8) added subd (l); (9) redesignated former subd (h) to be subd (m); and (10) added subds (n) and (o). (As amended by Stats 1983, ch 1038, compared to the section as it read prior to 1983. This section was also amended by an earlier chapter, ch 536. See Gov C § 9605.)

**1985 Amendment:** (1) Amended the second sentence of subd (a) by (a) deleting “such” after “recommending”; and (b) substituting “that” for “such” after “applicants for”; and (2) added the second sentence of subd (c).

**1986 Amendment:** Deleted former subd (o) which read: “(o) The commission shall require that each applicant for a credential issued by the commission, unless exempted by the provisions of Section 44252, take the state basic skills proficiency test for diagnostic purposes. Each applicant shall take the test no later than the deadline for the submission of his or her application for entrance to the credential program. Test results shall be forwarded to each California postsecondary institution to which the applicant has applied.”

**1996 Amendment:** (1) Deleted “the provisions of” after “required under” in subd (b)(1); (2) added subdivision designation (c)(1); and (3) added subd (c)(2).

**1998 Amendment:** (1) Substituted “or (m)” for “(m), and (n)” at the end of subd (b); (2) deleted former subd (m) which read: “(m) A school district may hire a teacher credentialed in another state who has not taken the state basic skills test if, at a public meeting, the school district governing board certifies that no person who meets the credentialing requirements and who has satisfied the basic skills requirement specified in Section 44261.5 is

available to fill a position deemed necessary to the normal operation of the school curriculum. The board shall include in the certification a statement of the need to fill the position and the reasons for the need, proof of its attempts to recruit qualified teachers in California, and a statement attesting to the failure of those attempts. Such certification shall be submitted to the commission with the name of the teacher the board intends to employ pursuant to this section. The commission shall issue an emergency credential pursuant to paragraph 3 of subdivision (b) of Section 44252, upon receipt of this documentation.”; and (3) redesignated former subd (n) to be subd (m).

**2004 Amendment:** (1) Amended subd (b) by substituting (a) “A school district governing board shall not initially” for “Commencing on February 1, 1983, no school district governing board shall initially” at the beginning of the section; (b) “his or her credential,” for “his or her credential”; and (c) “Section 44252.5 or is exempted from the requirement by subdivision (c),” for “Section 44252.5 or unless the person is exempted from the requirement by subdivision (c),” at the end of the section; (2) added “state” after “may administer the” in subd (b)(1); (3) deleted “the provisions of” after “effectively implementing” in the second sentence of subd (b)(2); (4) substituted “Section 44252 satisfies the” for “Section 44252 shall satisfy the” in subd (b)(3); (5) amended subd (c)(1) by (a) substituting “person is not required” for “person shall not be required” at the beginning of the section; (b) adding “district or if he or she is a retired Certificated employee who meets all of the following requirements:” after “to employment with the” at the end of the section; and (c) adding subds (c)(1)(A)–(c)(1)(C); (6) added subd (c)(2); (7) substituted “that has been developed” for “which has been developed” in subd (c)(2); (8) redesignated former subd (c)(2) to be subd (c)(3); (9) substituted “of Part 28 is not required” for “of Part 28 shall not be required” in the first sentence of subd (c)(3); (10) substituted “This section does not require” for “Nothing in this section shall require” in subds (d)–(g); (11) substituted “if that person” for “so long as that person” in subd (g); (12) added “state” before “basic skills proficiency” twice in subd (h); (13) substituted “Section 44930.” for “Section 44930) of Chapter 4.” in subd (i); (14) substituting “This section does not require the holder” for “Nothin in this section shall be construed as requiring the holder” in subds (j) and (k); (15) substituted “This section does not require” for “Nothing in this section shall be construed to require” in subd (l); and (16) amended subd (m) by deleting (a) “provision of” after “Notwithstanding any other” in the first sentence; and (b) “then” after “The person shall” in the second sentence.

**2007 Amendment:** (1) Substituted “Superintendent” for “superintendent” in subd (b)(2); (2) amended subd (c)(1) by (a) substituting “examination” for “test”; and (b) substituting “taken and passed it at least once, achieved a passing score on any of the tests specified in subdivision (d) of Section 44252, or possessed a credential before the enactment of the statute that made the test a requirement.” for “been employed in a position requiring certification in any school district within 39 months prior to employment with the district or if he or she is a retired certificated employee who meets all of the following requirements:”; (3) deleted former subds (c)(1)(A)–(c)(3) which read:

“(A) He or she has taught 15 years or more in a California public school.

“(B) He or she has been employed at least five of those 15 years in the same school district that desires to reemploy that person and has been employed as a full-time classroom teacher within the last five years or concurrently enrolls in a teacher refresher course that meets all of the following requirements:

“(i) The course is developed and administered by the employing school district.

“(ii) The course is aligned with the state content and performance standards for pupils, adopted pursuant to subdivision (a) of Section 60605.

“(iii) The course is approved by the local governing board.

“(C) He or she has been employed as a classroom teacher or administrator within the last 10 years.

“(2) A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment and who has not taken the state basic skills proficiency test, but who has passed a basic skills proficiency examination that has been developed and administered by the school district offering that person employment, may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one year of the date of his or her employment.

“(3) A certificated person who is employed for purposes of the class size reduction program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28 is not required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39 months prior to employment with the district. A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment for purposes of the class size reduction program and who has not taken the state basic skills proficiency test may be employed by the

governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one calendar year of the date of his or her employment.”; and (4) substituted “employed by the school district” for “employed by the district” in subd (m).

**2008 Amendment:** (1) Amended subd (a) by substituting (a) “qualifications for those positions” for “qualifications therefor” in the first sentence; and (b) “state for a person” for “state for any person” in the last sentence; (2) amended subd (b) by (a) substituting “The governing board of a school district” for “A school district governing board”; (b) deleting the comma after “his or her credential”; and (c) substituting “subdivision (c), (d), (e), (f), (g), (h), (i), (j), or (k)” for “subdivision (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), or (m)”; (3) added the first paragraph of subd (b)(2); (4) redesignated former subd (b)(2) to be the second paragraph of subd (b)(2); (5) amended the last paragraph of subd (b)(2) by substituting (a) “the governing boards of school districts” for “school district governing boards” in the first sentence; and (b) “The governing board of a school district” for “District governing boards” in the last sentence; (6) substituted “a person” for “any person” in subd (b)(3); (7) substituted “subdivision (b)” for “subdivision (d)” in subd (c); (8) deleted the comma after “skills proficiency test” in subd (g); (9) deleted former subds (h) and (i) which read:

“(h) If the state basic skills proficiency test is not administered at the time of hiring, the holder of a vocational designated subject credential who has not already taken and passed the state basic skills proficiency test may be hired on the condition that he or she will take the test at its next local administration.

“(i) If the holder of a vocational designated subject credential does not pass a proficiency assessment in basic skills pursuant to this section, he or she shall be given one year in which to retake and pass the proficiency assessment in basic skills. If at the expiration of the one-year period he or she has not passed the proficiency assessment in basic skills, he or she shall be subject to dismissal under procedures established in Article 3 (commencing with Section 44930).”;

(10) redesignated former subds (j)-(m) to be subds (h)-(k); (11) amended subd (h) by (a) substituting “designated subjects special subjects” for “vocational designated subject” both times it appears; and (b) adding “unless the requirements for the specific credential require the possession of a baccalaureate degree” in the first sentence; (12) substituted subd (i) for former subd (i) which read:

“(i) This section does not require the holder of an adult education designated subject credential for other than academic subjects, who is employed in an instructional setting for 20 hours or less per week, to pass the state proficiency assessment as a condition of employment.”;

and (13) substituted “or county office of education may hire certificated personnel who have not taken” for “may hire a certificated teacher who has not taken” in the first sentence of subd (k).

### Notes of Decisions

Teacher does not hold public office, but serves as employee of school district under employment contract. *Main v. Claremont Unified School Dist.* (1958, Cal App 2d Dist) 161 Cal App 2d 189, 326 P2d 573, 1958 Cal App LEXIS 1718, overruled on other grounds, *Barthuli v. Board of Trustees* (1977) 19 Cal 3d 717, 139 Cal Rptr 627, 566 P2d 261, 1977 Cal LEXIS 159.

Provisions restricting employment by local boards of education to teachers holding credentials from State Board of Education do not automatically deprive teachers of tenure or of status as permanent employees, but implement statewide system of certification by requirement that only teachers so qualified shall be eligible for employment by local boards; such provisions do not condition tenure rights or status on certification. *Mass v. Board of Education* (1964) 61 Cal 2d 612, 39 Cal Rptr 739, 394 P2d 579, 1964 Cal LEXIS 241.

If a teacher meets the Educational Code provisions for permanent status, the attainment of such status is automatic, and requires no application by the teacher or affirmative action on the part of the school board. *Vittal v. Long Beach Unified Sch. Dist.* (1970, Cal App 2d Dist) 8 Cal App 3d 112, 87 Cal Rptr 319, 1970 Cal App LEXIS 2026, superseded by statute as stated in *United Teachers of Ukiah v. Board of Education* (1988, Cal. App. 1st Dist.) 201 Cal. App. 3d 632, 251 Cal. Rptr. 499, — P.2d —, 1988 Cal. App. LEXIS 842.

Narrow exceptions in Ed C § 44911 for sister-state teachers, specifically Ed C §§ 44252(b), 44830(m), did not permit a teacher credentialed out of state without demonstrated competence to teach, as such a teacher must have passed equivalent examinations, and had a one year window in which to pass the California Basic Educational Skills Test; thus, such a case would involve a teacher with a foreign credential serving under an emergency credential only until the teacher either obtained a California credential or ran out of time to do so. *Smith v. Governing Bd. of Elk Grove Unified School Dist.* (2004, Cal App 3d Dist) 120 Cal App 4th 563, 16 Cal Rptr 3d 1, 2004 Cal App LEXIS 1095, review denied, *Smith v. Governing Board of the Elk Grove Unified School Dist.* (2004, Cal) 2004 Cal LEXIS 9471.

**§ 44830.3. Employment of district interns; Requirements; Assistance and guidance; Professional development plan; Compensation; Credentialing of district interns**

(a) The governing board of any school district that maintains prekindergarten, kindergarten, or any of grades 1 to 12, inclusive, classes in bilingual education, or special education programs, may, in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation, employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern be assisted and guided by a certificated employee selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. These certificated employees shall possess valid certification at the same level, or of the same type of credential, as the district interns they serve.

(b) The governing board of each school district employing district interns shall develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan shall include all of the following:

(1) Provisions for an annual evaluation of the district intern.

(2) As the governing board determines necessary, a description of courses to be completed by the district intern, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

(3) Mandatory preservice training for district interns tailored to the grade level or class to be taught, through either of the following options:

(A) One hundred twenty clock hours of preservice training and orientation in the aspects of child development, classroom organization and management, pedagogy, and methods of teaching the subject field or fields in which the district intern will be assigned, which training and orientation period shall be under the direct supervision of an experienced permanent teacher. In addition, persons holding district intern certificates issued by the commission pursuant to Section 44325 shall receive orientation in methods of teaching pupils with disabilities. At the conclusion of the preservice training period, the permanent teacher shall provide the district with information regarding the area that should be emphasized in the future training of the district intern.

(B) The successful completion, prior to service by the intern in any classroom, of six semester units of coursework from a regionally accredited college or university, designed in cooperation with the school district to provide instruction and orientation in the aspects of child development and the methods of teaching the subject matter or matters in which the district intern will be assigned.

(4) Instruction in child development and the methods of teaching during the first semester of service for district interns teaching in prekindergarten, kindergarten, or any of grades 1 to 6, inclusive, including bilingual education classes and special education programs.

(5) Instruction in the culture and methods of teaching bilingual pupils during the first year of service for district interns teaching pupils in bilingual classes and, for persons holding district intern certificates issued by the commission pursuant to Section 44325, instruction in the etiology and methods of teaching pupils with disabilities.

(6) Any other criteria that may be required by the governing board.

(7) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching in special education programs shall also include 120 clock hours of mandatory training and supervised fieldwork that shall include, but not be limited to, instructional practices, and the procedures and pedagogy of both general education programs and special education programs that teach pupils with disabilities.

(8) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching bilingual classes shall also include 120 clock hours of

mandatory training and orientation, which shall include, but not be limited to, instruction in subject matter relating to bilingual-crosscultural language and academic development.

(9) The professional development plan for district interns teaching in special education programs shall be based on the standards adopted by the commission as provided in subdivision (a) of Section 44327.

(c) Each district intern and each district teacher assigned to supervise the district intern during the preservice period shall be compensated for the preservice period required pursuant to subparagraph (A) or (B) of paragraph (3) of subdivision (b). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of service sufficient to meet program standards and performance assessments, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.

*Added by Stats 1983 ch 498 § 45, effective July 28, 1983. Amended by Stats 1984 ch 482 § 10.5, effective July 17, 1984; Stats 1987 ch 1468 § 8; Stats 1994 ch 673 § 8 (SB 1657); Stats 1996 ch 303 § 1 (AB 1432), ch 948 § 3 (AB 1068), effective September 26, 1996, operative February 11, 1997; Stats 2002 ch 1087 § 5 (SB 2029); Stats 2003 ch 62 § 53 (SB 600), ch 461 § 6 (SB 187) (ch 461 prevails); Stats 2004 ch 183 § 67 (AB 3082); Stats 2005 ch 22 § 39 (SB 1108), effective January 1, 2006; Stats 2007 ch 323 § 20 (AB 757), effective January 1, 2008; Stats 2009 ch 316 § 9 (AB 239), effective January 1, 2010.*

**Editor's Notes**—Stats 1996 ch 948 § 7 provided that ch 948 would not become operative unless AB 2460 of the 1995–96 Regular Session was chaptered and became operative effective January 1, 1997; AB 2460 was not chaptered in 1996, and so ch 948 did not become operative. However, Stats 1997 ch 1 § 1 repealed by Stats 1996 ch 948 § 7, effective February 11, 1997; and § 2 of Stats 1997 ch 1 provided that it is the intent of the Legislature in enacting this act to immediately facilitate the reduction of class size in California and to cause Chapter 948 of the Statutes of 1996 to become operative.

### Amendments

**1984 Amendment:** Substituted “6 to 8, inclusive, in a departmentalized program” for “7 and 8 in a departmentalized junior high school” in subd (a).

**1987 Amendment:** (1) Changed all references to teacher trainees to refer to district interns in subds (a), (b)(1), (b)(2), and (d); (2) amended subd (a) by (a) substituting “that maintains kindergarten or grades 1 to 12, inclusive, or that maintains classes in bilingual education” for “maintaining grades 9 to 12, inclusive, or maintaining grades 6 to 8, inclusive, in a departmentalized program,” in the first sentence; (b) adding “on the appropriate statement of need document provided by the commission” in the second sentence; and (c) adding “or by certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers” in the third sentence; (3) amended the first paragraph of subd (b) by (a) substituting “district interns” for “certificated teacher trainees” after “employing” in the first sentence; (b) substituting “district interns” for “each teacher trainee” after “plan for” in the first sentence; and (c) adding “all of the following” in the clause at the end; (4) added subds (b)(3)–(b)(5); (5) redesignated former subd (b)(3) to be subd (b)(6); (6) added subd (c); (7) redesignated former subd (c) to be subd (d); and (8) added “or three years of service for those teaching in bilingual classes” in subd (d).

**1994 Amendment:** (1) Amended subd (a) by (a) adding “classes in bilingual education, or in the case of special education programs for pupils with mild and moderate disabilities, the Los Angeles Unified School District,”; (b) adding “or classes” before “as a classroom” near the end of the first sentence; (c) substituting “an insufficient number of” for “insufficient” after “commission that” in the second sentence; (d) deleting “the provisions of” before “Article 4”; and (e) adding the last sentence; (2) amended subd (b)(3) by (a) deleting “teaching in kindergarten or grades 1 to 12, inclusive,” after “district interns”; and (b) adding “or class” before “to be taught”; (3) amended subd (b)(3)(B) by (a) adding “successful” after “The”; and (b) substituting “coursework from a regionally accredited college or university,” for “college or university coursework” before “designed in”; (4) added subds (b)(7)–(b)(9); and (5) substituted subd (d) for former subd (d) which read: “(d) Upon completion of two years of



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service or three years of service for those teaching in bilingual classes, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.”

**1996 Amendment:** (1) Amended the first sentence of subd (a) by adding (a) “or that maintains” after “grades 1 to 12, inclusive,”; and (b) “, in consultation with an accredited public institution of higher education offering an approved program of pedagogical teacher preparation,”; (2) deleted the former second sentence of subd (a) which read: “Prior to employing any person as a district intern, the governing board shall certify to the commission on the appropriate statement of need document provided by the commission that an insufficient number of fully credentialed teachers are available.”; (3) added the comma after “training and orientation” in subd (b)(8); and (4) deleted “of the Education Code” at the end of subd (b)(9).

**2002 Amendment:** (1) Amended the first sentence of subd (a) by (a) substituting “or” for “, or in the case of” after “bilingual education”; (b) substituting “may” for “the Los Angeles Unified School District, may,” after “moderate disabilities,”; and (c) deleting the comma after “pedagogical teacher preparation”; (2) amended subd (b)(3)(A) by (a) substituting “, classroom organization and management, pedagogy, and” for “and the” in the first sentence; and (b) adding the second sentence; (3) added “and, for person holding district intern certificates issued by the commission pursuant to Section 44325, special education programs for pupils with mild and moderate disabilities” in subd (b)(4); (4) added “and, for persons holding district intern certificates issued by the commission pursuant to Section 44325, instruction in the etiology and methods of teaching children with mild and moderate disabilities” in subd (b)(5); and (5) amended subd (b)(7) by substituting (a) “training and supervised fieldwork that” for “preservice training and orientation, which”; and (b) “instructional practices, and the procedures and pedagogy of both general education programs and special education programs that teach pupils with disabilities” for “instruction in the development of exceptional children and the methods of teaching exceptional children”.

**2003 Amendment:** (1) Amended subd (a) by (a) deleting “of the school district who has been designated by the governing board as a mentor teacher pursuant to Article 4 (commencing with Section 44490) of Chapter 3 or by certificated employees” after “by a certificated employee” in the second sentence; and (b) substituting “These” for “Mentor teachers or other” at the beginning of the last sentence; (2) amended subd (b)(3)(B) by (a) deleting the comma after “school district”; and (b) substituting “matter or matters” for “field or fields”; (3) amended subd (b)(4) by (a) adding “education” after “bilingual”; and (b) substituting “persons” for “person”; (4) substituted “children” for “pupils” wherever it appears in subd (b)(5); (5) amended the first sentence of subd (c) by adding (a) “required”; and (b) “of subdivision (b)”; and (6) substituted “service sufficient to meet program standards and performance assessments” for “two years of service, or three years of service for interns participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities” in subd (d).

**2004 Amendment:** (1) Amended subd (a) by deleting (a) “or that maintains” after “kindergarten or grades 1 to 12, inclusive,”; and (b) the comma after “mild and moderate disabilities” in the first sentence; and (2) added “of” before both occurrences of “and methods of teaching” in subd (b)(5).

**2005 Amendment:** (1) Deleted the comma after “of the same type” in the last sentence of subd (a); and (2) substituted “pupils” for “children” wherever it appears in subd (b)(5).

**2007 Amendment:** (1) Substituted “maintains prekindergarten, kindergarten,” for “maintains kindergarten” in subd (a); (2) substituted “in prekindergarten, kindergarten,” for “in kindergarten” in subd (b)(4); (3) amended subd (b)(5) by deleting (a) “of” after “in the culture”; and (b) “of” after “in the etiology”; and (4) substituted “disabilities shall also” for “disabilities also shall” in subd (b)(7).

**2009 Amendment:** (1) Substituted “any of grades” for “grades” in the first sentence of subd (a) and in subd (b)(4); (2) deleted “for pupils with mild and moderate disabilities” after “education programs” in the first sentence of subd (a) and in subd (b)(9); (3) substituted “disabilities” for “mild and moderate disabilities” in the second sentence of subd (b)(3)(A) and in subd (b)(5); (4) substituted “special education programs” for “, for persons holding district intern certificates issued by the commission pursuant to Section 44325, special education programs for pupils with mild and moderate disabilities at those levels” in subd (b)(4); and (5) deleted “for pupils with mild and moderate disabilities” before “shall also include” in subd (b)(7).

### Notes of Decisions

A school district was precluded from asserting that a teacher was an “intern” not entitled to probationary status, rather than a “district intern” under Ed C § 44830.3 who was entitled to 30 days’ prior written notice of dismissal,

where the district had accepted funds on the condition that the teacher was a “district intern.” Nor was probationary status defeated by Ed C § 44885.5, since a district intern was not required to satisfy all three of the criteria set forth in subdivision (a); rather, it contemplated two categories of district interns. In addition, Ed C § 44920 specified that temporary employees were only to be hired if there were long-term vacancies due to a teacher’s leave of absence. *Welch v. Oakland Unified School Dist.* (2001, Cal App 1st Dist) 91 Cal App 4th 1421, 111 Cal Rptr 2d 374, 2001 Cal App LEXIS 700.

#### **§ 44856. “Sojourn certificated employees”**

(a) The governing board of a school district, for the purposes of providing bilingual instruction, world language instruction, or cultural enrichment, in the schools of the school district, subject to the rules and regulations of the state board, may conclude arrangements with the proper authorities of a foreign country, or of a state, territory, or possession of the United States, for the hiring of bilingual teachers employed in public or private schools of a foreign country, state, territory, or possession. To be eligible for employment, the teacher must speak English fluently. Any persons employed pursuant to this section shall be known as a “sojourn certificated employee.”

(b) A person shall not be hired as a sojourn certificated employee by a school district unless he or she holds the necessary valid credential or credentials issued by the commission authorizing the person to serve in a position requiring certification qualifications in the school district proposing to employ him or her. The person may be employed for a period not to exceed two years, except that thereafter the period of employment may be extended from year to year for a total period of not more than five years upon verification by the employing school district that termination of the employment would adversely affect an existing bilingual or world language program or program of cultural enrichment, and that attempts to secure the employment of a certificated California teacher qualified to fill the position have been unsuccessful. The commission shall establish minimum standards for the credentials for sojourn certificated employees.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 2009 ch 53 § 12 (SB 512), effective January 1, 2010; Stats 2010 ch 328 § 42 (SB 1330), effective January 1, 2011; Stats 2018 ch 865 § 13 (AB 2319), effective January 1, 2019.*

#### **Amendments**

**2009 Amendment:** (1) Amended the first paragraph by (a) deleting “may” after “school district”; (b) substituting “the state board, may conclude” for “the State Board of Education conclude”; (c) substituting “a foreign country, or of a state” for “any foreign country, or of any state”; (d) adding the comma after “To be eligible for employment”; and (e) deleting “so” after “Any persons”; and (2) amended the second paragraph by (a) generally eliminating “such”; (b) substituting “A person shall not” for “No person may” at the beginning; (c) adding “or she” before “holds the necessary”; (d) substituting “Commission on Teacher Credentialing authorizing the person” for “Commission for Teacher Preparation and Licensing authorizing him”; (e) adding “or her” at the end of the first sentence; (f) deleting “only” after “person may be employed” at the beginning of the second sentence; and (g) adding the comma after “cultural enrichment”.

**2010 Amendment:** Substituted “certificated employee” for “certificate employee” in the first sentence of the second paragraph.

**2018 Amendment:** (1) Added subd designation (a); (2) in the first sentence of subd (a), (a) substituted “world” for “foreign”; and (b) added “school” following “schools of the”; (3) added subd designation (b); and (4) in subd (b), (a) substituted “the commission” for “the Commission on Teacher Credentialing”; (b) substituted “world” for “foreign” in the second sentence; and (c) added “school” in the second sentence.

#### **§ 44907. Effect of retirement**

The retirement of any employee of a school district under the provisions of any retirement law, except for employees retiring for disability under the Teachers’ Retirement Law, shall automatically effect the dismissal of the employee from the employ of the district at the end of the current school year.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1992 ch 1165 § 8 (SB 1884), effective September 29, 1992.*

**Amendments**

**1992 Amendment:** Added “, except for employees retiring for disability under the Teachers’ Retirement Law,”.

**§ 44917. Classification of substitute employees; Temporary employment deemed probationary employment**

Except as provided in Sections 44888 and 44920, governing boards of school districts shall classify as substitute employees those persons employed in positions requiring certification qualifications, to fill positions of regularly employed persons absent from service.

After September 1 of any school year, the governing board of any school district may employ, for the remainder of the school year, in substitute status any otherwise qualified person who consents to be employed in a position for which no regular employee is available, including persons retired for service under the State Teachers’ Retirement System. Inability to acquire the services of a qualified regular employee shall be demonstrated to the satisfaction of the Commission on Teacher Credentialing.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year’s employment as a temporary employee shall be deemed one year’s employment as a probationary employee for purposes of acquiring permanent status.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 2009 ch 53 § 13 (SB 512), effective January 1, 2010.*

**Editor’s Notes**—The reference to Ed C § 44888 in this section appears as enacted.

**Amendments**

**2009 Amendment (1)** Deleted “so” after “person who consents to be”; and **(2)** substituting “Commission on Teacher Credentialing” for “Commission on Teacher Preparation and Licensing”.

**Notes of Decisions**

Substitute teacher is employed from day to day to serve at option of school district in absence of regular teacher. *Wood v. Los Angeles City School Dist.* (1935, Cal App) 6 Cal App 2d 400, 44 P2d 644, 1935 Cal App LEXIS 915.

Teaching as substitute does not qualify one to become permanent teacher. *Wood v. Los Angeles City School Dist.* (1935, Cal App) 6 Cal App 2d 400, 44 P2d 644, 1935 Cal App LEXIS 915.

Substitute teachers may be dismissed at the pleasure of the board. *Hogsett v. Beverly Hills School Dist.* (1936, Cal App) 11 Cal App 2d 328, 53 P2d 1009, 1936 Cal App LEXIS 345.

No statute requires classification of substitute teacher as probationary. *Matthews v. Board of Education* (1962, Cal App 4th Dist) 198 Cal App 2d 748, 18 Cal Rptr 101, 1962 Cal App LEXIS 1463.

The status of a teacher employed as a substitute, who was assigned to classes formerly taught by a resigned permanently-certificated teacher, was determined by her employment contract classifying her as a substitute teacher. The statute relating to classification of substitute employees, is completely silent with regard to the status of those who replace permanently-certificated employees. *Rutley v. Belmont Elementary Sch. Dist.* (1973, Cal App 1st Dist) 31 Cal App 3d 702, 107 Cal Rptr 671, 1973 Cal App LEXIS 1102.

The employment of temporary teachers for two consecutive years did not compel their classification as probationary teachers by virtue of former Ed. Code, § 13336, where conflicting and inconsistent sections of the Education Code bearing on the same subject matter were enacted later by the Legislature and thus abrogated any contrary language in the earlier statute compelling automatic probationary status for a rehired temporary teacher. *Santa*

Barbara Federation of Teachers v. Santa Barbara High Sch. Dist. (1977, Cal App 2d Dist) 76 Cal App 3d 223, 142 Cal Rptr 749, 1977 Cal App LEXIS 2103.

Under former Ed. Code, § 13336, (now § 44917), permitting treatment of those persons employed to fill positions of regular employees absent from service as substitute employees, employees absent from service include employees who have been removed from the position they normally hold in order to temporarily fill another school district position as well as employees on leave of absence from the district. Thus, a school district properly classified a teacher as a substitute teacher, rather than as a probationary employee, where she was assigned as a teacher for four months in place of a teacher who had been designated as acting dean. *Levy v. San Francisco Unified School Dist.* (1978, Cal App 1st Dist) 79 Cal App 3d 953, 145 Cal Rptr 292, 1978 Cal App LEXIS 1385.

Employee was not entitled to classification as a temporary employee, and its attendant ramifications, because there was no evidence suggesting that she was ever employed to teach temporary classes or because another teacher was on leave or experiencing long term illness. *Fine v. Los Angeles Unified School Dist.* (2004, Cal App 2d Dist) 116 Cal App 4th 1070, 10 Cal Rptr 3d 876, 2004 Cal App LEXIS 330, rehearing denied (2004, Cal App 2d Dist) 2004 Cal App LEXIS 594.

School district's policy for classifying teachers and counselors as temporary employees, insofar as it was based on the fact they held something less than a preliminary or professional (clear) credential, such as preintern certificates, university internship credentials, emergency teaching permits, and credential waivers, was invalid because the district could classify as temporary employees only those persons who, by virtue of the position they occupied or the manner of service they performed, were defined or described as temporary employees in the California Education Code. All certificated employees who were not so classified as temporary employees, and who were not properly classified under the Code as permanent or substitute employees, had to be classified as probationary employees and had to be accorded the rights of probationary employees as provided in the Code, including the right to accrue seniority and the rights to notice and a hearing in the event of a workforce reduction. *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006, Cal App 5th Dist) 145 Cal App 4th 1260, 52 Cal Rptr 3d 486, 2006 Cal App LEXIS 1994, rehearing denied (2007, Cal App 5th Dist) 2007 Cal App LEXIS 70, review denied (2007, Cal) 2007 Cal LEXIS 3622.

Although Ed C § 44915 does not mention temporary employees, other provisions of the California Education Code, including Ed C §§ 44917, 44919, 44920, authorize that classification in certain narrowly defined situations, and Ed C § 44915 therefore establishes probationary status as the default classification for teachers whom the Education Code does not require to be classified otherwise. *California Teachers Assn. v. Vallejo City Unified School Dist.* (2007, Cal App 1st Dist) 149 Cal App 4th 135, 56 Cal Rptr 3d 712, 2007 Cal App LEXIS 469.

Although the legislature intended Ed C § 45030 to authorize school districts to hire substitute teachers as defined in Ed C § 44917, as the district deems necessary, it does not mean a district may classify any teacher as a substitute no matter what duties the teacher has performed. *Vasquez v. Happy Valley Union School Dist.* (2008, 3d Dist) 159 Cal App 4th 969, 72 Cal Rptr 3d 15, 2008 Cal App LEXIS 166.

Because a school district that employed a long-term temporary teacher in three consecutive years to replace a certificated employee on leave gave the teacher proper notice of her status and timely released her in the first two years under Ed C § 44954(b), she was not automatically reclassified as probationary in her second year under Ed C §§ 44917, 44918, 44920. Moreover, although the district changed her status during the third year from temporary to second-year probationary employment, the district timely notified her pursuant to Ed C § 44929.21 (b) that her employment would not be continued; thus, she was not entitled to reclassification and employment in permanent status. *McIntyre v. Sonoma Valley Unified School Dist.* (2012, 1st Dist) 206 Cal App 4th 170, 141 Cal Rptr 3d 540, 2012 Cal App LEXIS 608.

#### **§ 44922. Regulations allowing reduction of workload to part-time duties**

Notwithstanding any other provision, the governing board of a school district or a county superintendent of schools may establish regulations which allow their certificated employees to reduce their workload from full-time to part-time duties.

The regulations shall include, but shall not be limited to, the following, if the employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22713 of this code or Section 20900 of the Government Code:

(a) For employees subject to coverage under the Defined Benefit Program under the State Teachers' Retirement Plan, the regulations shall include all requirements for participation in the reduced workload program pursuant to Section 22713.

- (b) For employees subject to coverage under the Public Employees' Retirement System:
- (1) The employee shall have reached the age of 55 years of age prior to reduction in workload.
  - (2) The employee shall have been employed full time in a position requiring certification for at least 10 years of which the immediately preceding five years were full-time employment.
  - (3) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in a position requiring certification for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service.
  - (4) The option of part-time employment shall be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.
  - (5) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his or her final year of service in a full-time position.
  - (6) This option is limited in prekindergarten through grade 12 to certificated employees who do not hold positions with salaries above that of a school principal.
  - (7) The period of this part-time employment shall include a period of time, as specified in the regulations, which shall be up to and include five years.
  - (8) The period of part-time employment shall not extend beyond the end of the school year during which the employee reaches his or her 70th birthday.
- (c) (1) The employee shall be paid a salary that is the pro rata share of the salary he or she would be earning had he or she not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment
- (2) The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1979 ch 630 § 2; Stats 1981 ch 1023 § 2; Stats 1982 ch 1428 § 6; Stats 1987 ch 330 § 21; Stats 2000 ch 1025 § 39 (AB 816); Stats 2006 ch 655 § 84 (SB 1466), effective January 1, 2007; Stats 2017 ch 298 § 29 (AB 1325), effective January 1, 2018.*

### Amendments

**1979 Amendment:** (1) Added subd (c); (2) redesignated former subds (c)–(f) to be subds (d)–(g); (3) added subds (h) and (i); and (4) added the last paragraph.

**1981 Amendment:** (1) Added the commas after “include” and after “limited to” in the introductory clause of the second paragraph; (2) substituted “shall” for “must” in subds (a), (b), the first sentence of (c), and (d); (3) generally added feminine pronouns; (4) substituted “70th” for “65th” in subd (i); and (5) deleted the former third paragraph which read: “This section shall remain in effect only until June 30, 1983, and as of such date is repealed, unless a later enacted statute, which becomes effective before that date, deletes or extends such date. However, any member who commences part–time employment pursuant to this section prior to June 30, 1983, may continue such part–time employment and receive such retirement benefits and health benefits until the member has completed five years of such part–time employment.”

**1982 Amendment:** (1) Added “or a county superintendent of schools” in the first paragraph; and (2) amended the introductory clause of the second paragraph by substituting (a) “The” for “Such” at the beginning; and (b) “following, if the” for “following if such”.

**1987 Amendment:** (1) Amended subd (h) by (a) substituting “this” for “such” after “The period”; and (b) adding “for employees subject to Section 20815 of the Government Code or 10 years for employees subject to Section 22724 of this code”; (2) amended the first sentence of subd (i) by (a) deleting “such” after “period of”; and (b) adding “of employees subject to Section 20815 of the Government Code; and “(3) added the second sentence of subd (i).

**2000 Amendment:** (1) Deleted the former last sentence of subd (c) which read: “Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five–year full–time service requirement

prescribed by this subdivision.”; and (2) substituted “include a period of time, as specified in the regulations, which shall be up to and include” for “not exceed” for subd (h).

**2006 Amendment:** (1) Substituted “Section 22713” for “Section 22724” after “benefits pursuant to” in the introductory paragraph; (2) added subd designations (e)(1) and (e)(2); (3) substituted “that” for “which” after “paid a salary” in subd (e)(1); (4) substituted “Section 22713” for “Section 22724” after “employees subject to” in subd (h); and (5) substituted “Section 22713” for “Section 22724” after “employee subject to” in subd (i).

**2017 Amendment:** (1) Substituted “Section 20900” for “Section 20815” in the introductory language; (2) added subd (a); (3) redesignated and rewrote former subd (a) through subd (i) as subd (b); (4) deleted former subd (e); and (5) added subd (c).

### Notes of Decisions

The trial court erred in denying a teachers’ union’s petition for a writ of mandate to compel the city’s unified school district and district officials to grant part-time status to eligible employees pursuant to regulations adopted by respondents and incorporated into the parties’ collective bargaining agreement. Even though the agreement failed to comply with Ed. Code, §§ 22724 and 44922, concerning mandatory regulation of part-time employment, once the parties had agreed to have a program for part-time employees, the mandatory statutory provisions were incorporated by operation of law into the agreement, and those provisions prevailed over any noncomplying terms in the agreement. Accordingly, pursuant to Ed. Code, § 44922, respondents had a clear and present duty to grant requests from eligible employees who desired to participate in the part-time leave program, and the writ should have issued. *United Teachers-L.A. v. Los Angeles Unified School Dist.* (1994, Cal App 2d Dist) 24 Cal App 4th 1510, 29 Cal Rptr 2d 897, 1994 Cal App LEXIS 461, review denied (1994, Cal) 1994 Cal LEXIS 4362.

A teachers’ union did not waive the more favorable statutory provisions concerning part-time employment by agreeing to less favorable terms in a collective bargaining agreement with a school district. Ed. Code, § 44922, mandates that part-time status may continue for a period of up to 10 years, and the contract provided for a period of 5 years. Although a part-time employment program is discretionary, once the district had agreed to a such a program, it was bound by the statutory provisions. Ed. Code, § 44924, does not permit waiver of the benefits conferred by Ed. Code, § 44922. *United Teachers-L.A. v. Los Angeles Unified School Dist.* (1994, Cal App 2d Dist) 24 Cal App 4th 1510, 29 Cal Rptr 2d 897, 1994 Cal App LEXIS 461, review denied (1994, Cal) 1994 Cal LEXIS 4362.

Under Ed C § 44922, which allows school districts to establish part-time schedules for certain certificated employees, such employees, while paid the prorated share of their full-time salaries, retain the insurance benefits accorded to full-time employees, as long as they make the benefit payments that would be required if they remained in full-time employment. Gov C § 53201’s relevance in the § 44922 scheme is simply that if a particular school district chooses to offer its employees health benefits, the § 44922 part-time employees will receive health benefits in the same manner as full-time employees, as long as the part-time employees make the health benefit payments that would be required had they remained full-time employees. If no such payments would be required as a full-time employee, no such payments are required as a § 44922 part-time employee. In this way, § 44922 part-time employees receive health benefits in the same manner as full-time employees. *Praiser v. Biggs Unified School Dist.* (2001, Cal App 3d Dist) 87 Cal App 4th 398, 104 Cal Rptr 2d 551, 2001 Cal App LEXIS 134, review denied (2001, Cal) 2001 Cal LEXIS 3567.

In an employee’s action against a school district and associated individuals for wrongful discharge in violation of public policy, the trial court properly granted judgment on the pleadings in favor of the district and the individuals. The district’s inability to offer a part-time administrative position as allowed by Ed C § 44922 did not constitute a violation of fundamental policy; although § 44922 enabled the district to bestow a valuable right on a select segment of their employees, § 44922 did not embody the kind of universal and important right recognized as fundamental to the public good. *Sinatra v. Chico Unified School Dist.* (2004, Cal App 3d Dist) 119 Cal App 4th 701, 14 Cal Rptr 3d 661, 2004 Cal App LEXIS 943, review denied (2004, Cal) 2004 Cal LEXIS 8387.

### § 44929. Credit for additional years to encourage retirement of certificated employees

Whenever the governing board of a school district or a county office of education, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging the retirement of certificated employees and that the retirement will result in a net savings to the district or county

office of education, an additional two years of service shall be credited under the Defined Benefit Program of the State Teachers' Retirement Plan to a certificated employee pursuant to Section 22714 if all of the conditions set forth in that section are satisfied.

*Added by Stats 1994 ch 20 § 3 (SB 858), effective March 16, 1994. Amended by Stats 1998 ch 965 § 320 (AB 2765); Stats 2003 ch 313 § 14 (AB 1207).*

**Former Sections:** Former § 44929, similar to the present section, was added by Stats 1984 ch 361 § 2, amended by Stats 1987 ch 601 § 2, Stats 1990 ch 996 § 2, and repealed, operative January 1, 1994, by its own terms.

### Amendments

**1998 Amendment:** (1) Substituted "State Teacher's Retirement Defined Benefit Program" for "State Teachers' Retirement System" in subs (a), (a)(1), and (g); (2) deleted the former last sentence of subd (a)(1) which read: "For the 1993–94 fiscal year, the retirement period shall begin on the date of the formal action and shall end on June 30, 1994."; (3) substituted "is" for "are" after "four years, that" in the third sentence of subd (a)(2); (4) added "shall" after "paragraph (1)" the second time it appears in subd (b)(2); and (5) deleted "into the State Teachers' Retirement System" after "reinstates" in subd (f).

**2003 Amendment:** (1) Deleted subdivision designation (a) at the beginning; (2) deleted "taken prior to January 1, 1999" after "formal action"; (3) deleted "either:" after "retirement will"; (4) deleted "result in a reduction of the number of certificated employees as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science" after "county office of education"; (5) deleted "State Teachers' Retirement" after "credited under the"; (6) added "of the State Teachers' Retirement Plan"; (7) substituted "conditions set forth in that section are satisfied." for "following conditions exist."; and (8) deleted former subs (a)(1)–(a)(4) and subs (b)–(g) which read:

"(a)(1) The employee is credited with five or more years of service under the State Teachers' Retirement Defined Benefit Program and retires during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district or county superintendent of schools that shall specify the period.

"(2) The district or county office of education transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22714 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Sections 24414 and 24415. The transfer to the retirement fund shall be made in a manner, and time period that shall not exceed four years, that is acceptable to the Teachers' Retirement Board. The school district or county office of education shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22714.

"(3) The district or county office of education transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board." "(4) The governing board of the school district or the county office of education has considered the availability of teachers to fill the positions that would be vacated pursuant to this section.

"(b)(1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

"(2) The county superintendent shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502. A district that qualifies under clause (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to Section 42238.5.

“(3) The school district shall reimburse the county superintendent for all the costs of the county superintendent that result from the certification.

“(c)(1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in either:

“(A) a net savings to the county office of education;

“(B) a reduction of the number of certificated employees as a result of declining enrollment; or

“(C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

“(2) The Superintendent of Public Instruction shall certify to the Teachers’ Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

“(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification. (d) The service credit made available pursuant to this section shall be available to all members employed by the school district or county office of education who meet the conditions set forth in this section.

“(e) The amount of service credit shall be two years.

“(f) Any employee who retires with service credit granted under this section and Section 22714 and who subsequently reinstates, shall forfeit the service credit granted under this section and Section 22714.

“(g) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers’ Retirement Defined Benefit Program.”

#### **§ 44929.1. [Section repealed 2005.]**

*Added by Stats 2003 ch 313 § 15 (AB 1207), operative January 3, 2004. Repealed, January 1, 2005, by its own terms. The repealed section related to additional service and age credit.*

**Former Sections:** Former § 44929.1, relating to legislative findings and declarations, was added by Stats 1986 ch 148 § 1 and repealed, operative June 30, 1990, by the terms of former Ed C § 44929.16.

#### **§ 44957. Rights of probationary employee terminated due to reduction in employees**

Any probationary employee whose services have been terminated as provided in Section 44955 shall have the following rights:

(a) For the period of 24 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, subject to the prior rights to reappointment by all permanent employees as set forth in Section 44956, in the order of original employment as determined by the governing board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service. Except as otherwise provided, no probationary or temporary employee with less seniority shall be employed to render a service which such employee is certificated and competent to render and provided that such an employee shall be given a priority over employees whose right to a position is derived pursuant to Section 44918. However, prior to reappointing any employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee’s major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(b) Notwithstanding subdivision (a), a school district may deviate from reappointing a probationary employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the employee has special training and experience



necessary to teach that course or course of study, or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

(c) As to any such employee who is reappointed, the period of his absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his service, he shall retain the classification and order of employment he had when his services were terminated, and credit for prior service under any state or district retirement system shall not be affected by such termination; provided, however, that the period of his absence shall not be counted as a part of the service required for attaining permanent status in the district or, except as provided in subdivision (e), for retirement purposes.

(d) During the period of his preferred right to reappointment, any such employee shall, in the order of original employment, and subject to the rights of permanent employees as set forth in Section 44956, be offered prior opportunity for substitute service during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty; provided, that his services may be terminated upon a return to duty of such other employee, that such substitute service shall not affect the retention of his previous classification and rights, and that such an employee shall be given a priority over employees whose right to a substitute position is derived pursuant to Section 44918.

(e) At any time prior to the completion of one year after his return to service, an employee reappointed under the provisions of this section may elect to continue or to reinstate his membership and interest in any state or district retirement system and to receive retirement benefits as if no absence from service had occurred. In the event of such election the employee shall pay into the retirement system the amount of his share of contribution and the district's share of contribution attributable to the period of absence and the amount of any contributions withdrawn, plus interest.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1983 ch 498 § 68, effective July 28, 1983, ch 1302 § 15.5, effective September 30, 1983.*

### Amendments

**1983 Amendment:** Substituted the section for the former section which read:

“Any probationary employee whose services have been terminated as provided in Section 44955 shall have the following rights:

“(a) For the period of 24 months from the date of such termination, any employee who in the meantime has not attained the age of 65 years shall have the preferred right to reappointment, subject to the prior rights to reappointment by all permanent employees as set forth in Section 44956, in the order of original employment as determined by the governing board in accordance with the provisions of Sections 44831 to 44855, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service; provided, that no probationary or temporary employee with less seniority shall be employed to render a service which such employee is certificated and competent to render and provided that such an employee shall be given a priority over employees whose right to a position is derived pursuant to Section 44918.

“(b) As to any such employee who is reappointed, the period of his absence shall be treated as a leave of absence and shall not be considered as a break in the continuity of his service, he shall retain the classification and order of employment he had when his services were terminated, and credit for prior service under any state or district retirement system shall not be affected by such termination; provided, however, that the period of his absence shall not be counted as a part of the service required for attaining permanent status in the district or, except as provided in subdivision (c), for retirement purposes.

“(c) During the period of his preferred right to reappointment, any such employee shall, in the order of original employment, and subject to the rights of permanent employees as set forth in Section 44956, be offered prior opportunity for substitute service during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty; provided, that his services may be terminated upon a return to duty of such other employee, that such substitute service shall not affect the retention of his previous classification and rights, and that such an employee shall be given a priority over employees whose right to a substitute position is derived pursuant to Section 44918.

“(d) At any time prior to the completion of one year after his return to service, an employee reappointed under the provisions of this section may elect to continue or to reinstate his membership and interest in any state or district retirement system and to receive retirement benefits as if no absence from service has occurred. In the event of such election the employee shall pay into the retirement system the amount of his share of contribution and the district’s share of contribution attributable to the period of absence and the amount of any contributions withdrawn, plus interest.” (As amended by Stats 1983, ch 1302, compared to the section as it read prior to 1983. This section was also amended by an earlier chapter, ch 498. See Gov C § 9605.)

### Notes of Decisions

**1. Statutory Construction, Application, and Effect** Because the legislature has sharply limited school districts’ ability to hire temporary teachers, and there was no evidence that 43 provisionally credentialed teachers who were dismissed by a school district for economic reasons fell within the narrow categories of temporary employment defined in the California Education Code, the teachers fell within the default classification of “probationary” in Ed C § 44915. Because the Education Code gives probationary teachers a number of rights and protections, including certain protections in the event of a layoff under Ed C §§ 44949, 44955, 44957, and the statutes in question do not distinguish between probationary teachers based on the status of their credentials, the dismissed teachers were denied their statutory rights as probationary employees of the district when the district released them from employment without following the layoff procedures. *California Teachers Assn. v. Vallejo City Unified School Dist.* (2007, Cal App 1st Dist) 149 Cal App 4th 135, 56 Cal Rptr 3d 712, 2007 Cal App LEXIS 469.

### § 44965. Granting of leaves of absence after pregnancy and childbirth

The governing board of any school district shall provide for leave of absence from duty for any certificated employee of the district who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom. The length of the leave of absence, including the date on which the leave shall commence and the date on which the employee shall resume duties, shall be determined by the employee and the employee’s physician.

Disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment by any school district.

Except as provided herein, written and unwritten employment policies and practices of any school district shall be applied to disability due to pregnancy or childbirth on the same terms and conditions applied to other temporary disabilities.

This section shall be construed as requiring the governing board of a school district to grant leave with pay only when it is necessary to do so in order that leaves of absence for disabilities caused or contributed to by pregnancy, miscarriage, or childbirth be treated the same as leaves for illness, injury, or disability.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

### Notes of Decisions

Where pregnancy is the cause of a teacher’s leave of absence, she is not entitled to compensation during the period of her absence. *Axelrod v. Board of Education* (1940, Cal App) 37 Cal App 2d 367, 99 P2d 571, 1940 Cal App LEXIS 537.

In view of a recent United States Supreme Court decision laying down due process guidelines as to school teacher maternity leave requirements properly imposable, and suggesting that it might be permissible for a district to require that a pregnant teacher go on maternity leave during the last few weeks of pregnancy, a school district rule that a teacher go on maternity leave three months prior to be expected birth of her child, and precluding her from resuming her employment within three months after the birth of the child was unconstitutional, and a further requirement of the same rule that a teacher give advance notice of her pregnant condition was not severable from those invalid requirements; breach of the notice requirement therefore could not constitute a valid basis for the

district's refusal to reemploy the teacher for the next school year. *Kornblum v. Newark Unified Sch. Dist.* (1974, Cal App 1st Dist) 37 Cal App 3d 623, 112 Cal Rptr 457, 1974 Cal App LEXIS 1160.

Ohio administrative rule providing that pregnant teacher must take maternity leave beginning 5 months prior to expected birth of her child, must give notice of pregnancy at least 2 weeks prior to commencement of mandatory leave, and could become eligible for reemployment no earlier than beginning of next school semester after child was 3 months old, provided that a doctor issued certificate attesting to teacher's health, voided as to 5-month and 3-month provisions on due process grounds. *Cleveland Bd. of Educ. v. LaFleur* (1974) 414 US 632, 39 L Ed 2d 52, 94 S Ct 791, 1974 US LEXIS 44.

**§ 44966. Leaves of absence for study and travel**

The governing board of any school district may grant any employee of the district employed in a position requiring certification qualifications, a leave of absence for not to exceed one year for the purpose of permitting study or travel by the employee which will benefit the schools and pupils of the district. The governing board may provide that the leave of absence be taken in separate six-month periods or separate quarters rather than for a continuous one-year period, provided that the leave of absence for both of the separate six-month periods or any or all quarters shall be commenced and completed within a three-year period. Any period of service by the individual intervening between the two separate six-month periods or separate quarters of the leave of absence shall comprise a part of the service required for a subsequent leave of absence.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1994 ch 922 § 96 (AB 2587).*

**Amendments**

**1994 Amendment (1)** Substituted “the” for “such a” after “may provide that” near the beginning of the second sentence; **(2)** deleted “such” before “leave of absence” near the end; and **(3)** deleted the former second paragraph which read: “If any leave of absence commenced upon within three years prior to November 8, 1967, was taken in one or more separate periods of less than one year, the period of service intervening between such separate periods shall comprise a part of the service required for a subsequent such leave of absence.”

**Notes of Decisions**

The study or travel for which leave may be granted is limited to study or travel “which will benefit the schools and pupils of the district.” *Standard Elementary School Dist. v. Healy* (1938, Cal App) 26 Cal App 2d 172, 79 P2d 123, 1938 Cal App LEXIS 1014.

A leave for the purpose of travel or study could hardly be said to be a leave asked solely for the convenience of the applicant. *Standard Elementary School Dist. v. Healy* (1938, Cal App) 26 Cal App 2d 172, 79 P2d 123, 1938 Cal App LEXIS 1014.

School teacher who was granted sabbatical leave to obtain advanced academic degree under agreement requiring submission of transcript of record or of study on special problem on completion of leave and who pursued with some diligence and accomplishment purposes for which leave was granted but could produce only transcript indicating attendance at university before leave period and showing that he was not registered there during such period failed to show, in mandamus suit to compel payment of his compensation for leave period, that contract violated public policy and was incapable of performance by him where he did not make any reasonable attempt, during period specified by agreement for furnishing proof of accomplishment, to supply anything relative to his leave activities that might have been accepted by board of education in place of transcript, even though portion of agreement of his own making stated that evidence of progress would be completion of required dissertation and any related projects. *Berry v. Coronado Board of Education* (1965, Cal App 4th Dist) 238 Cal App 2d 391, 47 Cal Rptr 727, 1965 Cal App LEXIS 1151.

Fact that state legislature, by adopting statutory provisions respecting leaves of absence for travel and study, and officers of school district, by adopting regulations in that regard, have determined that type of travel that teacher undertakes does in fact make him more valuable teacher does not require conclusion, for federal income

tax purposes, that expenses for such travel are deductible for federal income tax purposes as ordinary and necessary business expenses. *Adelson v. United States* (1965, 9th Cir Cal) 342 F2d 332, 1965 US App LEXIS 6884.

A school district's requirement for annual increment of salary of 75 percent attendance upon teaching duties did not deny equal protection of the laws in providing exceptions for employees granted military or sabbatical leave but not for an employee whose absence was caused by illness; strong public policy favors the granting of credit to employees on military leave, and sabbatical leave is distinguishable because it is granted only for the purpose of travel or study which will benefit the schools and pupils of the school district. *Hunt v. Alum Rock Union Elementary Sch. Dist.* (1970, Cal App 1st Dist) 7 Cal App 3d 612, 86 Cal Rptr 663, 1970 Cal App LEXIS 2196.

**§ 44967. Time qualifications for leaves of absence for travel and study**

No leave of absence shall be granted to any employee under Section 44966 who has not rendered service to the district for at least seven consecutive years preceding the granting of the leave, and not more than one such leave of absence shall be granted in each seven-year period. The governing board granting the leave of absence may, subject to the rules and regulations of the State Board of Education, prescribe the standards of service which shall entitle the employee to the leave of absence. No absence from the service of the district under a leave of absence, other than a leave of absence granted pursuant to Section 44966, granted by the governing board of the district shall be deemed a break in the continuity of service required by this section, and the period of such absence shall not be included as service in computing the seven consecutive years of service required by this section. Service under a national recognized fellowship or foundation approved by the State Board of Education, for a period of not more than one year, for research, teaching or lecturing shall not be deemed a break in continuity of service, and the period of such absence shall be included in computing the seven consecutive years of service required by this section.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**§ 44968. Service and compensation during leaves of absence for travel and study**

Every employee granted a leave of absence pursuant to Section 44966 may be required to perform such services during the leave as the governing board of the district and the employee may agree upon in writing, and the employee shall receive such compensation during the period of the leave as the governing board and the employee may agree upon in writing, which compensation shall be not less than the difference between the salary of the employee on leave and the salary of a substitute employee in the position which the employee held prior to the granting of the leave. However, in lieu of such difference, the board may pay one-half of the salary of the employee on leave or any additional amount up to and including the full salary of the employee on leave.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**Notes of Decisions**

A leave granted for one year was an unusual privilege and if the grant of such leave was to be accompanied by payment of compensation during the period covered by the leave, it must clearly appear that the leave was asked and granted for the express purpose stated in the statute. *Standard Elementary School Dist. v. Healy* (1938, Cal App) 26 Cal App 2d 172, 79 P2d 123, 1938 Cal App LEXIS 1014.

**§ 44968.5. Agreement not to receive compensation during leave of absence**

An employee granted a leave of absence pursuant to Section 44966 or 44967 may agree in writing with the governing board of the school district not to receive compensation during the period of the leave.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**§ 44969. Manner of payment for leave of absence time**

Every employee, as a condition to being granted a leave of absence pursuant to Section 44966, shall agree in writing to render a period of service in the employ of the governing board of the district following his return from the leave of absence which is equal to twice the period of the leave. Compensation granted by the governing board to the employee on leave for less than one year may be paid during the first year of service rendered in the employ of the governing board following the return of the employee from the leave of absence or, in the event that the leave is for a period of one year, such compensation may be paid in two equal annual installments during the first two years of such service following the return of the employee. The compensation shall be paid the employee while on the leave of absence in the same manner as if the employee were teaching in the district, upon the furnishing by the employee of a suitable bond indemnifying the governing board of the district against loss in the event that the employee fails to render the agreed upon period of service in the employ of the governing board following the return of the employee from the leave of absence. The bond shall be exonerated in event the failure of the employee to return and render the agreed upon period of service is caused by the death or physical or mental disability of the employee. If the governing board finds and by resolution declares that the interests of the district will be protected by the written agreement of the employee to return to the service of the district and render the agreed upon period of service therein following his return from the leave, the governing board in its discretion may waive the furnishing of the bond and pay the employee on leave in the same manner as though a bond is furnished.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**§ 44970. Pro rata reduction of payment and division of bond proceeds upon partial default**

If the employee does not serve for the entire period of service agreed upon under Section 44969, the amount of compensation paid for the leave of absence shall be reduced by an amount which bears the same proportion to the total compensation as the amount of time which was not served bears to the total amount of time agreed upon. If the employee furnished an indemnity bond, upon default, the proceeds of the bond shall be divided between the employee and the school district in the same proportion as the actual amount of time served bears to the amount of time agreed upon.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**§ 44984. Required rules for industrial accident and illness leaves of absence**

(a) The governing board of a school district shall provide by rules and regulations for industrial accident and illness leaves of absence for all certificated employees. The governing board of a school district that is created or whose boundaries or status is changed by an action to organize or reorganize school districts completed after the effective date of this section shall provide by rules and regulations for these leaves of absence on or before the date on which the organization or reorganization of the school district becomes effective for all purposes.

(b) The rules or regulations shall include the following provisions:

(1) Allowable leave shall be for not less than 60 days during which the schools of the school district are required to be in session or when the employee would otherwise have been performing work for the school district in any one fiscal year for the same accident.

(2) Allowable leave shall not be accumulated from year to year.

(3) Industrial accident or illness leave shall commence on the first day of absence.

(4) (A) If a certificated employee is absent from his or her duties on account of an industrial accident or illness, he or she shall be paid the portion of the salary due him or her for any month in which the absence occurs as, when added to his or her temporary disability indemnity under Division 4 or Division 4.5 of the Labor Code, will result in a payment to him or her of not more than his or her full salary.

(B) The phrase “full salary” as used in this subdivision shall be computed so that it shall not be less than the employee’s “average weekly earnings” as that phrase is used in Section 4453 of the Labor Code. For purposes of this section, however, the maximum and minimum average weekly earnings set forth in Section 4453 of the Labor Code shall otherwise not be deemed applicable.

(5) Industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.

(6) When an industrial accident or illness leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused leave due him or her for the same illness or injury.

(c) Upon termination of the industrial accident or illness leave, the employee shall be entitled to the benefits provided in Sections 44977, 44978, and 44983, and for purposes of each of these sections, the employee’s absence shall be deemed to have commenced on the date of termination of the industrial accident or illness leave, provided that if the employee continues to receive temporary disability indemnity, the employee may elect to take as much of his or her accumulated sick leave as, when added to his or her temporary disability indemnity, will result in a payment to him or her of not more than his or her full salary.

(d) The governing board of a school district may, by rule or regulation, provide for an additional leave of absence for industrial accident or illness as it deems appropriate.

(e) During a paid leave of absence, the employee may endorse to the school district the temporary disability indemnity checks received on account of the employee’s industrial accident or illness. The school district, in turn, shall issue the employee appropriate salary warrants for payment of the employee’s salary and shall deduct normal retirement, other authorized contributions, and the temporary disability indemnity, if any, actually paid to and retained by the employee for periods covered by the salary warrants.

(f) In the absence of rules and regulations adopted by the governing board of a school district pursuant to this section, an employee shall be entitled to industrial accident or illness leave as provided in this section but without limitation as to the number of days of that leave.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 2015 ch 58 § 1 (AB 915), effective January 1, 2016; Stats 2016 ch 86 § 62 (SB 1171), effective January 1, 2017.*

### Amendments

**2015 Amendment:** (1) Added subdivision designations (a)-(f), (b)(4)(A), and (b)(4)(B); (2) substituted “The governing board of a school district” for “Governing boards of school districts” in the first sentence of subd (a); (3) amended the second sentence of subd (a) by (a) substituting “a district that” for “any district which”; (b) substituting “these” for “such”; and (c) deleting “as provided in Section 4064” at the end; (4) substituted “The” for “such” in the introductory clause of subd (b); (5) redesignated former subds a.-f. to be subds (b)(1)-(b)(6); (6) substituted the periods for the semicolons at the end of subds (b)(1)-(b)(3), (b)(4)(A), and (b)(5); (7) added “or her” wherever it appears in subds (b)(4)(A), (b)(6), and (c); (8) substituted “or she shall be paid the” for “shall be paid such” in subd (b)(4)(A); (9) substituted “the employee’s” for “his” in subd (c) and in the first sentence of subd (e); (10) substituted “the employee” for “he” after “disability indemnity,” in subd (c); (11) added “of a district” in subds (d) and (f); (12) substituted “an” for “such” in subd (d); (13) amended subd (e) by substituting (a) “a paid leave” for “any paid leave” in the first sentence; and (b) “the salary” for “such salary” in the second sentence; (14) deleted the former second paragraph of subd (e) which read: “Any employee receiving benefits as a result of this section shall, during periods of injury or illness, remain within the State of California unless the governing board authorizes travel outside the state.”; and (15) amended subd (f) by (a) adding the comma after “to this section”; and (b) substituting “this leave” for “such leave”.

**2016 Amendment:** (1) Added “school” wherever it appears in the second sentence of subd (a) and in subds (b)(1) and (d)-(f); (2) substituted “If” for “When” at the beginning of subd (b)(4)(A); (3) substituted “used” for “utilized” both times it appears in the first sentence of subd (b)(4)(B); (4) amended subd (c) by substituting (a) “Sections 44977, 44978, and 44983, and for” for “Sections 44977, 44978 and 44983, and for the”; and (b) “as” for “which” after “sick leave”; and (5) substituted “that leave” for “this leave” in subd (f).

### Notes of Decisions

In an action against a school district, members of its board, and high school principals by a former probationary teacher who had voluntarily resigned and had been assaulted and injured by a student in his classroom three days before his resignation became effective, the trial court erred in granting defendants' motion for summary judgment as to a cause of action for special disability pay pursuant to Ed C § 44984, and school board rules implementing the statute. Such disability pay constitutes an "allowance" within the meaning of Gov C § 905 subd (c), which excepts from the claim presentation requirements, "claims by public employees for fees, salaries, wages, mileage or other expenses and allowances." Furthermore, receipt of a workers' compensation award did not prevent payment of plaintiff's full salary (made up in part of workers' compensation benefits) for a limited period pursuant to the statute and the board rules. A board rule adopted pursuant to Gov C § 935, subd. (a), which authorizes a public entity to impose a claims procedure in such cases, was inapplicable since it was adopted almost three months after plaintiff's cause of action accrued and contained no retroactivity provision. *Adler v. Los Angeles Unified School Dist.* (1979, Cal App 2d Dist) 98 Cal App 3d 280, 159 Cal Rptr 528, 1979 Cal App LEXIS 2272.

#### § 44987. Leave of absence for service as elected officer of public employee organization

(a) The governing board of a school district shall grant to any employee, upon request, a leave of absence without loss of compensation for the purpose of enabling the employee to serve as an elected officer of any local school district public employee organization, or any statewide or national public employee organization with which the local organization is affiliated.

The leave shall include, but is not limited to, absence for purposes of attendance by the employee at periodic, stated, special, or regular meetings of the body of the organization on which the employee serves as an officer. Compensation during the leave shall include retirement fund contributions required of the school district as employer. The required employer contribution rate shall be the rate adopted by the Teachers' Retirement Board as a plan amendment with respect to the Defined Benefit Program as provided in Section 22711. The employee shall earn full service credit during the leave of absence and shall pay member contributions as prescribed by Section 22711. The maximum amount of the service credit earned may not exceed twelve years. Any employee who serves as a full-time officer of a public employee organization is not eligible for disability benefits under the State Teachers' Retirement Plan while on the leave of absence.

Following the school district's payment of the employee for the leave of absence, the school district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave. Reimbursement by the employee organization shall be made within 10 days after its receipt of the school district's certification of payment of compensation to the employee.

The leave of absence without loss of compensation provided for by this section is in addition to the released time without loss of compensation granted to representatives of an exclusive representative by subdivision (c) of Section 3543.1 of the Government Code.

For purposes of this section, "school district" also means "county superintendent of schools."

(b) An employee who after August 31, 1978, was absent on account of elected-officer service, shall receive full service credit in the State Teachers' Retirement Plan; provided that, not later than April 30, 1981: (1) the employee makes a written request to the employer for a leave of absence for the period of the elected-officer service, and (2) the employee organization of which the employee is an elected officer pays to the employee's school district an amount equal to the required State Teachers' Retirement Plan member and employer retirement contributions, as prescribed by this section.

The school district, following this written request and payment, shall transmit the amount received to the State Teachers' Retirement System, informing it of the period of the employee's leave of absence. The State Teachers' Retirement System shall credit the employee with all service credit earned for the period of the elected-officer leave of absence.

If the employee has been compensated by the school district for the period of the service, then, as a condition to the employee's entitlement to service credit for this period, the school district shall be reimbursed by the employee organization for the amount of the compensation.

The provisions of this subdivision shall apply retroactively to all service as an elective officer in a public employee organization occurring after August 31, 1978.

*Added by Stats 1978 ch 1169 § 3. Amended by Stats 1980 ch 1272 § 2; Stats 1982 ch 279 § 9; Stats 1987 ch 623 § 1; Stats 1988 ch 688 § 1; Stats 2004 ch 912 § 33 (AB 2233); Stats 2015 ch 123 § 40 (AB 991), effective January 1, 2016.*

### Amendments

**1980 Amendment:** (1) Designated the former section to be subd (a); (2) amended the first paragraph of subd (a) by (a) deleting “or” after “employee organization,”; and (b) substituting “local school district public employee organization which is affiliated with such state and national organizations” for “of any local organization or organizations of a school district having at least 50,000 employees which is affiliated with both a statewide and national organization”; (3) amended the second paragraph of subd (a) by (a) adding the comma after “special” in the first sentence; and (b) substituting “the State Teachers’ Retirement System while on such a leave of absence” for “any public employee retirement system in California for injuries incurred on the job while on such a leave of absence” at the end of the paragraph; and (4) added subd (b).

**1982 Amendment:** Substituted the third sentence of the second paragraph of subd (a) for the former third sentence which read: “Required retirement contributions shall include the amount necessary to pay any unfunded liability cost for such retirement plan.”

**1987 Amendment:** (1) Generally eliminated “such”; and (2) amended subd (a) by (a) substituting “local school district public employee organization, or any statewide or national public employee organization with which the local organization is affiliated” for “statewide public employee organization, national organization with which such statewide organization is affiliated, or local school district public employee organization which is affiliated with such state and national organizations” at the end of the first paragraph; and (b) deleting “a” before “leave of absence” at the end of the second paragraph.

**1988 Amendment:** Substituted “twelve” for “eight” in the fifth sentence of the second paragraph of subd (a).

**2004 Amendment:** Substituted (1) “State Teachers’ Retirement Plan” for “State Teachers’ Retirement System” in the second paragraph of subd (a), the introductory clause of subd (b), and in subd (b)(1); (2) Amended the second paragraph in subd (a) by substituting (a) “rate adopted by the Teachers’ Retirement Board as a plan amendment with respect to the Defined Benefit Program as provided in Section 22711” for “contribution rate for additional service credit less the member contribution rate prescribed by Section 22804” at the end of the third sentence; (b) “Section 22711” for “Section 22804” at the end of the fourth sentence; (c) “may not” for “shall not” in the fifth sentence; and (d) “is not” for “shall not be” in the sixth sentence; and (3) “If” for “In the event that” at the beginning of the third paragraph in subd (b).

**2015 Amendment:** Substituted “twelve years” for “twelve calendar years” in the next to last sentence of the second paragraph of subd (a).

### Notes of Decisions

If an employee organization determined its purposes required its elected officer to take a leave of absence 50 percent of the work week, Ed C § 44987(a) required the school district employer to grant the leave request, so long as the employee organization reimbursed the school district for all compensation paid to the employee during the leave of absence. The Legislature intended to allow an elected officer of a local school district employee organization to take a leave of absence for any period of time for which the organization was willing to reimburse the school district. The phrase “leave of absence” could not reasonably be interpreted to refer solely to an extended period of absence. *Tracy Educators Assn. v. Superior Court* (2002, Cal App 3d Dist) 96 Cal App 4th 530, 116 Cal Rptr 2d 916, 2002 Cal App LEXIS 2016.

#### § 44987.3. Leave of absence to serve on certain boards or committees

(a) The governing board of a school district shall grant to any employee, upon request, a leave of absence without loss of any compensation for the purpose of enabling the employee to serve on any of



the following boards, commissions, committees, or groups, so long as the requirements of subdivision (b) are satisfied:

- (1) Advisory Commission on Special Education, as provided for by Section 33590.
  - (2) Advisory committee for child care and development services, as provided in Section 8286.
  - (3) Curriculum Development and Supplemental Materials Commission, as provided for by Section 33530.
  - (4) Educational Innovation and Planning Commission, as provided for by Section 33502.
  - (5) Educational Management and Evaluation Commission, as provided for by Section 33550.
  - (6) Any other group, commission, or board authorized by statute; or commission or board, any of whose members are appointed by the Governor or the state board; whose purposes and activities are to further public education, exclusive of the Commission on Teacher Credentialing.
- (b) A leave of absence shall not be granted unless all the following requirements are satisfied:
- (1) Service is performed in the State of California.
  - (2) The board, commission, committee, or group, in writing, informs the employee's district of the service.
  - (3) The board, commission, committee, or group agrees, prior to service, to reimburse the school district pursuant to subdivision (d).
  - (c) The leave of absence shall be limited to 20 schooldays per school year.
  - (d) Following the school district's payment of the employee for the leave of absence, the school district shall be reimbursed by the board, commission, committee, or group that the employee serves for the compensation paid to the employee's substitute and for actual administrative costs related to the leave of absence granted to the employee under this section, upon written request for reimbursement by the school district. Reimbursement by the board, commission, committee, or group shall be made within 10 days after its receipt of the school district's certification of payment of compensation to the employee and of payment of compensation to the employee's substitute.
  - (e) The leave of absence without loss of compensation provided for by this section is in addition to the release time without loss of compensation granted to representatives of an exclusive representative by subdivision (c) of Section 3543.1 of the Government Code and the leave of absence granted employees by Section 44987.
  - (f) As used in this section, "school district" also means a county superintendent of schools.

*Added by Stats 1980 ch 1121 § 1. Amended by Stats 2009 ch 53 § 15 (SB 512), effective January 1, 2010.*

### Amendments

**2009 Amendment:** In addition to making technical changes, (1) substituted "the" for "such" after "purpose of enabling" in the introductory clause of subd (a); (2) substituted subd (a)(2) for former subd (a)(2) which read: "(2) Advisory Committee for Child Care, as provided for by Chapter 2 (commencing with Section 8200) of Part 6."; (3) deleted former subds (a)(3) and (a)(4) which read: "(3) California Advisory Council on Vocational Education, as provided for by Section 8000."(4) California Commission on Crime Control and Violence Prevention, as provided for by Section 14101 of the Penal Code."; (4) redesignated former subds (a)(5)–(a)(7) to be subds (a)(3)–(a)(5); (5) deleted former subds (a)(8)–(a)(10) which read: "(8) Equal Educational Opportunities Commission, as provided for by Section 33570."(9) Instructional Television Advisory Commission, as provided for by Sections 51872 and 51873."(10) State Council of Educational Planning and Coordination, as provided for by Section 21000."; (6) redesignated former subd (a)(11) to be subd (a)(6); and (7) amended subd (a)(6) by substituting (a) "state board" for "State Board of Education"; and (b) "on Teacher Credentialing" for "for Teacher Preparation and Licensing".

### Notes of Decisions

The trial court erred in denying a teacher's petition for writ of mandate to compel a school district to grant a paid leave of absence to enable the teacher to serve on an advisory panel created by the state Commission on Teaching Credentialing. The panel was to develop standards for future teachers and to develop methods for

evaluating prospective teachers. Educ. Code, § 44987.3, subd. (a)(11), provides that school districts shall grant a leave of absence for teachers serving on “any other group, commission, or board authorized by statute”; and Educ. Code, § 44288, provides that the commission shall create subject matter advisory panels, such as the one to which the teacher was selected. This serves the legislative purpose of facilitating active teachers’ participation in statutorily authorized groups that act to further public education. Thus, the advisory panel fell under the broad ambit of § 44987.3, subd. (a)(11), and the teacher was entitled to a paid leave of absence to serve on the panel. *Wiman v. Vallejo City Unified School Dist.* (1990, Cal App 1st Dist) 221 Cal App 3d 1486, 271 Cal Rptr 142, 1990 Cal App LEXIS 730.

### **§ 45025. Part-time employees**

Any person employed by a district in a position requiring certification qualifications who serves less than the minimum schoolday as defined in Sections 46112 to 46116, inclusive, or 46141 may specifically contract to serve as a part-time employee. In fixing the compensation of part-time employees, governing boards shall provide an amount which bears the same ratio to the amount provided full-time employees as the time actually served by such part-time employees bears to the time actually served by full-time employees of the same grade or assignment. This section shall not apply to any person classified as a temporary employee under Sections 44919 and 44888, or any person employed as a part-time employee above and beyond his employment as a full-time employee in the same school district.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977.*

**Editor’s Notes**—Ed C § 46116, referred to in this section, was repealed in 1987. Ed C § 44888, referred to in this section, was reserved.

### **Notes of Decisions**

Temporary community college teachers hired pursuant to the provisions of former Ed C § 13337.5 (see now Ed C § 44929.25), providing for the temporary classification of teachers of community college or adult classes who teach not more than 60 percent of full time, were not entitled to the benefits of former Ed C § 13503.1, providing for compensation for part-time work proportionate to the amounts paid full-time employees. Former Ed C § 13503.1, contains an express exclusion of “any person classified as a temporary employee under former Ed C §§ 13337 and 13337.5 (see now Ed C §§ 44919 and 44929.25)” *Peralta Federation of Teachers, etc. v. Peralta Federation of Teachers, etc. v. Peralta Community College Dist.* (1979) 24 Cal 3d 369, 155 Cal Rptr 679, 595 P2d 113, 1979 Cal LEXIS 263, cert. denied (1979) 444 US 966, 62 L Ed 2d 379, 100 S Ct 455, 1979 US LEXIS 3844.

The phrase “time actually served” as used in former Ed C § 13503.1, which provides that in fixing the compensation of persons employed by a school district as part-time employees the governing board shall provide an amount which bears the same ratio to the amount provided full-time employees as the time actually served by such part-time employee bears to the time actually served by full-time employees, means the time actually spent on the job both inside and outside the classroom, and requires consideration of the total amount of time spent by part- and full-time teachers in connection with their teaching. However, the phrase did not mean that the required number of hours for full-time instructors set by the district could be used as the measure, as that was the very measure that was deleted from the statute when it was amended to include the “time actually served” language. *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal 3d 692, 170 Cal Rptr 817, 621 P2d 856, 1981 Cal LEXIS 110.

Part-time teachers hired by a community college district prior to November 8, 1967 (the date former Ed C § 13337.5, see now Ed C § 44929.25, which authorized temporary status for part-timers, became effective), and classified by the district as temporary employees, were entitled to reclassification as part-time regular employees pursuant to former Ed C § 13346.25, and to receive additional prorated back pay, pursuant to former Ed C § 13503.1, insofar as their causes of action were not barred by the applicable three-year statute of limitations, or by failure to present a claim as required by any applicable district regulation in effect at the time of accrual of the causes of action, such additional back pay to be apportioned according to the time actually spent on the job both inside and outside of the classroom. *California Teachers Assn. v. Los Angeles Community College Dist.* (1981, Cal App 2d Dist) 123 Cal App 3d 947, 177 Cal Rptr 168, 1981 Cal App LEXIS 2176.

Ed C § 45025, which is a recodification of former Ed C § 13503.1, and provides that part-time employees are to be paid in the same ratio as full-time employees, applies only to instructors in grades one through eight and high school. This conclusion is compelled by the language of § 45025, if not by its singular placement, i.e., as part of title 2, division 3, of the Education Code, which applies to elementary and secondary education. Although former § 13503.1 used terms which applied to employees of both community college districts and elementary and high school districts, and referred to sections which embraced community college instructors, § 45025, while reenacting the equal pay provisions, changed these references to limit its application to elementary and high school instructors. Furthermore, Ed C § 3, which states: “[t]he provisions of this Code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, not as new enactments,” does not change this result, since § 45025 is not “substantially the same” as former Ed C § 13503.1 on the crucial point of its applicability to community college instructors. *Ferris v. Los Rios Community College Dist.* (1983, Cal App 3d Dist) 146 Cal App 3d 1, 194 Cal Rptr 16, 1983 Cal App LEXIS 2045.

### **§ 45028. Teachers; Technical assistance and planning grant funding**

**(a)(1)** Effective July 1, 1970, each person employed by a school district in a position requiring certification qualifications, except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, except if a public school employer and the exclusive representative negotiate and mutually agree to a salary schedule based on criteria other than a uniform allowance for years of training and years of experience pursuant to Chapter 10.7 (commencing with Section 3540) of the Government Code. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

**(2)** In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

**(3)** This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers.

**(b)(1)** It is not a violation of the uniformity requirement of this section for a school district, with the agreement of the exclusive representative of certificated employees, if any, to grant any employee hired after a locally specified date differential credit for prior years of experience or prior units of credit for purposes of initial placement on the salary schedule of the district.

**(2)** This subdivision is declaratory of existing law.

**(c)** A public school employer and the exclusive representative of credentialed teachers may jointly apply to the Superintendent for technical assistance and planning grant funding to facilitate the planning of a salary schedule for teachers based on criteria in addition to years of training and years of experience, as described in subdivision (a). The Superintendent may make planning grants from funds appropriated for this purpose in the annual Budget Act or other legislation.

**(d)** To be eligible for grant funding pursuant to subdivision (c), the public school employer and the exclusive representative of credentialed teachers should consider a salary schedule designed to compensate teachers for the additional responsibilities, time, and effort required to serve in challenging school settings, and reward teachers for professional growth tied to their particular assignments.

**(e)** Public school employers and exclusive representatives of credentialed teachers are encouraged to recognize teacher contributions to improving pupil achievement, provide incentives to teachers to accept teaching assignments in areas of highest need, and recognize relevant professional experience on the salary schedule in lieu of units and degrees or in lieu of teaching experience.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1988 ch 1461 § 19.7; Stats 1996 ch 959 § 1 (SB 98); Stats 2006 ch 517 § 29 (SB 1209), effective January 1, 2007.*

### Amendments

**1988 Amendment:** (1) Designated the former section to be subd (a); (2) added the comma after “qualifications” in the first sentence of the first paragraph of subd (a); and (3) added subd (b).

**1996 Amendment:** Amended subd (a) by adding (1) “school” after “employed by a”; and (2) “, except if a public school employer and the exclusive representative negotiate and mutually agree to a salary schedule based on criteria other than a uniform allowance for years of training and years of experience pursuant to Chapter 10.7 (commencing with Section 3540) of the Government Code”.

**2006 Amendment:** (1) Added subd designations (a)(1)-(a)(3) in subd (a); (2) added subd designations (b)(1) and (b)(3) in subd (b); and (3) added subds (c)-(e).

### Notes of Decisions

The contract of a teacher is contained in the statutes, the rules and regulations of the board, and it cannot be contended that the board can fix the status of a teacher by its rules and regulations, and by resolution, and then by a letter from an employee improperly interpreting the resolutions, claim that the status is different from that fixed by the rules and regulations and by the resolution. *Fry v. Board of Education* (1941) 17 Cal 2d 753, 112 P2d 229, 1941 Cal LEXIS 310.

Uniformity is required by the statute, but the uniformity which the law contemplates is not violated by a “reasonable” classification. *Rible v. Hughes* (1944) 24 Cal 2d 437, 150 P2d 455, 1944 Cal LEXIS 247, 154 ALR 137.

A board of education may not decide that its previous teacher experience ratings had departed from the rule of uniformity and reduce them, notwithstanding the contracts resulting from the original ratings had become executed, where its action in so doing results in attempting retroactively to make new contracts. *Aebli v. Board of Education* (1944, Cal App) 62 Cal App 2d 706, 145 P2d 601, 1944 Cal App LEXIS 869.

Classification of teachers for salary purposes based on training is not arbitrary, discriminatory, or unreasonable, may form basis for differences in salary payments to permanent teachers performing same duties, does not violate uniformity required in schedule making allowances for years of training and service, and may be used in composing acceptable salary schedule. *San Diego Federation of Teachers v. Board of Education* (1963, Cal App 4th Dist) 216 Cal App 2d 758, 31 Cal Rptr 146, 1963 Cal App LEXIS 2078.

It is within the province of the governing board of a school district to determine the extent to which salary credit is to be given for teaching experience outside the district and a court is not free to interfere with such determination if the policy is reasonable in nature and is applied fairly and without discrimination. *Lawe v. El Monte School Dist.* (1968, Cal App 2d Dist) 267 Cal App 2d 20, 72 Cal Rptr 554, 1968 Cal App LEXIS 1355, superseded by statute as stated in *California Teachers’ Assn. v. Livingston Union School Dist.* (1990, Cal App 5th Dist) 219 Cal App 3d 1503, 269 Cal Rptr 160, 1990 Cal App LEXIS 428.

In fixing compensation of teachers, a school board is empowered to adopt a salary schedule provided it is not arbitrary, discriminatory, or unreasonable, and provided further than any allowance for years of training and experience is uniform and based on reasonable classifications. *Shoban v. Board of Trustees* (1969, Cal App 4th Dist) 276 Cal App 2d 534, 81 Cal Rptr 112, 1969 Cal App LEXIS 1837.

There was a rational basis for classifying intermediate teachers differently than primary or secondary teachers, and the salary schedule thus violated neither the provisions prohibiting salary differences solely on the basis of respective grade levels, nor the principle of uniformity of treatment limiting a school’s discretionary control over the salary of teachers. *Lompoc Federation of Teachers v. Lompoc Unified Sch. Dist.* (1976, Cal App 2d Dist) 58 Cal App 3d 701, 130 Cal Rptr 70, 1976 Cal App LEXIS 1579, overruled *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School Dist.* (1978) 21 Cal 3d 650, 147 Cal Rptr 359, 580 P2d 1155, 1978 Cal LEXIS 254.

The prohibition against salary discrimination cannot be circumvented by the establishment of artificially low normal assignments for preferred grade levels, with extra compensation for additional service. *Lompoc Federation of Teachers v. Lompoc Unified Sch. Dist.* (1976, Cal App 2d Dist) 58 Cal App 3d 701, 130 Cal Rptr 70, 1976 Cal App LEXIS 1579, overruled *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School Dist.* (1978) 21 Cal 3d 650, 147 Cal Rptr 359, 580 P2d 1155, 1978 Cal LEXIS 254.

One of the Legislature’s aims in enacting Ed. Code, § 45028, formerly § 13506, providing that each teacher shall be classified on the salary schedule on the basis of uniform allowance for years of training and experience and that teachers shall not be placed in different salary classifications solely on the basis of the grade levels which they taught, was to break away from the past reliance on judicial assessments of reasonableness in the salary classification of teachers and establish a more certain standard of its own. Thus the new statute has the twofold

purpose of requiring that teachers be classified for salary purposes and that such classification proceed wholly on a uniform basis of years of training and experience. One effect of this action is to eliminate the possibility of instances in which a district, while granting a given maximum of credit for outside teaching experience, makes such credit available on a less than uniform basis to all teachers. Also, it was not the sole legislative purpose in amending the statute to remove the previous practice of classifying teachers for salary purposes according to grade level taught. (Disapproving, to the extent they are inconsistent herewith, *Lompoc Federation of Teachers v. Lompoc Unified Sch. Dist.* (1976) 58 Cal App 3d 701, 130 Cal Rptr 70, 1976 Cal App LEXIS 1579 and *California Sch. Employees Assn. v. Coachella Valley Unified Sch. Dist.* (1977) 65 Cal App 3d 913, 135 Cal Rptr 630, 1977 Cal App LEXIS 1100.) *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School Dist.* (1978) 21 Cal 3d 650, 147 Cal Rptr 359, 580 P2d 1155, 1978 Cal LEXIS 254.

Ed. Code, § 45028, formerly § 13506, providing that each teacher shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, would not forbid a rule providing for credit for outside teaching experience up to five years, although such a rule may have the effect of depriving a teacher with six years of outside experience of a year of credit. Such a rule would constitute a uniform allowance for years of experience within the meaning of the statute, since under it teachers would receive credit for prior experience up to the stated maximum. Similarly, the statute would not preclude a school district from making reasonable determinations as to the level and quality of training or experience which is necessary to qualify for a particular level of credit within its boundaries. *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School Dist.* (1978) 21 Cal 3d 650, 147 Cal Rptr 359, 580 P2d 1155, 1978 Cal LEXIS 254.

Under Ed. Code, § 45028 (former § 13506), providing that each teacher shall be classified on the salary schedule on the basis of a uniform allowance for years of training and years of experience, a school district is free to define "experience" for purposes of its salary schedule provided that what is so defined applies uniformly to all teachers employed by the district. Accordingly, a provision in a collective bargaining agreement providing that a teacher shall be advanced to the next step on the salary schedule provided he or she has received a satisfactory performance rating, and defining a year of experience within the district's employment as one for which the teacher has received a satisfactory evaluation, applicable to all teachers alike, did not violate Ed. Code, § 45028. Thus, teachers who challenged the incentive provision after being denied an advancement on the basis of unsatisfactory performance were not entitled to relief, where, on the record and in terms of the issue posed by the petition, it must be accepted as true that the teachers' unsatisfactory ratings were justified on the basis of their own behavior, and where there was nothing in the record to demonstrate that there was or was not a probability of abuse inherent in the subjective evaluation process. *Mayer v. Board of Trustees* (1980, Cal App 4th Dist) 106 Cal App 3d 476, 165 Cal Rptr 655, 1980 Cal App LEXIS 1893.

A school district rule governing salary advancement of certificated teachers violated Ed. Code, § 45028, which provides, in pertinent part, that "... each person employed by a district in a position requiring certification qualifications ... shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience," where the salary rule limited a teacher who advanced on the salary schedule from one column to the next, upon attainment of a higher educational level, to a one-step increase for experience, even though the teacher had additional years of experience and the new column had steps for those additional years of experience. The rule precluded teachers from receiving credit for experience solely due to their seniority within the system. *California Teachers Assn. v. Board of Education* (1982, Cal App 2d Dist) 129 Cal App 3d 826, 181 Cal Rptr 432, 1982 Cal App LEXIS 1374.

A school district's professional growth program, which required that certified personnel receiving salary step advancement for experience complete a specified number of professional growth units for each four years, violated Ed. Code, § 45028. On its face, the policy denied credit for years of experience as a teacher based on the teacher's failure to obtain professional growth units that had little or nothing to do with the teacher's experience in performing teaching duties; and, because it did not treat years of training and years of experience uniformly, the policy did not qualify as a legitimate pay incentive program. The policy was unlawful as applied because it permanently deprived teachers in a deficient status under the professional growth policy credit for years of experience. *Wygant v. Victor Valley Joint Union High School Dist.* (1985, Cal App 4th Dist) 168 Cal App 3d 319, 214 Cal Rptr 205, 1985 Cal App LEXIS 2097.

For the purposes of Ed. Code, § 45028, which requires that certified teachers be "classified on the salary schedule on the basis of uniform allowance for years of training and years of experience," "experience," given its normal and ordinary import and construed in context, means the performance of a teacher's duties, which normally include lesson preparation, classroom instruction, grading, parental counseling, and supervision of extracurricular

activities of students. *Wygant v. Victor Valley Joint Union High School Dist.* (1985, Cal App 4th Dist) 168 Cal App 3d 319, 214 Cal Rptr 205, 1985 Cal App LEXIS 2097.

In a mandamus proceeding challenging a school district's salary placement policy for teachers that was in effect during a collective bargaining agreement, the trial court erred in holding that Gov. Code, § 3543.2, subd. (d) (requirement of collective bargaining regarding payment of additional compensation of teachers based upon criteria other than years of training and years of experience), superseded Ed. Code, § 45028 (teacher shall be classified on salary schedule on basis of uniform allowance for years of training and experience). The policy, which provided that a teacher could advance to the next column in the schedule upon acquiring additional educational credits and attaining specified step levels in the preceding column, satisfied neither the "additional compensation" nor the "other criteria" prong of § 3543.2, subd. (d), and thus was governed by § 45028. *San Francisco Classroom Teachers Assn. v. San Francisco Unified School Dist.* (1987, Cal App 1st Dist) 196 Cal App 3d 627, 242 Cal Rptr 352, 1987 Cal App LEXIS 2358.

A school district's placement policy of advancing certified teachers to the next column of its salary schedule based on the teacher's acquisition of additional educational credits and the reaching of designated steps of a prior column violated Ed. Code, § 45028 (certified teachers must be classified on salary schedule on the basis of uniform allowance for years of training and experience). Under the policy, a teacher's failure to take the additional credits by the time the teacher reached a certain level of seniority within the system resulted in a denial of credit for experience to which the teacher otherwise would have been entitled, and it was not logical to define "experience" under the statute in terms of experience in a certain column of a salary schedule, since a teacher's duties did not vary in accordance with placement on the schedule. *San Francisco Classroom Teachers Assn. v. San Francisco Unified School Dist.* (1987, Cal App 1st Dist) 196 Cal App 3d 627, 242 Cal Rptr 352, 1987 Cal App LEXIS 2358.

In a proceeding by state and local teachers' associations for a writ of mandate against a school district governing board and the district superintendent, alleging that the district teachers were not being paid on a uniform basis for their years of training and experience as required by Ed. Code, § 45028, the trial court erred in denying the petition on the ground that the school district could "grandfather" certain teachers by using a classification system under which certain teachers were paid differently from others because they were hired and their salaries fixed before the statute was enacted. Ed. Code, § 45028, applies to all certificated teachers employed within a school district, and exceptions cannot be made for employees hired before its effective date. *California Teachers Assn. v. Governing Bd.* (1991, Cal App 2d Dist) 229 Cal App 3d 695, 280 Cal Rptr 286, 1991 Cal App LEXIS 379, review denied (1991, Cal) 1991 Cal LEXIS 3250.

A school district salary structure that punishes teachers who do not take advanced course work by denying them advancement for their additional years of teaching experience violates Ed. Code, § 45028, which requires formulation of a salary schedule based on a uniform allowance for years of training and experience. The appropriate method for a school district to encourage its teachers to take advanced course work is to create a special salary category as an extra reward for those teachers who do undertake advanced training, rather than having a policy of denying advancement to teachers that do not do any additional work. *California Teachers Assn. v. Governing Bd.* (1991, Cal App 2d Dist) 229 Cal App 3d 695, 280 Cal Rptr 286, 1991 Cal App LEXIS 379, review denied (1991, Cal) 1991 Cal LEXIS 3250.

A school district policy that precludes teachers from advancing more than a single classification on the salary scale in any one year, regardless of the amount of additional training they obtain, violates Ed. Code, § 45028, which requires formulation of a salary schedule based on a uniform allowance for years of training and experience. Although a school district is entitled to make reasonable determinations as to the level and quality of the training and experience necessary for advancement to a higher classification, it may not discriminate against teachers who have met the criteria for advancement by denying them full credit for their work. *California Teachers Assn. v. Governing Bd.* (1991, Cal App 2d Dist) 229 Cal App 3d 695, 280 Cal Rptr 286, 1991 Cal App LEXIS 379, review denied (1991, Cal) 1991 Cal LEXIS 3250.

Although Ed. Code, § 45028, which requires a school district to formulate a salary schedule based on a uniform allowance for years of training and experience for teachers, is qualified by Gov. Code, § 3543.2, subd. (d), which permits a public school employer and the exclusive representative of employees to negotiate regarding additional compensation based upon criteria other than years of training and experience, the Government Code section cannot be applied to permit a deviation from the uniformity requirements of Ed. Code, § 45028, on the ground that the deviations were agreed to in collective bargaining. The Education Code does not permit contractual waivers of benefits guaranteed by Ed. Code, § 45028 (Ed. Code, § 44924), and the chapter of the Government Code that contains Gov. Code, § 3543.2, and establishes a system of collective bargaining for school district employees, provides that it shall not supersede other provisions of the Education Code (Gov. Code, § 3540). Thus, Ed. Code,

§ 45028, prevails over the collective bargaining provisions in the Government Code, and may not be waived. *California Teachers Assn. v. Governing Bd.* (1991, Cal App 2d Dist) 229 Cal App 3d 695, 280 Cal Rptr 286, 1991 Cal App LEXIS 379, review denied (1991, Cal) 1991 Cal LEXIS 3250.

A one-time payment to teachers did not violate the uniform pay provisions of Ed C § 45028 or the legislative purposes underlying it where at least one criterion upon which the payment was based was neither years of training nor years of experience. Thus, the conditions imposed on an additional one-time payment of three percent of base salary satisfied the requirement for “criteria other than years of training and years of experience,” within the meaning of Gov C § 3543.2(d), where the disparity in pay between teachers of equal training and experience was based upon whether or not they returned to work for the 1998-1999 school year or retired after the 1997-1998 school year. Since the conditions imposed upon the one-time payment satisfied the “other criteria” prong of § 3543.2(d), § 45028 was not violated. *California Teachers Assn. v. Governing Bd. of Hilmar Unified School Dist.* (2002, Cal App 5th Dist) 95 Cal App 4th 183, 115 Cal Rptr 2d 323, 2002 Cal App LEXIS 181.

School district’s implementation of a compressed salary schedule in a collective bargaining agreement violated the uniformity requirement of Ed C § 45028 because the implementation resulted in less experienced teachers moving up the salary ladder at a rate of one step per year, while more experienced teachers were regressed to step levels below their number of years of experience; new system did not fall within the “other criteria” exception of Gov C § 3543.2 because the system was governed solely by length of experience and level of training, and the goal of encouraging teacher recruitment and retention was not a “criterion.” *Adair v. Stockton Unified School Dist.* (2008, 3d Dist) 162 Cal App 4th 1436, 2008 Cal App LEXIS 747.

Trial court properly severed from the valid part of a collective agreement a provision that violated a statutory uniformity requirement, in that it resulted in a slower climb up the salary ladder for teachers with more than 17 years of experience than for their less-experienced counterparts; Ed C § 44924 renders void any portion of a collective bargaining agreement purporting to waive the benefits of the uniformity provisions of Ed C § 45028. *Adair v. Stockton Unified School Dist.* (2008, 3d Dist) 162 Cal App 4th 1436, 2008 Cal App LEXIS 747.

Teacher who claimed that she was a permanent employee because she provided teaching services during the entire school year, and that she therefore was unlawfully deprived of backpay, could not rely on this provision for relief because it does not apply to substitute teachers. *Edwards v. Lake Elsinore Unified Sch. Dist.* (2014, 4th Dist) 230 Cal App 4th 1532, 179 Cal Rptr 3d 626, 2014 Cal App LEXIS 994.

#### **§ 45134. Age limits; Employment of persons receiving retirement allowance**

(a) Notwithstanding any other provisions of law, no minimum or maximum age limits shall be established for the employment or continuance in employment of persons as part of the classified service.

(b) Any person possessing all of the minimum qualifications for any employment shall be eligible for appointment to that employment, and no rule or policy, either written or unwritten, heretofore or hereafter adopted, shall prohibit the employment or continued employment, solely because of the age of any person in any school employment who is otherwise qualified.

(c) No person shall be employed in school employment while he or she is receiving a retirement allowance under any retirement system by reason of prior school employment, except that a person may be hired:

(1) Pursuant to Article 8 (commencing with Section 21220) of Chapter 12 of Part 3 of Division 5 of Title 2 of the Government Code.

(2) As an aide in one of the following circumstances:

(A) An aide is needed in a class with a high pupil–teacher ratio.

(B) An aide is needed to provide one–on–one instruction in remedial classes or for underprivileged students.

A person working as an aide pursuant to this subdivision shall not receive service credits for purposes of the State Teachers’ Retirement System.

(d) The provisions of subdivision (c) shall be inapplicable to persons who were employed in the classified service of any school district as of September 18, 1959, and who are still in the employ of the same district on the effective date of this subdivision, and the rights of those persons shall be fixed and determined as of September 18, 1959, and no such person shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he or she would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any

right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefore, be reinstated to such rights as he or she would have had had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1983 ch 666 § 3; Stats 1986 ch 371 § 1; Stats 1990 ch 903 § 2 (AB 4048); Stats 2005 ch 351 § 40 (AB 224), effective January 1, 2006.*

### Amendments

**1983 Amendment:** Substituted (1) subd (c) for former subd (c) which read: “(c) This section does not authorize the employment of any person in particular school employment who has reached the retirement age for that particular employment prescribed by any retirement system applicable thereto, whether or not the person is a member of the retirement system, or entitled to a retirement salary thereunder, nor shall any person be employed in such employment while he is receiving a retirement allowance under any retirement system by reason of prior school employment.”; and (2) subd (e) for former subd (e) which read: “(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter, except that in a school district or districts, governed by the same governing board, in which the combined average daily attendance of all districts is in excess of 400,000, the permanent classification of any employee who is classified as a permanent employee under the provisions of Article 6 (commencing with Section 45240) of this chapter shall cease at the close of the fiscal year in which the employee reaches the age of 65 years. In such district or districts the employment, or continued employment of any employee beyond the close of the fiscal year in which he reaches the age of 65 years shall be at the discretion of the governing board of the district, which may, at its pleasure, terminate the services of such employee at any time. Employment beyond age 65 in such districts shall be in accordance with rules and regulations governing such employment approved by the personnel commission, and adopted by the governing board of the district.”

**1986 Amendment:** Amended subd (c) by adding (1) “or she” after “employment while he” in the introductory clause; (2) “, except that a person may hired as an aide in one of the following circumstances:”(1) An aide is needed in a class with a high pupil–teacher ratio.”(2) An aide is need to provide one–on–one instruction in remedial classes or for underprivileged students.”; and (3) the second paragraph.

**1990 Amendment:** In addition to making technical changes, (1) substituted “as” for “a” after “persons” in subd (a); (2) deleted “as an aide in one of the following circumstances” at the end of the introductory clause in subd (c); (3) added subd (c)(1); (4) added the introductory clause in subd (c)(2); and (5) redesignated former subds (c)(1) and (c)(2) to be subds (c)(2)(A) and (c)(2)(B).

**2005 Amendment:** (1) Deleted “such” before “person” in subd (b); (2) deleted “therefore” after “qualified” in subd (b); (3) substituted “Article 8 (commencing with Section 21220) of Chapter 12” for “Article 5 (commencing with Section 21150) of Chapter 8” in subd (c)(1); and (4) substituted “therefore,” for “herefor,” in the last sentence of subd (d).

### § 47605. **Petition to establish charter school; Public hearing; Grounds for grant or denial; Requirements for school; Oversight; Teacher qualifications; Audit report; Relocation**

(a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:



**(A)** The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

**(B)** The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

**(2)** A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

**(3)** A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having their child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

**(4)** After receiving approval of its petition, a charter school that proposes to expand operations to one or more additional sites or grade levels shall request a material revision to its charter and shall notify the chartering authority of those additional locations or grade levels. The chartering authority shall consider whether to approve those additional locations or grade levels at an open, public meeting. If the additional locations or grade levels are approved pursuant to the standards and criteria described in subdivision (c), they shall be a material revision to the charter school's charter.

**(5) (A)** A charter school that established one site outside the boundaries of the school district, but within the county in which that school district is located before January 1, 2020, may continue to operate that site until the charter school submits a request for the renewal of its charter petition. To continue operating the site, the charter school shall do either of the following:

**(i)** First, before submitting the request for the renewal of the charter petition, obtain approval in writing from the school district where the site is operating.

**(ii)** Submit a request for the renewal of the charter petition pursuant to Section 47607 to the school district in which the charter school is located.

**(B)** If a Presidential declaration of a major disaster or emergency is issued in accordance with the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Sec. 5121 et seq.) for an area in which a charter schoolsite is located and operating, the charter school, for not more than five years, may relocate that site outside the area subject to the Presidential declaration if the charter school first obtains the written approval of the school district where the site is being relocated to.

**(C)** Notwithstanding subparagraph (A), if a charter school was relocated from December 31, 2016, to December 31, 2019, inclusive, due to a Presidential declaration of a major disaster or emergency in accordance with the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Sec. 5121 et seq.), that charter school shall be allowed to return to its original campus location in perpetuity.

**(D) (i)** A charter school in operation and providing educational services to pupils before October 1, 2019, located on a federally recognized California Indian reservation or rancheria or operated by a federally recognized California Indian tribe shall be exempt from the geographic restrictions of paragraph (1) and subparagraph (A) of this paragraph and the geographic restrictions of subdivision (a) of Section 47605.1.

**(ii)** The exemption to the geographic restrictions of subdivision (a) of 47605.1 in clause (i) does not apply to nonclassroom-based charter schools operating pursuant to Section 47612.5.

**(E)** The department shall regard as a continuing charter school for all purposes a charter school that was granted approval of its petition, that was providing educational services to pupils before October 1, 2019, and is authorized by a different chartering authority due to changes to this paragraph that took effect January 1, 2020. This paragraph shall be implemented only to the extent it does not conflict with federal law. In order to prevent any potential conflict with federal law, this paragraph does not apply to

covered programs as identified in Section 8101(11) of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 7801) to the extent the affected charter school is the restructured portion of a divided charter school pursuant to Section 47654.

**(6)** Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

**(b)** No later than 60 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 90 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. A petition is deemed received by the governing board of the school district for purposes of commencing the timelines described in this subdivision on the day the petitioner submits a petition to the district office, along with a signed certification that the petitioner deems the petition to be complete. The governing board of the school district shall publish all staff recommendations, including the recommended findings and, if applicable, the certification from the county superintendent of schools prepared pursuant to paragraph (8) of subdivision (c), regarding the petition at least 15 days before the public hearing at which the governing board of the school district will either grant or deny the charter. At the public hearing at which the governing board of the school district will either grant or deny the charter, petitioners shall have equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.

**(c)** In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice and with the interests of the community in which the school is proposing to locate. The governing board of the school district shall consider the academic needs of the pupils the school proposes to serve. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

**(1)** The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

**(2)** The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

**(3)** The petition does not contain the number of signatures required by subdivision (a).

**(4)** The petition does not contain an affirmation of each of the conditions described in subdivision (e).

**(5)** The petition does not contain reasonably comprehensive descriptions of all of the following:

**(A) (i)** The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

**(ii)** The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

**(iii)** If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A to G" admissions criteria may be considered to meet college entrance requirements.

**(B)** The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all pupil subgroups served by the charter school, as that term is defined in subdivision (a) of Section 52052. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served by the charter school.

**(C)** The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

**(D)** The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

**(E)** The qualifications to be met by individuals to be employed by the charter school.

**(F)** The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall require all of the following:

**(i)** That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

**(ii)** The development of a school safety plan, which shall include the safety topics listed in subparagraphs (A) to (J), inclusive, of paragraph (2) of subdivision (a) of Section 32282.

**(iii)** That the school safety plan be reviewed and updated by March 1 of every year by the charter school.

**(G)** The means by which the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils, including redesignated fluent English proficient pupils, as defined by the evaluation rubrics in Section 52064.5, that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted. Upon renewal, for a charter school not deemed to be a local educational agency for purposes of special education pursuant to Section 47641, the chartering authority may consider the effect of school placements made by the chartering authority in providing a free and appropriate public education as required by the federal Individuals with Disabilities Education Act (Public Law 101-476), on the balance of pupils with disabilities at the charter school.

**(H)** Admission policies and procedures, consistent with subdivision (e).

**(I)** The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

**(J)** The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:

**(i)** For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present the pupil's side of the story.

**(ii)** For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:

**(I)** Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.

**(II)** Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.

**(iii)** Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform the pupil, the pupil's parent or guardian, or the pupil's educational rights holder of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (i) and (ii).

**(K)** The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

**(L)** The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

**(M)** The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

**(N)** The procedures to be followed by the charter school and the chartering authority to resolve disputes relating to provisions of the charter.

**(O)** The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

**(6)** The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

**(7)** The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:

**(A)** The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.

**(B)** Whether the proposed charter school would duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.

**(8)** The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131, has a negative interim certification pursuant to Section 42131, or is under state receivership. Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

**(d) (1)** Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school's educational programs.

(e) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of that pupil's parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

(B) If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school's teachers, staff, and founders identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:

(i) Each type of preference shall be approved by the chartering authority at a public hearing.

(ii) Preferences shall be consistent with federal law, the California Constitution, and Section 200.

(iii) Preferences shall not result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.

(iv) In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(4) (A) A charter school shall not discourage a pupil from enrolling or seeking to enroll in the charter school for any reason, including, but not limited to, academic performance of the pupil or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2).

(B) A charter school shall not request a pupil's records or require a parent, guardian, or pupil to submit the pupil's records to the charter school before enrollment.

(C) A charter school shall not encourage a pupil currently attending the charter school to disenroll from the charter school or transfer to another school for any reason, including, but not limited to, academic performance of the pupil or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2). This subparagraph shall not apply to actions taken by a charter school pursuant to the procedures described in subparagraph (J) of paragraph (5) of subdivision (c).

**(D)** The department shall develop a notice of the requirements of this paragraph. This notice shall be posted on a charter school's internet website. A charter school shall provide a parent or guardian, or a pupil if the pupil is 18 years of age or older, a copy of this notice at all of the following times:

**(i)** When a parent, guardian, or pupil inquires about enrollment.

**(ii)** Before conducting an enrollment lottery.

**(iii)** Before disenrollment of a pupil.

**(E) (i)** A person who suspects that a charter school has violated this paragraph may file a complaint with the chartering authority.

**(ii)** The department shall develop a template to be used for filing complaints pursuant to clause (i).

**(5)** Notwithstanding any other law, a charter school in operation as of July 1, 2019, that operates in partnership with the California National Guard may dismiss a pupil from the charter school for failing to maintain the minimum standards of conduct required by the Military Department.

**(f)** The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

**(g)** The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

**(h)** The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation. If the school is to be operated by, or as, a nonprofit public benefit corporation, the petitioner shall provide the names and relevant qualifications of all persons whom the petitioner nominates to serve on the governing body of the charter school.

**(i)** In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the department under Section 54032, as that section read before July 19, 2006.

**(j)** Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

**(k) (1) (A) (i)** If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The petitioner shall submit the petition to the county board of education within 30 days of a denial by the governing board of the school district. At the same time the petition is submitted to the county board of education, the petitioner shall also provide a copy of the petition to the school district. The county board of education shall review the petition pursuant to subdivisions (b) and (c). If the petition submitted on appeal contains new or different material terms, the county board of education shall immediately remand the petition to the governing board of the school district for reconsideration, which shall grant or deny the petition within 30 days. If the governing board of the school district denies a petition after reconsideration, the petitioner may elect to resubmit the petition for the establishment of a charter school to the county board of education.

**(ii)** The county board of education shall review the appeal petition pursuant to subdivision (c). If the denial of the petition was made pursuant to paragraph (8) of subdivision (c), the county board of education shall also review the school district's findings pursuant to paragraph (8) of subdivision (c).

**(iii)** As used in this subdivision, "material terms" of the petition means the signatures, affirmations, disclosures, documents, and descriptions described in subdivisions (a), (b), (c), and (h), but shall not

include minor administrative updates to the petition or related documents due to changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law, or to reflect the county board of education as the chartering authority.

**(B)** If the governing board of a school district denies a petition and the county board of education has jurisdiction over a single school district, the petitioner may elect to submit the petition for the establishment of a charter school to the state board. The state board shall review a petition submitted pursuant to this subparagraph pursuant to subdivision (c). If the denial of a charter petition is reversed by the state board pursuant to this subparagraph, the state board shall designate the governing board of the school district in which the charter school is located as the chartering authority.

**(2)** If the county board of education denies a petition, the petitioner may appeal that denial to the state board.

**(A)** The petitioner shall submit the petition to the state board within 30 days of a denial by the county board of education. The petitioner shall include the findings and documentary record from the governing board of the school district and the county board of education and a written submission detailing, with specific citations to the documentary record, how the governing board of the school district or the county board of education, or both, abused their discretion. The governing board of the school district and county board of education shall prepare the documentary record, including transcripts of the public hearing at which the governing board of the school district and county board of education denied the charter, at the request of the petitioner. The documentary record shall be prepared by the governing board of the school district and county board of education no later than 10 business days after the request of the petitioner is made. At the same time the petition and supporting documentation is submitted to the state board, the petitioner shall also provide a copy of the petition and supporting documentation to the school district and the county board of education.

**(B)** If the appeal contains new or different material terms, as defined in clause (iii) of subparagraph (A) of paragraph (1), the state board shall immediately remand the petition to the governing board of the school district to which the petition was submitted for reconsideration. The governing board of the school district shall grant or deny the petition within 30 days. If the governing board of the school district denies a petition after reconsideration, the petitioner may elect to resubmit the petition to the state board.

**(C)** Within 30 days of receipt of the appeal submitted to the state board, the governing board of the school district or county board of education may submit a written opposition to the state board detailing, with specific citations to the documentary record, how the governing board of the school district or the county board of education did not abuse its discretion in denying the petition. The governing board of the school district or the county board of education may submit supporting documentation or evidence from the documentary record that was considered by the governing board of the school district or the county board of education.

**(D)** The state board's Advisory Commission on Charter Schools shall hold a public hearing to review the appeal and documentary record. Based on its review, the Advisory Commission on Charter Schools shall submit a recommendation to the state board whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record. If the Advisory Commission on Charter Schools does not submit a recommendation to the state board, the state board shall consider the appeal, and shall either hear the appeal or summarily deny review of the appeal based on the documentary record at a regular public meeting of the state board.

**(E)** The state board shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the state board hears the appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion. If the denial of a charter petition is reversed by the state board, the state board shall designate, in consultation with the petitioner, either the governing board of the school district or the county board of education in which the charter school is located as the chartering authority.

(3) A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the chartering authority to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(5) Upon the approval of the petition by the county board of education, the petition or petitioners shall provide written notice of that approval, including a copy of the petition, to the governing board of the school district in which the charter school is located, the department, and the state board.

(6) If either the county board of education or the state board fails to act on a petition within 180 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.

(1) Teachers in charter schools shall hold the Commission on Teacher Credentialing certificate, permit, or other document required for the teacher's certificated assignment. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. A governing body of a direct-funded charter school may use local assignment options authorized in statute and regulations for the purpose of legally assigning certificated teachers, in accordance with all of the requirements of the applicable statutes or regulations in the same manner as a governing board of a school district. A charter school shall have authority to request an emergency permit or a waiver from the Commission on Teacher Credentialing for individuals in the same manner as a school district.

(2) By July 1, 2020, all teachers in charter schools shall obtain a certificate of clearance and satisfy the requirements for professional fitness pursuant to Sections 44339, 44340, and 44341.

(3) The Commission on Teacher Credentialing shall include in the bulletins it issues pursuant to subdivision (k) of Section 44237 to provide notification to local educational agencies of any adverse actions taken against the holders of any commission documents, notice of any adverse actions taken against teachers employed by charter schools and shall make this bulletin available to all chartering authorities and charter schools in the same manner in which it is made available to local educational agencies.

(m) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (c), to its chartering authority, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering authority, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering authority pursuant to Section 41020.

(n) A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

(o) The requirements of this section shall not be waived by the state board pursuant to Section 33050 or any other law.

*Added by Stats 1992 ch 781 § 1 (SB 1448). Amended by Stats 1993 ch 589 § 45 (AB 2211); Stats 1996 ch 786 § 3 (AB 3384); Stats 1998 ch 34 § 6 (AB 544), ch 673 § 2 (AB 2417); Stats 1999 ch 828 § 1 (AB 631); Stats 2000 ch 580 § 4 (AB 2659); Stats 2001 ch 344 § 1 (SB 675), ch 892 § 1.5 (SB 740); Stats 2002 ch 209 § 1 (SB 1709), ch 1058 § 6 (AB 1994); Stats 2005 ch 543 § 2 (AB 1610), effective January 1, 2006; Stats 2007 ch 569 § 27 (SB 777), effective January 1, 2008; Stats 2008 ch 179 § 46 (SB 1498), effective January 1, 2009; Stats 2012 ch 576 § 1 (SB 1290), effective January 1, 2013; Stats 2013 ch 47 § 76 (AB 97), effective July 1, 2013; Stats 2015 ch 303 § 95 (AB 731), effective January 1, 2016; Stats 2017 ch 641 § 6 (AB 830), effective January 1, 2018. Stats 2017 ch 760 § 2.5 (AB 1360), effective*



*January 1, 2018 (ch 760 prevails); Stats 2018 ch 806 § 5 (AB 1747), effective January 1, 2019; Stats 2019 ch 51 § 30 (SB 75), effective July 1, 2019; Stats 2019 ch 486 § 2 (AB 1505), effective January 1, 2020, operative July 1, 2020; Stats 2019 ch 487 § 1 (AB 1507), effective January 1, 2020; Stats 2019 ch 543 § 3.3 (AB 1595), effective January 1, 2020, operative July 1, 2020 (ch 543 prevails); Stats 2020 ch 24 § 43 (SB 98), effective June 29, 2020; Stats 2020 ch 67 § 67 (SB 1371), effective January 1, 2021 (ch 24 prevails).*

**Prior Urgency Law:** This section, as amended Stats 2019 ch 51 § 30 (SB 75), effective July 1, 2019, until January 1, 2020, read:

“(a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:

“(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

“(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

“(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

“(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having their child or ward attend the charter school, or in the case of a teacher’s signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

“(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, there shall be a material revision to the charter school’s charter.

“(5) A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:

“(A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

“(B) The site is needed for temporary use during a construction or expansion project.

“(6) Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

“(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing

board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

“(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

“(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

“(3) The petition does not contain the number of signatures required by subdivision (a).

“(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

“(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

“(A) (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

“(ii) The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in paragraphs (2) to (8), inclusive, of subdivision (d) of Section 52060, that apply for the grade levels served by the charter school, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

“(iii) If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the “A to G” admissions criteria may be considered to meet college entrance requirements.

“(B) The measurable pupil outcomes identified for use by the charter school. “Pupil outcomes,” for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school’s educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in paragraphs (2) to (8), inclusive, of subdivision (d) of Section 52060, that apply for the grade levels served by the charter school.

“(C) The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

“(D) The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

“(E) The qualifications to be met by individuals to be employed by the charter school.

“(F) The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall require all of the following:

“(i) That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

“(ii) The development of a school safety plan, which shall include the safety topics listed in subparagraphs (A) to (H), inclusive, of paragraph (2) of subdivision (a) of Section 32282 and procedures for conducting tactical responses to criminal incidents.

“(iii) That the school safety plan be reviewed and updated by March 1 of every year by the charter school.

“(G) The means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

“(H) Admission policies and procedures, consistent with subdivision (d).

“(I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

“(J) The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a

minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:

“(i) For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present the pupil’s side of the story.

“(ii) For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:

“(I) Provide timely, written notice of the charges against the pupil and an explanation of the pupil’s basic rights.

“(II) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.

“(iii) Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil’s parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil’s educational rights holder, and shall inform the pupil, the pupil’s parent or guardian, or the pupil’s educational rights holder of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil’s parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, “involuntarily removed” includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (i) and (ii).

“(K) The manner by which staff members of the charter schools will be covered by the State Teachers’ Retirement System, the Public Employees’ Retirement System, or federal social security.

“(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

“(M) The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

“(N) The procedures to be followed by the charter school and the chartering authority to resolve disputes relating to provisions of the charter.

“(O) The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

“(6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

“(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

“(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school’s educational programs.

“(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of the pupil’s parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

“(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

“(B) If the number of pupils who wish to attend the charter school exceeds the charter school’s capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school’s teachers, staff, and founders identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:

“(i) Each type of preference shall be approved by the chartering authority at a public hearing.

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“(ii) Preferences shall be consistent with federal law, the California Constitution, and Section 200.

“(iii) Preferences shall not result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.

“(iv) In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

“(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

“(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil’s last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

“(4) (A) A charter school shall not discourage a pupil from enrolling or seeking to enroll in the charter school for any reason, including, but not limited to, academic performance of the pupil or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2).

“(B) A charter school shall not request a pupil’s records or require a parent, guardian, or pupil to submit the pupil’s records to the charter school before enrollment.

“(C) A charter school shall not encourage a pupil currently attending the charter school to disenroll from the charter school or transfer to another school for any reason, including, but not limited to, academic performance of the pupil or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2). This subparagraph shall not apply to actions taken by a charter school pursuant to the procedures described in subparagraph (J) of paragraph (5) of subdivision (b).

“(D) The department shall develop a notice of the requirements of this paragraph. This notice shall be posted on a charter school’s internet website. A charter school shall provide a parent or guardian, or a pupil if the pupil is 18 years of age or older, a copy of this notice at all of the following times:

“(i) When a parent, guardian, or pupil inquires about enrollment.

“(ii) Before conducting an enrollment lottery.

“(iii) Before disenrollment of a pupil.

“(E) (i) A person who suspects that a charter school has violated this paragraph may file a complaint with the chartering authority.

“(ii) The department shall develop a template to be used for filing complaints pursuant to clause (i).

“(5) Notwithstanding any other law, a charter school in operation as of July 1, 2019, that operates in partnership with the California National Guard may dismiss a pupil from the charter school for failing to maintain the minimum standards of conduct required by the Military Department.

“(e) The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

“(f) The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

“(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

“(h) In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving

pursuant to the standards established by the department under Section 54032, as that section read before July 19, 2006.

“(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

“(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the state board, and the state board may approve the petition, in accordance with subdivision (b). A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the school district to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

“(2) In assuming its role as a chartering authority, the state board shall develop criteria to be used for the review and approval of charter school petitions presented to the state board. The criteria shall address all elements required for charter approval, as identified in subdivision (b), and shall define “reasonably comprehensive,” as used in paragraph (5) of subdivision (b), in a way that is consistent with the intent of this part. Upon satisfactory completion of the criteria, the state board shall adopt the criteria on or before June 30, 2001.

“(3) A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

“(4) If either the county board of education or the state board fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.

“(5) The state board shall adopt regulations implementing this subdivision.

“(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the department and the state board.

“(k) (1) The state board may, by mutual agreement, designate its supervisory and oversight responsibilities for a charter school approved by the state board to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

“(2) The designated local educational agency shall have all monitoring and supervising authority of a chartering authority, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the state board.

“(3) A charter school that is granted its charter through an appeal to the state board and elects to seek renewal of its charter shall, before expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the charter school’s petition for renewal, the charter school may petition the state board for renewal of its charter.

“(l) Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

“(m) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (l) of paragraph (5) of subdivision (b), to its chartering authority, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering authority, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering authority pursuant to Section 41020.

“(n) A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.”

## Amendments

**1993 Amendment:** Routine code maintenance.

**1996 Amendment:** (1) Added subd (b)(14); and (2) substituted “Section 60605” for “Section 60602.5” in subd (c).

**1998 Amendment:** (1) Substituted subd (a) for former subd (a) which read: “(a) A petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. After the petition has been signed by not less than 10 percent of the teachers currently employed by the school district, or by not less than 50 percent of the teachers currently employed at one school of the district, it may be submitted to the governing board of the school district for review.”; (2) amended subd (b) by (a) substituting “governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents” for “board shall consider the level of employee and parental support for the petition” at the end of the first sentence; (b) adding the third sentence; (c) substituting the fourth sentence and introductory clause for the former introductory clause which read: “A school district governing board may grant a charter for the operation of a school under this part if it determines that the petition contains the number of signatures required by subdivision (a), a statement of each of the conditions described in subdivision (d), and descriptions of all of the following.”; (d) adding subds (b)(1)–(b)(4) and the introductory clause of subd (b)(5); (e) redesignating former subds (b)(1)–(b)(14) to be subds (b)(5)(A)–(b)(5)(N); and (f) substituting subd (b)(5)(I) for the former subdivision which read: “The manner in which an annual audit of the financial and programmatic operations of the school is to be conducted.”; (3) substituted subd (c) for former subd (c) which read: “Charter schools shall meet the statewide performance standards and conduct the pupil assessments required pursuant to Section 60605.”; (4) redesignated former subd (d) to be subd (d)(1); (5) added “Except as provided in paragraph (2),” at the beginning of the second sentence of subd (d)(1); (6) added subd (d)(2); (7) amended the first sentence of subd (g) by (a) substituting “of a school district shall” for “may”; and (b) adding “, if any,” after “civil liability effects”; (8) added the second sentence of subd (g); and (9) substituted subds (j)–(l) for former subd (j) which read:

“(j)(1) If the governing board of the school district denies a charter, the county superintendent of schools, at the request of the petitioner or petitioners, shall select and convene a review panel to review the action of the governing board. The review panel shall consist of three governing board members from other school districts in the county and three teachers from other school districts in the county unless only one school district is located in the county, in which case the panel members shall be selected from school districts in adjoining counties.

“(2) If the review panel determines that the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request, the review panel shall request the governing board to reconsider the charter request. In the case of a tie vote of the panel, the county superintendent of schools shall vote to break the tie.”(3) If, upon reconsideration, the governing board denies a charter, the county board of education, at the request of the petitioner or petitioners, shall hold a public hearing in the manner described in subdivision (b) and, accordingly, may grant a charter. A charter school for which a charter is granted by a county board of education pursuant to this paragraph shall qualify fully as a charter school for all funding and other purposes of this part.” (As amended by Stats 1998 ch 673, compared to the section as it read prior to 1998. This section was also amended by an earlier chapter, ch 34. See Gov C § 9605.)

**1999 Amendment:** Added subd (b)(5)(O).

**2000 Amendment:** (1) amended subd (b) by substituting (a) “one or more” for “one, or more,” near the end of the introductory clause of subd (b); and (b) “Code” for “Code” at the end of subd (b)(5)(O); and (2) amended subd (j) by (a) adding subd (j)(2); (b) redesignating former subds (j)(2)–(j)(5) to be subds (j)(3)–(j)(6); and (c) adding the comma after “school district” in subd (j)(4).

**2001 Amendment:** Added (1) “except as provided for in Section 47614.5” at the end of the first sentence of subd (d)(2)(B); and (2) subd (m).

**2002 Amendment:** (1) Added the second and third sentences of subd (a)(1); (2) added subds (a)(4)–(a)(6); (3) amended subd (b)(5) by adding (a) subdivision designation (b)(5)(A)(i); (b) subd (b)(5)(A)(ii); and (c) subd (b)(5)(P); (4) substituted “, on a regular basis,” for “on a regular basis” in subd (c)(2); (5) added the second sentence of subd (g); (6) added “applicable county superintendent of schools, the State Department of Education, and the” in subd (i); (7) amended subd (j)(1) by (a) substituting “the county board of education” for “either the county board of education or directly to the State Board of Education” in the first sentence; (b) deleting “or the State Board of Education, as the case may be,” after “education” in the second sentence; (c) adding “, and the state board may approve the petition, in accordance with subdivision (b)” at the end of the third sentence; and (d) adding the fourth and fifth sentence; (8) added “based on an appeal” in subd (j)(3); (9) added “State Department of Education and

the” in subd (j)(6); **(10)** substituted “through an appeal to” for “by” in the first sentence of subd (k)(3); and **(11)** added “, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity,” in subd (m). (As amended by Stats 2002 ch 1058, compared to the section as it read prior to 2002. This section was also amended by an earlier chapter, ch 209. See Gov C § 9605.)

**2005 Amendment:** **(1)** Amended subd (a)(2) by **(a)** substituting “A petition that proposes to convert an existing public school to” for “In the case of a petition for the establishment of”; **(b)** deleting “through the conversion of an existing public school,” after “a charter school”; **(c)** deleting “, the petition” after “Section 41365”; and **(d)** deleting “converted” after “seeking to establish the”; **(2)** amended subd (a)(4) by **(a)** deleting “within the jurisdictional boundaries of the school district” after “one or more additional sites”; **(b)** substituted “authority that granted its charter” for “governing board of the school district” in two places; and **(c)** substituted “approved,” for “approved by the governing board of the school district,”; **(3)** amended subd (a)(5) by **(a)** substituting “within whose jurisdiction” for “where”; **(b)** deleting “of Public Instruction” after “the Superintendent”; **(c)** adding a comma after “operations”; **(d)** in subd (a)(5)(A), substituting “program, but a site” for “program but such a”; and **(e)** deleting “or site” after “facility” in subd (a)(5)(A); **(4)** substituted “the manner in which” for “how” in subd (b)(1)(A)(ii); **(5)** amended subd (c) by **(a)** substituting “Sections 60605 and 60851” for “Section 60605” in subd (c)(1); and **(b)** adding “guardians,” in subd (c)(2); **(6)** added subd (d)(3); **(7)** amended subd (e) and (f) by **(a)** substituting “The” for “No”; and **(b)** adding “not” after “school district shall”; **(8)** in subd (h) and (i), substituted “department” for “State Department of Education”; **(9)** amended subd (j) by **(a)** deleting “of Section 47605” after “in subdivision (b)” in subd (j)(2); **(b)** deleting “of Section 47605” after “of subdivision (b)” in subd (j)(2); **(c)** substituting “this part.” for “the Charter Schools Act of 1992.” in subd (j)(2); and **(d)** substituting “department” for “State Department of Education” in subd (j)(6); **(10)** amended subd (l) by **(a)** deleting “be required to” after “charter schools shall”; and **(b)** substituting “are” for “shall be”; and **(11)** amended subd (m) by **(a)** substituting “department” for “State Department of Education”; and **(b)** substituting “does” for “shall”.

**2007 Amendment:** **(1)** Added “legal” after “parents or” in subd (a)(1)(A); **(2)** amended subd (a)(3) by **(a)** adding “legal” after “the parent or”; and **(b)** substituting “child or ward” for “child, or ward,”; **(3)** substituted “The governing board of the school district shall” for “A school district governing board shall” in the introductory paragraph of subd (b); **(4)** Added “, legal guardians,” in subd (c)(2); **(5)** amended subd (d)(1) by **(a)** substituting “on the basis of the characteristics listed in Section 220” for “on the basis of ethnicity, national origin, gender, or disability” in the first sentence; and **(b)** added “legal” after “her parent or” in the second sentence; **(6)** substituted “the governing board of the school district shall” for “the school district governing board shall” in subd (h); and **(7)** substituted “state board” for “State Board of Education” each time it appears in subs (i)–(k).

**2008 Amendment:** **(1)** Amended the first sentence of the introductory paragraph of subd (a)(1) by **(a)** substituting “a school district” for “any school district”; and **(b)** deleting “any” after “circulated by”; **(2)** deleted “any” after “circulated by” in the first sentence of subd (a)(2); **(3)** amended the introductory clause of subd (a)(5) by **(a)** deleting “Notwithstanding subdivision (a),” before “A charter school” at the beginning; **(b)** substituting “in” for “within” after “within the county”; and **(c)** substituting “the jurisdiction of which the charter school proposes” for “whose jurisdiction the charter school proposes”; **(4)** deleted the comma after “annual, independent” in subd (b)(5)(I); **(5)** substituted “Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code” for “the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code)” in subd (b)(5)(O); **(6)** substituted “an existing public school” for “any existing public school” in the last sentence of subd (d)(1); **(7)** deleted the commas around “in no event” in subd (d)(2)(C); **(8)** added “as it read prior to July 19, 2006” at the end of subd (h); **(9)** amended the fourth sentence of subd (j)(1) by substituting **(a)** “A charter” for “Any charter” at the beginning; **(b)** “to which” for “that” after “geographic location”; **(c)** “subject if it received approval” for “subject to if it receives approval”; and **(d)** “which it originally submitted” for “whom it originally submits” near the end; **(10)** deleted the comma after “school district” in subd (j)(4); **(11)** substituted “local educational agency” for “local education agency” in subs (k)(1) and (k)(2); and **(12)** deleted the comma after “annual, independent” near the beginning of subd (m).

**2012 Amendment:** **(1)** Substituted “is met” for “are met” in the last sentence of the introductory paragraph of subd (a)(1); **(2)** substituted “is signed” for “has been signed” in subs (a)(1)(A) and (a)(1)(B) and in the second sentence of subd (a)(2); **(3)** substituted “exists” for “exist” in the introductory clause of subd (a)(5); **(4)** added the last sentence of subd (b)(5)(B); **(5)** deleted “the” after “charter school for” in subd (b)(5)(O); **(6)** deleted “However,” at the beginning of the first sentence of subd (d)(2)(B); **(7)** substituted “used” for “utilized” in the first sentence of subd (g); **(8)** substituted “, as it read before” for “as it read prior to” in subd (h); and **(9)** amended the first sentence of subd (k)(3) by substituting **(a)** “is granted” for “has been granted”; and **(b)** “before” for “prior to”.

**2013 Amendment:** (1) Added subd (b)(5)(A)(ii); (2) redesignated former subd (b)(5)(A)(ii) to be subd (b)(5)(A)(iii); (3) added the last sentence of subd (b)(5)(B); and (4) added the second sentence of subd (b)(5)(C).

**2015 Amendment:** (1) Substituted “if” for “, as long as” in the third sentence of the introductory paragraph of subd (a)(1); (2) substituted “subdivision (c)” for “subdivision (b)” in the first sentence of subd (a)(2); (3) amended the subd (b) by adding (a) “school” after “employed by the” and after “employees of the” in the first sentence; and (b) “the” after “system and that” in the third sentence; (4) deleted “A description of” at the beginning of subd (b)(5)(A)(i); (5) added “charter” wherever it appears in subds (b)(5)(A)(i) and (b)(5)(D)-(b)(5)(F) and in the first sentence of subd (g); (6) amended the first sentence of subd (b)(5)(A)(ii) by (a) substituting “The annual goals” for “A description,”; and (b) deleting “, of annual goals,” before “for all pupils”; (7) amended subd (b)(5)(A)(iii) by (a) adding “charter” after “If the proposed”; and (b) deleting “a description of” after “high school pupils,”; (8) substituted “it” for “the school” after “school furnish” in the second sentence of subd (b)(5)(F); (9) substituted “The rights of an” for “A description of the rights of any” in subd (b)(5)(M); (10) deleted former (b)(5)(O) which read: “(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.”; (11) redesignated former subd (b)(5)(P) to be subd (b)(5)(O); (12) amended subd (b)(5)(O) by (a) deleting “A description of” at the beginning of the first sentence; and (b) adding “charter” after “audit of the” in the second sentence; (13) added subd (b)(6); (14) added “charter” after “regarding the” of subd (c)(2); (15) substituted “a” for “any” after “not discriminate against” in the first sentence of subd (d)(1); (16) substituted “shall not” for “in no event shall” in subd (d)(2)(C); (17) substituted “an” for “any” after “shall not require” in subd (e); (18) substituted “a” for “any” after “shall not require” in subd (f); (19) substituted “that section” for “it” in subd (h); (20) added the comma after “in subdivision (b)” in the second sentence of subd (j)(2); (21) deleted “, thereafter,” after “a petition shall” in subd (j)(4); and (22) added “charter” after “district denies the” in the second sentence of subd (k)(3).

**2017 Amendment:** (1) Added “charter” wherever it appears in this section; (2) substituted “there” for “they” in the third sentence of subd (a)(4); (3) substituted “ ‘A to G’ ” for “ ‘A’ to ‘G’ ” in subd (b)(5)(A)(iii); (4) rewrote subd (b)(5)(H), which formerly read: “Admission requirements, if applicable”; (5) rewrote subd (b)(5)(J), which formerly read: “The procedures by which pupils can be suspended or expelled”; (6) substituted “Section 60605” for “Sections 60605 and 60851” in subd (c)(1); (7) rewrote subd (d)(2)(B), which formerly read: “If the number of pupils who wish to attend the charter school exceeds the school’s capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law”; (8) in subd (d)(3), (a) substituted “report cards or a transcript of grades” for “a transcript of grades or report card” in the first sentence; and (b) added the second sentence; (9) substituted “also shall” for “shall also” in the third sentence of subd (g); (10) in the second sentence of subd (j)(2), (a) substituted “ ‘reasonably comprehensive,’ ” for “ ‘reasonably comprehensive’ ”; and (b) substituted “subdivision (b),” for “subdivision (b)”; (11) substituted “the” for “a” in subd (j)(4); (12) substituted “petition,” for “petition” in subd (j)(6); and (13) added subd (n).

**2018 Amendment:** (1) Substituted “shall” for “may” in subd (a)(6); (2) substituted “require all of the following:” for “include the requirement that each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.” in subd (b)(5)(F); and (3) added subd (b)(5)(F)(i)-(b)(5)(F)(iii).

**2019 Amendment (ch 51):** (1) Substituted “their” for “his or her” in subd (a)(3); (2) in subd (b)(5)(A)(ii) and subd (b)(5)(B), (a) added “paragraphs (2) to (8), inclusive, of”; and (b) deleted “, or the nature of the program operated,” following “levels served”; (3) substituted “the pupil’s” for “his or her” in subd (b)(5)(J)(i) and subd (d)(1); (4) substituted “the pupil, the pupil’s parent or guardian, or the pupil’s educational rights holder” for “him or her” in the second sentence of subd (b)(5)(J)(iii); (5) substituted “chartering authority” for “entity granting the charter” in subd (b)(5)(N); (6) added subd (d)(4) and subd (d)(5); (7) substituted “school district” for “entity” in the fourth sentence of subd (j)(1); (8) substituted “authority” for “agency” in subd (j)(2) and subd (k)(2); and (9) substituted “authority” for “entity” throughout subd (m).

**2019 Amendment (ch 543):** (1) Rewrote former subd (a)(4); (2) redesignated and rewrote former subd (a)(5) as subd (a)(5)(A); (3) redesignated and rewrote former subd (a)(5)(A) as subd (a)(5)(B); (4) added subd (5)(C) and subd (5)(D); (5) redesignated and rewrote former subd (a)(5)(B) as subd (a)(5)(E); (6) added subd (b); (7) redesignated and rewrote former subd (b) as subd (c); (8) substituted “subdivision (e)” for “subdivision (d)” in subd (c)(4); (9) in subd (c)(5)(A)(ii), (a) deleted “paragraphs (2) to (8), inclusive, of” preceding “subdivision”; and (b)



deleted “by the charter school” following “served”; **(10)** in subd (c)(5)(B), **(a)** substituted “pupil subgroups” for “groups of pupils”; **(b)** substituted “subdivision (a) of Section 52052” for “subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607”; and **(c)** deleted “paragraphs (2) to (8), inclusive, of” preceding “subdivision (d)”; **(11)** in subd (c)(5)(F)(ii), **(a)** substituted “(A) to (J)” for “(A) to (H)”; and **(b)** deleted “and procedures for conducting tactical responses to criminal incidents” at the end; **(12)** rewrote former subd (c)(5)(G); **(13)** substituted “subdivision (e)” for “subdivision (d)” in subd (c)(5)(H); **(14)** added subd (c)(7) through subd (c)(8); **(15)** redesignated former subd (c) and subd (d) as subd (d) and subd (e); **(16)** substituted “that pupils” for “the pupil’s” in subd (e)(1); **(17)** substituted “subdivision (c)” for “subdivision (b)” in subd (e)(4)(C); **(18)** redesignated former subd (e) through subd (g) as subd (f) through subd (h); **(19)** added the last sentence in subd (h); **(20)** redesignated former subd (h) through subd (i) as subd (i) through subd (j); **(21)** redesignated and rewrote former subd (j)(1) as subd (k)(1)(A)(i); **(22)** added subd (k)(1)(A)(ii) through subd (k)(1)(A)(iii); **(23)** added subd (k)(1)(B); **(24)** added subd (k)(2); **(25)** redesignated and rewrote former subd (j)(2) as subd (k)(2)(D); **(26)** added subd (k)(2)(E); **(27)** added subd (k)(4) and subd (k)(5); **(28)** redesignated former subd (j)(4) as subd (k)(6); **(29)** substituted “180 days” for “120 days” in subd (k)(6); **(30)** deleted former subd (j)(5) and subd (j)(6); **(31)** deleted former subd (k); **(32)** redesignated and rewrote former subd (l) as subd (l)(1); **(33)** added subd (l)(2) and subd (l)(3); **(34)** substituted “subdivision (c),” for “subdivision (b),” in subd (m); and **(35)** added subd (o).

**2020 Amendment:** **(1)** Redesignated former (a)(5)(D) as (a)(5)(D)(i); **(2)** in (a)(5)(D)(i), added “in operation and providing educational services to pupils before October 1, 2019,” and substituted “geographic restrictions of paragraph (1) and subparagraph (A) of this paragraph and the geographic restrictions of subdivision (a) of Section 47605.1” for “provisions of this paragraph”; **(3)** added (a)(5)(D)(ii); **(4)** in (a)(5)(E), substituted “before” for “prior to” in the first sentence and added the last sentence; **(5)** substituted “Section 42131” for “Section 1240” in the second sentence of (c)(8) three times; and **(6)** in (k)(1)(B), substituted “board of education has jurisdiction over a single school district” for “lacks an independent county board of education” in the first sentence, substituted “a petition submitted pursuant to this subparagraph pursuant to subdivision (c)” for “the petition pursuant to this paragraph” in the second sentence and added “pursuant to this subparagraph” in the last sentence.

## Notes of Decisions

### 1. Generally

As a subdivision of the Los Angeles, California, Unified School District (LAUSD), the Palisades, California, Charter High School (PCHS) is not a public agency within the meaning of Gov C § 53050, separately required to register with the California Secretary of State and the county clerk for the Roster of Public Agencies, and PCHS’s incorporation as a nonprofit public benefit corporation, assuming that were the case, would not change this relationship. While PCHS and LAUSD are independent legal entities, PCHS is a subdivision of its chartering authority because its existence, funding, and charter depend on LAUSD. *Knapp v. Palisades Charter High School* (Cal. App. 2d Dist. July 24, 2006), 141 Cal. App. 4th 780, 46 Cal. Rptr. 3d 295, 2006 Cal. App. LEXIS 1136, reh’g granted, depublished, (Cal. App. 2d Dist. Aug. 22, 2006), 2006 Cal. App. LEXIS 1369.

When a district school converts to a charter school, it has a defined attendance area as a district school, and students within that former attendance area are entitled to an ongoing admission preference at the charter school if they wish to attend, but students may not be forced to attend the charter school. From the point in time when the district school converts to a charter school and on, the school district and the charter school are in a vigorous competition for the students residing within the former attendance area of the charter school. *California School Bds. Assn. v. State Bd. of Education* (Cal. App. 3d Dist. Dec. 30, 2010), 191 Cal. App. 4th 530, 119 Cal. Rptr. 3d 596, 2010 Cal. App. LEXIS 2170.

Under the Education Code, an arbitrator has no authority to deny or revoke a school charter. *United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (Cal. June 28, 2012), 54 Cal. 4th 504, 142 Cal. Rptr. 3d 850, 278 P.3d 1204, 2012 Cal. LEXIS 6164.

School district’s decision to deny a charter school’s renewal petition is a quasi-judicial action subject to review via a petition for administrative mandamus. In considering a renewal petition, the school district is not acting in a legislative function by creating new policy, but rather performing a quasi-judicial function by applying existing standards and rules defined by state statute to determine whether the evidence presented by the charter school regarding its past performance is sufficient to satisfy those standards. *Oxford Preparatory Academy v. Chino Valley Unified School Dist.* (Cal. App. 4th Dist. July 11, 2019), 249 Cal. Rptr. 3d 726, 37 Cal. App. 5th 413, 2019 Cal. App. LEXIS 632, review denied, ordered not published, (Cal. Oct. 23, 2019), 2019 Cal. LEXIS 7750.

After a charter school's initial petition is approved by a school district, the petitioner has a fundamental vested right to continue operating the charter school such that a school district's decision that deprives the petitioner of that right is subject to independent judicial review. *Oxford Preparatory Academy v. Chino Valley Unified School Dist.* (Cal. App. 4th Dist. July 11, 2019), 249 Cal. Rptr. 3d 726, 37 Cal. App. 5th 413, 2019 Cal. App. LEXIS 632, review denied, ordered not published, (Cal. Oct. 23, 2019), 2019 Cal. LEXIS 7750.

## 2. Construction

Plain meaning of Ed C §§ 47605 and 47605.1 is that a charter school authorized by a school district is to be located and operate entirely within the geographic boundaries of the authorizing school district, unless one of the specific exceptions of § 47605.1 applies. The comprehensive statutory scheme governing charter schools does not permit a charter school—that is authorized by a school district and provides support for nonclassroom-based independent study—to locate a resource center outside the geographic boundaries of the authorizing school district but within the same county. *Anderson Union High School Dist. v. Shasta Secondary Home School* (Cal. App. 3d Dist. Oct. 17, 2016), 208 Cal. Rptr. 3d 564, 4 Cal. App. 5th 262, 2016 Cal. App. LEXIS 872, modified, (Cal. App. 3d Dist. Nov. 16, 2016), 2016 Cal. App. LEXIS 1001.

Nothing in Ed C § 47605(a) distinguishes between classroom-based and nonclassroom-based charter schools; § 47605(a), including its geographic restrictions, must apply to all charter schools whether classroom-based or nonclassroom-based. *Anderson Union High School Dist. v. Shasta Secondary Home School* (Cal. App. 3d Dist. Oct. 17, 2016), 208 Cal. Rptr. 3d 564, 4 Cal. App. 5th 262, 2016 Cal. App. LEXIS 872, modified, (Cal. App. 3d Dist. Nov. 16, 2016), 2016 Cal. App. LEXIS 1001.

Charter school that requested, in the same petition, both a renewal of its charter and a material revision to add a location was entitled to deemed approval of the renewal after the school district failed to make timely findings, but the school district retained the authority to separately consider and deny the revision because there is no deemed approval for a material revision; moreover, treating the new location request as a petition to approve a new charter would not allow deemed approval. *Today's Fresh Start Charter School v. Inglewood Unified School Dist.* (Cal. App. 2d Dist. Feb. 7, 2018), 228 Cal. Rptr. 3d 857, 20 Cal. App. 5th 276, 2018 Cal. App. LEXIS 100.

## 3. Applicability

Ed C § 47605(a)(6), which provided that a school district could not approve a petition to establish a charter school serving pupils in a grade level not served by that district unless the petition proposed to serve all grade levels served by that district, did not relieve a non-sponsoring public school district of its obligation under Ed C § 47614 to provide facilities for in-district charter school students whom the subject district would have been required to accommodate if such students did not attend the charter school operating in that district. *Sequoia Union High School Dist. v. Aurora Charter High School* (Cal. App. 1st Dist. Sept. 25, 2003), 112 Cal. App. 4th 185, 5 Cal. Rptr. 3d 86, 2003 Cal. App. LEXIS 1477.

Because the resource center that a nonclassroom-based charter school opened inside another school district did not fall within any of the exceptions of Ed C § 47605.1(c) or (d) (and the charter school offered no other possible exception), its location outside its authorizing school district's boundaries did not comply with the California Charter Schools Act of 1992. *Anderson Union High School Dist. v. Shasta Secondary Home School* (Cal. App. 3d Dist. Oct. 17, 2016), 208 Cal. Rptr. 3d 564, 4 Cal. App. 5th 262, 2016 Cal. App. LEXIS 872, modified, (Cal. App. 3d Dist. Nov. 16, 2016), 2016 Cal. App. LEXIS 1001.

In considering whether the prohibition against judges serving on public school boards might apply to service on the board of a charter school or a nonprofit organization operating charter schools, the Committee on Judicial Ethics Opinions noted both the autonomy and statutory requirements of charter schools. The issue was unresolved in the case law, and the committee advised against such service because a finding of public office status would result in automatic resignation from judicial office. *Judicial Service on a Nonprofit Charter School Board* (Cal. Comm. Jud. Ethics May 2, 2017).

In awarding attorney fees to a high school district under the private attorney general doctrine, the trial court could have reasonably concluded that the district's action advanced the public's interest in the lawful operation of charter schools and the legislature's oversight objectives reflected in the Charter Schools Act's location requirements. The trial court could have found that through this action the district helped preserve the constitutionality of charter schools within the public education system. *Sweetwater Union High School Dist. v. Julian Union Elementary School Dist.* (Cal. App. 4th Dist. June 4, 2019), 249 Cal. Rptr. 3d 309, 36 Cal. App. 5th 970, 2019 Cal. App. LEXIS 596.

School district's decision to deny a preparatory academy's charter school renewal petition substantially affected a fundamental vested right and, thus, required independent judicial review. Because the trial court did not provide independent judicial review, judicial review at the appellate level was precluded. *Oxford Preparatory Academy v. Chino Valley Unified School Dist.* (Cal. App. 4th Dist. July 11, 2019), 249 Cal. Rptr. 3d 726, 37 Cal. App. 5th 413, 2019 Cal. App. LEXIS 632, review denied, ordered not published, (Cal. Oct. 23, 2019), 2019 Cal. LEXIS 7750.

#### 4. Preemption

Collective bargaining provision does not conflict with the Education Code if its enforcement would neither control the approval or denial of a charter school petition nor delay or obstruct the charter petition approval process. *United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (Cal. June 28, 2012), 54 Cal. 4th 504, 142 Cal. Rptr. 3d 850, 278 P.3d 1204, 2012 Cal. LEXIS 6164.

Ed C § 47605 establishes a comprehensive process for approval of charter school petitions, spelling out precisely what is expected of a charter applicant. Any collective bargaining provision that delays the timelines set forth in § 47605 or adds to an applicant's statutory obligations for securing approval of a charter conflicts with § 47605 and may not be enforced. *United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (Cal. June 28, 2012), 54 Cal. 4th 504, 142 Cal. Rptr. 3d 850, 278 P.3d 1204, 2012 Cal. LEXIS 6164.

#### § 47611. Participation in State Teachers' Retirement Plan

(a) If a charter school chooses to make the State Teacher's Retirement Plan available, all employees of the charter school who perform creditable service shall be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as the provisions apply to other public schools in the school district that granted the charter.

(b)(1) If a charter school offers its employees coverage by the State Teachers' Retirement System or the Public Employees' Retirement System, or both, the charter school shall inform all applicants for positions within that charter school of the retirement system options for employees of the charter school.

(2) The information shall specifically include whether the charter school makes available to employees coverage under the State Teachers' Retirement System, the Public Employees' Retirement System, or both systems, and that accepting employment in the charter school may exclude the applicant from further coverage in the applicant's current retirement system, depending on the retirement options offered by the charter of the charter school.

*Added by Stats 1992 ch 781 § 1 (SB 1448). Amended by Stats 1996 ch 608 § 57 (AB 2673), effective September 19, 1996, operative July 1, 1996; Stats 1999 ch 939 § 89 (SB 1074); Stats 2000 ch 1025 § 40 (AB 816).*

#### Amendments

**1996 Amendment:** Added "and Part 14 (commencing with Section 26000)".

**1999 Amendment:** Substituted the section for the former section which read: "If a charter school chooses to participate in the State Teacher's Retirement System, all employees of the charter school who qualify for membership in the system shall be covered under the system, and all provisions of Part 13 (commencing with Section 22000) and Part 14 (commencing with Section 26000) shall apply in the same manner as if the charter school were a public school in the school district that granted the charter."

**2000 Amendment:** (1) Designated the former section to be subd (a); and (2) added subd (b).

#### § 47611.3. Creation of reports required by retirement systems by school district or county office of education; Condition

(a) At the request of a charter school, a school district or county office of education that is the chartering authority of a charter school shall create any reports required by the State Teachers' Retirement System and the Public Employees' Retirement System. The county superintendent of schools,

employing agency, or school district that reports to those systems pursuant to Section 23004 of this code or Section 20221 of the Government Code shall submit the required reports on behalf of the charter school. The school district or county office of education may charge the charter school for the actual costs of the reporting services.

(b) As a condition of creating and submitting reports for the State Teachers' Retirement System and the Public Employees Retirement System, the school district or county office of education shall not require a charter school to purchase payroll processing services from the chartering authority. Information submitted on behalf of the charter school to the State Teachers' Retirement System, the Public Employees' Retirement System, or both, shall be in a format conforming to the requirements of those systems.

*Added by Stats 2000 ch 466 § 1 (SB 2105).*

#### **§ 48927. Application of chapter to "state special schools"**

(a) This chapter shall also apply to pupils attending the California School for the Blind and the two California Schools for the Deaf, which shall be referred to as the "state special schools."

(b) Because the state special schools have a governance structure different from that of school districts, for the purposes of this section the following definitions shall apply:

(1) "Superintendent" means the appropriate principal of the state special school in which the pupil is enrolled, or the principal's designee, for purposes of Sections 48900, 48900.2, 48900.3, 48900.4, 48900.5, 48900.7, and 48911, and subdivisions (a) and (j) of Section 48918.

(2) "Governing board of each school district," "governing board of any school district," or "each governing board of a school district" means the Superintendent of Public Instruction or his or her designee for purposes of subdivision (a) of Section 48900.1, subdivision (b) of Section 48901, subdivision (b) of Section 48901.5, Section 48907, Section 48910, the first paragraph of Section 48918, and the first paragraph of Section 48918.5.

(3) "Governing board" means the Superintendent of the State Special School in which the pupil is enrolled for purposes of Section 48912, subdivision (d) of Section 48915, Section 48915.5, Section 48916, Section 48917, subdivisions (a), (c), (d), (f), (h), (i), (j), and (k) of Section 48918, and Sections 48921, 48922, 48923, and 48924.

(4) "Governing board" means the governing board of the district of residence of the expelled pupil for purposes of subdivision (f) of Section 48915 and Section 48916.1. In the case of an adult pupil expelled from a state special school, "governing board" means the governing board of the school district that referred the pupil to the state special school for purposes of the code section cited in this paragraph.

(5) "Superintendent of schools or the governing board" means the appropriate principal of the state special school in which the pupil is enrolled, or the principal's designee, for the purposes of Section 48900.6.

(6) "School district" or "district" means the state special school in which the pupil is enrolled for purposes of Section 48900.8, subdivision (b) of Section 48903, Section 48905, Section 48909, Section 48914, paragraph (1) of subdivision (e) of Section 48916.1, subdivision (c) of Section 48918.5, Section 48919, Section 48920, and Section 48921.

(7) "County board of education" or "county board" means the Superintendent of Public Instruction or his or her designee for purposes of Sections 48920, 48921, 48922, 48923, and 48924.

(8) "Local educational agency" includes a state special school for purposes of Section 48902 and Section 48915.5.

(9) "A change in placement" for purposes of paragraph (2) of subdivision (a) of Section 48915.5 means a referral by the state special school to the pupil's school district of residence for placement in an appropriate interim alternative educational setting.

(10) "Individualized education program team" means the individualized education program team of the pupil's school district of residence with appropriate representation from the state special school in which the pupil is enrolled for purposes of subdivision (a) of Section 48915.5.2.

(11) "Individualized education program team" means the individualized education program team of the state special school in which the pupil is enrolled with appropriate representation from the pupil's school district of residence for purposes of subdivisions (b), (c), and (d) of Section 48915.5.3.

(c) Subdivision (b) of this section shall be deemed to provide the same due process procedural protections to pupils in the state special schools as afforded to pupils in the public school districts of the state.

*Added by Stats 2002 ch 492 § 7 (AB 1859). Amended by Stats 2003 ch 62 § 56.5 (SB 600).*

### Amendments

**2003 Amendment:** (1) Added "and" before "48911" in subd (b)(1); (2) substituted "means" for "shall mean" in the second sentence of subd (b)(4) and in subds (b)(6) and (b)(7); (3) substituted "code section" for "statute" in the second sentence of subd (b)(4); and (4) substituted "state special school" for "State Special School" in subd (b)(9).

#### § 52055.57. [Section repealed effective January 1, 2018]

*Added by Stats 2004 ch 579 § 1 (AB 2066), effective September 18, 2004. Amended by Stats 2005 ch 513 § 3 (AB 953), effective October 4, 2005; Stats 2006 ch 538 § 119 (SB 1852), effective January 1, 2007; Stats 2008 ch 757 § 6 (AB 519), effective September 30, 2008; Repealed by Stats 2017 ch 130 § 5 (AB 1354). The repealed section related to identification of program improvement for local educational agencies, notification, self-assessment, sanctions, federal improvement funding, and funds available for agencies not identified as program improvement for local educational agency.*

#### § 52055.58. [Section repealed effective January 1, 2018]

*Added Stats by 2007 ch 174 § 8 (SB 80), effective August 24, 2007. Repealed by Stats 2017 ch 130 § 5 (AB 1354). The repealed section related to transmission of final evaluation of the pilot project involving district assistance and intervention teams.*

#### § 52055.59. [Section repealed effective January 1, 2018]

*Added by Stats 2008 ch 757 § 7 (AB 519), effective September 30, 2008. Repealed by Stats 2017 ch 130 § 5 (AB 1354). The repealed section related to evaluation of corrective actions taken by local education agencies identified for corrective action.*

#### § 52055.60. [Section repealed 2014.]

*Added by Stats 2009–2010 4th Ex Sess ch 2 § 25 (AB 2XXXX), effective July 28, 2009, inoperative July 1, 2013, repealed January 1, 2014, by its own terms. The repealed section related to the Certain schools, county offices of education, or charter schools identified for program improvement or corrective action allowed to utilize certain categorical program flexibility provisions.*

#### § 84040. Strengthening fiscal accountability; Requirement for annual audit

(a) It is the intent of the Legislature to encourage sound fiscal management practices among community college districts for the most efficient and effective use of public funds for the education of community college students by strengthening fiscal accountability at the district and state levels.

(b) The governing board of each community college district shall provide for an annual audit of all funds, books, and accounts of the district in accordance with regulations of the board of governors. The audit shall be made by certified public accountants licensed by the California Board of Accountancy. In the event the governing board of a community college district fails to provide for an audit, the board of governors shall provide for an audit, and if the board of governors fails or is unable to make satisfactory

arrangements for such an audit, the Department of Finance shall make arrangements for the audit. The cost of any audit described above shall be paid from district funds.

(c) The board of governors shall adopt criteria and standards for periodic assessment of the fiscal condition of community college districts, and such regulations regarding the review and improvement of district fiscal conditions as necessary to encourage sound fiscal management practices. In so doing:

(1) The governing board of a community college district, as required by regulations of the board of governors, shall periodically report information to the board of governors regarding the fiscal condition of the district.

(2) The board of governors, by regulation, shall develop standards for district maintenance of sound fiscal conditions. The regulations shall authorize a board comprehensive management review of any community college district which, after assessing itself or being assessed in accordance with board criteria and standards, is shown to be experiencing fiscal difficulty. On the basis of the findings of the management review, the board of governors may recommend appropriate changes in a district's management practices.

(3) The board of governors, by regulation, shall develop appropriate procedures and actions for districts that fail to achieve fiscal stability or that fail to comply with the board of governors' recommendations. The procedures and remedies may include the appointment of a special trustee to manage the community college district. The regulations pursuant to which the board of governors may appoint a special trustee to manage the community college district shall include specific benchmarks to indicate the presence of local capacity to resume management of the community college district and clear standards that require meaningful consultation by a special trustee, or his or her designee, with the community college district prior to decisionmaking. The board of governors shall be authorized to reduce or withhold apportionment to districts to pay for the cost of the special trustee, management review, or other extraordinary costs resulting from the district's fiscal difficulties and to ensure the stabilization of the district's financial condition.

(4) The board of governors shall report to the chairs of the educational policy and fiscal committees of both houses of the Legislature, the Director of Finance, and the Governor any corrective action taken by the district and any action taken against the district pursuant to paragraph (3).

*Added by Stats 1990 ch 1372 § 638 (SB 1854). Amended by Stats 2000 ch 1055 § 15 (AB 2889), effective September 30, 2000; Stats 2014 ch 466 § 1 (AB 2087), effective January 1, 2015.*

**Former Sections:** Former § 84040, similar to the present section, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, amended by Stats 1977 ch 36 § 334.5, effective April 29, 1977, operative April 30, 1977, ch 936 § 5, Stats 1978 ch 207 § 5, and repealed by Stats 1990 ch 1372 § 637.

### Amendments

**2000 Amendment:** In addition to making technical changes, amended subd (b) by substituting (1) "California Board of Accountancy" for "State Board of Accountancy" in the second sentence; and (2) "an audit" for "such audit" in the third sentence.

**2014 Amendment:** (1) Substituted "such regulations" for "these regulations" in the first sentence of the introductory paragraph of subd (c); and (2) amended subd (c)(3) by adding (a) "community college" in the second sentence; and (b) the third sentence.

### § 84040.5. Statements and information in audit reports; Development of audit procedures; Costs

(a) The board of governors shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop audit procedures for carrying out the purposes of this section. The Department of Finance may make audits, surveys, and reports which, in the judgment of the department will serve the best interest of the state.

(b) A review of existing audit procedures, statements, and other information required to be included in the audit reports shall be conducted periodically by the board of governors. Standards shall be updated periodically.

(c) For the audit of community colleges electing to take formal action pursuant to Sections 22714 and 87488, the audit standards shall require any information as is prescribed by the chancellor, including, but not limited to, the following:

(1) The number and type of positions being vacated.

(2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714 and 87488.

(3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement costs, including interest, if any, and postretirement healthcare benefits costs, incurred by the employer.

(d) The chancellor shall annually prepare a cost analysis, based upon the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by community college districts pursuant to Sections 22174 and 87488 and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(e) All costs incurred by the board of governors to implement subdivision (c) shall be absorbed by the board of governors.

(f) At the request of the Department of Finance, each community college district that elects to take formal action pursuant to Sections 22714 and 87488, shall reimburse the Department of Finance for any related administrative costs incurred by the Department of Finance.

*Added by Stats 1977 ch 936 § 6. Amended by Stats 1988 ch 1331 § 6; Stats 1994 ch 20 § 4 (SB 858), effective March 16, 1994; Stats 2004 ch 935 § 5 (AB 1852); Stats 2018 ch 33 § 31 (AB 1809), effective June 27, 2018.*

### Amendments

**1988 Amendment:** Amended the second paragraph by substituting (1) “conducted periodically by the board of governors, in cooperation with the Department of Finance” for “commenced on January 1, 1978, by the Department of Finance, in cooperation with the Auditor General and the board of governors” in the first sentence; and (2) the second sentence for the former second sentence which read: “Updated standards shall be completed by August 1, 1978, and shall periodically be updated no less than every two years thereafter.”

**1994 Amendment:** Added (1) subdivision designations (a) and (b); and (2) subs (c)–(f).

**2004 Amendment:** Substituted (1) “Sections 22714, 22714.5, 87488, and 87488.1,” for “Sections 22714 and 87488,” in the introductory clause of subd (c) and in subs (d) and (f); and (2) “any” for “such” in the introductory clause of subd (c).

**2018 Amendment:** (1) Deleted “, in cooperation with, and upon approval by, the Department of Finance,” following “The board of governors” in subd (a); (2) deleted “, in cooperation with the Department of Finance.” following “the board of governors” in subd (b); (3) substituted “Sections 22714 and 87488” for “Sections 22714, 22714.5, 87488, and 87488.1” in subd (c); (4) substituted “Sections 22714 and 87488, and” for “Sections 22714, 22714.5, 87488, and 87488.1, and” in subd (d); and (5) substituted “Sections 22714 and 87488,” for “Sections 22714, 22714.5, 87488, and 87488.1” in subd (f).

### § 87002. “Administrator”; “Educational administrator”; “Classified administrator”

(a) “Administrator” means any person employed by the governing board of a community college district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) “Educational administrator” means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or

district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) “Classified administrator” means an administrator who is not employed as an educational administrator.

*Added by Stats 1990 ch 1302 § 6 (SB 2298), effective September 24, 1990.*

**Former Sections:** Former § 87002, defining “credential”, was enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977, and repealed by Stats 1990 ch 1302 § 5, effective September 24, 1990.

**Editor’s Notes**—Article 5 of Chapter 10.7 of Division 4 of Title 1 of the Government Code, referred to in subd (a) of this section, commences with Gov.C § 3544.

#### **§ 87040. Deduction in salary payment as requested by employee**

(a)(1) The governing board of each community college district when drawing an order for the salary payment due to employees of the district shall, without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for any or all of the following purposes:

(A) Paying premiums on any policy or certificate of group life insurance for the benefit of the employee or for group disability insurance, or legal expense insurance, or any of them, for the benefit of the employee or his or her dependents issued by an admitted insurer on a form of policy or certificate approved by the Insurance Commissioner.

(B) Paying rates, dues, fees, or other periodic charges on any hospital service contract for the benefit of the employee, or his or her dependents, issued by a nonprofit hospital service corporation on a form approved by the Insurance Commissioner pursuant to the provisions of Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(C) Paying periodic charges on any medical and hospital service agreement or contract for the benefit of the employee, or his or her dependents, issued by a nonprofit corporation subject to Part 2 (commencing with Section 5110) of, Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code.

(D) Paying periodic charges on any legal services contract for the benefit of the employee, or his or her dependents issued by a nonprofit corporation subject to Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code.

(2) This subdivision shall not apply to subdivision (b).

(b) For purposes of a deferred compensation plan authorized by Section 403(b) or 457 of the Internal Revenue Code or an annuity program authorized by Section 403(b) of the Internal Revenue Code that is offered by the community college district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the California Constitution, the governing board of each community college district when drawing an order for the salary payment due to an employee of the district shall, with or without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for participating in a deferred compensation plan or annuity program offered by the community college district. The governing board shall determine the cost of performing the requested deduction and may collect that cost from the organization, entity, or employee requesting or authorizing the deduction. For purposes of this subdivision, the governing board of a community college district is entitled to include in the amounts reducing the order the costs of any compliance or administrative services that are required to perform the requested deduction in compliance with federal or state law, and may collect these costs from the participating employee, the employee’s participant account, or the organization or entity authorizing the deduction.

(c) The governing board of the district shall, beginning with the month designated by the employee and each month thereafter until authorization for the deduction is revoked, draw its order upon the funds of the district in favor of the insurer which has issued the policies or certificates or in favor of the nonprofit hospital service corporation which has issued hospital service contracts, or in favor of the



nonprofit corporation which has issued medical and hospital service or legal service agreements or contracts, for an amount equal to the total of the respective deductions therefor made during the month. The governing board may require that the employee submit his or her authorization for the deduction up to one month in advance of the effective date of coverage.

(d) "Group insurance" as used in this section shall mean only a bona fide group program of life or disability or life and disability insurance where a master contract is held by the community college district or an employee organization but it shall, nevertheless, include annuity programs authorized by Section 403(b) of the Internal Revenue Code when approved by the governing board.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1978 ch 1305 § 27, operative January 1, 1980; Stats 2006 ch 780 § 8 (AB 2462), effective January 1, 2007; Stats 2007 ch 130 § 81 (AB 299), effective January 1, 2008.*

**Editor's Notes**—Ins C § 11491, referred to in this section and relating to nonprofit hospital plans in relation to profit corporations, was repealed by Stats 1996 ch 484 § 1 (SB 1866).

### Amendments

**1978 Amendment:** (1) Amended the first sentence by substituting (a) "nonprofit corporation subject to Part 2 (commencing with Section 5110) of, Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code" for "nonprofit membership corporation lawfully operating under Section 9200 or 9201 of the Corporations Code"; and (b) "nonprofit corporation subject to Part 3 (commencing with Section 7110) of, or Part 11 (commencing with Section 10810) of, Division 2 of Title 1 of the Corporations Code" for "nonprofit membership corporation lawfully operating under Section 9200 or 9201.5 of the Corporations Code" at the end of the sentence; and (2) substituted "nonprofit corporation" for "nonprofit membership corporation" before "which has issued medical" in the second sentence.

**2006 Amendment:** (1) Added and redesignated subdivision designations; (2) deleted "participating in a deferred compensation program offered by the district which provides for investments in corporate stocks, bonds, securities, mutual funds, or annuities, except as prohibited by the Constituted, or" at the end of subd (a)(1); (3) substituted a period for ", or" at the end of subds (a)(1)(A)–(a)(1)(C); and (4) added subds (a)(2) and (b).

**2007 Amendment:** (1) Added "or her" wherever it appears; (2) substituted "Chapter 11A" for "Chapter 11a" in subd (a)(1)(B); (3) deleted "The requirements of" at the beginning of subd (a)(2); and (4) substituted "employee" for "employees" after "payment due to an" in subd (b).

### § 87040.5. Contract with a third-party administrator regarding annuity contract and custodial account or deferred compensation plan

(a) For purposes of this section, the following definitions shall apply:

(1) "Annuity contract" means an annuity contract described in Section 403(b) of the Internal Revenue Code that is available to employees as described in Section 770.3 of the Insurance Code.

(2) "Custodial account" means a custodial account described in Section 403(b)(7) of the Internal Revenue Code.

(3) "Deferred compensation plan" means a plan described in Section 457 of the Internal Revenue Code.

(4) "Third-party administrator" means a person or entity that provides administrative or compliance services to a community college district as described in subdivision (b).

(b) A community college district may enter into a written contract with a third-party administrator for services regarding an annuity contract and custodial account or a deferred compensation plan provided by the community college district. That contract may include any of the following:

(1) Services to ensure compliance with either Section 403(b) of the Internal Revenue Code regarding the annuity contract and custodial account or Section 457 of the Internal Revenue Code regarding a deferred compensation plan, including, but not limited to, any of the following:

(A) Administer and maintain written plan documents governing the community college district's plan.

**(B)** Review and authorize hardship withdrawal requests under Section 403(b) of the Internal Revenue Code, transfer requests, loan requests, unforeseeable emergency withdrawals under Section 457 of the Internal Revenue Code and other disbursements permitted under either Section 403(b) or 457 of the Internal Revenue Code.

**(C)** Review and determine domestic relations orders as qualified domestic relations orders as described in Section 414(p) of the Internal Revenue Code.

**(D)** Provide notice to eligible employees that is consistent with Title 26 of the Code of Federal Regulations that those employees may participate in an annuity contract and custodial account.

**(E)** Administer and maintain specimen salary reduction agreements for the community college district and employees of that community college district to initiate payroll deferrals.

**(F)** Monitor, from information provided either directly from the employee, as part of the common remitting services provided pursuant to paragraph (2), through information provided by the community college district, or through information provided by vendors authorized by the community college district to provide investment products, the maximum contributions allowed by employees participating in either the annuity contract and custodial account as described in Sections 402(g), 414(v), and 415 of the Internal Revenue Code or the deferred compensation plan as described in Section 414(v) or 457 of the Internal Revenue Code.

**(G)** Calculate and maintain vesting information for contributions made by the community college district to the annuity contract and custodial account or deferred compensation plan.

**(H)** Identify and notify employees that are required to take a minimum distribution of the funds in that employee's annuity contract and custodial account or deferred compensation plan as described in Section 401(a)(9) of the Internal Revenue Code.

**(I)** Coordinate responses to the Internal Revenue Service if there is an Internal Revenue Service audit of the annuity contract and custodial account or deferred compensation plan.

**(2)** Services to administer the annuity contract and custodial account or a deferred compensation plan that includes, but is not limited to, all of the following:

**(A)** Common remitting services.

**(B)** General educational information to employees about the annuity contract and custodial account or the deferred compensation plan that includes, but is not limited to, the enrollment process, program eligibility, and investment options.

**(C)** Internal reports for the community college district to ensure compliance with either Section 403(b) or 457 of the Internal Revenue Code and compliance with Title 26 of the Code of Federal Regulations.

**(D)** Consulting services related to the design, operation, and administration of the plan.

**(E)** Internal audits, on behalf of a community college district, of a provider's plan compliance procedures with respect to the provider's annuity contract or custodial account offered under the community college district's plan. These audits shall not be conducted more than once per year for any provider's plan unless documented evidence indicates a problem in complying with either Section 403(b) or 457 of the Internal Revenue Code.

**(c)(1)** If a community college district elects to contract with a third-party administrator for the administrative or compliance services to community college districts described in subdivision (b), the community college district shall do all of the following:

**(A)** Require the third-party administrator to provide proof of liability insurance and a fidelity bond in an amount determined by the community college district to be sufficient to protect the assets of participants and beneficiaries in the annuity contract and custodial account or deferred compensation plan.

**(B)** Require the third-party administrator to provide evidence of a safe chain-of-custody of assets process for ensuring fulfillment of fiduciary responsibilities and timely placement of participant investments.

**(C)** Require evidence, if the third-party administrator is related to or affiliated with a provider of investment products pursuant to Section 403(b) or 457 of the Internal Revenue Code, that data generated from the services provided by the third-party administrator are maintained in a manner that prevents the

provider of investment products from accessing that data unless access to the data is required to provide the services in accordance with the contract entered into with the community college district pursuant to subdivision (b).

(2) This subdivision shall apply to any administrative or compliance services provided pursuant to a contract for services between a community college district and the State Teachers' Retirement System if the system does not contract with a third-party administrator to provide those administrative and compliance services on behalf of the system.

(d) A third-party administrator shall disclose to any community college district seeking his or her services any fees, commissions, cost offsets, reimbursements, or marketing or promotional items received by the administrator, a related entity, or a representative or agent of the administrator or related entity from any plan provider selected as a vendor of an annuity contract, custodial account, or deferred compensation plan by the community college district. A third-party administrator that is affiliated with or has a contractual relationship with a provider of annuity contracts, custodial accounts, or deferred compensation plans shall disclose the existence of the relationship to each community college district and each individual participant in the annuity contract, custodial account or deferred compensation plan.

(e) Any personal information obtained by the third-party administrator in providing services pursuant to this section shall be used by the third-party administrator only to provide those services for the community college district in accordance with the contract entered into with the community college district pursuant to subdivision (b).

(f) Nothing in this section shall be construed to interfere with either of the following:

(1) The rights of employees or beneficiaries as described in Section 770.3 of the Insurance Code.

(2) The ability of the community college district to establish nonarbitrary requirements upon providers of an annuity contract that, in the community college district's discretion, aid in the administration of its benefit programs and do not unreasonably discriminate against any provider of an annuity contract or interfere with the rights of employees or beneficiaries as described in Section 770.3 of the Insurance Code.

(g) This section shall not apply to any services provided by a third-party administrator pursuant to a contract for services between a community college district and the State Teachers' Retirement System. Any services provided by a third-party administrator pursuant to a contract for services between a community college district and the State Teachers' Retirement System shall be subject to either Section 24953, in the case of an annuity contract or custodial account, or Section 24977, in the case of a deferred compensation plan.

*Added by Stats 2006 ch 780 § 9 (AB 2462), effective January 1, 2007. Amended by Stats 2007 ch 130 § 82 (AB 299), effective January 1, 2008.*

### Amendments

**2007 Amendment:** (1) Amended subd (b)(1)(F) by substituting (a) "paragraph (2)" for "subparagraph (2)"; and (b) "Section 414(v) or 457" for "Sections 414(v) or 457"; and (2) added "of the following" at the end of the introductory clause of subd (f).

### § 87482.3. Collective bargaining agreement with part-time, temporary faculty; Required terms and conditions

(a) (1) As a condition of receiving funds allocated for the Student Success and Support Program in the annual Budget Act, on or after July 1, 2017, community college districts that do not have a collective bargaining agreement with part-time, temporary faculty in effect as of January 1, 2017, shall commence negotiations with the exclusive representatives for part-time, temporary faculty regarding the terms and conditions required by subdivision (b). The parties shall negotiate these rights for part-time, temporary faculty.

(2) It is the intent of the Legislature that both of the following shall occur:

(A) The adoption of provisions in compliance with subdivision (b) shall be included as part of the usual and customary negotiations between the community college district and the exclusive representative for part-time, temporary faculty.

(B) (i) A community college district shall establish minimum standards for the terms of reemployment preference for part-time, temporary faculty assignments through the negotiation process between the community college district and the exclusive representative for part-time, temporary faculty. These standards shall include all of the following:

(I) The length of time part-time, temporary faculty have served at the community college or district.

(II) The number of courses part-time, temporary faculty have taught at the community college or district.

(III) The evaluations of temporary faculty conducted pursuant to Section 87663 and other related methods of evaluation that can reliably be used to assess educational impact of temporary faculty as it relates to student success.

(IV) The availability, willingness, and expertise of part-time, temporary faculty to teach specific classes or take on specific assignments that are necessary for student instruction or services.

(ii) Additional standards may be considered and established through the negotiation process, as necessary.

(iii) Standards established pursuant to clause (ii) shall reflect the processes and procedures for both of the following:

(I) Assigning part-time, temporary faculty to teach courses or staff nonclassroom assignments.

(II) Evaluating part-time, temporary faculty.

(b) As a condition of receiving funds allocated for the Student Success and Support Program in the annual Budget Act and except as provided in subdivision (d), a community college district described in paragraph (1) of subdivision (a) and the exclusive representative of the part-time, temporary faculty shall negotiate in good faith all of the following:

(1) The terms of reemployment preference for part-time, temporary faculty assignments based on the minimum standards up to the range of 60 to 67 percent of a full-time equivalent load. These terms shall also contain policies for termination, including, but not limited to, the evaluation process negotiated pursuant to paragraph (2).

(2) A regular evaluation process for part-time, temporary faculty pursuant to the requirements of Section 87663.

(c) A community college district that has a collective bargaining agreement in effect as of July 1, 2017, that has satisfied the requirements of subdivision (b), and that executes a signed written agreement with the exclusive representative of the part-time, temporary faculty acknowledging implementation of subdivision (b), shall be deemed to be in compliance with this section while the bargaining agreement is in effect.

(d) In all cases, part-time faculty assignments shall be temporary in nature, contingent on enrollment and funding, and subject to program changes, and no part-time faculty member shall have reasonable assurance of continued employment at any point, irrespective of the status, length of service, or reemployment preference of that part-time, temporary faculty member.

*Added Stats 2016 ch 877 § 1 (AB 1690), effective January 1, 2017. Amended Stats 2016 ch 891 § 1 (SB 1379), effective January 1, 2017.*

### Amendments

**2016 Amendment:** Substituted the section for the former section which read:

“(a)(1) On or after January 1, 2017, community college districts that do not have a collective bargaining agreement with part-time, temporary faculty in effect as of January 1, 2017, shall commence negotiations with the exclusive representatives for part-time, temporary faculty regarding the terms and conditions required by subdivision (b). The parties shall negotiate these rights for part-time, temporary faculty.

“(2) It is the intent of the Legislature that both of the following shall occur:

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

“(A) The adoption of provisions in compliance with subdivision (b) shall be included as part of the usual and customary negotiations between the community college district and the exclusive representative for part-time, temporary faculty.

“(B)(i) A community college district shall meet the minimum standards established by this section through the negotiation process between the community college district and the exclusive representative for part-time, temporary faculty.

“(b)(1) A community college district that enters into a collective bargaining agreement on or after January 1, 2017, shall comply with all of the following:

“(A) Upon initial hire, and subsequently thereafter, a part-time, temporary faculty member shall be evaluated pursuant to the requirements of Section 87663.

“(B) After six semesters or nine quarters of service, exclusive of summer and intersession terms, each part-time, temporary faculty member who has not received a less-than-satisfactory evaluation during the preceding six semesters or nine quarters of service shall be placed on a seniority list for each assignment at each college where he or she holds a current assignment during the seventh semester or 10th quarter of service, irrespective of how many times he or she has completed each unique assignment. The seniority for all assignments shall be determined based on the first date of hire at the applicable college. Seniority lists shall be by campus unless otherwise locally negotiated between the community college district and the exclusive representative for part-time, temporary faculty.

“(C) For semester seven or quarter 10 and beyond, each community college district shall endeavor to maintain the workload equivalent that the part-time, temporary faculty member was assigned during semester six or quarter nine, subject to all of the following:

“(i) As new assignments become available due to growth or attrition, these assignments shall be offered in seniority order to those part-time, temporary faculty members who have qualified to be placed on the seniority list pursuant to subparagraph (B), and previously successfully completed that same assignment. These assignments may be made up to a maximum annualized load, exclusive of summer and intersession terms, in the range of 60 to 67 percent of a full-time equivalent load.

“(ii) In cases where a reduction in assignment needs to occur due to program needs, budget constraints, or more contract faculty hires, the reduction shall occur first from among those part-time, temporary faculty members who have not yet qualified to be placed on the seniority list, and thereafter in reverse seniority order, with the least senior part-time, temporary faculty member reduced first. Any rights to a certain workload equivalent shall be maintained for a period of 18 months. In cases of class cancellation due to low enrollment, faculty members shall displace faculty members who are lower than they are on the seniority list, if the class cancellation occurs prior to the first class meeting day.

“(iii) Each new assignment successfully completed shall be added to the part-time, temporary faculty member seniority list.

“(E) In cases where a part-time, temporary faculty member, subsequent to qualifying to be placed on the seniority list, receives a less-than-satisfactory evaluation, as that term is defined in the collective bargaining agreement between the community college district and the exclusive representative for part-time, temporary faculty, the faculty member shall be provided a written plan of remediation with concrete suggestions for improvement. The faculty member shall be evaluated again the following semester. If the outcome of this subsequent evaluation is also less than satisfactory, the faculty member shall lose all seniority rights, and may be dismissed at the discretion of the district. Appeal and grievance rights and procedures, if any, shall be subject to local collective bargaining.

“(F) In all cases, part-time faculty assignments are temporary in nature, contingent on enrollment and funding, and subject to program changes, and no part-time faculty member has a reasonable assurance of continued employment at any point, irrespective of the status, length of service, or reemployment preference seniority of that part-time, temporary faculty member.

“(2)(A) A community college district that has a collective bargaining agreement in effect as of January 1, 2017, that has provisions in place that require implementation of all of the following, and executes a signed written agreement pursuant to subparagraph (B), shall be exempt from this subdivision upon the expiration of that agreement:

“(i) Part-time, temporary faculty assignment based on seniority up to the range of 60 to 67 percent of a full-time equivalent load.

“(ii) A regular evaluation process for part-time, temporary faculty.

“(iii) Due process for termination once a part-time, temporary faculty member has qualified for the negotiated provisions.

“(B) A written agreement, confirming that provisions requiring the implementation of clauses (i) to (iii), inclusive, have been included in a collective bargaining agreement in effect as of January 1, 2017, shall be signed by the exclusive representative for part-time, temporary faculty and the community college district, who are subject to that agreement, in order for the district to be exempt from this subdivision pursuant to subparagraph (A).”

**§ 87482.5. Classification of certain instructors as temporary employees; Effect of service as substitute; Service in professional ancillary activities**

(a) Notwithstanding any other law, a person who is employed to teach adult or community college classes for not more than 67 percent of the hours per week considered a full-time assignment for regular employees having comparable duties shall be classified as a temporary employee, and shall not become a contract employee under Section 87604. If the provisions of this section are in conflict with the terms of a collective bargaining agreement in effect on or before January 1, 2009, the provisions of this section shall govern the employees subject to that agreement upon the expiration of the agreement.

(b) Service as a substitute on a day-to-day basis by persons employed under this section shall not be used for purposes of calculating eligibility for contract or regular status.

(c)(1) Service in professional ancillary activities by persons employed under this section, including, but not necessarily limited to, governance, staff development, grant writing, and advising student organizations, shall not be used for purposes of calculating eligibility for contract or regular status unless otherwise provided for in a collective bargaining agreement applicable to a person employed under this section.

(2) This subdivision may not be construed to affect the requirements of subdivision (d) of Section 84362.

*Added by Stats 1985 ch 132 § 2. Amended by Stats 2003 ch 25 § 1 (SB 955); Stats 2008 ch 84 § 1 (AB 591), effective January 1, 2009.*

**Amendments**

**2003 Amendment:** Added subd (c).

**2008 Amendment:** Amended subd (a) by (1) substituting “other law, a person” for “other provision of law, any person”; (2) substituting “67 percent” for “60 percent”; and (3) adding the last sentence.

**Notes of Decisions**

Community college districts have the authority to employ two types of academic employees designated as temporary: those hired for a limited time to meet certain specified needs, Ed C §§ 87478, 87480, 87481, 87482, and those hired on a part-time basis of 60 percent or less of a full-time workload. *Balasubramanian v. San Diego Community College Dist.* (2000, Cal App 4th Dist) 80 Cal App 4th 977, 95 Cal Rptr 2d 837, 2000 Cal App LEXIS 385.

Temporary employees hired under Ed C § 87482.5 may continue to teach year after year, without becoming contract employees, provided each year they teach not more than 60 percent of a full-time assignment exclusive of day-to-day substitution assignments. *Balasubramanian v. San Diego Community College Dist.* (2000, Cal App 4th Dist) 80 Cal App 4th 977, 95 Cal Rptr 2d 837, 2000 Cal App LEXIS 385.

In contrast to those provisions mandating contract status upon reemployment or continuation of particular duties, Ed C § 87482.5, pertaining to employees of a school district as 60 percent full-time equivalent employees, provides no such consequence; section 87482.5 does not compel reclassification. *Balasubramanian v. San Diego Community College Dist.* (2000, Cal App 4th Dist) 80 Cal App 4th 977, 95 Cal Rptr 2d 837, 2000 Cal App LEXIS 385.

Ed C § 87482.5(b) prohibits reclassification of a temporary employee as a contract employee by virtue of teaching more than 60 percent full-time equivalent, where the service as a substitute teacher is on a day-to-day basis. *Balasubramanian v. San Diego Community College Dist.* (2000, Cal App 4th Dist) 80 Cal App 4th 977, 95 Cal Rptr 2d 837, 2000 Cal App LEXIS 385.

Temporary employee statutes should be strictly construed. An employee should not be classified as temporary unless that classification is specifically authorized; otherwise, the catchall provision in Ed C § 87477 controls.

*Stryker v. Antelope Valley Community College Dist.* (2002, Cal App 2d Dist) 100 Cal App 4th 324, 122 Cal Rptr 2d 489, 2002 Cal App LEXIS 4409.

Proper measure in determining whether the 60 percent limit is exceeded is the number of hours the person seeking tenure spends teaching classes compared to the number of hours per week a regular fully assigned employee spends on comparable duties. *Stryker v. Antelope Valley Community College Dist.* (2002, Cal App 2d Dist) 100 Cal App 4th 324, 122 Cal Rptr 2d 489, 2002 Cal App LEXIS 4409.

In an action arising from the revocation of reappointment rights, a community college district had to adhere to the requirements it negotiated in the collective bargaining agreement because it was possible to harmonize the provisions governing reappointment rights of part-time, temporary faculty and governing termination, and, in the alternative, the former would control. Arbitration awards in favor of temporary, part-time faculty were proper because the arbitrator reasonable construed the collective bargaining agreement to require evidence to substantiate findings that the faculty were guilty of misconduct. *Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015, 2d Dist) 2015 Cal App LEXIS 1169.

**§ 87483. Regulations allowing reduction of workload to part-time duties**

Notwithstanding any other provision, the governing board of a community college district may establish regulations that allow academic employees to reduce their workload from full-time to part-time duties. The regulations shall include, but shall not be limited to, the following if the employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22713 of this code or Section 20900 of the Government Code:

(a) For employees subject to coverage under the Defined Benefit Program under the State Teachers' Retirement Plan, the regulations shall include all requirements for participation in the reduced workload program pursuant to Section 22713.

(b) For employees subject to coverage under the Public Employees' Retirement System:

(1) The employee shall have reached the age of 55 prior to reduction in workload.

(2) The employee shall have been employed full time in an academic position or a position requiring certification qualifications, or both, for at least 10 years of which the immediately preceding five years were full-time employment.

(3) During the period immediately preceding a request for a reduction in workload, the employee shall have been employed full time in an academic position or a position requiring certification qualifications, or both, for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(4) The option of part-time employment shall be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.

(5) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his or her final year of service in a full-time position.

(6) The period of this part-time employment shall not exceed five years.

(7) The period of part-time employment shall not extend beyond the end of the college year during which the employee reaches his or her 70th birthday.

(c) (1) The employee shall be paid a salary that is the pro rata share of the salary he or she would be earning had he or she not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he or she makes the payments that would be required if he or she remained in full-time employment.

(2) The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1978 ch 558 § 1; Stats 1979 ch 218 § 1, effective July 6, 1979, ch 630 § 3, ch 1110 § 1, effective September 28, 1979, ch 1110 § 1.5, effective September 28, 1979, operative January 1, 1980; Stats 1981 ch 1023 § 3; Stats 1987*

*ch 330 § 22; Stats 1990 ch 1302 § 84 (SB 2298), effective September 24, 1990; Stats 1995 ch 758 § 154 (AB 446); Stats 2016 ch 415 § 1 (AB 2375), effective January 1, 2017. Stats 2017 ch 298 § 30 (AB 1325), effective January 1, 2018.*

### Amendments

**1978 Amendment:** (1) Added subd (f); and (2) deleted former subd (g) which read: “(g) This section shall not be applicable to persons who are administrators in community colleges.”

**1979 Amendment (ch 218):** (1) Added subd (c); (2) redesignated former subds (c)–(f) to be subds (d)–(g); (3) added “of this code” after “Section 22724” in the second paragraph; and (4) substituted “Section 22724 of this code” for “Section 22724 of the Government Code” in subd (g).

**1979 Amendment (ch 1110 § 1):** (1) Substituted “and with respect to members of the State Teachers’ Retirement System” for “of this code” in the introductory clause of subd (g); and (2) added subd (h).

**1979 Amendment (ch 1110 § 1.5):** (1) Substituted subd (g) for former subd (g) which read:

“(g) Notwithstanding the provisions of Section 22724 of this code, the following contributions, shall be made to the Teachers’ Retirement Fund:

“(1) The member shall contribute the amount that would have been contributed if the member was employed full time.

“(2) The employer shall contribute 13 percent of the salary that would have been paid the member had the member been employed full time.”;

(2) substituted subd (h) for former subd (h) which read:

“(h) With respect to members of the Public Employees’ Retirement System, the following contributions shall be made to the Public Employees’ Retirement Fund:

“(1) The member shall contribute the amount that would have been contributed if the member was employed full time.

“(2) Contributions based on full salary in accordance with Chapter 6 (commencing with Section 20740) of Part 3 of Division 5 of the Government Code.”;

and (3) added the last paragraph.

**1981 Amendment:** (1) Added the commas after “include” and after “limited to” in the introductory clause of the second paragraph; (2) substituted “shall” for “must” in subds (a), (b), the first sentence of (c), and (d); (3) generally added feminine pronouns; (4) substituted “70th” for “65th” in subd (h); and (5) deleted the former third paragraph which read: “This section shall remain in effect only until June 30, 1983, and as of such date is repealed, unless a later enacted statute, which becomes operative before that date, deletes or extends such date. However, any member who commences part–time employment pursuant to this section prior to June 30, 1983, may continue such part–time employment and receive such retirement benefits and health benefits until the member has completed five years of such part–time employment.”

**1987 Amendment:** (1) Amended subd (g) by (a) substituting “this” for “such” after “The period”; and (b) adding “for employees subject to Section 22724 of this code”; (2) amended the first sentence of subd (h) by (a) deleting “such” after “period of”; and (b) adding “of employees subject to Section 20815 of the Government Code”; and (3) added the second sentence of subd (h).

**1990 Amendment:** Substituted (1) “academic” for “their certificated” in the first sentence; (2) “The” for “Such” before “regulations” and before “employees wish” in the introductory clause; and (3) “an academic position or a position requiring certification qualifications, or both,” for “a position requiring certification” in subds (b) and (c).

**1995 Amendment:** Substituted (1) “that” for “which” after “may establish regulations” in the first sentence; (2) “Section 22713” for “Section 22724” wherever it appears; and (3) “college” for “school” after “beyond the end of the” in subd (h).

**2016 Amendment:** Substituted “Section 20900” for “Section 20815” in the second sentence of the introductory paragraph and in subd (g).

**2017 Amendment:** (1) Added subd (a); (2) redesignated former subd (a) through subd (d) as subd (b)(1) through subd (b)(4); (3) added subd (b)(5) through subd (b)(7); (4) redesignated and rewrote former subd (e) as subd (c); and (5) deleted subd (f) through subd (h).



**§ 87488. Credit of additional years to encourage retirement of academic employees; Conditions**

Whenever the governing board of a community college district, by formal action, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will result in a net savings to the district, an additional two years of service shall be credited under the Defined Benefit Program of the State Teachers' Retirement Plan to an academic employee pursuant to Section 22714 if all of the conditions set forth in that section are satisfied.

*Added by Stats 1994 ch 20 § 5 (SB 858), effective March 16, 1994. Amended by Stats 1998 ch 965 § 321 (AB 2765); Stats 2003 ch 313 § 16 (AB 1207).*

**Former Sections:** Former § 87488, similar to the present section, was added by Stats 1984 ch 361 § 3, amended by Stats 1985 ch 293 § 7, effective July 29, 1985, Stats 1987 ch 601 § 3, Stats 1990 ch 996 § 3, ch 1302 § 88.5, effective September 14, 1990, operative until January 1, 1994, and repealed, operative January 1, 1994, by its own terms.

**Amendments**

**1998 Amendment:** (1) Substituted "State Teachers' Retirement Defined Benefit Program" for "State Teachers' Retirement System" in subds (a), (a)(1), and (f); (2) deleted the former last sentence of subd (a)(1) which read: "For the 1993-94 fiscal year, the retirement period shall begin on the date of the formal action and shall end on June 30, 1994."; (3) substituted "in a time period that shall not exceed four years, that is" for "time period that shall not exceed four years, that are" in the third sentence of subd (a)(2); and (4) deleted "into the State Teachers' Retirement System" after "reinstates" in subd (e).

**2003 Amendment:** (1) Deleted former subdivision designation (a) at the beginning of the section; (2) deleted "taken prior to January 1, 1999" after "formal action"; (3) deleted "either:" after "retirement will"; (4) deleted "; result in a reduction of the number of academic employees as a result of declining enrollment; or result in the retention of faculty who are qualified to teach in areas of teacher shortage, including, but not limited to, mathematics and science" after "to the district"; (5) substituted "Defined Benefit Program of the State Teachers' Retirement Plan" for "State Teachers' Retirement Defined Benefit Program"; (6) substituted "conditions set forth in that section are satisfied." for "following conditions exist:"; and (7) deleted former subds (a)(1)-(a)(4) and subds (b)-(f) which read:

"(1) The employee is credited with five or more years of service under the State Teachers' Retirement Defined Benefit Program and retires during a period not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the district that shall specify the period.

"(2) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22714 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Sections 24414 and 24415. The transfer to the retirement fund shall be made in a manner and in a time period that shall not exceed four years, that is acceptable to the Teachers' Retirement Board. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22714.

"(3) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

"(4) The governing board of the community college district has considered the availability of academic employees to fill the positions that would be vacated pursuant to this section.

"(b)(1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction in the number of academic

employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701; or (C) the retention of faculty who are qualified to teach in teacher shortage disciplines.

“(2) The chancellor shall certify to the Teachers’ Retirement Board that the results specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under clause (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to subdivision (c) of Section 84701.

“(3) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

“(c) The service credit made available pursuant to this section shall be available to all members employed by the community college district who meet the conditions set forth in this section.

“(d) The amount of service credit shall be two years.

“(e) Any employee who retires with service credit granted under this section and Section 22714 and subsequently reinstates, shall forfeit the service credit granted under this section and Section 22714.

“(f) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers’ Retirement Defined Benefit Program.”

### **§ 87488.1. [Section repealed 2005.]**

*Added by Stats 2003 ch 313 § 17 (AB 1207), operative January 3, 2004. Repealed, January 1, 2005, by its own terms. The repealed section related to additional service and age credit.*

### **§ 88001. Definitions**

As used in this chapter the following terms mean:

(a) “Classification” means that each position in the classified service shall have a designated title, a regular minimum number of assigned hours per day, days per week, and months per year, a specific statement of the duties required to be performed by the employees in each such position, and the regular monthly salary ranges for each such position.

(b) “Permanent,” as used in the phrase “permanent employee,” includes tenure in the classification in which the employee passed the required probationary period and includes all of the incidents of that classification.

(c) “Regular,” as used in the phrase “regular classified employee,” or any similar phrase, refers to a classified employee who has probationary or permanent status.

(d) “Demotion” means assignment to an inferior position or status without the employee’s written voluntary consent.

(e) “Disciplinary action” includes any action whereby an employee is deprived of any classification or any incident of any classification in which he or she has permanence, including dismissal, suspension, demotion, or any reassignment, without his or her voluntary consent, except a layoff for lack of work or lack of funds.

(f) “Reclassification” means the upgrading of a position to a higher classification as a result of the gradual increase of the duties being performed by the incumbent in that position.

(g) “Layoff for lack of funds or layoff for lack of work” includes any reduction in hours of employment or assignment to a class or grade lower than that in which the employee has permanence, voluntarily consented to by the employee, in order to avoid interruption of employment by layoff.

(h) “Cause,” relating to disciplinary actions against classified employees, means those grounds for discipline or offenses enumerated in the law or the written rules of a community college employer. No disciplinary action may be maintained for any “cause” other than as defined herein.

This section shall not apply to districts to which Article 3 (commencing with Section 88060) is applicable.

This section shall not apply to any district which, during the 1973–74 college year, had an average daily attendance of 100,000 or more.

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1995 ch 758 § 186 (AB 446).*

### Amendments

**1995 Amendment:** (1) In addition to making technical changes, amended the introductory clause of the first paragraph by (a) deleting “Definitions” at the beginning; and (b) adding “the following terms mean”; (2) added “or she” and “or her” in subd (e); (3) substituted “community college” for “public school” in the first sentence of subd (h); (4) amended the second paragraph by deleting “the provisions of” (a) at the beginning; and (b) after “to which”; and (5) amended the last paragraph by (a) deleting “the provisions of” at the beginning; and (b) substituting “college year” for “school year”.

### § 88033. Age limits

(a) Notwithstanding any other provisions of law, no minimum or maximum age limits shall be established for the employment or continuance in employment of persons as part of the classified service.

(b) Any person possessing all of the minimum qualifications for any employment shall be eligible for appointment to that employment, and no rule or policy, either written or unwritten, heretofore or hereafter adopted, shall prohibit the employment or continued employment, solely because of the age of any such person in any community college employment who is otherwise qualified therefor.

(c) No person shall be employed in community college employment while he or she is receiving a retirement allowance under any retirement system by reason of prior school or community college employment, except as provided in Article 5 (commencing with Section 21150) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code.

(d) Subdivision (c) shall be inapplicable to persons who were employed in the classified service of any community college district as of September 18, 1959, and who are still employed by the same district on September 15, 1961, and the rights of those persons shall be fixed and determined as of September 18, 1959, and none of these persons shall be deprived of any right to any retirement allowance or eligibility for any such allowance to which he or she would have been entitled as of that date. Any such person who, by reason of any provision of law to the contrary, has been deprived of any right to retirement allowance or eligibility for such an allowance, shall, upon the filing of application therefor, be reinstated to those rights as he or she would have had, had this subdivision been in effect on September 18, 1959.

(e) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

*Enacted by Stats 1976 ch 1010 § 2, operative April 30, 1977. Amended by Stats 1983 ch 666 § 5; Stats 1990 ch 903 § 3 (AB 4048); Stats 1995 ch 758 § 199 (AB 446); Stats 2004 ch 183 § 83 (AB 3082).*

**Editor’s Notes**—Article 5 of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code, referred to in subd (c) of this section, commences with § 20750.

### Amendments

**1983 Amendment:** Substituted (1) subd (c) for former subd (c) which read: “This section does not authorize the employment of any person in particular school employment who has reached the retirement age for that particular employment prescribed by any retirement system applicable thereto, whether or not the person is a member of the retirement system, or entitled to a retirement salary thereunder, nor shall any person be employed in such employment while he is receiving a retirement allowance under any retirement system by reason of prior school employment”; and (2) subd (e) for former subd (e) which read: “This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section

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88060) of this chapter, except that in a community college district governed by the same governing board, in which the combined average daily attendance of all districts is in excess of 400,000, the permanent classification of any employee who is classified as a permanent employee under the provisions of Article 3 (commencing with Section 88060) of this chapter shall cease at the close of the fiscal year in which the employee reaches the age of 65 years. In such district or districts the employment, or continued employment of any employee beyond the close of the fiscal year in which he reaches the age of 65 years shall be at the discretion of the governing board of the district, which may, at its pleasure, terminate the services of such employee at any time. Employment beyond age 65 in such districts shall be in accordance with rules and regulations governing such employment approved by the personnel commission, and adopted by the governing board of the district.”

**1990 Amendment:** (1) Substituted “as” for “a” after “persons” in subd (a); (2) amended subd (c) by adding (a) “or she” after “he”; and (b) “, except as provided in Article 5 (commencing with Section 21150) of Chapter 8 of Part 3 of Division 5 of Title 2 of the Government Code”; (3) substituted the comma for a semicolon after “September 18, 1959” the second time it appears in the first sentence of subd (d); and (4) added “or she” after “he” in the second sentence in subd (d).

**1995 Amendment:** (1) Added “or community college” in subd (c); (2) deleted “The provisions of” at the beginning of subd (d); (3) amended the first sentence of subd (d) by (a) substituting “September 15, 1961” for “the effective date of this subdivision”; (b) substituting “none of these persons” for “no such person”; and (c) adding “or she” after “allowance to which he”; and (4) deleted “of this chapter” at the end of subd (e).

**2004 Amendment:** Substituted “who are still employed by the same district” for “who are still in the employ of the same district” in the first sentence of subd (d).

**EXTRACTS FROM THE GOVERNMENT CODE****§ 1243. Effects of conviction for crimes arising out of official duties as public official  
[Section renumbered Gov C § 7522.70 effective January 1, 2013]**

*Added by Stats 2005 ch 322 § 1 (AB 1044), effective January 1, 2006. Amended and renumbered Gov C § 7522.70 by Stats 2012 ch 296 § 9 (AB 340), effective January 1, 2013.*

**§ 3540.1. Definitions**

As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means an employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

(d) "Employee organization" means an organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person of the organization authorized to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of public school employees, as "public school employee" is defined in subdivision (j), in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means an employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, is not subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) “Public school employee” or “employee” means a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) “Public school employer” or “employer” means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, an auxiliary organization established pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, except an auxiliary organization solely formed as or operating a student body association or student union, or a joint powers agency, except a joint powers agency established solely to provide services pursuant to Section 990.8, if all the following apply to the joint powers agency.

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides educational services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of educational agencies.

(l) “Recognized organization” or “recognized employee organization” means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) “Supervisory employee” means an employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*Added by Stats 1975 ch 961 § 2, operative July 1, 1976. Amended by Stats 1977 ch 1159 § 6, operative July 1, 1978; Stats 1985 ch 661 § 2; Stats 1999 ch 828 § 5 (AB 631); Stats 2000 ch 135 § 63 (AB 2539), ch 893 § 1 (SB 1960) (ch 893 prevails); Stats 2003 ch 190 § 1 (SB 253); Stats 2011 ch 674 § 1 (AB 501), effective January 1, 2012; Stats 2012 ch 162 § 54 (SB 1171), effective January 1, 2013.*

**Historical Derivation:** Former Ed C § 13081, as added by Stats 1965 ch 2041 § 2, amended by Stats 1970 ch 1412 § 3, ch 1413 § 2.

## Amendments

**1977 Amendment:** Substituted “Public Employment Relations Board” for “Educational Employment Relations Board” in subd (a).

**1985 Amendment:** The amendment made technical changes.

**1999 Amendment:** Amended subd (k) by (1) deleting “or” after “board of education,”; and (2) adding “, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code”.

**2000 Amendment:** Added “is within the scope of representation, and” in the introductory clause of subd (i).

**2003 Amendment:** Substituted (1) subd (c) for former subd (c) which read: “(c) ‘Confidential employee’ means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer’s employer–employee relations.”; (2) “of the organization authorized” for “such an organization authorizes” in the second sentence of subd (d); (3) “is not” for “shall not be” after “Section 3543.7,” in subd (h); (4) “an arrangement may not” for “no such arrangement shall” in the second sentence of subd (i)(1); and (5) “that” for “such” after “or effectively recommend” in subd (m).

**2011 Amendment:** (1) Substituted “that” for “which” in subds (b) and (l) and the first sentence of subd (d); (2) substituted “an” for “any” after “means” in subds (c) and (m) and the first sentence of subd (g); (3) substituted “an organization that” for “any organization which” in the first sentence of subd (d); (4) substituted “public school employees, as ‘public school employee’ is defined in subdivision (j),” for “certificated or classified employees” in subd (e); (5) substituted “may” for “shall” in the second sentence of subd (i)(1); (6) substituted “a” for “any” after “means” and after “employed by” in subd (j); (7) amended the first paragraph of subd (k) by (a) deleting “or” after “superintendent of schools,”; and (b) adding “, an auxiliary organization established pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, except an auxiliary organization solely formed as or operating a student body association or student union, or a joint powers agency, except a joint powers agency established solely to provide services pursuant to Section 990.8, if all the following apply to the joint powers agency”; (8) added subds (k)(1)-(k)(3); and (9) substituted “layoff” for “lay off” in subd (m).

**2012 Amendment:** Substituted “lay off” for “layoff” in subd (m).

## Notes of Decisions

### 1. “Employee Organization”

An employee organization did not constitute a “group of employees” within the meaning of Cal. Admin. Code, tit. 8, § 34020, which prescribes, after the establishment of an organizational security agreement, a procedure pursuant to which a “group of employees in an appropriate unit” may petition to rescind that agreement, and thus, had no standing to petition the Public Employment Relations Board to rescind an organizational security agreement in which employees of a unified school district had voted in favor of an organizational security agreement requiring them to pay an agency fee to another employee organization that had been designated the exclusive representative of the employees of the district. The Educational Employment Relations Act (Gov C § 3540 et seq.) applies the principle of exclusivity to the employee organization chosen as the exclusive representative of the employees for all dealings with the employer. If the Public Employment Relations Board, created to administer the act, had intended to permit any labor unit, rival, or representative to take the action, it could have expressly said so when the regulation was adopted. Moreover, the fact that some employees of the school district belonged to the employee organization did not transform that labor unit into a “group of employees” as defined and specified in § 34020. *Bissell v. Public Employment Relations Bd.* (1980, Cal App 3d Dist) 109 Cal App 3d 878, 167 Cal Rptr 498, 1980 Cal App LEXIS 2209.

Gov C § 3540.1, subd. (d), by expanding the definition of employee organizations to include persons authorized to act on the organization’s behalf, was intended to permit a local union to act through an affiliate in discharging the union’s representational obligations under the Educational Employment Relations Act (Gov C § 3540 et seq.). Thus, for purposes of determining nonmembers’ rights to object to uses of their service fees under an organizational security arrangement, service fee funds spent by an authorized affiliate in support of the union’s representational obligations must be treated as if spent by the union itself. *Cumero v. Public Employment Relations Bd.* (1989) 49 Cal 3d 575, 262 Cal Rptr 46, 778 P2d 174, 1989 Cal LEXIS 1603.

### 2. Union or Service Fees

In consolidated actions by a teachers’ union against teachers who had refused to either join the union or pay it a service fee as required by an “organizational security” provision in the collective bargaining agreement entered into by the employer-school district and the union, which was the teachers’ exclusive bargaining representative, the trial court properly granted money judgments in favor of the union. Under the labor relations system established for public education employees by the Educational Employment Relations Act (Gov C § 3540 et seq.), a collective bargaining agreement executed by an exclusive bargaining representative binds all the members of the unit as to all terms within the organization’s scope of representation. Gov C § 3540.1, subd. (i)(2), which defines organizational security as an arrangement requiring an employee, as a condition of continued employment, either to join a union or to pay a service fee, permits but does not require the remedy of termination of noncomplying employees’ employment; civil suit is also an appropriate remedy. *San Lorenzo Education Ass’n v. Wilson* (1982) 32 Cal 3d 841, 187 Cal Rptr 432, 654 P2d 202, 1982 Cal LEXIS 250.

Public school employees who were not union members, but who, pursuant to collective bargaining agreements between certain teachers’ unions and the school districts that employed them, were required to pay a “service fee” not to exceed the amount of union dues, as authorized by Gov C § 3540.1, subd. (i)(2), were required to bring their dispute over the fee to the Public Employment Relations Board before they could challenge the constitutionality

of the fee requirement in court. The constitutional violations raised by the public school employees were within the jurisdiction of the board, despite the claim that these constitutional violations did not constitute “unfair practices” as defined by Gov C §§ 3541.5, 3543.5 and 3543.6. The board is not limited to investigating charges defined as “unlawful” under §§ 3543.5 and 3543.6. Under Gov C § 3541.3, subd. (i), the board has the power to not only investigate unfair practices but also to investigate alleged violations of the Education Employment Regulations Act (Gov C § 3540 et seq.), and to take such action and make such determinations as the board deems necessary to effectuate the policies of the act. Looking beyond the constitutional label given to the public school employees’ grievances, the substance of the conduct complained of may also constitute unfair practices, which arguably could be resolved by a board ruling. *Link v. Antioch Unified School Dist.* (1983, Cal App 1st Dist) 142 Cal App 3d 765, 191 Cal Rptr 264, 1983 Cal App LEXIS 1684.

Union regulations providing that written notice concerning the amount and purpose of, and procedures for appealing, agency fees assessed against nonunion public school teachers pursuant to Gov C § 3540.1, subd. (i)(2), could be given concurrently with collection of the fees (Cal. Code Regs., tit. 8, §§ 32992, subd. (c)(2), 32995, subd. (a)(2)) comported with due process and did not violate the nonmembers’ rights under U.S. Const., 1st Amend. The regulations, by requiring that all collected fees be placed in escrow pending identification of objectors, and by also requiring that contested fees be placed in escrow pending resolution of the dispute, prevented the union from having access to the funds for political, ideological, or other nonrepresentational purposes, thus avoiding the evil of requiring nonmembers to subsidize ideological activity which with they disagreed. *Jerabek v. Public Employment Relations Bd.* (1991, Cal App 3d Dist) 2 Cal App 4th 1298, 4 Cal Rptr 2d 181, 1991 Cal App LEXIS 1521, cert. denied (1992) 506 US 815, 121 L Ed 2d 25, 113 S Ct 56, 1992 US LEXIS 5576.

### 3. Management Employees

In a case in which a probationary teacher sued a school district and individual defendants, the trial court erred in finding that three of the individual defendants were management employees under Ed C § 44113. To the extent these employees exercised “official authority” to recommend that the teacher not be reelected to employment, they acted as “supervisory employees,” as defined in Gov C § 3540.1, subd. (m), and not as “management employees,” as defined in § 3540.1, subd. (g). *Conn v. Western Placer Unified School Dist.* (2010, 3d Dist) 186 Cal App 4th 1163, 113 Cal Rptr 3d 116, 2010 Cal App LEXIS 1192, modified, rehearing denied (2010, Cal. App. 3d Dist.) 2010 Cal. App. LEXIS 1390.

If a public school employer designates an employee as a management employee, the public school employer’s designation is controlling unless the California Public Employment Relations Board reviews the designation and determines the designation is incorrect. Accordingly, a trial court correctly determined that Ed C § 44114(c), did not apply to a former employee of a county office of education where, when the alleged retaliatory acts against him occurred, he was a management employee as a matter of law because the education office had designated him as such, and the record did not show the California Public Employment Relations Board had reviewed and overturned that designation. *Hartnett v. Crosier* (2012, 4th Dist) 2012 Cal App LEXIS 495, review denied (2012, Cal.) 2012 Cal. LEXIS 7389.

### 4. Public School Employer

Because a joint labor/management benefits committee was created as part of, and for the purpose of furthering, the collective bargaining process under the Educational Employment Relations Act, Gov C §§ 3540 et seq., the committee’s proceedings were exempt under Gov C § 3549.1, from the Ralph M. Brown Act, Gov C §§ 54950 et seq. The committee was not a legislative body under Gov C § 54952(b), and thus was not required under Gov C § 54953(a), to hold open meetings; rather, it was a public school employer under Gov C § 3540.1(k), entitled under Gov C § 3543.3, to meet and negotiate as defined in § 3540.1(h), through its agents or representatives, with its employees’ exclusive representatives. *Californians Aware v. Joint Labor/Management Benefits Committee* (2011, 2d Dist) 200 Cal App 4th 972, 2011 Cal App LEXIS 1412, modified and rehearing denied (2011, Cal. App. 2d Dist.) — P.3d —, 2011 Cal. App. LEXIS 1475.

School district’s executive director of human resources was not excluded from the protections of the whistleblower statutes, but his status as a whistleblower was, in any event, irrelevant to whether he was entitled to public records access to documents relating to his complaint against the district’s superintendent. *Caldecott v. Superior Court* (2015, 4th Dist) 2015 Cal App LEXIS 1146.



## 5. Supervisory Employees

Ed C § 44113, makes persons who exercise supervisory authority over personnel actions liable when that authority is used to interfere with a schoolteacher's rights under California's Reporting by School Employees of Improper Governmental Activities Act, Ed C §§ 44110-44114. Accordingly, in a case in which a former employee of a county office of education sued several individual education office employees for allegedly retaliating against him in violation of § 44113, subd. (a), the trial court erred in granting summary judgment in favor of the individual defendants, because they were also supervisory employees under Gov C § 3540.1(m). *Hartnett v. Crosier* (2012, 4th Dist) 2012 Cal App LEXIS 495, review denied (2012, Cal.) 2012 Cal. LEXIS 7389.

### § 6254. Records exempt from disclosure requirements

Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Records contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, this subdivision does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) (A) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(B) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. This paragraph shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this paragraph.

(4) Notwithstanding any other provision of this subdivision, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subparagraph (C), may be withheld only as follows:

(A) (i) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in

the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

**(ii)** After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

**(B) (i)** If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

**(ii)** Except as provided in clause (iii), if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described in clause (i) and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in clause (i) or unredacted, shall be disclosed promptly, upon request, to any of the following:

**(I)** The subject of the recording whose privacy is to be protected, or their authorized representative.

**(II)** If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected.

**(III)** If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected.

**(iii)** If disclosure pursuant to clause (ii) would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation, and provide the estimated date for the disclosure of the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in clause (ii) of subparagraph (A).

**(C)** For purposes of this paragraph, a video or audio recording relates to a critical incident if it depicts any of the following incidents:

**(i)** An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

**(ii)** An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

**(D)** An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this paragraph.

**(E)** This paragraph does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subparagraph (C).

**(F)** For purposes of this paragraph, a peace officer does not include any peace officer employed by the Department of Corrections and Rehabilitation.

**(g)** Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.

**(h)** The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

**(i)** Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

**(j)** Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

**(k)** Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

**(l)** Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

**(m)** In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

**(n)** Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish their personal qualification for the license, certificate, or permit applied for.

**(o)** Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

**(p) (1)** Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, and Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. This paragraph shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this paragraph.

**(2)** Records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter. This paragraph shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this paragraph.

**(q) (1)** Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

**(2)** Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

**(3)** Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

**(4)** Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

**(r)** Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

**(s)** A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

**(t)** Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

**(u) (1)** Information contained in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of their family.

**(2)** The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

**(3)** The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

**(v) (1)** Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2

(commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to former Part 6.3 (commencing with Section 12695), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the

board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.

**(B)** The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.

**(2) (A)** Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after their effective dates.

**(B)** If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

**(3)** Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

**(4)** Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

**(5)** The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to former Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.

**(z)** Records obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

**(aa)** A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

**(ab)** Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

**(ac)** All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

**(ad)** The following records of the State Compensation Insurance Fund:

**(1)** Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

**(2)** Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

**(3)** Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

**(4)** Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

**(5) (A)** Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including, without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

**(B)** Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

**(6) (A)** Internal audits containing proprietary information and the following records that are related to an internal audit:

**(i)** Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that their papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

**(ii)** Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

**(B)** Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

**(7) (A)** Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

**(B)** If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

**(C)** Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

**(D)** Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

**(E)** This paragraph is not intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

**(F)** For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.



This section does not prevent any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

*Added by Stats 1981 ch 684 § 1.5, effective September 23, 1981, operative January 1, 1982. Amended by Stats 1982 ch 83 § 1, effective March 1, 1982, ch 1492 § 2, ch 1594 § 2, effective September 30, 1982; Stats 1983 ch 200 § 1, effective July 12, 1983, ch 621 § 1, ch 955 § 1, ch 1315 § 1; Stats 1984 ch 1516 § 1, effective September 28, 1984; Stats 1985 ch 103 § 1; ch 1218 § 1; Stats 1986 ch 185 § 2; Stats 1987 ch 634 § 1, effective September 14, 1987, ch 635 § 1; Stats 1988 ch 870 § 1, ch 1371 § 2; Stats 1989 ch 191 § 1; Stats 1990 ch 1106 § 2 (SB 2106); Stats 1991 ch 278 § 1.2 (AB 99), effective July 30, 1991, ch 607 § 4 (SB 98); Stats 1992 ch 3 § 1 (AB 1681), effective February 10, 1992, ch 72 § 2 (AB 1525), effective May 28, 1992, ch 1128 § 2 (AB 1672), operative July 1, 1993; Stats 1993 ch 606 § 1 (AB 166), effective October 1, 1993 (ch 1265 prevails); Stats 1993 ch 610 § 1 (AB 6), effective October 1, 1993; Stats 1993 ch 611 § 1 (SB 60), effective October 1, 1993; Stats 1993 ch 1265 § 14 (SB 798); Stats 1994 ch 82 § 1 (AB 2547), ch 1263 § 1.5 (AB 1328); Stats 1995 ch 438 § 1 (AB 985), ch 777 § 2 (AB 958), ch 778 § 1.5 (SB 1059); Stats 1996 ch 1075 § 11 (SB 1444); Stats 1997 ch 623 § 1 (AB 1126); Stats 1998 ch 13 § 1 (AB 487), ch 110 § 1 (AB 1795) (ch 110 prevails), ch 485 § 83 (AB 2803); Stats 2000 ch 184 § 1 (AB 1349); Stats 2001 ch 159 § 105 (SB 662); Stats 2002 ch 175 § 1 (SB 1643); Stats 2003 ch 230 § 1 (AB 1762), effective August 11, 2003, ch 673 § 12 (SB 2); Stats 2004 ch 8 § 1 (AB 1209), effective January 22, 2004, ch 183 § 134 (AB 3082), ch 228 § 2 (SB 1103), effective August 16, 2004, ch 882 § 1 (AB 2445), ch 937 § 2.5 (AB 1933); Stats 2005 ch 22 § 71 (SB 1108), ch 476 § 1 (AB 1495), effective October 4, 2005, ch 670 § 1.5 (SB 922), effective October 7, 2005; Stats 2006 ch 538 § 232 (SB 1852); Stats 2007 ch 577 § 1 (AB 1750), effective October 13, 2007, ch 578 § 1.5 (SB 449); Stats 2008 ch 344 § 1 (SB 1145), effective September 26, 2008, ch 358 § 2 (AB 2810), ch 372 § 1.3 (AB 38), effective January 1, 2009; Stats 2010 ch 32 § 1 (AB 1887) (ch 32 prevails), effective June 29, 2010, ch 178 § 33 (SB 1115), effective January 1, 2011, operative January 1, 2012; Stats 2011 ch 285 § 7 (AB 1402), effective January 1, 2012. See this section as modified in Governor's Reorganization Plan No. 2 § 85 of 2012; Amended Stats 2012 ch 697 § 1 (AB 2221), effective January 1, 2013; Stats 2013 ch 23 § 2 (AB 82), effective June 27, 2013, ch 352 § 106 (AB 1317), effective September 26, 2013, operative July 1, 2013; Stats 2014 ch 31 § 2 (SB 857), effective June 20, 2014; Stats 2015 ch 303 § 183 (AB 731), effective January 1, 2016; Stats 2016 ch 644 § 1 (AB 2498), effective January 1, 2017. Stats 2017 ch 560 § 1 (AB 1455), effective January 1, 2018; Stats 2018 ch 423 § 27 (SB 1494), effective January 1, 2019; Stats 2018 ch 960 § 1 (AB 748), effective January 1, 2019 (ch 960 prevails); Stats 2019 ch 25 § 1 (SB 94), effective June 27, 2019; Stats 2019 ch 385 § 29 (AB 378), effective January 1, 2020; Stats 2019 ch 497 § 130 (AB 991), effective January 1, 2020 (ch 385 prevails).*

**Editor's Notes**—2012 Governor's Reorganization Plan No. 2 was submitted to the Legislature on May 3, 2012, and became effective July 3, 2012, pursuant to Gov C § 12080.5, and substantively operative July 1, 2013.

Stats 2013 ch 352 (AB 1317) enacts the statutory changes necessary to reflect the changes made by the Governor's Reorganization Plan No. 2 of 2012.

**Former Sections:** Former § 6254, similar to the present section, was added by Stats 1968 ch 1473 § 39, amended by Stats 1970 ch 1231 § 1.5, ch 1295 § 1.5, Stats 1975 ch 1231 § 1, ch 1246 § 3, Stats 1976 ch 314 § 1, Stats 1977 ch 650 § 1, effective September 7, 1977, Stats 1978 ch 1217 § 3, ch 1217 § 4, operative July 1, 1979, Stats 1980 ch 519 § 1, Stats 1981 ch 265 § 1, ch 684 § 1, effective September 23, 1981, and repealed, operative January 1, 1982, by its own terms.

**Historical Derivation:** Former Gov C § 6254, as added by Stats 1968 ch 1473 § 39, amended by Stats 1970 ch 1231 § 11.5, ch 1295 § 1.5, Stats 1975 ch 1231 § 1, ch 1246 § 3, Stats 1976 ch 314 § 1, Stats 1977 ch 650 § 1, Stats 1978 ch 1217 § 3, ch 1217 § 4, Stats 1980 ch 519 § 1, Stats 1981 ch 265 § 1, ch 684 § 1.

### Amendments

**1982 Amendment (ch 83):** (1) Amended subd (f) by (a) substituting "state and local law enforcement agencies" for "local law enforcement agencies and the California Highway Commission" in the first sentence; and (b) adding

the second paragraph; and (2) deleted the former last paragraph which read: “This section shall become operative on January 1, 1982.”

**1982 Amendment (ch 1594):** Added subd (q). (As amended by Stats 1982 ch 1594, compared to the section as amended by Stats 1982 ch 83. This section was also amended by an earlier chapter, ch 1492. See Gov C § 9605.)

**1983 Amendment (ch 200):** Added subd (r).

**1983 Amendment (ch 1315):** Added subd (s). (As amended by Stats 1983 ch 1315, compared to the section as amended by Stats 1983 ch 200. This section was also amended by two earlier chapters, chs 621 and 955. See Gov C § 9605.)

**1984 Amendment:** In addition to making technical changes, (1) substituted subd (q) for former subd (q) which read: “(q) Records of state agencies related to activities governed by Articles 2.6, 2.8, and 2.91 of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator’s deliberative processes, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees. All or portions of contracts entered into pursuant to these articles may be exempted from the provisions of this chapter as specified by the terms of each contract.” Nothing in this section is to be construed as preventing any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.”; and (2) added the last two paragraphs.

**1985 Amendment:** (1) Amended the second paragraph of subd (q) by adding (a) “Except for the portion of a contract containing the rates of payment,”; and (b) “, except for any portion containing the rates of payment,”; and (2) added the third and fourth paragraphs of subd (q). (As amended by Stats 1985, ch 1218, compared to the section as it read prior to 1985. This section was also amended by an earlier chapter, ch 103. See Gov C § 9605.)

**1986 Amendment:** (1) Deleted “of Title 1 of the Government Code” after “Section 810)” in subd (b); (2) substituted “paragraph (1)” for “subdivision (1)” wherever it appears in subd (d); (3) substituted “as defined by subdivision (c)” for “of violence as defined by subdivision (b)” in the first paragraph of subd (f); and (4) added subd (t).

**1987 Amendment (ch 634):** Added the second and third sentences of subd (f)(2).

**1987 Amendment (ch 635):** Substituted “is to be construed as preventing” for “prevents” in the last two paragraphs.

**1988 Amendment:** (1) Substituted “. However” for “; provided, however, that” at the end of the first sentence of the first paragraph of subd (f); (2) added “273.5,” after “273d” in the first sentence of subd (f)(2); and (3) substituted “. However” for “; provided, however” at the end of the first sentence of subd (h).

**1989 Amendment:** Added “273.5,” in the first sentence of subd (f)(2).

**1990 Amendment:** Added subd (v).

**1991 Amendment (ch 278):** Added subd (w).

**1991 Amendment (ch 607):** In addition to making technical changes, added “422.6, 422.7, or 422.75” wherever it appears in the second paragraph of subd (f)(2).

**1992 Amendment (ch 3):** Added “Subject to the restrictions imposed by Section 841.5 of the Penal Code,” at the beginning of subd (f)(2).

**1992 Amendment (ch 72):** Added “or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code,” in the first sentence of subd (t).

**1992 Amendment (ch 1128):** Added subd (x).

**1993 Amendment (ch 611):** (1) Added “carjacking” after “larceny, robbery,” in the first sentence of subd (f); (2) amended subd (p) by (a) adding “, Chapter 10.5 (commencing with Section 3525, and Chapter 2 (commencing with Section 3560));” and (b) deleting “Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1,” after “of Title 1,” in subd (p); and (3) substituted “firearms issued pursuant to Section 12050 of the Penal Code” for “concealed weapons issued” in subd (u). (As amended by Stats 1993 ch 611, compared to the section as it read prior to 1993. This section was also amended by two earlier chapters, chs 606 and 610. See Gov C § 9605.)

**1993 Amendment (ch 1265):** (1) Deleted “carjacking,” after “larceny, robbery,” in the first sentence of subd (f); (2) substituted “of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1” in subd (p); (3) deleted former subd (v) which read: “(v) Residence addresses contained in licensure applications and registration applications for collection agencies as may be required by the Bureau of Collection and Investigative Services of the Department of Consumer Affairs pursuant to Sections 6876.2, 6877, 6878, and 6894.3 of

the Business and Professions Code.”; (4) redesignated former subs (w) and (x) to be subs (v) and (w); and (5) added subd (x).

**1994 Amendment:** Added (1) “carjacking” after “explosion, larceny, robbery,” in subd (f); and (2) “, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248” in subd (m). (As amended by Stats 1994 ch 1263, compared to the section as it read prior to 1994. This section was also amended by an earlier chapter, ch 82. See Gov C § 9605.)

**1995 Amendment:** In addition to making technical changes, (1) substituted “Sections 6254.7 and 6254.13” for “Section 6254.7” in the introductory clause; (2) deleted “, current address,” after “The full name” in subd (f)(1); (3) amended subd (f)(2) by (a) substituting “and age of the victim” for “, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed” in the first sentence; and (b) adding “220” and “or 646.9” wherever it appears; and (4) added subd (f)(3). (As amended by Stats 1994 ch 778, compared to the section as it read prior to 1994. This section was also amended by two earlier chapters, chs 438 and 777. See Gov C § 9605.)

**1996 Amendment:** (1) Amended subd (f)(2) by substituting (a) “Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” for “Section 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” in the second sentence; and (b) “Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” for “Section 220, 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” in the third sentence; and (2) substituted “Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” for “Section 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” in subd (f)(3).

**1997 Amendment:** Added (1) subd (y); and (2) the third paragraph of subd (y).

**1998 Amendment:** (1) Designated former subd (u) to be subd (u)(1); and (2) added subs (u)(2), (u)(3) and (z).

**2000 Amendment:** (1) Added “261.5,” after “Section 220, 261,” both times it appears in subd (2) and subd (3) of the second paragraph of subd (f); (2) amended subd (u) by adding (a) subdivision designation (u)(1); and (b) subd (u)(2); and (3) added subd (z).

**2001 Amendment:** In addition to making technical changes, (1) added “any of the following” in the introductory clause of subd (d); (2) substituted “Notwithstanding any other provision of this subdivision” for “Other provisions of this subdivision notwithstanding” in the introductory clause of subd (f); (3) amended the first paragraph of subd (q) by substituting (a) “Article” for “Articles” after “governed by”; (b) “Article 2.8” for “2.8”; and (c) “Article 2.9” for “2.9”; and (4) substituted “committee” for “Joint Legislative Audit Committee” in the last paragraph of subd (q) and in subs (v)(4), (w)(3), and (y)(4).

**2002 Amendment:** (1) Added the comma after “Records” in subd (k); and (2) added subd (aa).

**2003 Amendment (ch 230):** (1) Substituted “memorandums” for “memoranda” in subd (a); (2) substituted “database” for “data base” in subd (m); (3) added “or Part 6.4 (commencing with Section 12699.50)” in subd (y)(1); (4) added “or Part 6.4 (commencing with Section 12699.50)” in subd (y)(2)(A); (5) added “or Part 6.4 (commencing with Section 12699.50)” in subd (y)(2)(B); and (6) added subd (y)(5).

**2003 Amendment (ch 673):** Added subd (bb).

**2004 Amendment (ch 8):** (1) Substituted “memoranda” for “memorandums” in subd (a); (2) amended subd (f) by (a) substituting “subdivision (b) of Section 13951” for “subdivision (c) of Section 13960” in the first paragraph; and (b) added the second paragraph; (3) substituted “maintained by the Governor’s Legal Affairs Secretary,” for “maintained by the Governor’s legal affairs secretary,” in subd (k)(1); (4) substituted “or for a state or local agency” for “a local agency” in subd (aa); and (5) added subs (bb)(1)–(4).

**2004 Amendment (ch 228):** (1) Amended subd (f)(3) by (a) substituting “may not be used directly or indirectly, or furnished to another, for “shall not be used directly or indirectly”; and (b) adding the last sentence; (2) amended the last paragraph of subd (q) by substituting (a) “Legislative Analyst’s Office” for “Legislative Analyst’s office” at the end of the first sentence; and (b) “that” for “the” in the last sentence; and (3) added subd (cc).

**2004 Amendment (ch 937):** (1) Amended subd (f)(3) by (a) substituting “may not” for “shall not” before “be used directly or indirectly”; and (b) adding the last sentence; (2) amended the last paragraph of subd (q) by substituting (a) “Legislative Analyst’s Office” for “Legislative Analyst’s office” at the end of the first sentence; and (b) “that” for “the” in the last sentence; and (3) added subd (cc).

**2005 Amendment (ch 476):** (1) Substituted “Analyst’s Office” for “Analyst’s Office” in the fifth sentence of subd (q); and (2) substituted subd (bb) for the former subd (bb) which read: “(bb)(1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion

of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.”(2)(A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.”(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.”(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.”(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).”

**2005 Amendment (ch 670):** Amended subd (r) by adding (1) “and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code” after “sacred places”; (2) “, or in the possession of,” after “maintained by”; and (3) “, another state agency, or a local agency” after “Native American Heritage Commission”.

**2006 Amendment:** (1) Substituted “if” for “provided that” after “course of business,” in subd (a); (2) amended subd (f) by (a) substituting “. However,” for “, except that” after “or licensing purposes”; and (b) substituting “reflects” for “reflect” after “investigative files that”; (3) substituted “However,” for “, except that” after “Business and Professions Code.” in subd (f)(3); (4) substituted “. However,” for “, provided that” after “Legal Affairs Secretary” in subd (l); (5) substituted “products” for “product” after “meeting minutes, research, work” in subd (p); (6) substituted “If” for “In the event that” after “are fully executed.” in subd (q); (7) substituted “If” for “In the event that” at the beginning of subd (v)(2)(B); (8) deleted “for agreement” after “and that reveal” in subd (w)(1); (9) substituted “is” for “are” after “amendments to a contract” in subd (w)(3); (10) added “and” after “of the Insurance Code,” in subd (y)(1); (11) added subd (bb); (12) redesignated former subd (bb) to be subd (cc); and (13) added “Act (29 U.S.C. Sec. 158)” after “National Labor Relations” in subd (cc).

**2007 Amendment (ch 577):** (1) Added “Division 14 of Title 3 of” in subd (g); (2) deleted “of Title 1” after “of Division 4” in the first sentence of subd (p); (3) substituted “State Department of Health Care Services” for “State Department of Health Services” in subd (s); (4) amended the first sentence of subd (t) by (a) adding “Part 2 of” after “of Chapter 5 of”; and (b) deleting “and 11512” after “Section 10133”; (5) substituted “Managed Risk Medical Insurance Board” for “Major Risk Medical Insurance Program” in subds (v)(1) and (w)(1); (6) substituted “entities contracting or seeking to contract with the board” for “health plans” in subds (v)(1) and (y)(1); (7) substituted “their effective dates” for “they have been fully executed” at the end of subds (v)(2)(A) and (y)(2)(A); (8) deleted “for health coverage” after “If a contract” in subd (v)(2)(B); (9) substituted “Chapter 8” for “Chapter 14” in subds (w)(1) and (w)(2); (10) substituted “If” for “In the event of” at the beginning of subd (y)(2)(B); (11) deleted “with health plans” after “communications, negotiations” wherever it appears in subd (y)(5); and (12) redesignated former subds (bb) and (cc) to be subds (ab) and (ac).

**2007 Amendment (ch 578):** (1) Amended subd (f)(2) by (a) substituting “Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9 or 647.6” for “Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9”; and (b) substituting “in any of the sections of the Penal Code set forth in this subdivision” for “by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code”; (2) substituted “Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6” for “Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9” in subd (f)(3); (3) added “of Division 14 of Title 3” in subd (g); (4) deleted “of Title 1” after “of Division 4” in subd (p); (5) substituted “State Department of Health Care Services” for “State Department of Health Services” in subd (s); (6) amended subd (t) by (a) adding “of Part 2” after “of, Chapter 5”; and (b) deleting “or 11512” after “Section 10133”; (7) amended subd (v)(1) by (a) substituting “Managed Risk Medical Insurance Board” for “Major Risk Medical Insurance Program”; and (b) substituting “entities contracting or seeking to contract with the board” for “health plans”; (8) substituted “their effective dates” for

“they have been fully executed” in subd (v)(2)(A); **(9)** deleted “for health coverage” after “If a contract” in subd (v)(2)(B); **(10)** amended subd (w)(1) by **(a)** substituting “Managed Risk Medical Insurance Board” for “Major Risk Medical Insurance Program”; and **(b)** substituting “Chapter 8” for “Chapter 14”; **(11)** substituted “Chapter 8” for “Chapter 14” in subd (w)(2); **(12)** substituted “entities contracting or seeking to contract with the board” for “health plans” in subd (y)(1); **(13)** substituted “their effective dates” for “they have been fully executed” in subd (y)(2)(A); **(14)** substituted “If” for “In the event that” in subd (y)(2)(B); **(15)** deleted “with health plans” after “communications, negotiations” both times it appears in subd (y)(5); and **(16)** redesignated former subds (bb) and (cc) to be subds (ab) and (ac).

**2008 Amendment (ch 344):** Added subd (ad).

**2008 Amendment (ch 372):** **(1)** Amended subd (f) by **(a)** adding “the California Emergency Management Agency,” in the first sentence of the first paragraph; and **(b)** added “236.1” to the Section list in subds (f)(2) and (f)(3); **(2)** substituted “contracts or amendments to the contracts are” for “contract or amendments to a contract is” in subds (v)(4) and (w)(3); and **(3)** substituted “Emergency Management Agency” for “Office of Homeland Security” in subd (ab). (As amended by Stats 2008 ch 372, compared to ch 344. This section was also amended by an earlier chapter, ch 358. See Gov C § 9605.)

**2010 Amendment:** **(1)** Amended subd (v)(1) by **(a)** substituting a comma for “and” after “Section 12695”; **(b)** adding “, Part 6.6 (commencing with Section 12739.5), and Part 6.7 (commencing with Section 12739.70)”; **(c)** substituting “any of the following:” for “the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.”; and **(d)** adding subds (v)(1)(A) and (v)(1)(B); **(2)** amended subd (v)(2)(A) by **(a)** deleting “for health coverage” after “payment, contracts”; **(b)** substituting a comma for “or” after “Section 12695”; and **(c)** adding “, Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70)”; **(3)** substituted “effective date of the amendment” for “amendment has been fully executed” in subd (v)(2)(B); **(4)** amended subd (y)(1) by **(a)** substituting “any of the following:” for “the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.”; and **(b)** adding subds (y)(1)(A) and (y)(1)(B); and **(5)** substituted “effective date of the amendment” for “amendment has been fully executed” in subd (y)(2)(B).

**2011 Amendment:** **(1)** Added subdivision designations (q)(1)-(q)(4); **(2)** substituted “Section 26150, 26155, 26170, or 26215” for “Section 12050” in subds (u)(1)-(u)(3); and **(3)** substituted “subdivision (f)” for “subdivision (c)” in subd (z).

**2012 Amendment:** **(1)** Added “prosecutors, public defenders,” in subds (u)(2) and (u)(3); **(2)** deleted “provision of” after “Notwithstanding any other” in the first sentence of subds (v)(4), (w)(3), (y)(4), and (ad)(7)(D); **(3)** substituted “This paragraph is not” for “Nothing in this paragraph is” in subd (ad)(7)(E); and **(4)** substituted “This section shall not prevent” for “Nothing in this section prevents” in last two paragraphs.

**2013 Amendment (ch 23):** **(1)** Amended the introductory clause of subd (v)(1) by adding **(a)** “and the State Department of Health Care Services”; and **(b)** “and Chapter 2 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.”; **(2)** added “or the department” wherever it appears in subd (v)(1)(A); **(3)** amended subd (v)(1)(B) by adding **(a)** “or the department or its staff”; and **(b)** “their” after “or training to”; and **(4)** added “or Chapter 2.2 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code,” in subd (v)(2)(A).

**2013 Amendment (ch 352):** Substituted “Office of Emergency Services” for “California Emergency Management Agency,” in the first sentence of the first paragraph of subd (f).

**2014 Amendment:** **(1)** Amended the introductory clause by **(a)** substituting “this chapter does not require the disclosure of” for “nothing in this chapter shall be construed to require disclosure of records that are”; and **(b)** adding “records”; **(2)** deleted “provision of” after “Notwithstanding any other” in the first sentence of subd (q)(4); **(3)** amended the introductory clause of subd (v)(1) by substituting **(a)** “or Part 6.7” for “and Part 6.7”; **(b)** “or Chapter 2” for “and Chapter 2”; and **(c)** “(commencing with Section 15810) or Chapter 4 (commencing with Section 15870)” for “(commencing with Section 15850)”; **(4)** added “or department” wherever it appears in subds (v)(1)(A) and (y)(1)(A); **(5)** substituted “Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870)” for “Chapter 2.2 (commencing with Section 15850)” in subd (v)(2)(A); **(6)** amended the introductory clause of subd (y)(1) by **(a)** adding “and the State Department of Health Care Services”; and **(b)** substituting “or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3

of Division 9 of, the Welfare and Institutions Code, if the records” for “, and that”; (7) added “the department or its staff, or” in subd (y)(1)(B); (8) added “or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code” in subd (y)(2)(A); (9) added “or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code,” in subd (y)(2)(B); and (10) amended subd (y)(5) by adding (a) “, or the department or its staff,”; and (b) “or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code”.

**2015 Amendment:** (1) Added “Records” in the introductory clause of subd (d); (2) substituted “this division does not” for “nothing in this division shall” in the last sentence of the first paragraph of subd (f); (3) amended subd (f)(3) by substituting (a) “if the requester” for “where the requester” in the first sentence; (b) “shall not” for “may not” in the third sentence; and (c) “This paragraph shall not” for “Nothing in this paragraph shall” in the last sentence; (4) substituted “if an authorized officer” for “where an authorized officer” in the first sentence of subd (o); (5) substituted “This subdivision shall not” for “Nothing in this subdivision shall” in the last sentence of subd (p); (6) substituted “Code or” for “Codeor” in the introductory clause of subd (y)(1); (7) substituted “Office of Emergency Services” for “California Emergency Management Agency” in the first sentence of subd (ab); and (8) substituted “does not” for “shall not” in the last two paragraphs of the section.

**2016 Amendment:** (1) Substituted “subdivision” for “division” in the last sentence of the first paragraph of subd (f); (2) added subdivision designation (f)(2)(A); (3) amended subd (f)(2)(A) by (a) deleting “236.1,” after “Section 220,”; and (b) substituting “288.4,” for “(as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election)”; (4) added subd (f)(2)(B); (5) substituted “288.4,” for “(as added by Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006, statewide general election)” in the second sentence of subd (f)(3); and (6) substituted “California State Auditor’s Office” for “the Bureau of State Audits” in subds (ad)(5)(B) and (ad)(6)(B).

**2017 Amendment:** (1) Added the subd (p)(1) designation; (2) substituted “paragraph” for “subdivision” twice in the second sentence of subd (p)(1); and (3) added subd (p)(2).

**2018 Amendment (ch 960):** (1) Added subd (f)(4); (2) substituted “former Part 6.3” for “Part 6.3” and “former Part 6.5” for “Part 6.5” in subd (v)(1) and subd (v)(2)(A); (3) substituted “former Part 6.4” for “Part 6.4” in subd (y)(1), subd (y)(2)(A) and subd (y)(2)(B); and (4) substituted “including,” for “including” in subd (ad)(5)(A).

**2019 Amendment (ch 25):** (1) Substituted “their” for “his or her” in subd (f)(4)(B)(ii)(I); (2) added “estimated date for the disclosure of the” in the first sentence of subd (f)(4)(B)(iii); (3) substituted “their” for “his or her” in subd (n) and in subd (u)(1); (4) added “former” preceding “Part 6.4” in subd (y)(5); and (5) substituted “their” for “his or her” in subd (ad)(6)(A)(i).

**2019 Amendment (ch 385):** Added “and Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code,” in the first sentence of subd (p)(1).

## NOTES OF DECISIONS

### 1. Generally

There are three statutory conditions for exemption from the California Public Records Act, pursuant to Gov C § 6254, subd. (a) (preliminary drafts of agency memoranda not normally retained in the ordinary course of business): the record sought must be a preliminary draft, note, or memorandum; not retained by the public agency in the ordinary course of business; and the public interest in withholding must clearly outweigh the public interest in disclosure. The purpose of the exemption is to provide a measure of agency privacy for written discourse concerning matters pending administrative action. *Citizens for a Better Environment v. Department of Food & Agriculture* (Cal. App. 3d Dist. Aug. 26, 1985), 171 Cal. App. 3d 704, 217 Cal. Rptr. 504, 1985 Cal. App. LEXIS 2446.

With regard to the “memorandum” exemption to the federal Freedom of Information Act (FOIA), an exemption protects the deliberative materials produced in the process of making agency decisions, but not factual materials, and not agency law. The purpose of the exception is to foster robust discussion within the agency of policy questions attending pending administrative decisions. The means to achieve this is an exemption from disclosure of those portions of predecisional writings containing advisory opinions, recommendations, and policy deliberations. However, memoranda consisting only of compiled factual material or purely factual material contained in deliberative memoranda and severable from its context are not exempt from disclosure. Moreover, the text and context of Gov C § 6254, subd. (a) (exemption from disclosure as to preliminary drafts of agency memoranda not normally retained in ordinary course of business), pursuant to the California Public Records Act, suggest that it has

essentially the same purpose as its FOIA cognate. Thus, to the extent permitted by the express statutory language, a reviewing court may properly look to the reasoning of the analogous federal case law in construing Gov C § 6254, subd. (a). *Citizens for a Better Environment v. Department of Food & Agriculture* (Cal. App. 3d Dist. Aug. 26, 1985), 171 Cal. App. 3d 704, 217 Cal. Rptr. 504, 1985 Cal. App. LEXIS 2446.

The Public Records Act (Gov C § 6250 et seq.) contains a number of exemptions from disclosure. Because of the strong public policy in favor of disclosure of public records, such records must be disclosed unless they come within one or more of the categories of documents exempt from compelled disclosure (Gov C § 6254). These exemptions are construed narrowly, and the burden is on the public agency to show that the records should not be disclosed. *Rogers v. Superior Court* (Cal. App. 2d Dist. Sept. 14, 1993), 19 Cal. App. 4th 469, 23 Cal. Rptr. 2d 412, 1993 Cal. App. LEXIS 1028.

## 2. Legislative Intent

Financial data supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the company pursuant to an exclusive contract between the city and the company for the collection of waste and garbage within the city limits, was not exempt from disclosure under Gov C § 6254, subd. (n), which exempts from disclosure “[s]tatements of personal worth or financial data required by a licensing agency and filed by an applicant with such licensing agency to establish his personal qualifications for the license, certificate, or permit applied for.” The term license within the meaning of § 6254, subd. (n), must be construed narrowly to give effect to the legislative intent that favors disclosure over secrecy in government. If the Legislature had intended a broad exemption to apply to any financial statements then it need not have hinged the exemption to those filing applications for licensing agencies. Although it makes good sense to exempt license applicants, that situation was distinct from the type of contractual relationship that existed between the city and the disposal company. *San Gabriel Tribune v. Superior Court* (Cal. App. 2d Dist. June 9, 1983), 143 Cal. App. 3d 762, 192 Cal. Rptr. 415, 1983 Cal. App. LEXIS 1811.

Cal Const., Art. I, § 1, guarantees all persons the inalienable right to privacy. Nonetheless, the public and the press have a right to review the government’s conduct of its business. The Legislature, mindful of the right of individuals to privacy, has deemed the public’s right of access to information concerning the conduct of public business a fundamental and necessary interest of citizenship. Consequently, in enacting the Public Records Act (Gov C § 6250 et seq.), the Legislature balanced the individual’s privacy interest with the right to know about the conduct of public business. The specific exemptions from this general requirement of disclosure, which are listed in Gov C § 6254, are construed narrowly to insure maximum disclosure of the conduct of governmental operations. *New York Times Co. v. Superior Court* (Cal. App. 2d Dist. Mar. 23, 1990), 218 Cal. App. 3d 1579, 268 Cal. Rptr. 21, 1990 Cal. App. LEXIS 282.

Considering the language of Pen C § 832.8(a) as a whole, the legislature did not intend the words “personal data” to carry their broadest possible meaning, encompassing any and all information related to a particular officer, and had the legislature intended Pen C § 832.7 to change the law with respect to disclosure of public salary information, one would expect to see specific language to that effect in the statute because the legislature easily could have added “salary” to the list of personnel records set forth in Pen C § 832.8. The amount of salary paid to a particular individual provides information concerning the governmental agency in which the public has a legitimate and traditionally recognized interest. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

## 3. Construction with Other Law

The doctrine of equal protection did not require release of the records of a sheriff’s department investigation of a shooting incident involving several juveniles to the mother of one of the minors for her use in a civil action arising out of the incident without the necessity of her obtaining a juvenile court order for inspection of such records as required by Welf. & Inst. Code, § 827. The promotion of the rehabilitative purposes of the juvenile law provides more than a valid reason to require the confidentiality of juvenile records under the statute, which provides a simple procedure (petition for a court order) under which the mother could obtain the report but yet protect the other minors involved. *Wescott v. County of Yuba* (Cal. App. 3d Dist. Apr. 1, 1980), 104 Cal. App. 3d 103, 163 Cal. Rptr. 385, 1980 Cal. App. LEXIS 1657.

Gov C § 6254, subd. (b) is not redundant of subdivision (k), through which CCP § 2018 (repealed) applies and protects attorney work product, but rather subdivision (b) confers upon public agencies a broader exemption from

disclosure by protecting the “work product” generated by a public agency in anticipation of litigation. Nor is it redundant of the attorney-client privilege codified in Ev C § 950 et seq. and made applicable to the CPRA through subdivision (k) of Gov C § 6254. Gov C § 6254, subd. (b), refers to litigation records generally, while subdivision (k) specifically refers to matters of privilege, including the attorney-client privilege. *Fairley v. Superior Court* (Cal. App. 2d Dist. Sept. 30, 1998), 66 Cal. App. 4th 1414, 78 Cal. Rptr. 2d 648, 1998 Cal. App. LEXIS 823.

Gov C § 6254, subd. (b) is not redundant of subdivision (k), through which CCP § 2018 (repealed) applies and protects attorney work product, but rather subdivision (b) confers upon public agencies a broader exemption from disclosure by protecting the “work product” generated by a public agency in anticipation of litigation. Nor is it redundant of the attorney-client privilege codified in Ev C § 950 et seq. and made applicable to the CPRA through subdivision (k) of Gov C § 6254. Gov C § 6254, subd. (b), refers to litigation records generally, while subdivision (k) specifically refers to matters of privilege, including the attorney-client privilege. *Fairley v. Superior Court* (Cal. App. 2d Dist. Sept. 30, 1998), 66 Cal. App. 4th 1414, 78 Cal. Rptr. 2d 648, 1998 Cal. App. LEXIS 823.

Because an insurer was not entitled to invoke the trade secret privilege under Ev C § 1060 to prevent the disclosure of its Record A data under Ins. Code § 1861.07, given that the statute did not incorporate the exemption from disclosure found in Gov C § 6254(k), the appellate court properly affirmed the grant of summary judgment in favor of the state insurance commissioner and two organizations. *State Farm Mutual Automobile Ins. Co. v. Garamendi* (Cal. Apr. 26, 2004), 32 Cal. 4th 1029, 12 Cal. Rptr. 3d 343, 88 P.3d 71, 2004 Cal. LEXIS 3616, modified, (Cal. June 9, 2004), 2004 Cal. LEXIS 4790.

Exemptions listed in Ins. Code § 1861.07 are meant to be examples, rather than an exhaustive listing of all those statutory exemptions that are inapplicable, and by giving the public access to all information provided to the California Insurance Commissioner pursuant to Ins. Code art. 10, Ins. Code §§ 1861.01-1861.14, the court’s construction of Ins. Code § 1861.07 is consistent with Cal. Proposition 103’s goal of fostering consumer participation in the rate-setting process; the language of Ins. Code § 1861.07 requires public disclosure of Record A data under Cal. Code Regs. tit. 10, § 2646.6(b), and the fact that insurers can invoke the trade secret privilege pursuant to Ins. Code § 1861.08 does not dictate a different result, and the court concludes that Ins. Code § 1861.07 does not incorporate the exemption to disclosure found in Gov C § 6254(k) and trade secret information in therefore not exempt from disclosure. *State Farm Mutual Automobile Ins. Co. v. Garamendi* (Cal. Apr. 26, 2004), 32 Cal. 4th 1029, 12 Cal. Rptr. 3d 343, 88 P.3d 71, 2004 Cal. LEXIS 3616, modified, (Cal. June 9, 2004), 2004 Cal. LEXIS 4790.

Only information subject to Pen C § 832.7 and incorporated into Gov C § 6254(k) of the California Public Records Act (CPRA) is the written material maintained in the peace officer’s personnel file or oral testimony that is a recitation from material in that file, and testimony of a percipient witness to events, or from documents not maintained in the personnel file, is not information subject to Pen C § 832.7 even though that information may be identical to or duplicative of information in the personnel file; thus, Gov C § 6254(k) does not exempt from the required disclosures under the CPRA information relating to a disciplinary appeal from sources other than the peace officer’s personnel file. *The Copley Press, Inc. v. Superior Court* (Cal. App. 4th Dist. Sept. 16, 2004), 122 Cal. App. 4th 489, 18 Cal. Rptr. 3d 657, 2004 Cal. App. LEXIS 1553, review granted, depublished, (Cal. Dec. 1, 2004), 21 Cal. Rptr. 3d 609, 101 P.3d 506, 2004 Cal. LEXIS 11345, rev’d, (Cal. Aug. 31, 2006), 39 Cal. 4th 1272, 48 Cal. Rptr. 3d 183, 141 P.3d 288, 2006 Cal. LEXIS 10229.

Because records of appeal of a county civil service commission (CSC) that were not documents from a personnel file or recited from documents in a personnel file were outside the definitional limitations applicable to Pen C § 832.7, a California Public Records Act (CPRA) request for those records by a company could not be denied under Gov C § 6254(k)’s exemption, and the exemption under § 6254(c) could not be invoked to shield the record of the appeal hearing unless that information was within the limitation of Pen C § 832.8, and although information from an appeal proceeding could be added to an officer’s file, the records themselves did not become personnel files under § 832.8; the court noted that the CPRA still permitted the CSC to withhold records, if warranted, pursuant to Gov C § 6255, the CSC erred in denying the company’s request under Gov C § 6254, and the court granted the company’s writ petition insofar as it sought the release of a peace officer’s identity and other information, redacted to exclude information within Pen C §§ 832.7, 832.8. *The Copley Press, Inc. v. Superior Court* (Cal. App. 4th Dist. Sept. 16, 2004), 122 Cal. App. 4th 489, 18 Cal. Rptr. 3d 657, 2004 Cal. App. LEXIS 1553, review granted, depublished, (Cal. Dec. 1, 2004), 21 Cal. Rptr. 3d 609, 101 P.3d 506, 2004 Cal. LEXIS 11345, rev’d, (Cal. Aug. 31, 2006), 39 Cal. 4th 1272, 48 Cal. Rptr. 3d 183, 141 P.3d 288, 2006 Cal. LEXIS 10229.

Publisher could not obtain disciplinary records that included a peace officer’s name because the county civil service commission’s records of an appeal hearing were exempt from disclosure under Gov C § 6254(k); the records were deemed confidential files of the employing agency within the meaning of Pen C §§ 832.5, 832.8, a peace



officer's identity is confidential under Pen C § 832.7, and the application of § 832.7 is not limited to criminal and civil proceedings, *Copley Press, Inc. v. Superior Court* (Cal. Aug. 31, 2006), 39 Cal. 4th 1272, 48 Cal. Rptr. 3d 183, 141 P.3d 288, 2006 Cal. LEXIS 10229.

Pen C §§ 832.7 and 832.8 do not mandate that city payroll records reflecting peace officer salary information be excluded from disclosure merely because some of the facts relied upon in determining the amount of salary may be recorded in the agency's personnel files. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

Term "records relating" to the kinds of information specified in Pen C § 832.8 is more reasonably understood as a reference to records that actually reflect the enumerated items, and records of salary expenditures do not reflect any of the items enumerated in the statute. Thus, Pen C §§ 832.7 and 832.8 do not mandate that peace officer salary information be excluded from disclosure under the California Public Records Act, Gov C § 6250 et seq. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

Additional information briefly discussing prehistoric Native American artifacts did not require recirculation of a draft environmental impact report under Pub Res C §§ 21092.1, 21166 because the changes were not significant in light of disclosure restrictions in Gov C § 6254(r), Pub Res C §§ 5097.9, 5097.993, and Cal. Code Regs., tit. 14, § 15120(d). *Clover Valley Foundation v. City of Rocklin* (Cal. App. 3d Dist. July 8, 2011), 197 Cal. App. 4th 200, 128 Cal. Rptr. 3d 733, 2011 Cal. App. LEXIS 884.

Where citations for care violations in state facilities for mentally ill and developmentally disabled patients are produced as public records, to harmonize the accessibility provisions of the Long-Term Care Act with the confidentiality provisions of the Lanterman Act: (1) names must be deleted, other than inspectors and investigators; (2) the nature of the violation must be described with particularity; (3) the patient's mental, physical, and medical conditions, history of mental disability or disorder, and risk from the violation may not be disclosed; (4) good faith efforts by the facility to prevent the violation from occurring and the licensee's history of compliance may be disclosed. *State Dept. of Public Health v. Superior Court* (Cal. App. 3d Dist. Sept. 18, 2013), 219 Cal. App. 4th 966, 162 Cal. Rptr. 3d 324, 2013 Cal. App. LEXIS 741, modified, (Cal. App. 3d Dist. Oct. 9, 2013), 2013 Cal. App. LEXIS 806, review granted, depublished, (Cal. Jan. 29, 2014), 167 Cal. Rptr. 3d 107, 316 P.3d 1217, 2014 Cal. LEXIS 734, rev'd, superseded, (Cal. Feb. 19, 2015), 60 Cal. 4th 940, 184 Cal. Rptr. 3d 60, 342 P.3d 1217, 2015 Cal. LEXIS 954.

#### 4. Procedure

In actions seeking reimbursement from the State of California and the California Highway Patrol for allegedly illegal charges made for copies of traffic accident reports and an injunction against such practice, the trial court properly sustained defendants' demurrers, where, though the reports were public records within the meaning of Gov C § 6252, subd. (d), and thus subject to the limitation of former Gov C § 6257 (see now Gov C § 6253), as to charges for copies, the complaints failed to allege that plaintiffs were persons entitled, under Gov C § 6254, subd. (f), and Veh C § 20012, to such otherwise confidential information. However, the court should have granted plaintiffs leave to amend to allege such entitlement if the facts permitted. *Vallejos v. California Highway Patrol* (Cal. App. 2d Dist. Feb. 26, 1979), 89 Cal. App. 3d 781, 152 Cal. Rptr. 846, 1979 Cal. App. LEXIS 1424.

In the case of a third party seeking to challenge an agency's decision to disclose documents, a petition for writ of mandate is the appropriate procedure to present the issue to the court. *Marken v. Santa Monica-Malibu Unified School Dist.* (Cal. App. 2d Dist. Jan. 24, 2012), 202 Cal. App. 4th 1250, 136 Cal. Rptr. 3d 395, 2012 Cal. App. LEXIS 47.

#### 5. Police and Correctional Matters

In seeking to avoid excessive and therefore prejudicial publicity in a pending prosecution, the trial court's order that copies of the transcript of the grand jury proceedings in possession of the clerk remain sealed and which restricted and limited the disclosure of the transcript contents by the clerk and district attorney to unauthorized personnel, specifically newspapers, was unreasonable, where the effect of the order was to permanently deny the right of public inspection of the grand jury records in question. *Craemer v. Superior Court of Marin County* (Cal. App. 1st Dist. Aug. 27, 1968), 265 Cal. App. 2d 216, 71 Cal. Rptr. 193, 1968 Cal. App. LEXIS 1617.

In keeping with a trial judge's duty to insure that a defendant will receive a fair trial the judge may, in order to prevent even the probability of unfairness, make such orders as are reasonably designed to avert improper prejudice

to indicted defendants, and, accordingly, a proper order can require that grand jury transcripts not be disclosed to any person (other than those specifically mentioned in Pen C § 938.1) until a specified reasonable period of time after a copy thereof has been delivered to the defendant, provided that if the defendant, during such time, shall move the court that such transcript, or any portion thereof, not be available for public inspection pending trial, such time shall be extended subject to the court's ruling on such motion. *Craemer v. Superior Court of Marin County* (Cal. App. 1st Dist. Aug. 27, 1968), 265 Cal. App. 2d 216, 71 Cal. Rptr. 193, 1968 Cal. App. LEXIS 1617.

Gov C § 6254, subd (f), exempting from disclosure records used for correctional, law enforcement, or licensing purposes, applies only when the prospect of enforcement proceedings is concrete and definite; the exemption does not apply when an agency merely labels its file "investigatory" and suggests that enforcement proceedings may be initiated at some unspecified future date or were previously considered. *Uribe v. Howie* (Cal. App. 4th Dist. Aug. 10, 1971), 19 Cal. App. 3d 194, 96 Cal. Rptr. 493, 1971 Cal. App. LEXIS 1271.

Gov C § 6254, subd. (f), exempting from disclosure all public files compiled for law enforcement purposes, was not applicable to files maintained by the Division of Industrial Safety which were the subject of a discovery order in personal injury and wrongful death actions arising out of the collapse of a bridge under construction. While the Division of Industrial Safety does make investigations in the course of enforcement of certain aspects of the California Occupational Safety and Health Act of 1973, and undoubtedly compiles files of its investigations, all of such files are not necessarily files compiled for "law enforcement purposes" within the meaning of the subdivision. The adjective "law enforcement," as used in the subdivision, refers to law enforcement in the traditional sense, that is, to the enforcement of penal statutes, etc., and unless there is a concrete and definite prospect of such criminal law enforcement, the subdivision does not apply. Furthermore, the terms "law enforcement" and "investigatory files" would not be given the same interpretations those terms have been given in the regulations of the United States Department of Labor, since the interpretations reflect the point of view of the agency and have not been approved by the federal courts. *State of California ex rel. Division of Industrial Safety v. Superior Court* (Cal. App. 2d Dist. Nov. 27, 1974), 43 Cal. App. 3d 778, 117 Cal. Rptr. 726, 1974 Cal. App. LEXIS 1355.

The Public Records Act which establishes a general right of public access to governmental documents does not authorize persons with arrest records to have access to state arrest record information furnished to a city by the Attorney General and Department of Justice, since certain documents in the possession of a municipality are expressly exempt from disclosure under Gov C § 6254 including records of intelligence information or security procedures of the office of the Attorney General and the Department of Justice, or any such investigatory or security files compiled for correctional or law enforcement purposes. Furthermore, Pen C §§ 11120–11127, dealing with the access of private individuals to their arrest records, are special legislation and they take precedence over any general legislation such as the Public Records Act. *Younger v. Berkeley City Council* (Cal. App. 1st Dist. Mar. 7, 1975), 45 Cal. App. 3d 825, 119 Cal. Rptr. 830, 1975 Cal. App. LEXIS 1734.

A church's verified complaint to require disclosure of any records a police department maintained of its activities, and its declarations and documents filed in support of its motion for temporary injunction, which was denied, clearly established that the records sought, if they in fact existed, were of the type embraced in Gov C § 6254, subd. (f), exempt as records of "intelligence information," where the complaint referred repeatedly to "information, documents, reports and records" allegedly maintained by the police department relating to the church, where, in oral argument on the motion for preliminary injunction, the church's attorney admitted that "the statutory intent relating to intelligence files and relating to investigatory files is that they are exempt," and where it was plain that the records of "intelligence information" requested fell within the ambit of the exemption. *Los Angeles Police Dept. v. Superior Court* (Cal. App. 2d Dist. Jan. 5, 1977), 65 Cal. App. 3d 661, 135 Cal. Rptr. 575, 1977 Cal. App. LEXIS 1076.

Interrogatories that seek information about records exempt from public disclosure, either as "intelligence information" exempt under Gov C § 6254, subd. (f), or as exempt in the public interest, are not permitted. Ancillary discovery through written interrogatories is not permissible to determine whether "intelligence information" has been gathered by police intelligence divisions, whether a file is maintained therefore, or the names and titles of persons who might have reviewed the file. *Los Angeles Police Dept. v. Superior Court* (Cal. App. 2d Dist. Jan. 5, 1977), 65 Cal. App. 3d 661, 135 Cal. Rptr. 575, 1977 Cal. App. LEXIS 1076.

Disclosure of a public entity's investigatory or security records is not prohibited under Gov C § 6254, subd. (f), unless the agency itself asserts a privilege under that section. Thus, police department employees were not entitled to an injunction prohibiting disclosure of records by the police chief to a citizens' review commission on the basis of privilege under Gov C § 6254, subd. (f), where it did not appear that the city or the department had asserted any privilege of nondisclosure. *Berkeley Police Assn. v. City of Berkeley* (Cal. App. 1st Dist. Dec. 21, 1977), 76 Cal. App. 3d 931, 143 Cal. Rptr. 255, 1977 Cal. App. LEXIS 2128.

In an action under the Public Records Act (Gov C §§ 6250 et seq.), to compel the disclosure of various documents utilized by the California Highway Patrol in training its officers, the trial court properly exempted from disclosure matters dealing with security and safety procedures of the highway patrol in the performance of its police function (Gov C § 6254, subd. (f) (exemption for specified police records). *Northern Cal. Police Practices Project v. Craig* (Cal. App. 3d Dist. Mar. 6, 1979), 90 Cal. App. 3d 116, 153 Cal. Rptr. 173, 1979 Cal. App. LEXIS 1457.

Personal identifiers contained in certain law enforcement documents were not exempt from disclosure under Gov C § 6254, subd. (c), since the exemption from disclosure provided by such subdivision is confined to "personnel, medical, or similar files." However, they were exempt under a similar exemption for personal identifiers which was read into the "intelligence information" exemption from disclosure provided by Gov C § 6254, subd. (f). *American Civil Liberties Union Foundation v. Deukmejian* (Cal. Sept. 27, 1982), 32 Cal. 3d 440, 186 Cal. Rptr. 235, 651 P.2d 822, 1982 Cal. LEXIS 229.

In an action under the Public Records Act (Gov C §§ 6250 et seq.) to compel disclosure of certain index cards compiled by law enforcement departments which listed organized crime suspects, the trial court erred in concluding the exemption from disclosure accorded intelligence information (Gov C § 6254, subd. (f)) was confined to personal identifiers and information which might reveal confidential sources. While not exempting all information reasonably related to criminal activity, the "intelligence information" exemption also bars the disclosure of information supplied in confidence, even if such information does not reveal the identity of a confidential source. Further, the exclusion of personal identifiers includes information from which the identity of the individual in question might be inferred. *American Civil Liberties Union Foundation v. Deukmejian* (Cal. Sept. 27, 1982), 32 Cal. 3d 440, 186 Cal. Rptr. 235, 651 P.2d 822, 1982 Cal. LEXIS 229.

In invoking the Public Record Act's exemption from disclosure accorded investigatory records compiled for law enforcement purposes (Gov C § 6254, (f)), the requirement that the information sought relate to a definite prospect of enforcement proceedings is applicable only to information which is not itself exempt from compelled disclosure, but claims exemption only as part of an investigatory file. Information independently exempt, such as intelligence information, is not subject to the requirement that it relate to a definite prospect of enforcement proceedings. *American Civil Liberties Union Foundation v. Deukmejian* (Cal. Sept. 27, 1982), 32 Cal. 3d 440, 186 Cal. Rptr. 235, 651 P.2d 822, 1982 Cal. LEXIS 229.

A sheriff's investigation report undertaken at the county's instance to determine the validity of a jail inmate's tort liability claim based on a jailhouse assault was not protected from disclosure by Gov C § 6254, subd. (f) (California Public Records Act), which exempts from disclosure records of complaints or investigations conducted for correctional, law enforcement or licensing purposes. Even if the sheriff's report had law enforcement implications, the exemption is applicable only when the prospect of law enforcement is "concrete and definite." *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (Cal. App. 4th Dist. July 31, 1984), 158 Cal. App. 3d 893, 205 Cal. Rptr. 92, 1984 Cal. App. LEXIS 2371.

Under the California Public Records Act (Gov C §§ 6500 et seq.), exemptions from disclosure of records of complaints or investigations conducted for correctional or law enforcement purposes (Gov C § 6254, subd. (f)) are permissive, not mandatory. Thus, it did not forbid disclosure of investigation reports of an assault on a jail inmate undertaken in connection with a tort claim, and, since disclosure was not forbidden by state law, the absolute privilege of Evi C § 1040, subd. (b)(1), granting governmental entities a privilege against disclosure of information if disclosure is forbidden by a federal or state statute, was not applicable in an action by a newspaper against the county for disclosure of the reports. *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (Cal. App. 4th Dist. July 31, 1984), 158 Cal. App. 3d 893, 205 Cal. Rptr. 92, 1984 Cal. App. LEXIS 2371.

Under Gov C § 6254, subd. (f)(2), which provides an exemption from disclosure for "[r]ecords of complaints to or investigations conducted by...any state or local police agency," a city had a duty to provide information contained in a police report to the public, notwithstanding the report was not the result of a formal, written complaint made by a citizen to the police department, but rather was the result of an independent police investigation. By its terms, § 6254, subd. (f)(2), requires disclosure of information in investigatory files "to the extent such information regarding crimes alleged or committed or any other incident investigated is recorded." The investigation by police was recorded. Therefore, the statute required disclosure of specific information about the investigation. If the language of § 6254, subd. (f)(2), is in any way ambiguous, it should be resolved in favor of the legislative intent of the California Public Records Act (Gov C §§ 6250 et seq.) to maximize disclosure of the conduct of governmental operations. *South Coast Newspapers, Inc. v. City of Oceanside* (Cal. App. 4th Dist. Sept. 24, 1984), 160 Cal. App. 3d 261, 206 Cal. Rptr. 527, 1984 Cal. App. LEXIS 2539.

The 1982 amendments to Gov C § 6254, subd. (f), which exempts from disclosure records of complaints to or investigations conducted by any state or local police agency, enacted as subds. (1) and (2) of § 6254, subd. (f), did not so significantly alter the statute that its federal counterpart, 5 USCS § 552(b)(7), is no longer an appropriate guide to its construction. The effect of these amendments was simply to extend public access to information contained in agency records which are themselves exempt from disclosure by § 6254, subd. (f). The amendments are in keeping with the original, shared purpose of the California Public Records Act (Gov C §§ 6250 et seq.) and the federal Freedom of Information Act (5 USCS § 552) to provide public access to government information. *South Coast Newspapers, Inc. v. City of Oceanside* (Cal. App. 4th Dist. Sept. 24, 1984), 160 Cal. App. 3d 261, 206 Cal. Rptr. 527, 1984 Cal. App. LEXIS 2539.

In a declaratory relief action by a newspaper seeking to inspect or obtain a copy of a police report of an investigation of a high school principal for his alleged failure to report an incident of child abuse, the trial court erred in ruling that the report was absolutely privileged under Gov C § 6254, subd. (f), which exempts from disclosure records of complaints to or investigations by any state or local police agency. Under the California Public Records Act (Gov C §§ 6250 et seq.), the newspaper was entitled to a copy of the report if no confidential sources would be revealed, disclosure would not interfere with enforcement proceedings, no person would be deprived of a fair trial, release of the report would not constitute an unwarranted invasion of privacy, secret police investigative techniques or procedures would not be revealed, and the life or physical safety of law enforcement personnel would not be endangered. Accordingly, the trial court was required to conduct an *in camera* inspection and to release the report or parts thereof, or an accurate edited summary, unless the court found disclosure would result in an invasion of statutorily protected areas of information. *South Coast Newspapers, Inc. v. City of Oceanside* (Cal. App. 4th Dist. Sept. 24, 1984), 160 Cal. App. 3d 261, 206 Cal. Rptr. 527, 1984 Cal. App. LEXIS 2539.

The purpose of the exemption under the California Public Records Act (Gov C §§ 6250 et seq.) regarding police records, as originally enacted, was to allow the law enforcement agency to develop a discretionary policy for disclosure of such records. The addition in 1982 of Gov C § 6254, subd. (f)(1), and Gov C § 6254, subd. (f)(2), specifying information contained within such reports that must be disclosed, had the effect of extending public access to information contained in agency records themselves exempted from disclosure by Gov C § 6254, subd. (f). *City of Santa Rosa v. Press Democrat* (Cal. App. 1st Dist. Dec. 16, 1986), 187 Cal. App. 3d 1315, 232 Cal. Rptr. 445, 1986 Cal. App. LEXIS 2341.

On appeal from a judgment ordering a county sheriff to partially disclose to a newspaper records of disciplinary proceedings against two deputies, the Court of Appeal erred in concluding that the exemption from disclosure under the California Public Records Act (Gov C § 6250 et seq.) for law enforcement investigatory records (Gov C § 6254, subd. (f)) was limited by the criteria set forth in the federal Freedom of Information Act (5 USCS § 552). In drafting Gov C § 6254, subd. (f), the Legislature expressly imposed several precise limitations on the confidentiality of law enforcement investigatory records. Clearly, the Legislature was capable of articulating additional limitations if that is what it intended to do. Further, the Legislature has already enacted appropriate statutory provisions, as part of the California Public Records Act, to address the concerns articulated in the Freedom of Information Act criteria. *Williams v. Superior Court* (Cal. June 7, 1993), 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882, 852 P.2d 377, 1993 Cal. LEXIS 2500.

The California Public Records Act (Gov C §§ 6250 et seq.) is not properly interpreted as giving the custodian of law enforcement records unreviewable power to decide whether Gov C § 6254, subd. (f) (information subject to disclosure from records of complaints to or investigations by law enforcement agencies), requires the disclosure of particular items of information from such records. While Gov C § 6259, expressly mentions only the court's power to order the public official to make the record itself public (Gov C § 6254, subd. (b)), that greater power necessarily includes the lesser. Otherwise, the statutory right of access to information from law enforcement records would be meaningless. *Williams v. Superior Court* (Cal. June 7, 1993), 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882, 852 P.2d 377, 1993 Cal. LEXIS 2500.

On appeal from a judgment ordering a county sheriff to partially disclose to a newspaper records of disciplinary proceedings against two deputies, the Court of Appeal erred in concluding that such records remain exempt only so long as they continue to relate to a "pending" investigation. The exemption for law enforcement investigatory files (Gov C § 6254, subd. (f)) does not terminate with the conclusion of the investigation. Once an investigation has come into being because there is a concrete and definite prospect of enforcement proceedings at that time, materials that relate to the investigation and, thus, properly belong in the file remain subject to the terms of the statute. *Williams v. Superior Court* (Cal. June 7, 1993), 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882, 852 P.2d 377, 1993 Cal. LEXIS 2500.

In a mandate proceeding by a newspaper, the trial court erred in ordering disclosure to plaintiff of records of an internal investigation conducted by a city police department into the actions of a police sergeant (focusing on whether he had improperly used city property, investigated drug use on county property while on duty as a city officer, or used his police status to obtain confidential information from a school). Gov C § 6254, subd. (k), provides that disclosure is not required for public records the disclosure of which is exempted or prohibited pursuant to federal or state law, including the Evidence Code privileges. Pen C § 832.7, subd. (a), provides that peace officer personnel records and records of citizen complaints against law enforcement personnel are confidential and may not be disclosed except by discovery pursuant to Evi C §§ 1043 and 1046. The confidentiality provided by these more specific provisions would be illusory unless incorporated into the California Public Records Act through Gov C § 6254, subd. (k). *City of Hemet v. Superior Court* (Cal. App. 4th Dist. Aug. 24, 1995), 37 Cal. App. 4th 1411, 44 Cal. Rptr. 2d 532, 1995 Cal. App. LEXIS 824.

Amendment to Gov C § 6254(f)(3) (prohibiting release of arrestee addresses only to people who intend to use those addresses for commercial purposes, while allowing release to other people who intend to use the addresses for scholarly, journalistic, political, governmental, or investigative purposes) is an impermissible restriction on commercial speech which violates the First Amendment. *United Reporting Publ'g Corp. v. Lungren* (S.D. Cal. Nov. 27, 1996), 946 F. Supp. 822, 1996 U.S. Dist. LEXIS 17756, *aff'd*, (9th Cir. Cal. June 25, 1998), 146 F.3d 1133, 1998 U.S. App. LEXIS 13549.

Where a person from a minority, seeking all documents relating to any internal investigation and a deputy sheriff's personnel file, filed suit against a county for violations of his civil rights and state law by the deputy, the county could not successfully object to the requested discovery upon the grounds internal investigation reports were protected by Gov C § 6254, Pen C §§ 832 et seq., and Ev C §§ 1040 and 1043 and that disclosure would infringe the deputy because the county failed to demonstrate any statutory or other privacy bar to disclosure of the requested information. *Jackson v. County of Sacramento* (E.D. Cal. Sept. 11, 1997), 175 F.R.D. 653, 1997 U.S. Dist. LEXIS 14615.

The court reversed a judgment for respondent publishing company which provided the names and addresses of recently arrested individuals to its customers, who included attorneys, insurance companies, drug and alcohol counselors, and driving schools. It received this information from petitioner and other California state and local law enforcement agencies until the State amended Gov C § 6254(f)(3) to require that a person requesting an arrestee's address declare that the request is being made for one of five prescribed purposes and that the address will not be used directly or indirectly to sell a product or service. Respondent was not entitled to prevail on a "facial attack" on the statute. At least for the purposes of facial invalidation, the statute was not an abridgment of anyone's right to engage in speech, but simply a law regulating access to information in the government's hands. The government was not prohibiting a speaker from conveying information that the speaker already possessed. California law merely required respondent to qualify under the statute if it wished to obtain arrestees' addresses. California could decide not to give out arrestee information at all without violating the First Amendment. *Los Angeles Police Dep't v. United Reporting Publ'g Corp.* (U.S. Dec. 7, 1999), 528 U.S. 32, 120 S. Ct. 483, 145 L. Ed. 2d 451, 1999 U.S. LEXIS 8239.

The exemption from disclosure for "records of investigation" by local police agencies (Gov C § 6254(f)), as distinct from "investigatory files," was not subject to the qualification that the prospect of enforcement proceedings be concrete and definite. Records of investigation, no less than records of complaints and intelligence information, were exempt on their face, whether or not they were ever included in an investigatory file. Limiting the § 6254(f) exemption only to records of investigation where the likelihood of enforcement had ripened into something concrete and definite would expose to the public the very sensitive investigative stages of determining whether a crime had been committed or who had committed it. However, the records of investigation exemption under § 6254(f) encompassed only those investigations undertaken for the purpose of determining whether a violation of law might occur or had occurred. If a violation or potential violation had been detected, the exemption also extended to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency. Here, the investigation that included a deputy sheriff's decision to stop a motorist and the stop itself were for the purpose of discovering whether a violation of law had occurred and, if so, the circumstances of its commission. Records relating to that investigation were exempt from disclosure by § 6254(f). *Haynie v. Superior Court* (Cal. Oct. 1, 2001), 26 Cal. 4th 1061, 112 Cal. Rptr. 2d 80, 31 P.3d 760, 2001 Cal. LEXIS 6478.

A television network's request for disclosure of the identity of every individual granted a criminal conviction exemption to work in a licensed daycare facility and the identity of each facility employing such individuals was a proper request under the Public Records Act (Gov C § 6250). The state's disclosure in detail of how it operated the exemption process did not satisfy the statutory directive that the public have access to information concerning

the conduct of the people's business. Further, nondisclosure was not compelled under the personnel records exemption (Gov C § 6254(c)), or by Pen C §§ 11105, 11142, which would thereby serve as an underlying basis for nondisclosure under § 6254(k). The network was not seeking information about the convictions suffered by the individuals at issue or any other privileged information. In any event, the fact that an individual suffered a criminal conviction was a matter of public record. Nor was nondisclosure compelled by reason of the "catchall" provision of Gov C § 6255, since the state, which did not set forth any protectable privacy interest of a licensed child care facility which would justify nondisclosure of its identity as a facility which employed an individual who had been granted a criminal conviction exemption, failed to carry its burden. Additionally, to the extent the individuals had any privacy interest in nondisclosure, they subjected themselves to public review by virtue of applying for a license to work at, operate, or own a child care facility. *CBS Broadcasting Inc. v. Superior Court* (Cal. App. 2d Dist. Aug. 21, 2001), 91 Cal. App. 4th 892, 110 Cal. Rptr. 2d 889, 2001 Cal. App. LEXIS 654.

Undisclosed letter directly related to a definite and concrete investigation of an officer and it had no purpose other than to report the deputy DA's thoughts, opinions, and conclusions; thus, the letter was exempt from disclosure under the California Public Records Act, Gov C § 6250 et seq., pursuant to the investigation exemption in Gov C § 6254(f). *Rackauckas v. Superior Court* (Cal. App. 4th Dist. Dec. 9, 2002), 104 Cal. App. 4th 169, 128 Cal. Rptr. 2d 234, 2002 Cal. App. LEXIS 5114.

Although authorized by the California Public Records Act, Gov C § 6250 et seq., under Gov C § 6259, the newspaper never asked the trial court to conduct an in camera review to determine whether the nonpublic letter about the investigation of a police officer had been improperly withheld; thus, the appellate court considered the investigators' declarations to sufficiently establish that the letter actually related to the investigation and falls within the investigation exemption contained in Gov C § 6254(f). *Rackauckas v. Superior Court* (Cal. App. 4th Dist. Dec. 9, 2002), 104 Cal. App. 4th 169, 128 Cal. Rptr. 2d 234, 2002 Cal. App. LEXIS 5114.

District attorney did not waive the investigation exemption in Gov C § 6254(f) by providing a nonpublic letter to the police department, which initiated the criminal investigation and employed the officer, as the district attorney did so with the understanding that the document would remain confidential. *Rackauckas v. Superior Court* (Cal. App. 4th Dist. Dec. 9, 2002), 104 Cal. App. 4th 169, 128 Cal. Rptr. 2d 234, 2002 Cal. App. LEXIS 5114.

Regarding police officers' personnel files, urinalysis test results contained in police investigative files and the files of a district attorney are not subject to disclosure under the Gov C § 6254(f) of the California Public Records Act, Gov C § 6250 et seq. *Fagan v. Superior Court* (Cal. App. 1st Dist. Aug. 22, 2003), 111 Cal. App. 4th 607, 4 Cal. Rptr. 3d 239, 2003 Cal. App. LEXIS 1288.

Letters in a district attorney's investigation file were exempt from disclosure under Gov C §§ 6254, 6254.5. *County of Los Angeles v. Superior Court* (Cal. App. 2d Dist. June 29, 2005), 130 Cal. App. 4th 1099, 30 Cal. Rptr. 3d 708, 2005 Cal. App. LEXIS 1039.

Coroner and autopsy reports that constitute investigations of a suspected homicide death, in which the prospect of criminal law enforcement proceedings is concrete and definite, are public records that are exempt from disclosure under Gov C § 6254(f). *Dixon v. Superior Court* (Cal. App. 3d Dist. Feb. 4, 2009), 170 Cal. App. 4th 1271, 88 Cal. Rptr. 3d 847, 2009 Cal. App. LEXIS 145.

Disclosure of coroner and autopsy reports was properly denied under the investigatory file exemption of Gov C § 6254(f) because substantial evidence supported a factual finding that the reports were investigatory files of a local agency for law enforcement purposes that involved a definite prospect of criminal law enforcement; reports investigated the death of a person left in an open field with multiple bullet wounds, and that death led to a criminal trial for murder, and it was irrelevant that the party requesting the public records was a reporter. *Dixon v. Superior Court* (Cal. App. 3d Dist. Feb. 4, 2009), 170 Cal. App. 4th 1271, 88 Cal. Rptr. 3d 847, 2009 Cal. App. LEXIS 145.

Office of the Inspector General (OIG) should not have been ordered to disclose investigative materials underlying a report relating to a parolee who kidnapped a young girl and held her for 18 years because Pen C § 6131 gave the Inspector General complete discretion as to disclosure of those material. Further, the exemption from disclosure in Gov C § 6254(f), applied because OIG launched its investigation into supervision of the parolee by the California Department of Corrections and Rehabilitation (CDCR) to determine whether CDCR's parole policies were adequate and whether they were followed in this instance; thus, the prospect of enforcement proceedings was concrete and definite when the investigation was launched. *Office of Inspector General v. Superior Court* (Cal. App. 3d Dist. Oct. 6, 2010), 189 Cal. App. 4th 695, 117 Cal. Rptr. 3d 388, 2010 Cal. App. LEXIS 1848.

Good cause requirement of CCP § 1985 was inapplicable to a subpoena duces tecum issued by a grand jury to a police department because the investigation was not a civil proceeding. The records were not confidential under Pen C § 832.7 or exempt from disclosure under Gov C § 6254, subd. (f), because they were sought pursuant to the

grand jury's authority under Pen C §§ 925, 925a. *City of Woodlake v. Tulare County Grand Jury* (Cal. App. 5th Dist. Aug. 1, 2011), 197 Cal. App. 4th 1293, 129 Cal. Rptr. 3d 241, 2011 Cal. App. LEXIS 994.

Absent an evidentiary showing that the disclosure of a particular officer's identity would jeopardize that officer's safety or efficacy, protecting the anonymity of a peace officer did not outweigh the public interest in disclosure under Gov C §§ 6254(c) and 6255 of the names of police officers involved in shooting incidents. *Long Beach Police Officers Assn. v. City of Long Beach* (Cal. App. 2d Dist. Feb. 7, 2012), 203 Cal. App. 4th 292, 136 Cal. Rptr. 3d 868, 2012 Cal. App. LEXIS 109, review granted, depublished, (Cal. Apr. 18, 2012), 140 Cal. Rptr. 3d 112, 274 P.3d 1110, 2012 Cal. LEXIS 3662, aff'd, superseded, (Cal. May 29, 2014), 59 Cal. 4th 59, 172 Cal. Rptr. 3d 56, 325 P.3d 460, 2014 Cal. LEXIS 3757.

Report concerning an officer-involved shooting of an unarmed teen completed by an independent consultant retained by a city was a public document, as the information and analysis it contained was precisely the sort the disclosure of which would promote public scrutiny of and agency accountability for specific uses of deadly force, and while portions of the report related to the administrative investigation of the officers contained confidential personnel information exempt from disclosure under California's Public Records Act, portions of the report related to their criminal investigation were not; however, the nonprivileged portions were not so intertwined with the privileged portions as to render the entire report exempt from disclosure. *Pasadena Police Officers Assn. v. Superior Court* (Cal. App. 2d Dist. Sept. 10, 2015), 240 Cal. App. 4th 268, 192 Cal. Rptr. 3d 486, 2015 Cal. App. LEXIS 796.

In a case involving a report concerning an officer-involved shooting of an unarmed teenager completed by an independent consultant retained by a city, the California Public Records Act privilege had not been waived when the officers placed personnel information in the public domain because, absent an express waiver of the privilege with respect to the confidential, personnel information found in the report, the officers retained Pitchess protections as to that information, even if the information was the same as or similar to information available elsewhere in the public domain. *Pasadena Police Officers Assn. v. Superior Court* (Cal. App. 2d Dist. Sept. 10, 2015), 240 Cal. App. 4th 268, 192 Cal. Rptr. 3d 486, 2015 Cal. App. LEXIS 796.

Waiver of the California Public Records Act privilege did not occur by virtue of a city's provision of an independent report concerning an officer-involved shooting of an unarmed teenager to the officers involved in the shooting because the statutory privilege of confidentiality in the officers' personnel records was held both by the city and the officers. The officers had a right to review the report to ascertain which portions they contended were privileged and could not be denied access to their own personnel records for fear that permitting access would waive confidentiality. *Pasadena Police Officers Assn. v. Superior Court* (Cal. App. 2d Dist. Sept. 10, 2015), 240 Cal. App. 4th 268, 192 Cal. Rptr. 3d 486, 2015 Cal. App. LEXIS 796.

Trial court's narrow construction of a police department's disclosure duties as to a request for information about all complaints/requests for assistance pertaining to burglary and identity theft for a six-month period was incorrect both as to the substantive and temporal limits placed upon them because Gov C § 6254(f)(2) does not include an express time limitation on production of only contemporaneous or current records; the court was required to focus on additional relevant criteria, including the department's fiscal and workload burdens and safety concerns, in performing an appropriate balancing of interests with regard to not only production of further nonexempt information, but also the reasonable costs of production. *Fredericks v. Superior Court* (Cal. App. 4th Dist. Jan. 16, 2015), 233 Cal. App. 4th 209, 182 Cal. Rptr. 3d 526, 2015 Cal. App. LEXIS 35.

In a case in which two organizations sought to compel disclosure of requested automated license plate reader (ALPR) data, the Supreme Court held that the bulk collection of ALPR data is not exempt from disclosure under Gov. Code, § 6254, subd. (f). The process of ALPR scanning does not produce records of investigations, because the scans are not conducted as part of a targeted inquiry into any particular crime or crimes. *American Civil Liberties Union Foundation v. Superior Court* (Cal. Aug. 31, 2017), 221 Cal. Rptr. 3d 832, 400 P.3d 432, 3 Cal. 5th 1032, 2017 Cal. LEXIS 6768.

## 6. Licensing Matters

Monthly pesticide spray reports submitted in accordance with Fd & Ag C § 11733, to a county agricultural commissioner, each containing the name of the operator, the location and owners of the lands to which pesticides were applied, the chemical combinations, quantities, concentrations, and dates of such applications, and the crops and pests involved, were not "crop reports" within the meaning of the disclosure exemption provisions of Gov C § 6254, where the reports did not yield information concerning the magnitude of the crops sprayed, their state of preparation, or their likely marketing dates, and could not affect the privacy of either the growers' or applicators'

financial dealings, nor affect prices in commodity markets. *Uribe v. Howie* (Cal. App. 4th Dist. Aug. 10, 1971), 19 Cal. App. 3d 194, 96 Cal. Rptr. 493, 1971 Cal. App. LEXIS 1271.

Monthly pesticide spray reports submitted in accordance with Fd & Ag C § 11733, to a county agricultural commissioner, each containing the name of the operator, the location and owners of the lands to which pesticides were applied, the chemical combinations, quantities, concentrations, and dates of such applications, and the crops and pests involved, could not, in an action seeking public disclosure of such reports, be validly deemed to be records used for “correctional, law enforcement or licensing purposes” within the meaning of the disclosure exemption provisions of Gov C § 6254, subd (f), where, although pesticide spray reports had been used to review applicators’ licenses on various occasions, this was not the primary purpose for which they were compiled, and where there was no evidence that any of the reports were being put to such purpose at the time of trial. *Uribe v. Howie* (Cal. App. 4th Dist. Aug. 10, 1971), 19 Cal. App. 3d 194, 96 Cal. Rptr. 493, 1971 Cal. App. LEXIS 1271.

In a proceeding under the Public Records Act for the disclosure of certain documents from a county transportation authority regarding a licensing agreement for the installation of automated public toilets and the award of advertising space to the successful bidder, the trial court erred in finding that the attorney-client privilege was waived (Gov C § 6254(k); Ev C §§ 912, 952), where the documents at issue were prepared by counsel for the successful bidder and were circulated between two parties bound by an offer and acceptance in contemplation of a binding, detailed license agreement. *STI Outdoor v. Superior Court* (Cal. App. 2d Dist. Aug. 2, 2001), 91 Cal. App. 4th 334, 109 Cal. Rptr. 2d 865, 2001 Cal. App. LEXIS 615.

## 7. Miscellaneous Matters

In a proceeding for appointment of a guardian of a minor child committed to the care of the welfare department and placed in a foster home for adoption, the trial court abused its discretion in ordering the welfare department to answer interrogatories as to the identity of persons having custody of the child following commitment and other particulars concerning the activities of the department in connection with attempts to arrange adoptive placement for the child, where the information concerning the placement and adoption of the child was acquired in confidence by the department and its employees in the course of their duties, and was not open or officially disclosed to the public prior to the time a claim of privilege was made, and where no preliminary basis had been established for finding that the adoption procedure was not running its proper course, and that the agency was unfit to have temporary custody of the child, or that it was improbable that the child would be adopted; while there is no absolute statutory ban on disclosure of such information, nor any absolute privilege with respect thereto, Ev C § 1040, requires a weighing of necessity for preserving confidentiality with the necessity for disclosure in the interest of justice. *Terzian v. Superior Court* (Cal. App. 1st Dist. Aug. 6, 1970), 10 Cal. App. 3d 286, 88 Cal. Rptr. 806, 1970 Cal. App. LEXIS 1841.

Gov C § 6254, exempting crop reports from public disclosure, applies only to reports specifying the nature, extent, type, or magnitude of crops being grown, disclosure of which might adversely affect the confidentiality of growers’ enterprises and interfere with trading in futures on commodity markets. *Uribe v. Howie* (Cal. App. 4th Dist. Aug. 10, 1971), 19 Cal. App. 3d 194, 96 Cal. Rptr. 493, 1971 Cal. App. LEXIS 1271.

The trial court properly denied issuance of a writ of mandate to compel a county assessor to permit a corporation to inspect documents and records enabling it to more easily compare market values of real property with assessed values. Though the documents are the working papers used by the assessor in the performance of his duties, there is no provision requiring him to prepare and keep them and they therefore fall within the purview of Rev & Tax C § 408, providing “...any information and records in the assessor’s office which are not required by law to be kept and prepared by the assessor are not public documents and shall not be open to public inspection.” *Statewide Homeowners, Inc. v. Williams* (Cal. App. 4th Dist. Feb. 15, 1973), 30 Cal. App. 3d 567, 106 Cal. Rptr. 479, 1973 Cal. App. LEXIS 1187.

Medical records of a tort claimant appended to a letter sent to a county requesting settlement of the claim were not exempt from disclosure under Gov C § 6254, subd. (c) (California Public Records Act), intended to protect information of a highly personal nature on file with a public agency. By making the claim, the claimant placed his alleged physical injuries and medical records substantiating them in issue and tacitly waived any expectation of privacy regarding the medical records. Because the county utilized the supporting medical records in arriving at its decision to settle the claim, it could not hide behind the claimant’s privacy to justify its concealment of the records from public scrutiny. *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (Cal. App. 4th Dist. July 31, 1984), 158 Cal. App. 3d 893, 205 Cal. Rptr. 92, 1984 Cal. App. LEXIS 2371.

The Governor’s daily, weekly, and monthly appointment calendars were not exempt from disclosure under the Public Records Act by Gov C § 6254, subd. (1), exempting from disclosure correspondence of and to the Governor



or employees of the Governor's office. For purposes of the act, the correspondence exemption must be confined to communications by letter, and the Governor's appointment calendars and schedules did not meet that definition. *Times Mirror Co. v. Superior Court* (Cal. July 22, 1991), 53 Cal. 3d 1325, 283 Cal. Rptr. 893, 813 P.2d 240, 1991 Cal. LEXIS 3059.

In an action brought under the California Public Records Act (Gov C § 6250 et seq.) by a private organization to compel the Governor to disclose the names and qualifications of applicants for a temporary appointment to a local board of supervisors, the letters and application forms received by the Governor's Office from applicants for appointment to the vacant supervisor position constituted "[c]orrespondence of and to the Governor or employees of the Governor's office" within the meaning of Gov C § 6254, subd. (l). The correspondence exemption was intended to protect communications to the Governor and members of the Governor's staff from correspondents outside of government. The application forms from private citizens, like formal letters and other mail from citizens, did not become public records until received by the Governor's Office. Gov C § 6254 permits the Governor to receive such communications in confidence. *California First Amendment Coalition v. Superior Court* (Cal. App. 3d Dist. Oct. 9, 1998), 67 Cal. App. 4th 159, 78 Cal. Rptr. 2d 847, 1998 Cal. App. LEXIS 854.

Public records containing names of county retirees and their pension amounts were not exempt from California Public Records Act disclosure under Gov C § 6253(a). Because Gov C § 31532 did not exempt the records, Gov C § 6254(k) did not apply; moreover, the balancing test applied under Gov C § 6255(a) weighed in favor of disclosure. *San Diego County Employees Retirement Assn. v. Superior Court* (Cal. App. 4th Dist. June 28, 2011), 196 Cal. App. 4th 1228, 127 Cal. Rptr. 3d 479, 2011 Cal. App. LEXIS 823.

Forms used by a sheriff's department to document when a vehicle is towed to be stored or impounded fell under the exemption for records that are prohibited under federal or state law because the forms contained personal information, including addresses, obtained from the Department of Motor Vehicles; disclosure was prohibited under state and federal statutes. *County of Los Angeles v. Superior Court* (Cal. App. 2d Dist. Nov. 20, 2015), 242 Cal. App. 4th 475, 195 Cal. Rptr. 3d 110, 2015 Cal. App. LEXIS 1034.

Citizen group had no right to inspect and copy ballots after a presidential primary election because the ballots were exempt from public records disclosure as materials expressly protected from disclosure by statute. Specific, clear statutory language required that the ballots be kept unopened after being counted, and thus the right of access was outweighed by privacy interests and voting secrecy. *Citizens Oversight, Inc. v. Vu* (Cal. App. 4th Dist. May 21, 2019), 247 Cal. Rptr. 3d 521, 35 Cal. App. 5th 612, 2019 Cal. App. LEXIS 474.

Citizen group had no right to inspect and copy ballots after a presidential primary election because the ballots were exempt from public records disclosure as materials expressly protected from disclosure by statute. Specific, clear statutory language required that the ballots be kept unopened after being counted, and thus the right of access was outweighed by privacy interests and voting secrecy. *Citizens Oversight, Inc. v. Vu* (Cal. App. 4th Dist. May 21, 2019), 247 Cal. Rptr. 3d 521, 35 Cal. App. 5th 612, 2019 Cal. App. LEXIS 474.

## 8. Records of Complaints

Gov C § 6254, subd. (f), exempting from the disclosure requirements of the Public Records Act, "records of complaints to," or investigations conducted by, the office of the Attorney General and the Department of Justice, and any state or local agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes, does not violate First Amendment guarantees of freedom to communicate. Decisional law generally accepts the assumption that a statute calling for general disclosure may validly define reasonably restricted areas of nondisclosure, provided that they are justified by a genuine public policy concern, such as the privacy of citizens whose information gets into government files. *Black Panther Party v. Kehoe* (Cal. App. 3d Dist. Oct. 24, 1974), 42 Cal. App. 3d 645, 117 Cal. Rptr. 106, 1974 Cal. App. LEXIS 1256.

Gov C § 6254, subd. (f), exempting from the disclosure requirements of the Public Records Act, "records of or complaints to," or investigations conducted by, the office of the Attorney General and the Department of Justice, and any state or local police agency, "or any such investigatory... files compiled by any other state or local agency for correctional, law enforcement or licensing purposes," is properly interpreted as exempting records of complaints, as well as records of investigation maintained for licensing purposes by agencies of the Department of Consumer Affairs. The words "any such" would be surplusage if they did not embrace the same records as the preceding clause, and that textual interpretation comports with the dual legislative concern, appearing throughout the act, for individual privacy as well as disclosure "concerning the conduct of the people's business." Both complaining witnesses, who often demand anonymity, and the public have an interest in the confidentiality of complaints of wrongdoing prior to the inception of formal enforcement or disciplinary proceedings. *Black Panther*

Party v. Kehoe (Cal. App. 3d Dist. Oct. 24, 1974), 42 Cal. App. 3d 645, 117 Cal. Rptr. 106, 1974 Cal. App. LEXIS 1256.

In holding that letters of complaint to the Bureau of Collections and Investigative Services charging unethical or abusive practices by licensed collection agencies are exempt from disclosure as “records of complaint” within the meaning of Gov C § 6254, subd. (f), the trial court erred in failing to find on the material factor, urged as a special basis of plaintiffs’ demand for disclosure under the Public Records Act, of the bureau’s practice of furnishing copies of consumer complaints to the affected licensees. Gov C § 6254, setting forth various categories of exemptions, and further providing that it is not to be construed as “preventing” public inspection of exempted material not otherwise prohibited by law, does not permit selective disclosure. The practice of disclosing complaints to the affected licensees destroys the privilege of confidentiality otherwise permitted by the statute, and, when a record loses its exempt status, it becomes subject to the provision of Gov C § 6253, subd. (a), that “every citizen has a right to inspect any public record.” Black Panther Party v. Kehoe (Cal. App. 3d Dist. Oct. 24, 1974), 42 Cal. App. 3d 645, 117 Cal. Rptr. 106, 1974 Cal. App. LEXIS 1256.

The procedural regulations of the California Highway Patrol governing the investigation of citizen complaints concerning conduct of personnel in that department come within the meaning of “Public Records” in Gov C § 6252, subd (d), defining terms used in the Public Records Act (Gov C §§ 6250 et seq.), and since such regulations are not themselves “records of complaints” or “investigations” within the meaning of Gov C § 6254, subd (f), and are thus not exempt from disclosure thereunder, or under Gov C § 6254, subd (k), they are required by the Public Records Act to be made available by the department for public inspection and copying. Cook v. Craig (Cal. App. 3d Dist. Feb. 25, 1976), 55 Cal. App. 3d 773, 127 Cal. Rptr. 712, 1976 Cal. App. LEXIS 1289.

In an action by a newspaper under the California Public Records Act (CPRA) (Gov C § 6250 et seq.) to compel a city to comply with its request for public access to certain records regarding investigations of citizens’ complaints against the city’s police department, the trial court erred in ordering disclosure in camera of the requested records and preparation of a descriptive index of the documents with reasons for exempting them from disclosure. Pen C § 832.7, establishes the confidentiality of the records, since the term “confidential,” as used therein, has independent significance and, thus, the statute does not merely define procedures for disclosure of such records in criminal and civil proceedings. And, although the CPRA procedures applied to the newspaper’s request, Pen C § 832.7, is a provision of state law within the meaning of Gov C § 6254, subd. (k), which exempts from disclosure records exempted pursuant to state law. Pen C § 832.7, allows the dissemination of data regarding the number, type, and disposition of complaints, provided the individuals involved are not identified, but the newspaper’s request was not narrowly drawn with that section in mind. Also, Gov C § 6259, permits an in camera examination of records to determine if they have been properly withheld, but only if the records are clearly subject to disclosure. City of Richmond v. Superior Court (Cal. App. 1st Dist. Mar. 3, 1995), 32 Cal. App. 4th 1430, 38 Cal. Rptr. 2d 632, 1995 Cal. App. LEXIS 200.

Official information privilege did not protect from public records disclosure documents relating to a complaint by a school district’s executive director of human resources against the district’s superintendent that preceded the director’s dismissal; the important role of senior administrators supported disclosure of claims against them and the public’s right to know how they were performing in their offices. Caldecott v. Superior Court (Cal. App. 4th Dist. Dec. 9, 2015), 243 Cal. App. 4th 212, 196 Cal. Rptr. 3d 223, 2015 Cal. App. LEXIS 1146.

Whether a school district employee was a whistleblower had nothing to do with whether he was entitled to public records access to documents relating to his complaint against the superintendent. Caldecott v. Superior Court (Cal. App. 4th Dist. Dec. 9, 2015), 243 Cal. App. 4th 212, 196 Cal. Rptr. 3d 223, 2015 Cal. App. LEXIS 1146.

## 9. Pending Litigation; Discovery

In a personal injury action against a city for battery by a policeman, information relating to any suspension of the officer resulting from the alleged battery would not be discoverable, in view of the rule prohibiting the use of remedial measures undertaken after an event to prove negligence or culpability in connection with the event itself. City of Los Angeles v. Superior Court (Cal. App. 2d Dist. Aug. 1, 1973), 33 Cal. App. 3d 778, 109 Cal. Rptr. 365, 1973 Cal. App. LEXIS 932.

Gov C § 6254, subd. (b), exempting from disclosure records “pertaining to” pending litigation to which a public agency is a party, was not applicable to an order for discovery of information and documents in the possession of the Division of Industrial Safety, in personal injury and wrongful death actions arising out of the collapse of a bridge under construction. The exception in question essentially provides public agencies with the protection of the attorney-client privilege, including work product, for a limited period while there is ongoing litigation, and the

discovery order did not require the disclosure of any documents or records coming within the attorney-client privilege. *State of California ex rel. Division of Industrial Safety v. Superior Court* (Cal. App. 2d Dist. Nov. 27, 1974), 43 Cal. App. 3d 778, 117 Cal. Rptr. 726, 1974 Cal. App. LEXIS 1355.

In a wrongful death action against a city and certain of its employees including police officers who allegedly inflicted fatal gunshot wounds on the deceased, the district attorney could not successfully resist plaintiff's efforts to discover materials in his possession under the absolute privilege established as to official information by Evi C § 1040, subd (b)(1), if disclosure is forbidden by federal or state statutes, on the ground that Gov C § 6254, subd (f), a part of the Public Records Act relating to "records of complaints to or investigations conducted by, or records of intelligence information or security procedures of" law enforcement agencies, forbids disclosure of such material. The statute, by its terms, deals only with public inspection of certain governmental documents, and the act further specifically provides in Gov C § 6260, that its provision "shall not be deemed in any manner to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery." *Shepherd v. Superior Court of Alameda County* (Cal. June 11, 1976), 17 Cal. 3d 107, 130 Cal. Rptr. 257, 550 P.2d 161, 1976 Cal. LEXIS 279, overruled in part, *People v. Holloway* (Cal. June 17, 2004), 33 Cal. 4th 96, 14 Cal. Rptr. 3d 212, 91 P.3d 164, 2004 Cal. LEXIS 5504.

The trial court's discovery order in a professor's defamation action against his former university employer that allowed the professor discovery of his tenure and promotion files, save and except letters of recommendation or reference to the university concerning the professor written when he was being considered for employment constituted error insofar as it failed to provide appropriate protection of the privacy interests of those who had furnished confidential information for the files after the professor's employment. Protection should have been afforded not only to those who had furnished confidential information prior to the professor's employment, but also to all those who had subsequently furnished confidential information concerning the professor's qualifications for employment, promotion, additional compensation, or termination. Since there was no compelling state purpose in maintenance of confidentiality of the contents of letters of reference in the file, the professor was entitled to the disclosure thereof, subject to protection of the confidential communications' authors by withholding their names and other identification. Courts should impose partial limitations rather than outright denial of discovery when by doing so otherwise affected constitutional rights may be preserved. *Board of Trustees v. Superior Court of Santa Clara County* (Cal. App. 1st Dist. May 28, 1981), 119 Cal. App. 3d 516, 174 Cal. Rptr. 160, 1981 Cal. App. LEXIS 1766, overruled in part, *Williams v. Superior Court* (Cal. July 13, 2017), 220 Cal. Rptr. 3d 472, 398 P.3d 69, 3 Cal. 5th 531, 2017 Cal. LEXIS 5124.

The Public Records Act (Gov C §§ 6250 et seq.) did not require disclosure of a letter a city attorney prepared for the city council, in which the attorney expressed legal opinions concerning a resident's pending appeal of a parcel map. Although the letter was a "public record" within the meaning of the act, it was a confidential communication within the attorney-client privilege. Further, Gov C § 6254, subd. (b), which exempts from disclosure records pertaining to pending litigation until the litigation is terminated, does not operate to limit the scope of the attorney-client privilege to matters pertaining to pending litigation. This subdivision pertains to all public records, but does not address the privilege. Gov C § 6254, subd. (k), expressly exempts from disclosure matters privileged under the Evidence Code. This includes the attorney-client privilege. Thus, the city could assert the privilege without the necessity of alleging that the letter was a document pertaining to pending litigation. *Roberts v. City of Palmdale* (Cal. June 24, 1993), 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330, 853 P.2d 496, 1993 Cal. LEXIS 3190.

Under the "pending litigation" exemption from the disclosure of public records (Gov C § 6254, subd. (b)), a document is protected from disclosure only if it was specifically prepared for use in litigation. Thus, records of an internal investigation conducted by a city police department into the actions of a police sergeant (focusing on whether he had improperly used city property, investigated drug use on county property while on duty as a city officer, or used his police status to obtain confidential information from a school) were not protected from disclosure to a newspaper under that exemption, even though they later became relevant to a tort claim arising from the sergeant's conduct, which was filed by a deputy sheriff two weeks after the investigation had concluded. *City of Hemet v. Superior Court* (Cal. App. 4th Dist. Aug. 24, 1995), 37 Cal. App. 4th 1411, 44 Cal. Rptr. 2d 532, 1995 Cal. App. LEXIS 824.

A city was required, under the California Public Records Act (Gov C §§ 6250 et seq.), to disclose to an individual deposition transcripts from litigation in which the city was a party. Although it asserted the depositions fell under the Civil Discovery Act, the California Public Records Act contemplates that litigation documents fall within its purview. Gov C § 6254, subd. (b), exempts records of pending litigation from disclosure only until the litigation is completed, and it is not limited to attorney-client privilege or work product matters. The depositions also related to conduct of public business subject to disclosure. Nor was the city exempt under Gov C § 6254, subd. (k)

(disclosure not required for records exempted under federal or state law). Although it asserted that, under Gov C § 6254.5, subd. (b), no waiver of exemption occurred since it was compelled to take part in discovery in the underlying cases, that section references the exemption of Gov C § 6254, subd. (b), which lasts only while litigation is pending, and the cases were completed. Nor were the depositions exempt under Gov C § 6255 (exemption if public interest served by withholding record outweighs public interest served by disclosure). The cases involved claims of excessive force with police dogs, and disclosure served a public interest. There was also no evidence of invasion of the privacy rights of people involved in the cases. Finally, there was no evidence of the burden or prejudice the city faced in having to review the depositions for exemptions, nor did the city cite any provision that this was a valid ground for nondisclosure. *City of Los Angeles v. Superior Court* (Cal. App. 2d Dist. Jan. 10, 1996), 41 Cal. App. 4th 1083, 49 Cal. Rptr. 2d 35, 1996 Cal. App. LEXIS 23.

A claim form submitted by a minor to a public school district under the California Tort Claims Act (Gov C § 910 et seq.), where a student was sodomized with a broomstick by classmates during a hazing incident, was not protected against disclosure under exemptions in the Public Records Act (Gov C § 6254(b) or Gov C § 6255), or Ed C § 49060. Gov C § 6254(b) was primarily designed to prevent a litigant opposing the government from using the Public Records Act's disclosure provisions to accomplish earlier or greater access to records pertaining to pending litigation or tort claims than would otherwise be allowed under the rules of discovery. No unfair advantage inures against the public entity by disclosure of the mere claim form. Thus, a Claims Act form itself does not fall within the exemption of Gov C § 6254(b). In addition, the claim form is not exempt under Gov C § 6255 in that the public interest served by withholding the claims does not clearly outweigh the public interest served by disclosure of the record. Given the facts of the case, there was no reasonable expectation of privacy, nor was there conduct constituting a serious invasion of privacy. However, there is a legitimate and important competing public interest in ending school hazing practices that potentially endanger many children. Finally, the District failed to justify withholding any record under Ed C § 49060. A Claims Act claim, even if presented on behalf of a student, is not an "educational record" or "pupil record" within the purview of such exemption. Just because a litigant has chosen to sue a school does not transmogrify the Claims Act claim into such a record. *Poway Unified Sch. Dist. v. Superior Court* (Cal. App. 4th Dist. Apr. 13, 1998), 62 Cal. App. 4th 1496, 73 Cal. Rptr. 2d 777, 1998 Cal. App. LEXIS 318.

A petitioner sought a writ of mandate to compel the respondent superior court to order the real party in interest, a city, to provide the petitioner with all documents relating to his arrest, pursuant to his request for the documents under the California Public Records Act (CPRA; Gov C § 6250 et seq.). The trial court denied the writ on the basis that the documents at issue were exempted from disclosure under the "pending litigation" provision found in Gov C § 6254, subd. (b). After the petition for writ of mandate was filed in this case, the city provided petitioner with all of the documents in its possession pertaining to petitioner's arrest. This did not render the matter moot, however, because the question of petitioner's entitlement to the documents in the first place remained to be determined. Further, if the question was to be decided in petitioner's favor, he would be entitled to collect his attorney fees and costs. (Gov C § 6259, subd. (d).) In addition, the interpretation of the "pending litigation" exemption to the CPRA was a matter of public interest and continuing concern. *Fairley v. Superior Court* (Cal. App. 2d Dist. Sept. 30, 1998), 66 Cal. App. 4th 1414, 78 Cal. Rptr. 2d 648, 1998 Cal. App. LEXIS 823.

Where a petitioner sought a writ of mandate to compel the respondent superior court to order the real party in interest, a city, to provide the petitioner with all documents relating to his arrest, pursuant to his request for the documents under the California Public Records Act (CPRA; Gov C § 6250 et seq.), the trial court erred in denying the writ on the basis that the documents at issue were exempted from disclosure under the "pending litigation" provision found in Gov C § 6254, subd. (b). "Pending litigation," which focuses on the purpose of the document, serves to protect documents created by a public entity for its own use in anticipation of litigation, which documents it reasonably has an interest in keeping to itself until litigation is finalized. In this way, a litigant opposing a public entity is prevented from taking unfair advantage of the public agency status of his or her opponent. Through this exemption, a public entity may refuse to disclose documents which it prepares for use in litigation. There appears to be no grave danger in allowing a litigant or potential litigant to obtain documents from a public agency through the CPRA, rather than waiting to file suit and obtaining the documents through formal discovery. In fact, to the extent that settlement of disputes may be aided by prompt access to documents, it would be better. *Fairley v. Superior Court* (Cal. App. 2d Dist. Sept. 30, 1998), 66 Cal. App. 4th 1414, 78 Cal. Rptr. 2d 648, 1998 Cal. App. LEXIS 823.

A plaintiff who has filed suit against a public agency may, either directly or indirectly through a representative, file a Public Records Act request for the purpose of obtaining documents for use in the plaintiff's civil action; the documents must be produced unless one or more of the statutory exemptions apply (Gov C § 6254). Nor is a court

bound by prior discovery rulings unless all of the elements of collateral estoppel are present. *County of Los Angeles v. Superior Court* (Cal. App. 2d Dist. July 31, 2000), 82 Cal. App. 4th 819, 98 Cal. Rptr. 2d 564, 2000 Cal. App. LEXIS 607.

A document is protected from disclosure under the pending litigation exemption only if the document was specifically prepared for use in litigation. Section 6254(b), however, is not duplicative of subdivision (k), through which CCP § 2018 (repealed) applies and protects attorney work product, but rather subdivision (b) confers upon public agencies a broader exemption from disclosure by protecting the work product generated by a public agency in anticipation of litigation. *County of Los Angeles v. Superior Court* (Cal. App. 2d Dist. July 31, 2000), 82 Cal. App. 4th 819, 98 Cal. Rptr. 2d 564, 2000 Cal. App. LEXIS 607.

Newspaper was not entitled to disclosure of communications between a university and two employees relating to the employees' law suits because the parties intended that their correspondence not be disclosed to third parties. *Board of Trustees of California State University v. Superior Court* (Cal. App. 4th Dist. Sept. 14, 2005), 132 Cal. App. 4th 889, 34 Cal. Rptr. 3d 82, 2005 Cal. App. LEXIS 1443.

Pending litigation exemption of Gov C § 6254(b) applies to litigation-related documents, when sought by persons or entities not party to the litigation, which the parties to the litigation do not intend to be revealed outside the litigation. *Board of Trustees of California State University v. Superior Court* (Cal. App. 4th Dist. Sept. 14, 2005), 132 Cal. App. 4th 889, 34 Cal. Rptr. 3d 82, 2005 Cal. App. LEXIS 1443.

Deposition transcripts are not covered by the pending litigation exemption of Gov C § 6254(b) because they are available to the public under CCP § 2025.570. *Board of Trustees of California State University v. Superior Court* (Cal. App. 4th Dist. Sept. 14, 2005), 132 Cal. App. 4th 889, 34 Cal. Rptr. 3d 82, 2005 Cal. App. LEXIS 1443.

Newspaper was entitled to disclosure of deposition transcripts relating to litigation between a university and two employees. *Board of Trustees of California State University v. Superior Court* (Cal. App. 4th Dist. Sept. 14, 2005), 132 Cal. App. 4th 889, 34 Cal. Rptr. 3d 82, 2005 Cal. App. LEXIS 1443.

In a case in which a card room operator challenged a city ordinance that prohibited operation of card rooms between 2:00 a.m. and 6:00 a.m. and backline betting, the trial court properly issued a discovery order protecting specified documents from disclosure on the ground that their discovery would violate the mental processes principle, which precludes judicial inquiry into the motivation or mental processes of legislators in enacting legislation. Because evidence relating to the mental processes of individual legislators was irrelevant to the judicial task, the evidence was not the proper subject of discovery requests. *Sutter's Place Inc. v. Superior Court* (Cal. App. 6th Dist. Mar. 18, 2008), 161 Cal. App. 4th 1370, 75 Cal. Rptr. 3d 9, 2008 Cal. App. LEXIS 541.

In a case in which a surrogate for a party to a pending civil rights lawsuit against a county sought to obtain documents under the California Public Records Act, Gov C §§ 6250 et seq., relating to the attorney fees charged by litigation counsel for the county, the trial court reasonably found that, based on the evidence before it, the billing and payment records in question were not prepared for use in litigation as that term was explained in the appellate decisions. That was true even though the records in question related to pending litigation and, indeed, would not have existed but for the pending litigation because the dominant purpose for preparing the documents was not for use in litigation, but as part of normal record keeping and to facilitate the payment of attorney fees on a regular basis. *County of Los Angeles v. Superior Court* (Cal. App. 2d Dist. Nov. 16, 2012), 211 Cal. App. 4th 57, 149 Cal. Rptr. 3d 324, 2012 Cal. App. LEXIS 1188, modified, (Cal. App. 2d Dist. Dec. 3, 2012), 2012 Cal. App. LEXIS 1227.

## 10. Evidentiary Privileges

An agreement entered into between a school district and a private corporation, providing for performance by the corporation of research and development work and services for a fee, could not be said to require the district to violate Gov C § 6253, requiring generally that public records be open to inspection during an agency's office hours, but giving the agency the right to adopt regulations stating the procedures to be followed when making records available, where the agreement specifically permitted the disclosure of any confidential material for which there was a reasonable and proper need, on the condition that the person receiving the material agree not to publish or sell it. Moreover, Gov C § 6254, provides that nothing in the Public Records Act shall be construed to require disclosure of records exempted by provisions of the Evidence Code relating to privilege, and, under Evi C § 1060, the owner of a trade secret is privileged to refuse to disclose, and to prevent another from disclosing the secret. *California Sch. Employees Assn. v. Sunnyvale Elementary Sch. Dist.* (Cal. App. 1st Dist. Dec. 17, 1973), 36 Cal. App. 3d 46, 111 Cal. Rptr. 433, 1973 Cal. App. LEXIS 636.

In an action by former faculty members of a state university against the chancellor and others, predicated on their alleged denial of tenure or retention in retaliation for opposing the election of their department chairman, in which the faculty members made a strong showing in a motion for discovery that certain official information was essential to determine whether they were dismissed for exercising constitutional rights, rather than for the stated reasons, the trial court did not comply with applicable principles requiring it, on being confronted with a claim of conditional privilege for official information under Ev C § 1040, subd. (b)(2), to engage in a weighing process to determine whether the disclosure would be against the public interest, where the trial court's one-sentence and one-word orders denying the motions contained no findings that disclosure would be against the public interest. *Parnes v. Superior Court* (Cal. App. 1st Dist. June 15, 1978), 81 Cal. App. 3d 831, 146 Cal. Rptr. 818, 1978 Cal. App. LEXIS 1627.

Financial data supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the disposal company pursuant to an exclusive contract between the city and the waste disposal company for the collection of waste and garbage within the city limits, was not exempt from disclosure as a public record by Gov C § 6254, subd. (k), which exempts from disclosure records exempted from disclosure under federal or state law, including Evid. Code, §§ 1040 (privilege for official information) and 1060 (privilege to protect trade secret). There was no showing that the city would be injured by revealing the data. Moreover, under Evid. Code, § 1040, there was no showing that disclosure of the information was against the public interest; disclosure was shown to weigh in favor of the public's interest in view of the fact that the rate increase amounted to a 15 to 25 percent increase in just two years that the public—not the city—would have to pay. Further, assurances of confidentiality were insufficient in themselves to justify withholding pertinent public information from the public. Nor was a showing of egregious conduct necessary to gain access to relevant data, since in many cases knowledge of such could only be gained by access. *San Gabriel Tribune v. Superior Court* (Cal. App. 2d Dist. June 9, 1983), 143 Cal. App. 3d 762, 192 Cal. Rptr. 415, 1983 Cal. App. LEXIS 1811.

Rejection of a county sheriff's claim for exemption from disclosure to a television and broadcasting company of records pertaining to licenses to carry concealed weapons, under Gov C § 6255, the "catch-all" exemption to the general policy of disclosure of public records under the Public Records Act (Gov C §§ 6250 et seq.), on the ground that the public interest weighed in favor of disclosure as opposed to nondisclosure, required rejection of a claim for exemption made by the sheriff with respect to the same records, under Gov C § 6254, subd. (k), exempting records, disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege, since the same weighing process is involved under both provisions. Rejection of the sheriff's claim for exemption from disclosure of the records sought, based on Evid. Code, § 1040, which creates a privilege for official information acquired in confidence, under certain circumstances, was mandated for the same reason. *CBS, Inc. v. Block* (Cal. Oct. 9, 1986), 42 Cal. 3d 646, 230 Cal. Rptr. 362, 725 P.2d 470, 1986 Cal. LEXIS 270.

In a civil action in which the defendant sought to compel discovery of memoranda from a state agency to the Governor's office, the trial court erred in denying the motion on grounds that such memoranda were absolutely privileged. The applicable privilege was not absolute but conditional under Ev C § 1040(b)(2), which required the trial court to consider the party's need for disclosure in the interest of justice, and to determine whether that interest was outweighed by the public interest in preserving confidentiality. The Public Records Act exemption for the Governor's correspondence (Gov C § 6254 (l)) did not apply to the issue whether records were privileged in pending litigation so as to defeat a party's right to discovery (Gov C § 6260). *Marylander v. Superior Court* (Cal. App. 2d Dist. June 28, 2000), 81 Cal. App. 4th 1119, 97 Cal. Rptr. 2d 439, 2000 Cal. App. LEXIS 516.

County met its burden to show that invoices from its outside counsel fell within the exemption from public records disclosure for documents protected by the attorney-client privilege because the invoices were confidential communications; a declaration established that the invoices were kept confidential, and the invoices were made in the course of an attorney-client relationship when outside counsel represented the county in the litigation from which the invoices arose. *Los Angeles County Bd. of Supervisors v. Superior Court* (Cal. App. 2d Dist. Apr. 13, 2015), 235 Cal. App. 4th 1154, 185 Cal. Rptr. 3d 842, 2015 Cal. App. LEXIS 308, review granted, depublished, (Cal. July 8, 2015), 189 Cal. Rptr. 3d 206, 351 P.3d 329, 2015 Cal. LEXIS 4807, rev'd, (Cal. Dec. 29, 2016), 212 Cal. Rptr. 3d 107, 386 P.3d 773, 2 Cal. 5th 282, 2016 Cal. LEXIS 9629.

School district could maintain an action for injunctive relief seeking to recover inadvertently disclosed documents that it contended fell within the privilege exemption from public records disclosure. Waiver under Gov. Code, § 6254.5, as construed to avoid conflict with Evid. Code, § 912, does not occur as a result of an inadvertent release, notwithstanding the interpretive rule generally favoring public access. *Newark Unified School Dist. v. Superior Court* (Cal. App. 1st Dist. July 31, 2015), 239 Cal. App. 4th 33, 2015 Cal. App. LEXIS 671, review

granted, depublished, (Cal. Oct. 14, 2015), 193 Cal. Rptr. 3d 538, 357 P.3d 770, 2015 Cal. LEXIS 7846, ordered published, sub. op., (Cal. App. 1st Dist. July 31, 2015), 245 Cal. App. 4th 887, 190 Cal. Rptr. 3d 721, 2016 Cal. App. LEXIS 219.

City did not waive exemption from disclosure for material privileged by statute when the city inadvertently disclosed, in response to a public records request, documents that the city asserted came within either the attorney-client privilege or the work product privilege. Waiver does not apply to inadvertent disclosures, notwithstanding the rule of construction that generally requires statutory ambiguities to be resolved in favor of greater access to public records. *Ardon v. City of Los Angeles* (Cal. Mar. 17, 2016), 62 Cal. 4th 1176, 199 Cal. Rptr. 3d 743, 366 P.3d 996, 2016 Cal. LEXIS 1572.

Attorney-client privilege as construed to further the people's right of access did not categorically shield billing invoices for services provided by a county's outside counsel from public records disclosure; however, the privilege protects the confidentiality of invoices for work in pending and active legal matters, which implicates the confidentiality of legal consultation. If only parts of invoices are exempt, any reasonably segregable portion not exempt must be disclosed. *Los Angeles County Bd. of Supervisors v. Superior Court* (Cal. Dec. 29, 2016), 212 Cal. Rptr. 3d 107, 386 P.3d 773, 2 Cal. 5th 282, 2016 Cal. LEXIS 9629.

Although due process concerns were present regarding communications between the Agricultural Labor Relations Board and its general counsel in seeking injunctive relief against an employer when counsel served as prosecutor in administrative proceedings, the superior court erred in disregarding the attorney-client privilege and ordering public records disclosure of those communications. Any violation of the ban on ex parte communications could be remedied by inclusion in the administrative record. *Agricultural Labor Relations Bd. v. Superior Court* (Cal. App. 3d Dist. Oct. 25, 2016), 209 Cal. Rptr. 3d 243, 4 Cal. App. 5th 675, 2016 Cal. App. LEXIS 901.

California Public Records Act's procedure to enforce the right of access to public records is exclusive and does not encompass actions brought by parties seeking to prevent disclosure of public records; thus, a newspaper was not entitled to attorney fees after it substantially prevailed in a mandamus action brought by an officer of a public agency who asserted that a statutory exemption based on attorney-client privilege applied to records that the agency had agreed to disclose to the newspaper. *National Conference of Black Mayors v. Chico Community Publishing, Inc.* (Cal. App. 3d Dist. July 25, 2018), 236 Cal. Rptr. 3d 1, 25 Cal. App. 5th 570, 2018 Cal. App. LEXIS 653.

### **11. Deliberative Process Exemption**

Under the "deliberative process" exemption to disclosure of public records (Gov C § 6254, subd. (a)) in the Public Records Act, the key question is whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or inextricably intertwined with policymaking processes. *Times Mirror Co. v. Superior Court* (Cal. July 22, 1991), 53 Cal. 3d 1325, 283 Cal. Rptr. 893, 813 P.2d 240, 1991 Cal. LEXIS 3059.

Trial court erred in ordering the Labor and Workforce Development Agency to produce an index identifying the author, recipient, general subject matter, and nature of the exemption claimed to justify withholding information in response to a request for documents under the Public Records Act because the order required disclosure of matters protected by the deliberative process and work product privileges. *Labor & Workforce Development Agency v. Superior Court* (Cal. App. 3d Dist. Jan. 8, 2018), 227 Cal. Rptr. 3d 744, 19 Cal. App. 5th 12, 2018 Cal. App. LEXIS 15.

### **12. Personnel Matters**

In a prosecution of a state prison inmate for the murder of a prison employee, the trial court did not abuse its discretion in denying defendant's pretrial discovery motion for production, for impeachment purposes, of the complete personnel files of all prison staff members and the inmate files of all prisoners that each side was considering calling to testify at trial, where the prosecutor had offered to go through the files and disclose any material which might be relevant to impeachment, but defense counsel apparently rejected that offer. The blanket request failed to describe the requested information with sufficient specificity and there is a legitimate public interest in protecting against wholesale disclosure of the matter requested. *People v. Gaulden* (Cal. App. 3d Dist. Jan. 9, 1974), 36 Cal. App. 3d 942, 111 Cal. Rptr. 803, 1974 Cal. App. LEXIS 733.

In determining, under Gov C § 6259, whether a public official is justified in refusing to publicly disclose records of investigations of complaints against employees on the ground that the public interest in protection of personal

privacy outweighs the public interest in disclosure (Gov C §§ 6254, subd. (c), and 6255), the court should consider whether there is reasonable cause to believe the charges were well founded and whether they were substantial in nature. Thus, in an action to compel disclosure of an audit report of financial activities of university employees, the trial court abused its discretion in refusing to order disclosure of portions of the audit report that indicated certain substantial charges against the employees to be well founded. *American Federation of State Etc. Employees v. Regents of University of California* (Cal. App. 1st Dist. May 16, 1978), 80 Cal. App. 3d 913, 146 Cal. Rptr. 42, 1978 Cal. App. LEXIS 1474.

Information sought by a citizens' assistant, appointed pursuant to a city charter, relating to a complaining citizen's evaluation, by a city department, on her application for employment was not exempt from disclosure under the Public Records Act. The assistant was clothed with official dignity and prestige comparable to that of other city officials and his official acts were those of the city itself. A disclosure, such as the one sought, by one official or department to another is not a "public disclosure." In the exercise of his functions, the citizens' assistant, like all other of the city's officials and employees, was subject to the provisions of any law forbidding public, or private, disclosure of designated records or information to citizens or others. *Parrott v. Rogers* (Cal. App. 1st Dist. Mar. 18, 1980), 103 Cal. App. 3d 377, 163 Cal. Rptr. 75, 1980 Cal. App. LEXIS 1582.

Financial data supplied by a waste disposal company to a city which the city relied on in granting a rate increase to the company pursuant to an exclusive contract between the city and company for the collection of waste and garbage within the city limits, was not exempt from disclosure as a public record by Gov C § 6254, subd. (c), which exempts from disclosure "[p]ersonal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." When the city publicly based its decision to permit the company to increase waste and garbage collection rates on the financial data supplied by the disposal company, the data lost its exempt status. *San Gabriel Tribune v. Superior Court* (Cal. App. 2d Dist. June 9, 1983), 143 Cal. App. 3d 762, 192 Cal. Rptr. 415, 1983 Cal. App. LEXIS 1811.

Two letters in a city firefighter's personnel file—one letter appointing him to the position of transit administrator and the other rescinding the appointment and reinstating him as a firefighter—were not exempt from disclosure under Gov C § 6254, subd. (c), which exempts personnel files, the disclosure of which would constitute an unwarranted invasion of personal privacy, from disclosure under the Public Records Act (Gov C §§ 6250 et seq.). The letters contained no personal information. Although reclassification may be embarrassing to an individual, in California, employment contracts are public records and may not be considered exempt. (Gov C § 6254.8.) The letters were memoranda of the firefighter's appointment to a position and the rescission thereof; they therefore manifested his employment contract. Because the letters regarded business transactions and contained no personal information, the trial court properly ordered disclosure of the letters under the act. *Braun v. City of Taft* (Cal. App. 5th Dist. Apr. 10, 1984), 154 Cal. App. 3d 332, 201 Cal. Rptr. 654, 1984 Cal. App. LEXIS 1890.

The trial court did not err in ordering disclosure of the first page of a city firefighter's salary card under the Public Records Act (Gov C §§ 6250 et seq.), to show that the firefighter's employment record had been altered, although the card contained personal information (the firefighter's address, birth date, phone number, social security and credit union numbers, and salary) which was not relevant to the inquiry. The trial court could have ordered the personal information taken out before the card was made public; however, the data listed on the card was not in any way embarrassing and, although personal, was not secret. Thus, the court was within its discretion in finding that the disclosure of the face sheet of the salary card would not constitute an unwarranted invasion of personal privacy under Gov C § 6254, subd. (c), and was not exempt from disclosure thereunder. *Braun v. City of Taft* (Cal. App. 5th Dist. Apr. 10, 1984), 154 Cal. App. 3d 332, 201 Cal. Rptr. 654, 1984 Cal. App. LEXIS 1890.

Although Gov C § 6254, subd. (c), exempts personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, from disclosure under the Public Records Act (Gov C §§ 6250 et seq.), the Legislature, by using the word "files," did not intend to exempt the entire file and thus to prohibit the selective disclosure of certain documents from the file. In view of Gov C § 6250, which states that "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state" and the policy favoring disclosure of public records, it is unlikely that the Legislature intended such an all or nothing approach. *Braun v. City of Taft* (Cal. App. 5th Dist. Apr. 10, 1984), 154 Cal. App. 3d 332, 201 Cal. Rptr. 654, 1984 Cal. App. LEXIS 1890.

In cases involving the disclosure of personnel, medical, or similar files under the Public Records Act (Gov C §§ 6250 et seq.), the weighing process under Gov C § 6254, subd. (c), to determine whether the disclosure would constitute an unwarranted invasion of privacy, and thus make the records exempt from disclosure, requires a consideration of almost exactly the same elements that should be considered under Gov C § 6255, which provides that



a public agency shall justify withholding any record by demonstrating that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. *Braun v. City of Taft* (Cal. App. 5th Dist. Apr. 10, 1984), 154 Cal. App. 3d 332, 201 Cal. Rptr. 654, 1984 Cal. App. LEXIS 1890.

Disclosure of material from a city employee's personnel file under the Public Records Act (Gov C §§ 6250 et seq.) was not prohibited by the employee's constitutional right to privacy (Cal. Const., Art. I, § 1). The balancing test employed by the trial court in its determination that the records were not exempt under Gov C § 6254, subd. (c), because they did not constitute an unwarranted invasion of privacy, is the same one which should be utilized in weighing the right of privacy against the right of the public to oversee the actions of governmental employees. The trial court carefully considered the clash between the need for public disclosure of its business and the need of the individual to privacy when making its determination under § 6254, subd. (c); no more was required under Cal. Const., Art. I, § 1. *Braun v. City of Taft* (Cal. App. 5th Dist. Apr. 10, 1984), 154 Cal. App. 3d 332, 201 Cal. Rptr. 654, 1984 Cal. App. LEXIS 1890.

The Medical Board of California did not violate the Information Practices Act (CC § 1798.61(a)) or the California Public Records Act (Gov C §§ 6254(c), 6254.3(a)) by posting on its internet web site the "addresses of record" of licensed physicians, including those employed by state and local clinics and prisons who were unable to receive mail where they treated patients. Licensees were free to designate a post office box as their "address of record," in which case their home addresses would remain confidential. To the extent a licensee chose to continue using a home address as an address of record, knowing that it would be posted on the board's web site, the physician may be deemed to have waived any interest he or she may have in the confidentiality of such information. *Lorig v. Medical Board* (Cal. App. 1st Dist. Feb. 18, 2000), 78 Cal. App. 4th 462, 92 Cal. Rptr. 2d 862, 2000 Cal. App. LEXIS 108.

In an invasion of privacy case concerning a publisher's request for information about city employees' salaries, a preliminary injunction prohibiting the cities from disclosing salaries received by individually identifiable employees was appropriate; the California Public Records Act recognizes the right of privacy in personnel files by virtue of the exemption for such files in Gov C § 6254(c). *Teamsters Local 856 v. Priceless, LLC* (Cal. App. 1st Dist. Oct. 31, 2003), 112 Cal. App. 4th 1500, 5 Cal. Rptr. 3d 847, 2003 Cal. App. LEXIS 1639, overruled in part, *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

In an action brought by a newspaper company for disclosure of highly paid municipal employees' salaries, the employees had no legally protected privacy interest in the information because its disclosure did not violate the state constitutional right to privacy under Cal Const Art I, § 1 and was not an unwarranted invasion of personal privacy under Gov C § 6254(c); public salaries are matters of substantial public interest warranting open discussion, and in accordance with Cal Const Art I, § 3(b)(2), statutes restricting public access to information concerning the conduct of public business must be narrowly construed. *Internat. Federation of Prof. & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. App. 1st Dist. Apr. 18, 2005), 128 Cal. App. 4th 586, 27 Cal. Rptr. 3d 262, 2005 Cal. App. LEXIS 607, review granted, depublished, (Cal. July 27, 2005), 32 Cal. Rptr. 3d 1, 116 P.3d 476, 2005 Cal. LEXIS 8230, aff'd, superseded, (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

While public employment does not entail the loss of privacy rights, and public employees have the same financial privacy rights as anyone else after they have received their salaries, it does require a surrender of anonymity due to the fact that public employees are engaged in the people's business; the public is entitled to know the names as well as the salaries of its highly paid employees. *Internat. Federation of Prof. & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. App. 1st Dist. Apr. 18, 2005), 128 Cal. App. 4th 586, 27 Cal. Rptr. 3d 262, 2005 Cal. App. LEXIS 607, review granted, depublished, (Cal. July 27, 2005), 32 Cal. Rptr. 3d 1, 116 P.3d 476, 2005 Cal. LEXIS 8230, aff'd, superseded, (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

Community college district was not required under the California Public Records Act, Gov C § 6250 et seq., to disclose the personal performance goals of its former superintendent because the exemption of Gov C § 6254(c) for personnel files also applies to a public employee's personal performance goals. *Versaci v. Superior Court* (Cal. App. 4th Dist. Mar. 21, 2005), 127 Cal. App. 4th 805, 26 Cal. Rptr. 3d 92, 2005 Cal. App. LEXIS 385.

Where all information sought by a newspaper was obtained by the California Commission On Peace Officer Standards from peace officer personnel records within the meaning of Pen C §§ 832.7, 832.8, the requested information was exempt from disclosure under Gov C § 6254(k). *California Com. on Peace Officer Standards & Training v. Superior Court* (Cal. App. 3d Dist. Apr. 7, 2005), 128 Cal. App. 4th 281, 27 Cal. Rptr. 3d 108, 2005 Cal.

App. LEXIS 541, review granted, depublished, (Cal. July 27, 2005), 32 Cal. Rptr. 3d 3, 116 P.3d 477, 2005 Cal. LEXIS 8239, rev'd, (Cal. Aug. 27, 2007), 42 Cal. 4th 278, 64 Cal. Rptr. 3d 661, 165 P.3d 462, 2007 Cal. LEXIS 8916.

Defendant's request for protective order to redact certain information was granted because the district court found that disclosure of the sensitive information contained in the applications to carry concealed weapons (CCW) threatened to subject judicial and law enforcement officers to heightened risk of attacks upon themselves or their families and the information could reveal the vulnerability to attack of persons who applied for a CCW. *Mehl v. Blanas* (E.D. Cal. Mar. 27, 2007), 241 F.R.D. 653, 2007 U.S. Dist. LEXIS 25291.

California Supreme Court has rejected the notion that peace officers in general have a greater privacy interest in the amount of their salaries than that possessed by other public employees, and the public interest in disclosure is equally strong as between peace officers and other public employees. While individual peace officers, such as those working undercover, may have a legitimate interest in maintaining their anonymity, and that interest would warrant exempting their names from disclosure under the California Public Records Act, Gov C § 6250 et seq., that circumstance does not support the conclusion that peace officers as a general category have a privacy interest in their identity sufficient to render salary records confidential under Pen C § 832.8(f) whenever those records include individually identified officers. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

In a case in which newspapers sought the disclosure of salary information of all city employees who earned \$ 100,000 or more in a particular fiscal year, the information sought was not private information that happened to be collected in the records of a public entity, but, rather, it was information regarding an aspect of government operations, the disclosure of which contributed to the public's understanding and oversight of those operations by allowing interested parties to monitor the expenditure of public funds. The disclosure of such information under the California Public Records Act, Gov C § 6250 et seq., does not violate the right of privacy protected by the International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

In a case in which newspapers sought the disclosure of salary information of all city employees who earned \$ 100,000 or more in a particular fiscal year, disclosure of the salary information would not constitute an unwarranted invasion of personal privacy because salary information should not be exempt from disclosure under the California Public Records Act, Gov C § 6250 et seq. To the extent that some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable one and is, accordingly, entitled to diminished weight in the balancing test that a court applies under Gov C § 6254(c), and counterbalancing any cognizable interest that public employees may have in avoiding disclosure of their salaries is the strong public interest in knowing how the government spends its money. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (Cal. Aug. 27, 2007), 42 Cal. 4th 319, 64 Cal. Rptr. 3d 693, 165 P.3d 488, 2007 Cal. LEXIS 8918.

Public Records Act did not require a county to disclose an attorney report relating to the facts underlying a high ranking employee's resignation, unless and until the county waived the attorney-client privilege under Gov C § 6254 subd. (k). Moreover, a confidentiality provision in the severance agreement essentially made it a breach of contract for the county to waive the privilege. *Sanchez v. County of San Bernardino* (Cal. App. 4th Dist. Aug. 7, 2009), 176 Cal. App. 4th 516, 98 Cal. Rptr. 3d 96, 2009 Cal. App. LEXIS 1302.

In accordance with the narrow construction required by Cal Const Art I, § 3, subd. (b)(2), for statutory exemptions from disclosure of records under Gov C §§ 6253, 6254, subd. (k), the names and benefit amounts of county retirees are not confidential under Gov C § 31532; further, the catchall exemption in Gov C § 6255, subd. (a), did not prevent a newspaper from obtaining disclosure of county retirees' names and amounts. The newspaper could not obtain disclosure of the retirees' ages, however, because § 31532 protects this information either as part of the member's sworn statement under Gov C § 31526 or as otherwise nonpublic information. *Sonoma County Employees' Retirement Assn. v. Superior Court* (Cal. App. 1st Dist. Aug. 26, 2011), 198 Cal. App. 4th 986, 130 Cal. Rptr. 3d 540, 2011 Cal. App. LEXIS 1124.

High school teacher could not enjoin the school district's disclosure, at the request of a parent, of an investigation report and letter of reprimand relating to a student's complaint of sexual harassment. Disclosure was not an unwarranted invasion of personal privacy under the exemption in Gov C § 6254(c) because the teacher was found to have violated the sexual harassment policy and the public had a legitimate interest in knowing whether and how the district enforced its sexual harassment policy. *Marken v. Santa Monica-Malibu Unified School Dist.* (Cal. App. 2d Dist. Jan. 24, 2012), 202 Cal. App. 4th 1250, 136 Cal. Rptr. 3d 395, 2012 Cal. App. LEXIS 47.

Names of police officers involved in shooting incidents were not exempt from disclosure under the California Public Records Act, Gov C §§ 6250 et seq., and Cal Const Art I, § 3(b), because officer names were not personnel information exempted by Pen C §§ 832.7(a) and 832.8, as incorporated into Gov C § 6254(k). *Long Beach Police Officers Assn. v. City of Long Beach* (Cal. App. 2d Dist. Feb. 7, 2012), 203 Cal. App. 4th 292, 136 Cal. Rptr. 3d 868, 2012 Cal. App. LEXIS 109, review granted, depublished, (Cal. Apr. 18, 2012), 140 Cal. Rptr. 3d 112, 274 P.3d 1110, 2012 Cal. LEXIS 3662, aff'd, superseded, (Cal. May 29, 2014), 59 Cal. 4th 59, 172 Cal. Rptr. 3d 56, 325 P.3d 460, 2014 Cal. LEXIS 3757.

Disposition letters regarding complaints against a former high school volleyball coach, which alleged conduct such as yelling at players and did not result in formal disciplinary action, were personnel records or similar files, although not placed in a personnel file. They were exempt from public records disclosure because the potential harm to the coach's privacy outweighed a minimal public interest; no substantial misconduct was alleged, and the coach was not a high-profile public official. *Associated Chino Teachers v. Chino Valley Unified School Dist.* (Cal. App. 4th Dist. Nov. 29, 2018), 241 Cal. Rptr. 3d 732, 30 Cal. App. 5th 530, 2018 Cal. App. LEXIS 1192.

Disposition letters regarding complaints against a former high school volleyball coach, which alleged conduct such as yelling at players and did not result in formal disciplinary action, were personnel records or similar files, although not placed in a personnel file. They were exempt from public records disclosure because the potential harm to the coach's privacy outweighed a minimal public interest; no substantial misconduct was alleged, and the coach was not a high-profile public official. *Associated Chino Teachers v. Chino Valley Unified School Dist.* (Cal. App. 4th Dist. Nov. 29, 2018), 241 Cal. Rptr. 3d 732, 30 Cal. App. 5th 530, 2018 Cal. App. LEXIS 1192.

### 13. Federal Law

As recognized in both the Critical Infrastructure Information Act of 2002, 6 USCS § 131 through § 134, and the accompanying regulations promulgated by Department of Homeland Security, there is a distinction between submitters of critical infrastructure information and recipients of protected critical infrastructure information and the federal prohibition on disclosure of protected confidential infrastructure information applies only to recipients of protected confidential information; accordingly, in a case in which a requester sought a copy of a county's geographic information system basemap under the California Public Records Act, Gov C § 6250 et seq., the federal provisions did not apply because the county was a submitter of critical infrastructure information and did not receive protected confidential information. *County of Santa Clara v. Superior Court* (Cal. App. 6th Dist. Feb. 5, 2009), 170 Cal. App. 4th 1301, 89 Cal. Rptr. 3d 374, 2009 Cal. App. LEXIS 148, modified, (Cal. App. 6th Dist. Feb. 27, 2009), 2009 Cal. App. LEXIS 274.

Exemption provisions of Federal Freedom of Information Act, rather than Ev C § 1040 and Gov C § 6254(f), are determinative in suit against California Adult Authority on defendant's motion to withhold allegedly privileged personnel files. *Kerr v. United States Dist. Court for Northern Dist.* (9th Cir. Jan. 17, 1975), 511 F.2d 192, 1975 U.S. App. LEXIS 16555, aff'd, (U.S. June 14, 1976), 426 U.S. 394, 96 S. Ct. 2119, 48 L. Ed. 2d 725, 1976 U.S. LEXIS 62.

In light of the fact that the California Public Records Act (Gov C §§ 6250 et seq.) was modeled after the federal Freedom of Information Act (5 USCS § 552), Gov C § 6254, subd. (f), which provides an exemption from disclosure for records of complaints to or investigations conducted by any state or local police agency, should receive a parallel construction with 5 USCS § 552(b)(7), which exempts investigatory records compiled for law enforcement purposes, including the 1974 amendments to § 552(b)(7), which limit the investigatory records exemption and were intended to restate and clarify the original purpose of the federal act. *South Coast Newspapers, Inc. v. City of Oceanside* (Cal. App. 4th Dist. Sept. 24, 1984), 160 Cal. App. 3d 261, 206 Cal. Rptr. 527, 1984 Cal. App. LEXIS 2539.

### 14. Particular Determinations

Because the confidentiality conferred by Gov C § 31532, protected information provided by a member or on the member's behalf to a county employees' retirement system, not all information held by the county employees' retirement system that pertained to or related to the member, a trial court correctly concluded that the information, as requested by a newspaper under the California Public Records Act, Gov C §§ 6251 et seq., was not protected from disclosure by § 31532. Moreover, the county employees' retirement system had not shown the privacy interest served by nondisclosure clearly outweighed the public interest served by disclosure, and because individual county retirees were not entitled to notice and a hearing before their individual pensions were disclosed, there was no cause to remand to the trial court for a hearing on whether each individual's pension benefits should be kept

confidential. *Sacramento County Employees' Retirement System v. Superior Court* (Cal. App. 3d Dist. May 11, 2011), 195 Cal. App. 4th 440, 125 Cal. Rptr. 3d 655, 2011 Cal. App. LEXIS 569.

Because the confidentiality conferred by Gov C § 31532, protected information provided by a member or on the member's behalf to a county employees' retirement system, not all information held by the county employees' retirement system that pertained to or related to the member, a trial court correctly concluded that the information, as requested by a newspaper under the California Public Records Act, Gov C § 6251 et seq., was not protected from disclosure by § 31532. Moreover, the county employees' retirement system had not shown the privacy interest served by nondisclosure clearly outweighed the public interest served by disclosure, and because individual county retirees were not entitled to notice and a hearing before their individual pensions were disclosed, there was no cause to remand to the trial court for a hearing on whether each individual's pension benefits should be kept confidential. *Scott v. Sanches* (E.D. Cal. Dec. 8, 2010), 2010 U.S. Dist. LEXIS 130513.

In a case under the California Public Records Act, Gov C §§ 6250 et seq., in which petitioner sought the names of pharmaceutical companies and other businesses and individuals the California Department of Corrections and Rehabilitation (CDCR) contacted in order to acquire sodium thiopental, a prescription drug used by the State in executing condemned inmates, the trial court erred in concluding that the public interest favoring withholding of the information sought by petitioner outweighed that favoring disclosure, because the record contained no evidence that disclosure of the names would threaten privacy and security interests, nor a basis in fact or law upon which to apply either the conditional privilege for confidential information set forth in Ev C § 1040, or the deliberative process privilege, which the trial court considered in the weighing process mandated by Gov C §§ 6254 and 6255. CDCR failed to present any competent evidence in support of nondisclosure, and when the competing considerations were weighed independently, the public interest served by revealing the requested information clearly outweighed that favoring nondisclosure. *American Civil Liberties Union of Northern California v. Superior Court* (Cal. App. 1st Dist. Dec. 20, 2011), 202 Cal. App. 4th 55, 134 Cal. Rptr. 3d 472, 2011 Cal. App. LEXIS 1590.

State Department of Mental Health was ordered to produce, with certain redactions, citations that were requested by an investigative news organization and that related to patient care violations in state facilities housing mentally ill and developmentally disabled patients. *State Dept. of Public Health v. Superior Court* (Cal. App. 3d Dist. Sept. 18, 2013), 219 Cal. App. 4th 966, 162 Cal. Rptr. 3d 324, 2013 Cal. App. LEXIS 741, modified, (Cal. App. 3d Dist. Oct. 9, 2013), 2013 Cal. App. LEXIS 806, review granted, depublished, (Cal. Jan. 29, 2014), 167 Cal. Rptr. 3d 107, 316 P.3d 1217, 2014 Cal. LEXIS 734, rev'd, superseded, (Cal. Feb. 19, 2015), 60 Cal. 4th 940, 184 Cal. Rptr. 3d 60, 342 P.3d 1217, 2015 Cal. LEXIS 954.

In a case in which a prisoner sought various records from the district attorney to assist in investigating whether the district attorney impermissibly sought the death penalty based on the race of the defendant, the district attorney's argument the documents sought were exempt under subdivision (k) of this section was unavailing. *Weaver v. Superior Court* (Cal. App. 4th Dist. Mar. 12, 2014), 224 Cal. App. 4th 746, 168 Cal. Rptr. 3d 864, 2014 Cal. App. LEXIS 233.

Documents a prisoner sought from two homicide cases were publicly filed in superior court, and involved motions for disclosure of information regarding claims of selective prosecution. As such, they were not investigatory files exempt from disclosure under subdivision (f) of this section. *Weaver v. Superior Court* (Cal. App. 4th Dist. Mar. 12, 2014), 224 Cal. App. 4th 746, 168 Cal. Rptr. 3d 864, 2014 Cal. App. LEXIS 233.

In a case in which a police union and a city sought a permanent injunction against disclosure of the names of police officers involved in certain shootings while on duty pursuant to exceptions set forth in the California Public Records Act, the particularized showing necessary to outweigh the public's interest in disclosure was not made here, where the union and the city relied on only a few vaguely worded declarations making only general assertions about the risks officers face after a shooting. *Long Beach Police Officers Assn. v. City of Long Beach* (Cal. May 29, 2014), 59 Cal. 4th 59, 172 Cal. Rptr. 3d 56, 325 P.3d 460, 2014 Cal. LEXIS 3757.

School district's inadvertent inclusion of over a hundred documents that were arguably subject to the attorney-client or attorney work product privileges did not waive the privileges. A public agency's inadvertent release of privileged documents in response to a records request does not waive the attorney-client and attorney work product privileges. 239 Cal. App. 4th 33, 190 Cal. Rptr. 3d 721, 2015 Cal. App. LEXIS 671.

Public records exemption for law enforcement records of investigations applied to records generated by a system of high-speed cameras that automatically scanned and catalogued license plate images to aid law enforcement in locating vehicles associated with a suspected crime. *American Civil Liberties Union Foundation of Southern California v. Superior Court* (Cal. App. 2d Dist. May 6, 2015), 236 Cal. App. 4th 673, 186 Cal. Rptr. 3d 746, 2015 Cal. App. LEXIS 378, review granted, depublished, (Cal. July 29, 2015), 190 Cal. Rptr. 3d 318, 352 P.3d 882,

2015 Cal. LEXIS 5302, aff'd in part and rev'd in part, (Cal. Aug. 31, 2017), 221 Cal. Rptr. 3d 832, 400 P.3d 432, 3 Cal. 5th 1032, 2017 Cal. LEXIS 6768.

Because CHP 180 forms contain personal information exempt from disclosure under the Public Records Act, as set forth in *County of Los Angeles v. Superior Court*, the superior court erred in compelling the California Highway Patrol to produce unredacted records containing personal information derived from CHP 180 forms in light of the intervening case law. *State of California v. Superior Court (Flynn)* (Cal. App. 2d Dist. Oct. 13, 2016), 208 Cal. Rptr. 3d 501, 4 Cal. App. 5th 94, 2016 Cal. App. LEXIS 857.

**§ 6254.26. Disclosure of specified records regarding alternative investments in which public investment funds invest**

(a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

- (1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
- (2) Quarterly and annual financial statements of alternative investment vehicles.
- (3) Meeting materials of alternative investment vehicles.
- (4) Records containing information regarding the portfolio positions in which alternative investment funds invest.
- (5) Capital call and distribution notices.
- (6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

- (1) The name, address, and vintage year of each alternative investment vehicle.
- (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.
- (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.
- (4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
- (5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.
- (6) The net internal rate of return of each alternative investment vehicle since inception.
- (7) The investment multiple of each alternative investment vehicle since inception.
- (8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.
- (9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

(c) For purposes of this section, the following definitions shall apply:

- (1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.
- (2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.
- (3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.
- (4) "Public investment fund" means any public pension or retirement system, any public endowment or foundation, or a public bank, as defined in Section 57600.

*Added by Stats 2005 ch 258 § 2 (SB 439), effective January 1, 2006. Amended by Stats 2006 ch 538 § 233 (SB 1852), effective January 1, 2007; Stats 2019 ch 442 § 8 (AB 857), effective January 1, 2020.*

**2006 Amendment:** Substituted “year-end” for “yearend” after “on a fiscal” in subd (b)(9).

**2019 Amendment:** In subd (c)(4), (1) deleted “and” following “retirement system,”; and (2) added “, or a public bank, as defined in Section 57600.”

### Notes of Decisions

Public entity could not be required to obtain individual fund information from its fund management company because the entity had not prepared, owned, used, or retained the information; thus, the requested documents did not fall within the definition of public records. The requirement to produce public records in an agency’s possession does not import a constructive possession inquiry into the definition, nor do the statutory exceptions to the fund information exemptions expand the definition. *Regents of University of California v. Superior Court* (2013, 1st Dist) 222 Cal App 4th 383, 2013 Cal App LEXIS 1021.

#### § 7480. Exempted disclosures

Nothing in this chapter shall prohibit any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police, sheriff’s department, district attorney, or special agent with the Department of Justice in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association in this state, the police, sheriff’s department, district attorney, special agent with the Department of Justice, or a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days before, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer’s signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) Surveillance photographs and video recordings of persons accessing the crime victim’s financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving the account were alleged to have occurred. Nothing in this paragraph does any of the following:

(A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

(B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police, sheriff's department, district attorney, or special agent with the Department of Justice in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, access cards, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police, sheriff's department, district attorney, special agent with the Department of Justice, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days before, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) Surveillance photographs and video recordings of persons accessing the crime victim's financial account via an automated teller machine (ATM) or from within the financial institution for dates on which illegal acts involving this account were alleged to have occurred. Nothing in this paragraph does any of the following:

(A) Requires a financial institution to produce a photograph or video recording if it does not possess the photograph or video recording.

(B) Affects any existing civil immunities as provided in Section 47 of the Civil Code or any other provision of law.

(8) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:

(1) Authorization of the disclosure for the period specified in subdivision (c).

(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.

(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller, or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Business Oversight when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Business Oversight, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Business Oversight by reference to Division 1 (commencing with Section 99), Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000), of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001), of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001), of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section 8006 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.



(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) An order by a judge issued pursuant to subdivision (c) of Section 532f of the Penal Code.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system

with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.

**(q)** When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system with the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

**(r)** When the Franchise Tax Board certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by the taxpayer; (2) the direct deposit refund was not returned to the Franchise Tax Board; and (3) the refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund, then the financial institution shall furnish to the Franchise Tax Board the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account.

*Added by Stats 2005 ch 140 § 3 (SB 1018), operative January 1, 2013. Amended by Stats 2008 ch 234 § 2, effective January 1, 2009, operative January 1, 2013; Stats 2010 ch 697 § 30 (SB 189), effective January 1, 2011, operative July 1, 2012 (ch 697 prevails), ch 709 § 2 (SB 1062); Stats 2011 ch 304 § 3 (SB 428), effective January 1, 2012; Stats 2014 ch 401 § 38 (AB 2763), effective January 1, 2015; Stats 2018 ch 288 § 1 (AB 3229), effective January 1, 2019.*

### Amendments

**2010 Amendment:** (1) Substituted "shall prohibit" for "prohibits" in the introductory clause; (2) added "access cards," in the introductory clause of subds (b) and (c); (3) added subds (b)(7) and (c)(7); (4) redesignated former subds (b)(7) and (c)(7) to be subds (b)(8) and (c)(8); (5) added the comma after "Section 33000" in subd (f)(1); (6) added the comma after "Section 38001" in subd (g); (7) added the comma after "Section 37001" in subd (h)(2); (8) substituted "Section 8006" for "Section 3087" in subd (k); (9) added "with" after "furnish the retirement system" in subds (p) and (q); and (10) deleted former subd (s) which read: "(s) This section shall become operative on January 1, 2013."

**2011 Amendment:** (1) Added subd (n)(4); and (2) redesignated former subd (n)(4) to be subd (n)(5).

**2014 Amendment:** (1) Amended subd (e)(1) by substituting (a) "Department of Business Oversight" for "Department of Corporations"; and (b) "Commissioner of Business Oversight" for "Commissioner of Corporations"; and (2) amended subd (f)(1) by substituting (a) "Commissioner of Business Oversight" for "Commissioner of Financial Institutions"; and (b) "Division 1.1 (commencing with Section 1000), Division 1.2 (commencing with Section 2000), Division 1.6" for "Division 1.5".

**2018 Amendment:** (1) Substituted "police, sheriff's department, district attorney, or special agent with the Department of Justice" for "police or sheriff's department or district attorney" in the introductory paragraph of subd (b), and twice in the introductory paragraph of subd (c); (2) substituted "30 days before" for "30 days prior to" in the introductory paragraph of subd (b) and in the introductory paragraph of subd (c); and (3) substituted "the police, sheriff's department, district attorney, special agent with the Department of Justice, or a county" for "the police or sheriff's department or district attorney, a county" in the introductory paragraph of subd (b).

### § 7500. Sex differential in contribution rate

Any city with a population of 1,000,000 or more, and any agency thereof, which has established any pension and retirement plan which requires officers and employees of one sex to pay greater contributions than those of another sex who are the same age shall revise the plan so that the contributions are

the same commencing with contributions for service on and after January 1, 1975. This section shall not be construed as requiring or authorizing an increase in the contributions of any members of a pension and retirement plan.

This section shall not be applicable to the Public Employees' Retirement System.

*Added by Stats 1974 ch 1478 § 1.*

### **§ 7501. Legislative intent**

It is the intent and purpose of the Legislature, in enacting this chapter, to safeguard the solvency of all public retirement systems and funds. The Legislature finds and declares that public agencies maintaining retirement systems can benefit from periodic and independent analysis of their financial condition. It is the purpose of Sections 7502, 7503, and 7504 to enable the State Controller to gather information to compare and evaluate the financial condition of such systems and to make such comparisons and evaluations.

*Added by Stats 1977 ch 928 § 1, effective September 20, 1977, operative January 1, 1978. Amended by Stats 1978 ch 388 § 1, effective July 11, 1978; Stats 1982 ch 821 § 1.*

#### **Amendments**

**1978 Amendment:** Substituted “gather information to compare and evaluate the financial condition of such systems and to make such comparisons and evaluations” for “perform this service” after “Controller to”.

**1982 Amendment:** Substituted (1) “this chapter” for “Sections 7502, 7503, and 7504” in the first sentence; and (2) “Sections 7502, 7503, and 7504” for “those sections” in the third sentence.

### **§ 7502. Review of financial reports and triennial valuations of public retirement systems; Advisory committee**

The Controller shall review the annual financial report of each state and local public retirement system submitted pursuant to Section 7504 giving particular consideration to the adequacy of funding of each system. The Controller shall also review the triennial valuation of each public retirement system submitted pursuant to Section 7504 and shall give particular consideration to the assumption concerning the inflation element in salary and wage increases, mortality, service retirement rates, withdrawal rates, disability retirement rates, and rate of return on total assets.

The Controller shall establish an advisory committee that shall include actuaries who have attained the designation of Associate or Fellow of the Society of Actuaries and state and local public retirement system administrators to assist in carrying out the duties imposed by this section.

*Added by Stats 1977 ch 928 § 2, effective September 20, 1977, operative January 1, 1978. Amended by Stats 1978 ch 388 § 2, effective July 11, 1978; Stats 2016 ch 415 § 2 (AB 2375), effective January 1, 2017.*

#### **Amendments**

**1978 Amendment:** Substituted “total assets” for “investments” at the end of the first paragraph.

**2016 Amendment:** (1) Substituted “Controller” for “State Controller” in the first and second sentences of the first paragraph and in the second paragraph; and (2) amended the second paragraph by (a) substituting “that shall include actuaries who have attained the designation of Associate or Fellow of the Society of Actuaries” for “which shall include enrolled actuaries, as defined in Section 7504,”; and (b) deleting the comma after “system administrators”.

**§ 7503. Preparation of annual report by state and local public retirement systems**

All state and local public retirement systems shall prepare an annual report in accordance with generally accepted accounting principles.

*Added by Stats 1977 ch 928 § 3, effective September 20, 1977, operative January 1, 1978. Amended by Stats 1978 ch 388 § 3, effective July 11, 1978.*

**Amendments**

**1978 Amendment:** Substituted the section for the former section which read: "All state and local public retirement systems shall prepare an annual report which shall contain the following financial information:

- "(a) Balance sheet as of the close of the system's fiscal year.
- "(b) Statement of income and credits to reserves.
- "(c) Statement of changes in reserves.
- "(d) Statement of cash receipts and disbursements.

"The balance sheet shall show the cost of assets held, distributed among the reserves for employer contributions, employee contributions, and retired members. The balance sheet shall also show the present value of the total existing and future liabilities of the system to be met from future contributions as certified by an enrolled actuary based on the most recent triennial valuation. The assets of the retirement system shall be stated in accordance with generally accepted accounting principles."

**§ 7504. Services to be performed by actuary; Submission of audited financial statements**

(a) All state and local public retirement systems shall, not less than triennially, secure the services of an actuary. For the purposes of this section, "actuary" means an actuary who satisfies the qualification standards for actuaries issuing statements of actuarial opinion in the United States with regard to pensions or other postemployment benefits and who has demonstrated experience in public retirement systems. The actuary shall perform a valuation of the system utilizing actuarial assumptions and techniques established by the agency that are, in the aggregate, reasonably related to the experience and the actuary's best estimate of anticipated experience under the system. Any differences between the actuarial assumptions and techniques used by the actuary that differ significantly from those established by the agency shall be disclosed in the actuary's report and the effect of the differences on the actuary's statement of costs and obligations shall be shown.

(b) All state and local public retirement systems shall secure the services of a qualified person to perform an attest audit of the system's financial statements. A qualified person means any of the following:

- (1) A person who is licensed to practice as a certified public accountant in this state by the California Board of Accountancy.
- (2) A person who is registered and entitled to practice as a public accountant in this state by the California Board of Accountancy.
- (3) A county auditor in any county subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3).
- (4) A county auditor in any county having a pension trust and retirement plan established pursuant to Section 53216.

(c) All state and local public retirement systems shall submit audited financial statements to the Controller at the earliest practicable opportunity within six months of the close of each fiscal year. However, the Controller may delay the filing date for reports due in the first year until the time as report forms have been developed that, in his or her judgment, will satisfy the requirements of this section. The financial statements shall be prepared in accordance with generally accepted accounting principles in the form and manner prescribed by the Controller. The penalty prescribed in Section 53895 shall be invoked for failure to comply with this section. Upon a satisfactory showing of good cause, the Controller may waive the penalty for late filing provided by this subdivision.

(d) The Controller shall compile and publish a report annually on the financial condition of all state and local public retirement systems containing, but not limited to, the data required in Section 7502. The report shall be published within 12 months of the receipt of the information, and in no case later than 18 months after the end of the fiscal year upon which the information in the report is based.

*Added by Stats 1977 ch 928 § 4, effective September 20, 1977, operative January 1, 1978. Amended by Stats 1978 ch 388 § 4, effective July 11, 1978; Stats 1979 ch 20 § 1, effective April 3, 1979; Stats 1980 ch 1102 § 1; Stats 1981 ch 800 § 2; Stats 2000 ch 1055 § 24 (AB 2889), effective September 30, 2000; Stats 2008 ch 369 § 3 (AB 1844), effective January 1, 2009; Stats 2016 ch 415 § 3 (AB 2375), effective January 1, 2017.*

### Amendments

**1978 Amendment:** (1) Amended subd (a) by (a) deleting the comma after “systems”; (b) adding “, for the purposes of this section,” after “actuary” the first time it appears in the second sentence; and (c) adding “and who has demonstrated experience in public retirement systems” after “Act of 1974”; and (2) added the second and fifth sentences in subd (c).

**1979 Amendment:** Amended subd (b) by (1) substituting “person” for “public accountant” after “qualified” wherever it appears; (2) adding “any of the following” in the introductory clause; (3) substituting the periods for “, or” at the end of subds (b)(1) and (b)(2); and (4) adding subd (b)(4).

**1980 Amendment:** (1) Amended subd (a) by (a) substituting “actuary’s” for “actuaries’ “ in the third sentence; and (b) adding the last sentence; and (2) amended the second sentence of subd (c) by (a) substituting “State Controller” for “Controller”; and (b) adding the commas after “developed which” and after “his judgment”.

**1981 Amendment:** Added “at the earliest practicable opportunity” in the first sentence of subd (c).

**2000 Amendment:** In addition to making technical changes, (1) amended subd (a) by adding (a) “federal” after “Title III of the”; and (b) “(Public Law 93–406)” in the first sentence of subd (a); (2) substituting “California Board of Accountancy” in subds (b)(1) and (b)(2); and (3) adding “(Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3)” in subd (b)(3).

**2008 Amendment:** Added the last sentence of subd (d).

**2016 Amendment:** (1) Substituted “actuary” for “enrolled actuary” in the first sentence of subd (a); (2) amended the second sentence of subd (a) by (a) deleting “An enrolled actuary,” at the beginning; (b) adding “ ‘actuary’ ”; and (c) substituting “who satisfies the qualification standards for actuaries issuing statements of actuarial opinion in the United States with regard to pensions or other postemployment benefits” for “enrolled under subtitle C of Title III of the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406)”; and (3) substituted “Controller” for “State Controller” wherever it appears in subds (c) and (d).

### § 7505. Direct transmission of benefits into payee’s bank account

Every state and local public retirement system shall permit any person entitled to the receipt of benefits to designate that payment of such benefits shall be transmitted to a bank, savings and loan association, or credit union for deposit in the person’s account, and the transmittal of such payment pursuant to this section shall discharge the public agency’s obligations in respect to such payment.

*Added by Stats 1979 ch 454 § 1.*

### § 7506. Direct deposit of beneficiary’s funds

Notwithstanding any other provision of law, any person entitled to the receipt of benefits from any state retirement system may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person’s account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established by the Controller pursuant to Section 7506.5. The direct deposit shall discharge the state agency’s obligation in respect to that payment.

*Added by Stats 1982 ch 1270 § 22, ch 1317 § 1.*

**§ 7506.5. Agreements regarding direct deposits programs**

The Controller shall make an agreement with one or more financial institutions participating in the Automated Clearing House pursuant to the local rules, and shall establish a program, for the direct deposit by electronic fund transfer of the benefits, after any withholding required by law and authorized deductions, of any person entitled to the receipt of benefits from any state retirement system who authorizes the direct deposit thereof by electronic fund transfer into the person's account at the financial institution of his or her choice.

*Added by Stats 1982 ch 1317 § 2. Amended by Stats 1985 ch 600 § 2, ch 1344 § 1, operative January 1, 1987.*

**Amendments**

**1985 Amendment:** Substituted "shall" for "may" both times it appears.

**§ 7507. Actuarial evaluations of future annual costs; Applicability**

(a) For the purpose of this section:

(1) "Actuary" means an actuary as defined in Section 7504.

(2) "Future annual costs" includes, but is not limited to, annual dollar changes, or the total dollar changes involved when available, as well as normal cost and any change in accrued liability.

(b) (1) Except as provided in paragraph (2), the Legislature and local legislative bodies, including community college district governing boards, when considering changes in retirement benefits or other postemployment benefits, shall secure the services of an actuary to provide a statement of the actuarial impact upon future annual costs, including normal cost and any additional accrued liability, before authorizing changes in public retirement plan benefits or other postemployment benefits.

(2) The requirements of this subdivision do not apply to:

(A) An annual increase in a premium that does not exceed 3 percent under a contract of insurance.

(B) A change in postemployment benefits, other than pension benefits, mandated by the state or federal government or made by an insurance carrier in connection with the renewal of a contract of insurance.

(c) (1) (A) With regard to local legislative bodies, including community college district governing boards, the future costs of changes in retirement benefits or other postemployment benefits, as determined by the actuary, shall be made public at a public meeting at least two weeks prior to the adoption of any changes in public retirement plan benefits or other postemployment benefits. If the future costs of the changes exceed one-half of 1 percent of the future annual costs, as defined in paragraph (2) of subdivision (a), of the existing benefits for the legislative body, an actuary shall be present to provide information as needed at the public meeting at which the adoption of a benefit change shall be considered. The adoption of any benefit to which this section applies shall not be placed on a consent calendar.

(B) The requirements of this paragraph do not apply to:

(i) An annual increase in a premium that does not exceed 3 percent under a contract of insurance.

(ii) A change in postemployment benefits, other than pension benefits, mandated by the state or federal government or made by an insurance carrier in connection with the renewal of a contract of insurance.

(2) With regard to the Legislature, the future costs as determined by the actuary shall be made public at the policy and fiscal committee hearings to consider the adoption of any changes in public retirement plan benefits or other postemployment benefits. The adoption of any benefit to which this section applies shall not be placed on a consent calendar.

(d) Upon the adoption of any benefit change to which this section applies, the person with the responsibilities of a chief executive officer in an entity providing the benefit, however that person is denominated, shall acknowledge in writing that he or she understands the current and future cost of the benefit

as determined by the actuary. For the adoption of benefit changes by the state, this person shall be the Director of Human Resources.

(e) The requirements of this section do not apply to a school district or a county office of education, which shall instead comply with requirements regarding public notice of, and future cost determination for, benefit changes that have been enacted to regulate these entities. These requirements include, but are not limited to, those enacted by Chapter 1213 of the Statutes of 1991 and by Chapter 52 of the Statutes of 2004.

*Added by Stats 2008 ch 371 § 3 (SB 1123), effective January 1, 2009. Amended by Stats 2012 ch 665 § 41 (SB 1308), effective January 1, 2013; Stats 2016 ch 415 § 4 (AB 2375), effective January 1, 2017.*

**Editor's Notes**—2011 Governor's Reorganization Plan No. 1 was submitted to the Legislature on June 9, 2011, and became effective September 9, 2011, pursuant to Gov C § 12080.5, and substantively operative July 1, 2012.

Stats 2012 ch 665 (SB 1308) enacts the statutory changes necessary to reflect the changes made by the Governor's Reorganization Plan No. 1 of 2011.

**Former Sections:** Former Gov C § 7507, similar to the present section, was added by Stats 1977 ch 941 § 1, amended by Stats 1980 ch 481 § 3, and repealed by Stats 2008 ch 371 § 2.

### Amendments

**2011 Amendment:** Substituted "Director of the Department of Human Resources" for "director of the Department of Personnel Administration" in the second sentence of subd (d).

**2012 Amendment:** Substituted "Director of Human Resources" for "director of the Department of Personnel Administration" in the second sentence of subd (d).

**2016 Amendment:** Substituted "as defined in Section 7504" for "who is an associate or fellow of the Society of Actuaries" in subd (a)(1).

### Notes of Decisions

Arbitrator who interpreted a memorandum of understanding (MOU) exceeded her powers under CCP § 1286.2(a)(4), by mandating the State to reclassify certain employees retroactively as safety members because the MOU as presented to the Legislature for approval under Gov C §§ 3517.5, 3517.6(b), did not inform the Legislature that it would be applied retroactively and the Legislature was not provided under Gov C § 7507(b)(1) with a fiscal analysis of the cost of doing so. Because Gov C §§ 19816.21, 20405.1, pertaining to safety member retirement benefits, are not sources cited in the Dills Act, Gov C §§ 3512 et seq., provisions of the MOU requiring their amendment could not become effective without legislative approval, notwithstanding the delegation of authority to the California Department of Personnel Administration in Gov C §§ 20068, 20405.1. *California Statewide Law Enforcement Assn. v. California Dept. of Personnel Admin.* (2011, 3d Dist) 192 Cal App 4th 1, 120 Cal Rptr 3d 374, 2011 Cal App LEXIS 84, review denied (2011, Cal.) 2011 Cal. LEXIS 4698.

### § 7507.2. California Actuarial Advisory Panel

(a) There is hereby enacted the California Actuarial Advisory Panel. The panel shall provide impartial and independent information on pensions, other postemployment benefits, and best practices to public agencies and shall meet quarterly.

(b) The responsibilities of the California Actuarial Advisory Panel shall include, but are not limited to:

- (1) Defining the range of actuarial model policies and best practices for public retirement plan benefits, including pensions and other postemployment benefits.
- (2) Developing pricing and disclosure standards for California public sector benefit improvements.
- (3) Developing quality control standards for California public sector actuaries.
- (4) Gathering model funding policies and practices.
- (5) Replying to policy questions from public retirement systems in California.
- (6) Providing comment upon request by public agencies.



(c) The California Actuarial Advisory Panel shall consist of eight members. Each member shall be an actuary who has attained the designation of Associate or Fellow of the Society of Actuaries and who has demonstrated experience with public sector clients. Members shall be appointed by the entities listed below, and each member shall serve a three-year term, provided that, in the initial appointments only, the panelists named by the University of California, the Senate, and one of the panelists named by the Governor shall serve two-year terms. The Governor shall appoint two panelists, and one panelist shall be appointed by each of the following:

- (1) The Teachers' Retirement Board.
- (2) The Board of Administration of the Public Employees' Retirement System.
- (3) The State Association of County Retirement Systems.
- (4) The Board of Regents of the University of California.
- (5) The Speaker of the Assembly.
- (6) The Senate Committee on Rules.

(d) The California Actuarial Advisory Panel shall be located in the Controller's office, which shall provide support staff to the panel.

(e) The opinions of the California Actuarial Advisory Panel are nonbinding and advisory only. The opinions of the panel shall not, in any case, be used as the basis for litigation.

(f) A member of the California Actuarial Advisory Panel shall receive reimbursement for expenses that shall be paid by the authority that appointed the member.

(g) The California Actuarial Advisory Panel shall report to the Legislature on or before February 1 of each year.

*Added by Stats 2008 ch 371 § 4 (SB 1123), effective January 1, 2009. Amended by Stats 2016 ch 415 § 5 (AB 2375), effective January 1, 2017.*

### **Amendments**

**2016 Amendment:** Substituted "who has attained the designation of Associate or Fellow of the Society of Actuaries and who has demonstrated experience" for "as defined in Section 7507," in the first sentence of the introductory paragraph of subd (c).

#### **§ 7507.5. Notice to Legislature concerning proposed changes in University of California Retirement System**

It is the intent of the Legislature that the Regents of the University of California provide written notice to the Legislature of any proposed changes to retirement plan benefits, employer or employee contribution rates, or actuarial assumptions affecting the University of California Retirement System, at least 60 days prior to the effective date thereof. The written notice shall be provided to the Joint Legislative Budget Committee and the fiscal subcommittees and shall consist of:

- (a) A description and explanation of each specific proposed change to the benefit structure, contribution rates, or actuarial assumptions.
- (b) The actuarial impact upon future annual costs of each proposed change.

*Added by Stats 1984 ch 268 § 16.95, effective June 30, 1984.*

#### **§ 7508. Service on public boards by retired members of state retirement system**

A retired member of a state retirement system, other than the University of California Retirement System, the Judges' Retirement System, the Judges' Retirement System II, and the State Teachers' Retirement System, may, notwithstanding Section 9359.12, serve on a public board or commission and be entitled to receive for that service, per diem compensation for every day or portion thereof of actual attendance at meetings of the board or commission or any committee thereof, and necessary traveling expenses incurred in connection with the performance of his or her official duties, without loss or

interruption of benefits provided by the system, so long as the service does not exceed a total of 50 meeting days.

This section shall not apply to service as a member of a board or commission the annual salary for which is prescribed by Chapter 6 (commencing with Section 11550) of Division 3 of Title 2.

*Added by Stats 1986 ch 1458 § 1, effective September 30, 1986. Amended by Stats 1994 ch 879 § 1 (SB 65), effective September 26, 1994, operative November 9, 1994.*

**Former Sections:** Former § 7508, relating to mandatory retirement age, was added by Stats 1978 ch 385 § 1, effective July 11, 1978, operative January 1, 1979, amended by Stats 1978 ch 810 § 1, effective September 18, 1978, operative January 1, 1979, and repealed by Stats 1983 ch 666 § 7.

#### **§ 7508.5. Representation before retirement board prohibited**

Except as otherwise provided in Section 20098 or 31528 of this code, or Section 22212.5 of the Education Code, an individual who was a member of the retirement board of a public pension or retirement system, as defined in subdivision (h) of Section 17 of Article XVI of the California Constitution, or an administrator, executive officer, investment officer, or general counsel of that board, shall not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person except the public entity maintaining that pension or retirement system, by making any formal or informal appearance before, or any oral or written communication to, the pension or retirement system, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

*Added by Stats 2009 ch 301 § 2 (AB 1584), effective October 11, 2009.*

#### **§ 7509. Exemption from interest rate restrictions**

(a) The restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any loans made by, or forbearances of, any state or local public retirement system, including, but not limited to, any public retirement system authorized and regulated by the State Teachers' Retirement Law, the Public Employees' Retirement Law, the County Employees Retirement Law of 1937, any public retirement system administered by the Teachers Retirement Board or Board of Administration of the Public Employees' Retirement System, or any public retirement system acting pursuant to the laws of this state or the laws of any local agency.

(b) For the purposes of this section, "local agency" means county, city, city and county, district, school district, or any public or municipal corporation, political subdivision, or other public agency of the state, or any instrumentality of one or more of these agencies.

(c) This section creates and authorizes any state or local retirement system as an exempt class of persons pursuant to Section 1 of Article XV of the California Constitution.

*Added by Stats 1982 ch 821 § 2. Amended by Stats 2006 ch 538 § 236 (SB 1852), effective January 1, 2007.*

#### **Amendments**

**2006 Amendment:** (1) Added subd designations (a)–(c); (2) added “, including,” after “public retirement system” in subd (a); (3) amended subd (b) by (a) adding “ ‘local agency’ “ after “purposes of this section,”; (b) substituting “means” for “shall mean” after “ ‘local agency’ “; (c) substituting “subdivision” for “subdivison” after “municipal corporation, political”; and (d) substituting “these” for “any such” after “one or more of”; and (4) substituted “California” for “State” after “Article XV of the” in subd (c).

**§ 7510. Investments by public retirement systems in real property**

(a) (1) Except as provided in subdivision (b), a public retirement system, which has invested assets in real property and improvements thereon for business or residential purposes for the production of income, shall pay annually to the city or county, in whose jurisdiction the real property is located and has been removed from the secured roll, a fee for general governmental services equal to the difference between the amount that would have accrued as real property secured taxes and the amount of possessory interest unsecured taxes paid for that property. The governing bodies of local entities may adopt ordinances and regulations authorizing retirement systems to invest assets in real property subject to the foregoing requirements.

(2) This subdivision shall not apply to any retirement system which is established by a local governmental entity if that entity is presently authorized by statute or ordinance to invest retirement assets in real property.

(3) This subdivision shall not apply to property owned by any state public retirement system.

(b) (1) Whenever a state public retirement system, which has invested assets in real property and improvements thereon for business or residential purposes for the production of income, leases the property, the lease shall provide, pursuant to Section 107.6 of the Revenue and Taxation Code, that the lessee's possessory interest may be subject to property taxation and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on that interest. The lease shall be valued in accordance with Section 21 of Title 18 of the California Code of Regulations, as that section was in effect on January 1, 2015, for the valuation of taxable possessory interests.

(2) Except as provided in this subdivision, the property shall be assessed and its taxes computed and collected in the same manner as privately owned property. The lessee's possessory interest shall be placed on the unsecured roll and the tax on the possessory interest shall be subject to the collection procedures for unsecured property taxes.

(3) An investment by a state public retirement system in a legal entity that invests assets in real property and improvements thereon shall not constitute an investment by the state public retirement system of assets in real property and improvements thereon. For purposes of this paragraph, "legal entity" includes, but is not limited to, partnership, joint venture, corporation, trust, or association. When a state public retirement system invests in a legal entity, the state public retirement system shall be deemed to be a person for the purpose of determining a change in ownership under Section 64 of the Revenue and Taxation Code.

(4) Notwithstanding any other provision of law, fees charged pursuant to this section and collected prior to July 1, 1992, shall be deemed valid and not refundable under any circumstance. Notwithstanding any other provision of law, fees, interest and penalties, if any, asserted to be due pursuant to this section that were not charged or collected prior to July 1, 1992, shall be deemed invalid and not collectable under any circumstance.

(5) This subdivision shall apply to the assessment, computation, and collection of taxes for the fiscal year beginning on July 1, 1992, and each fiscal year thereafter. For the 1992–93 and 1993–94 fiscal years, in the case where a lessee's possessory interest existed for less than the full fiscal year for which the tax was levied, the amount of tax shall be prorated in accordance with the number of months for which the lessee's interest existed.

*Added by Stats 1982 ch 24 § 2. Amended by Stats 1992 ch 1158 § 1 (SB 1687), effective September 29, 1992; Stats 1993 ch 1187 § 2 (SB 70); Stats 1994 ch 1281 § 1 (SB 1972), effective September 30, 1994; Stats 2015 ch 454 § 1 (SB 803), effective January 1, 2016.*

**Amendments**

**1992 Amendment:** (1) Added subdivisions designations (a)(1) and (a)(2); (2) added "Except as provided in subdivision (b)," in subd (a)(1); (3) substituted "subdivision" for "section" in subd (a)(2); and (4) added subds (a)(3) and (b).

**1993 Amendment:** (1) Substituted “this section” for “Section 7510” wherever it appears in subd (b)(4); and (2) amended subd (b)(5) by adding (a) “each fiscal year” before “thereafter” at the end of the first sentence; and (b) the second sentence.

**1994 Amendment:** Amended subd (b)(1) by adding (1) the third sentence; and (2) “, subject to the preceding sentence,” in the fourth sentence.

**2015 Amendment:** Amended subd (b)(1) by (1) substituting “be valued in accordance with Section 21 of Title 18 of the California Code of Regulations, as that section was in effect on January 1, 2015, for the valuation of taxable possessory interests.” for “also provide that the full cash value, as defined in Sections 110 and 110.1 of the Revenue and Taxation Code, of the possessory interest upon which property taxes will be based shall equal the greater of (A) the full cash value of the possessory interest, or (B), if the lessee has leased less than all of the property, the lessee’s allocable share of the full cash value of the property that would have been enrolled if the property had been subject to property tax upon acquisition by the state public retirement system.” in the second sentence; and (2) deleting the former last two sentences which read: “The full cash value as provided for pursuant to either (A) or (B) of the preceding sentence shall reflect the anticipated term of possession if, on the lien date described in Section 2192 of the Revenue and Taxation Code, that term is expected to terminate prior to the end of the next succeeding fiscal year. The lessee’s allocable share shall, subject to the preceding sentence, be the lessee’s leasable square feet divided by the total leasable square feet of the property.”

### Notes of Decisions

Insofar as a county included the exempt reversionary interest pursuant to Gov C § 7510(b)(1) when the county assessed a commercial lessee’s possessory interest under Rev & Tax C § 107 in property owned by a state public retirement system, this valuation method was facially unconstitutional because it violated Cal Const Art XIII, § 3(a), by assessing property taxes on publicly owned real property; moreover, it violated Cal Const Art XIII, § 1, by assessing property in excess of the fair market value as described in Rev & Tax C §§ 110(a), 110.5. *California State Teachers’ Retirement System v. County of Los Angeles* (2013, 2d Dist) 216 Cal App 4th 41, 156 Cal Rptr 3d 545, 2013 Cal App LEXIS 360, review denied, (2013, Cal.) — P.3d —, 2013 Cal. LEXIS 6845.

### § 7510.5. Report on climate-related financial risk; Summary of activities undertaken [Repealed effective January 31, 2035]

(a) For purposes of this section, the following definitions apply:

(1) “Board” means the Board of Administration of the Public Employees’ Retirement System or the Teachers’ Retirement Board.

(2) “Climate-related financial risk” means risk that may include material financial risk posed to the fund by the effects of the changing climate, such as intense storms, rising sea levels, higher global temperatures, economic damages from carbon emissions, and other financial and transition risks due to public policies to address climate change, shifting consumer attitudes, changing economics of traditional carbon-intensive industries.

(3) “Fund” means the Public Employees’ Retirement Fund described in Section 20062 or the Teachers’ Retirement Fund described in Section 22167 of the Education Code.

(b) To the extent the board identifies climate-related financial risk as a material risk to the fund, that risk shall be analyzed.

(c) By January 1, 2020, and every three years thereafter, the board shall publicly report on its analysis of the climate-related financial risk of its public market portfolio, including the alignment of the fund with the Paris climate agreement and California climate policy goals and the exposure of the fund to long-term risks.

(d) The board shall include in the reports pursuant to subdivision (c) the methods and results of the board’s engagement related to climate-related financial risk with publicly traded companies that are the most carbon intense, such as utilities, oil, and gas producers, within the fund. This component of the reports shall include both of the following:

(1) A summary of climate-related financial risk-related engagement activities undertaken.

(2) A description of additional action taken, or planned to be taken, by the board to address climate-related financial risk, including a list of proxy votes and shareholder proposals initiated by the board.

(e) Nothing in this section shall require the board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(f) This section shall remain in effect only until January 31, 2035, and as of that date is repealed.

*Added Stats 2018 ch 731 § 2 (SB 964), effective January 1, 2019, repealed January 31, 2035.*

**§ 7511. Authority to purchase insurance for fiduciaries**

Notwithstanding any other provision to the contrary:

(a) A public retirement system may purchase insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if the insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by the fiduciary.

(b) A fiduciary may purchase insurance to cover liability under this section from and for his or her own account.

(c) An employer or an employee organization may purchase insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

*Added by Stats 1984 ch 1503 § 4.*

**Notes of Decisions**

Insofar as a county included the exempt reversionary interest pursuant to Gov C § 7510(b)(1) when the county assessed a commercial lessee's possessory interest under Rev & Tax C § 107 in property owned by a state public retirement system, this valuation method was facially unconstitutional because it violated Cal Const Art XIII, § 3(a), by assessing property taxes on publicly owned real property; moreover, it violated Cal Const Art XIII, § 1, by assessing property in excess of the fair market value as described in Rev & Tax C §§ 110(a), 110.5. *California State Teachers' Retirement System v. County of Los Angeles* (2013, 2d Dist) 216 Cal App 4th 41, 156 Cal Rptr 3d 545, 2013 Cal App LEXIS 360, review denied, (2013, Cal.) — P.3d —, 2013 Cal. LEXIS 6845.

**§ 7512. Provision of annual report to members**

Each state and local public pension or retirement system shall, on and after the 90th day following the completion of the annual audit of the system, mail or otherwise provide to any member who makes a request therefor and pays, if required, a fee, a concise annual report on the investments and earnings of the system and other related matters. The report shall be published in a low-cost format.

Each local public pension or retirement system may impose a fee for each copy of the report in an amount sufficient to pay all costs incurred in the preparation and dissemination of the report.

*Added by Stats 1985 ch 655 § 1. Amended by Stats 1991 ch 281 § 1 (AB 113).*

**Amendments**

**1991 Amendment:** Deleted the former third paragraph which read: "This section shall remain in effect only until January 1, 1992, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends such date."

**§ 7513. Election to have distribution paid directly to eligible retirement plan; Direct rollover**

(a) In the case of a state or local retirement system or plan that is subject to Section 401(a)(31) of the Internal Revenue Code, if, under the terms of the system or plan, a person becomes entitled to a distribution that constitutes an "eligible rollover distribution" within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code, the person may elect, under terms and conditions to be established by the administrator of the system or plan, to have the distribution or a portion thereof paid directly to a plan

that constitutes an “eligible retirement plan” within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code, as specified by the person. Upon the exercise of the election by a person with respect to a distribution or portion thereof, the distribution by the system or plan of the amount so designated, once distributable under the terms of the system or plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(b) The purpose and intent of this section is to enable the state and local retirement systems and plans that are subject to Section 401(a)(31) of the Internal Revenue Code of 1986, as amended, to comply with the requirements of that section regarding the provision of an election for direct rollover of certain plan distributions.

*Added by Stats 1992 ch 1047 § 1 (AB 2721).*

**§ 7513.5. Compliance with nondiscrimination laws by corporations doing business in Northern Ireland in which systems have invested assets**

(a) On or before the first day of March of each year, the Teachers’ Retirement Board and the Board of Administration of the Public Employees’ Retirement System, respectively, shall investigate and report to the Legislature on the extent to which United States and international corporations operating in Northern Ireland, in which the assets of the State Teachers’ Retirement System and the Public Employees’ Retirement System are invested, adhere, in compliance with the law applicable in Northern Ireland, to the principles of nondiscrimination in employment and freedom of workplace opportunity.

(b) The Teachers’ Retirement Board and the Board of Administration of the Public Employees’ Retirement System, respectively, shall compile a list of domestic and international corporations that, directly or through a subsidiary, do business in Northern Ireland, and in whose stocks or obligations it has invested, and determine whether each corporation on the list has, during the preceding year, taken substantial action, in compliance with the law applicable in Northern Ireland, designed to lead toward the achievement of the following goals:

(1) Increased representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical, and technical jobs.

(2) Adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

(3) Banning of provocative religious or political emblems from the workplace.

(4) Public advertisement of all job openings and the use of special recruitment efforts to attract applicants from underrepresented religious groups.

(5) Establishment of layoff, recall, and termination procedures which do not, in practice, favor particular religious groupings.

(6) Abolition of job reservations, apprenticeship restrictions, and differential employment criteria, which discriminate on the basis of religion or ethnic origin.

(7) The development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of minority employees.

(8) The establishment of procedures to assess, identify, and actively recruit minority employees with potential for further advancement.

(9) The appointment of senior management staff members to oversee affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

(c) Whenever feasible and consistent with their fiduciary responsibility, the Teachers’ Retirement Board and the Board of Administration of the Public Employees’ Retirement System, respectively, shall support shareholder resolutions designed to encourage domestic and international corporations in which the Teachers’ Retirement Board and the Board of Administration of the Public Employees’ Retirement System, respectively, has invested to pursue, in compliance with the law applicable in Northern Ireland, a policy of affirmative action in Northern Ireland in accordance with the goals listed in subdivision (b).

*Added by Stats 1999 ch 341 § 2 (SB 105).*

**§ 7513.6. Investments in Sudan prohibited in specified circumstances**

(a) As used in this section, the following definitions shall apply:

(1) "Active business operations" means a company engaged in business operations that provide revenue to the government of Sudan or a company engaged in oil-related activities.

(2) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(3) "Business operations" means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan.

(4) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. "Company" also means a company owned or controlled, either directly or indirectly, by the government of Sudan, that is established or organized under the laws of or has its principal place of business in the Republic of the Sudan.

(5) "Government of Sudan" means the government of Sudan or its instrumentalities.

(6) "Invest" or "investment" means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Sudan, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company.

(7) "Military equipment" means weapons, arms, or military defense supplies.

(8) "Oil-related activities" means, but is not limited to, the export of oil, extracting or producing oil, exploration for oil, or the construction or maintenance of a pipeline, refinery, or other oil field infrastructure.

(9) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(10) "Research firm" means a reputable, neutral third-party research firm.

(11) "Substantial action" means a boycott of the government of Sudan, curtailing business in Sudan until that time described in subdivision (m), selling company assets, equipment, or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan.

(12) "Sudan" means the Republic of the Sudan, a territory under the administration or control of the Sudan, including but not limited to, the Darfur region, or an individual, company, or public agency located in Khartoum, northern Sudan, or the Nile River Valley that supports the Republic of the Sudan.

(b) The board shall not invest public employee retirement funds in a company with business operations in Sudan that meets all of the following criteria:

(1) The company is engaged in active business operations in Sudan. If that company is not engaged in oil-related activities, that company also lacks significant business operations in the eastern, southern, and western regions of Sudan.

(2) Either of the following apply:

(A) The company is engaged in oil-related activities or energy or power-related operations, or contracts with another company with business operations in the oil, energy, and power sectors of Sudan, and the company failed to take substantial action related to the government of Sudan because of the Darfur genocide.

(B) The company has demonstrated complicity in the Darfur genocide.

(c) Notwithstanding subdivision (b), the board shall not invest public employee retirement funds in a company that supplies military equipment within the borders of Sudan. If a company provides

equipment within the borders of Sudan that may be readily used for military purposes, including, but not limited to, radar systems and military-grade transport vehicles, there shall also be a strong presumption against investing in that company unless that company implements safeguards to prevent the use of that equipment for military purposes.

**(d)(1)** The board shall, without regard to the provisions regarding competitive bidding, contract with a research firm or firms to determine those companies that have business operations in Sudan. Those research firms shall, in the aggregate, obtain data on a majority of companies with business operations in Sudan. On or before March 30, 2007, those research firms shall report any findings to the board and those research firms shall submit further findings to the board if there is a change of circumstances in Sudan.

**(2)** In addition to the reports described in paragraph (1), the board shall take all of the following actions no later than March 30, 2007:

**(A)** Review publicly available information regarding companies with business operations in Sudan.

**(B)** Contact other institutional investors that invest in companies with business operations in Sudan.

**(C)** Send written notice to a company with business operations in Sudan that the company may be subject to this section.

**(e)(1)** The board shall determine, by the next applicable board meeting and based on the information and reports described in subdivision (d), if a company meets the criteria described in subdivision (b) or (c). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b) or (c), that planned or existing investment shall be subject to subdivisions (g) and (h).

**(2)** Investments of the board in a company that does not meet the criteria described in subdivision (b) or (c) or does not have active business operations in Sudan are not subject to subdivision (h), provided that the company does not subsequently meet the criteria described in subdivision (b) or (c) or engage in active business operations. The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) or (c) or does not engage in active business operations in the report to the Legislature described in subdivision (i).

**(f)(1)** Notwithstanding subdivision (e), if the board's investment in a company described in subdivision (b) or (c) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, 2007, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b) or (c), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Sudan shall be deemed to satisfy subdivision (h).

**(2)** If the board's investment in a company described in subdivision (b) or (c) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that excludes companies described in subdivision (b) or (c), and the new fund or account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subdivision (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subdivision (i).

**(3)** The board shall make a good faith effort to identify any private equity investments that involve companies described in subdivision (b) or (c) or are linked to the government of Sudan. If the board determines that a private equity investment clearly involves a company described in subdivision (b) or (c) or is linked to the government of Sudan, the board shall consider, at its discretion, if those private equity investments shall be subject to subdivision (h). If the board determines that a private equity investment clearly involves a company described in subdivision (b) or (c) or is linked to the government of Sudan and the board does not take action as described in subdivision (h), the board shall include the reasons for its decision in the report described in subdivision (i).

**(g)** Except as described in subdivision (f) or paragraph (2) of subdivision (e), the board, in the board's capacity of shareholder or investor, shall notify any company described in paragraph (1) of subdivision (e) that the company is subject to subdivision (h) and permit that company to respond to the information



and reports described in subdivision (d). The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subdivision. If the board determines that a company has taken substantial action or has made sufficient progress towards substantial action before the expiration of that 90-day period, that company shall not be subject to subdivision (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Sudan. A company that fails to complete substantial action or continue to make sufficient progress towards substantial action by the next time interval shall be subject to subdivision (h).

**(h)** If a company described in paragraph (1) of subdivision (e) fails to complete substantial action by the time described in subdivision (g), the board shall take the following actions:

**(1)** The board shall not make additional or new investments or renew existing investments in that company.

**(2)** The board shall liquidate the investments of the board in that company no later than 18 months after this subdivision applies to that company. The board shall liquidate those investments in a manner to address the need for companies to take substantial action in Sudan and consistent with the board's fiduciary responsibilities as described in Section 17 of Article XVI of the California Constitution.

**(i)** On or before January 1, 2008, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

**(1)** A list of investments the board has in companies with business operations in Sudan, including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

**(2)** A detailed summary of the business operations a company described in paragraph (1) has in Sudan and whether that company satisfies all of the criteria in subdivision (b) or (c).

**(3)** Whether the board has reduced its investments in a company that satisfies the criteria in subdivision (b) or (c).

**(4)** If the board has not completely reduced its investments in a company that satisfies the criteria in subdivision (b) or (c), when the board anticipates that the board will reduce all investments in that company or the reasons why a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

**(5)** Any information described in subdivision (e).

**(6)** A detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Sudan as described in subdivision (f).

**(j)** If the board voluntarily sells or transfers all of its investments in a company with business operations in Sudan, this section shall not apply except that the board shall file a report with the Legislature related to that company as described in subdivision (i).

**(k)** Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

**(l)** Subdivision (h) shall not apply to any of the following:

**(1)** Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Sudan.

**(2)** Investments in a company that promotes health, education, journalistic, or religious activities in or welfare in the western, eastern, or southern regions of Sudan.

**(3)** Investments in a United States company that is authorized by the federal government to have business operations in Sudan.

**(m)** This section shall remain in effect only until one of the following occurs, and as of the date of that action, is repealed:

**(1)** The government of Sudan halts the genocide in Darfur for 12 months as determined by both the Department of State and the Congress of the United States.

**(2)** The United States revokes its current sanctions against Sudan.

*Added by Stats 2006 ch 442 § 2 (AB 2941), effective January 1, 2007.*

**§ 7513.7. California Public Divest from Iran Act (Operative term contingent)**

(a) As used in this section, the following definitions shall apply:

(1) “Board” means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) “Business operations” means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Iran, including the ownership or possession of real or personal property located in Iran.

(3) “Company” means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. “Company” also means a company owned or controlled, either directly or indirectly, by the government of Iran, that is established or organized under the laws of or has its principal place of business in Iran.

(4) “Energy sector of Iran” means activities to develop petroleum or natural gas resources or nuclear power in Iran.

(5) “Invest” or “investment” means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Iran, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company.

(6) “Iran” means the government of Iran and any agency or instrumentality of Iran.

(7) “Public employee retirement funds” means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(8) “Substantial action” means a boycott of the government of Iran, curtailing business in Iran until that time described in subdivision (m), or selling company assets, equipment, or real and personal property located in Iran.

(b) The board shall not invest public employee retirement funds in a company which has business operations in Iran as identified by the board through, as the board deems appropriate, publicly available information including, but not limited to, information provided by nonprofit and other organizations and government entities, that meets either of the following criteria:

(1) The company (A) is invested in or engaged in business operations with entities in the defense or nuclear sectors of Iran or (B) has an investment of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including in a company that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran, and that company is subject to sanctions under Public Law 104-172, as renewed and amended in 2001 and 2006.

(2) The company has demonstrated complicity with an Iranian organization that has been labeled as a terrorist organization by the United States government.

(c) Annually, on or before June 30, the board shall review its investment portfolio and determine which companies are subject to divestment.

(d) After the determination described in subdivision (c), the board shall determine, by the next applicable board meeting, if a company meets the criteria described in subdivision (b). If the board plans to invest or has investments in a company that meets the criteria described in subdivision (b), that planned or existing investment shall be subject to subdivisions (g) and (h).

(e) Investments of the board in a company that does not meet the criteria described in subdivision (b) are not subject to subdivision (h) if the company does not subsequently meet the criteria described in subdivision (b). The board shall identify the reasons why that company does not satisfy the criteria described in subdivision (b) in the report to the Legislature described in subdivision (i).

(f) (1) Notwithstanding subdivisions (d) and (e), if the board's investment in a company described in subdivision (b) is limited to investment via an externally and actively managed commingled fund, the

board shall contact that fund manager in writing and request that the fund manager remove that company from the fund as described in subdivision (h). On or before June 30, if the fund or account manager creates a fund or account devoid of companies described in subdivision (b), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Iran shall be deemed to satisfy subdivision (h).

(2) If the board's investment in a company described in subdivision (b) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that excludes companies described in subdivision (b), and the new fund or account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subdivision (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subdivision (i).

(3) The board shall make a good faith effort to identify any private equity investments that involve companies described in subdivision (b), or are linked to the government of Iran. If the board determines that a private equity investment clearly involves a company described in subdivision (b), or is linked to the government of Iran, the board shall consider, at its discretion, if those private equity investments shall be subject to subdivision (h). If the board determines that a private equity investment clearly involves a company described in subdivision (b), or is linked to the government of Iran and the board does not take action as described in subdivision (h), the board shall include the reasons for its decision in the report described in subdivision (i).

(g) Except as described in subdivisions (e) and (f), the board, in the board's capacity of shareholder or investor, shall notify any company described in subdivision (d) that the company is subject to subdivision (h) and permit that company to respond to the board. The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subdivision. If the board determines based on credible information available to the public that a company has taken substantial action or has made sufficient progress toward substantial action before the expiration of that 90-day period, that company shall not be subject to subdivision (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Iran. Any determination made at each 90-day interval that a company has taken substantial action shall be supported by findings adopted by a rollcall vote of the board following a presentation and discussion of the findings in open session, during a properly noticed public hearing of the full board. All proposed findings of the board shall be made public 72 hours before they are considered by the board, and the board shall maintain a list of interested parties who shall be notified of proposed findings 72 hours before the board's consideration. The findings and any public comments regarding the adopted findings and determinations made pursuant to this subdivision shall be included in the report to the Legislature required by subdivision (i). A company that fails to complete substantial action within one year from the date of the initial notice by the board shall be subject to subdivision (h).

(h) If a company described in subdivision (d) fails to complete substantial action by the time described in subdivision (g), the board shall take the following actions:

(1) The board shall not make additional or new investments or renew existing investments in that company.

(2) The board shall liquidate the investments of the board in that company no later than 18 months after this subdivision applies to that company. The board shall liquidate those investments in a manner to address the need for companies to take substantial action in Iran and consistent with the board's fiduciary responsibilities as described in Section 17 of Article XVI of the California Constitution.

(i) On or before January 1, 2009, and every year thereafter, the board shall file a report with the Legislature. The report shall describe the following:

(1) A list of investments the board has in companies with business operations that satisfy the criteria in subdivision (b), including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

(2) A detailed summary of the business operations a company described in paragraph (1) has in Iran.

(3) Whether the board has reduced its investments in a company that satisfies the criteria in subdivision (b).

(4) If the board has not completely reduced its investments in a company that satisfies the criteria in subdivision (b), when the board anticipates that the board will reduce all investments in that company or the findings adopted in support of a determination made pursuant to subdivision (k) pertaining to why a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

(5) Any information described in subdivisions (d) and (e).

(6) A detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Iran as described in subdivision (f).

(7) An annual calculation of any costs or investment losses or other financial results incurred in compliance with the provisions of this section.

(j) If the board voluntarily sells or transfers all of its investments in a company with business operations in Iran, this section shall not apply except that the board shall file a report with the Legislature related to that company as described in subdivision (i).

(k) Nothing in this section shall require the board to take action as described in this section if the board determines, and adopts findings, in good faith and based on credible information available to the public, that the action described in this section would fail to satisfy the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution. Any adopted findings shall demonstrate how divestment disadvantages the fund and that any feasible investment alternatives would yield a lower rate of return with commensurate degrees of risk, or create a higher degree of risk with commensurate rates of return. Notwithstanding any other law, any determination that an action would fail to satisfy the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution shall require a recorded rollcall vote of the full board, following a presentation and discussion of findings in open session, during a properly noticed public hearing of the full board. All proposed findings of the board shall be made public 72 hours before they are considered by the board, and the board shall maintain a list of interested parties who shall be notified of proposed findings 72 hours before board consideration. The findings and any public comments regarding the adopted findings and determinations made pursuant to this subdivision shall be included in the report to the Legislature required by subdivision (i).

(l) This section shall cease to be operative if the President of the United States has made the certifications specified in paragraphs (1) and (2) of subdivision (a) of Section 8551 of Title 22 of the United States Code.

(m) This section shall be known and may be cited as the California Public Divest from Iran Act.

(n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

*Added by Stats 2007 ch 671 § 2 (AB 221), effective January 1, 2008. Amended by Stats 2011 ch 441 § 2 (AB 1151), effective January 1, 2012, operative term contingent.*

**Editor's Notes**—For contingent operation, see subdivision (m) of this section.

### Amendments

**2011 Amendment:** (1) Deleted “the Islamic Republic of” after “of business in” in the second sentence of subd (a)(3); (2) substituted subd (a)(4) for former subd (a)(4) which read: “(4) ‘Government of Iran’ means the government of Iran or its instrumentalities or political subdivisions. ‘Government of Iran’ also means an individual, company, or public agency located in Iran that provides material or financial support to the Islamic Republic of Iran.”; (3) substituted “government of Iran and any agency or instrumentality” for “Islamic Republic of Iran or a territory under the administration or control” in subd (a)(6); (4) deleted former subd (a)(7) which read: “(7) ‘Military equipment’ means weapons, arms, or military defense supplies.”; (5) redesignated former subds (a)(8) and (a)(9) to be

subds (a)(7) and (a)(8); **(6)** substituted “has an investment of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including in a company that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector” for “is invested in or engaged in business operations with entities involved in the development of petroleum or natural gas resources” in subd (b)(1); **(7)** amended subd (c) by adding **(a)** “Annually,”; and **(b)** “review its investment portfolio and”; **(8)** deleted “2008,” after “June 30,” in subd (c) and in the second sentence of subd (f)(1); **(9)** amended the third sentence of subd (g) by **(a)** adding “based on credible information available to the public”; and **(b)** substituting “toward” for “towards”; **(10)** added the fifth through seventh sentences of subd (g); **(11)** substituted “findings adopted in support of a determination made pursuant to subdivision (k) pertaining to” for “reasons” in subd (i)(4); **(12)** amended the first sentence of subd (k) by substituting **(a)** “if the board determines, and adopts findings, in good faith and based on credible information available to the public” for “unless the board determines, in good faith”; and **(b)** “would fail to satisfy” for “is consistent with”; **(13)** added the second through last sentences of subd (k); **(14)** deleted former subd (l) which read: “(l) Subdivision (h) shall not apply to any of the following: (1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Iran. (2) Investments in a company that promotes health, education, or journalistic, religious, or welfare activities in Iran. (3) Investments in a United States company that is authorized by the federal government to have business operations in Iran.”; **(15)** redesignated former subds (m) and (n) to be subds (l) and (m); **(16)** substituted present subd (l) for former subd (m) which read: “(m) This section shall cease to be operative if both of the following apply: (1) Iran is removed from the United States Department of State’s list of countries that have been determined to repeatedly provide support for acts of international terrorism. (2) Pursuant to Public Law 104-172, as amended, the President of the United States determines and certifies to the appropriate committee of the Congress of the United States that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology.”; and **(17)** added subd (n).

**§ 7513.72. Report to Legislature and Governor regarding investments in Dakota Access Pipeline; Review and consideration of tribal sovereignty and indigenous tribal rights**

**(a)** As used in this section:

**(1)** “Board” means the Board of Administration of the Public Employees’ Retirement System or the Teachers’ Retirement Board of the State Teachers’ Retirement System, as applicable.

**(2)** “Company” means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage.

**(3)** “Dakota Access Pipeline” means the oil pipeline connecting the Bakken oil fields in northwest North Dakota to Illinois, traveling through South Dakota and Iowa, that runs north and upstream of the Standing Rock Sioux Reservation.

**(4)** “Investment” means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company.

**(5)** “Public employee retirement funds” means the Public Employees’ Retirement Fund described in Section 20062 of this code and the Teachers’ Retirement Fund described in Section 22167 of the Education Code.

**(b)** On or before April 1, 2018, the board shall file a report with the Legislature, in compliance with Section 9795, and the Governor that shall include the following:

**(1)** A list of investments the board has in companies constructing, or funding the construction of, the Dakota Access Pipeline.

**(2)** A list of companies identified pursuant to paragraph (1) with which the board has constructively engaged, including:

**(A)** A detailed description of the board and its staff’s engagement activities with each company, including, but not limited to, the number of engagement interactions with each company.

**(B)** A detailed description of the results of the engagement, including, but not limited to, agreements reached between the board and the company.

(C) An evaluation as to the efficacy of the engagement, including, but not limited to, whether the engagement resulted in a change of action by the investing firm or company with which funds were invested.

(c) It is the intent of the Legislature that on or before April 1, 2018, the board review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the board's investment policies related to environmental, social, and governance issues.

(d) Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

*Added by Stats 2017 ch 575 § 2 (AB 20), effective January 1, 2018.*

**§ 7513.74. Prohibition of public employee retirement funds investments in government of Turkey; Report to Legislature and Governor; Repeal of section**

(a) As used in this section, the following terms have the following meanings:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Government of Turkey" means the government of Turkey or its instrumentalities or political subdivisions.

(3) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(4) "Turkey" means the Republic of Turkey.

(b) Upon passage of a federal law by both the United States House of Representatives and the United States Senate, and signed by the President of the United States, imposing sanctions on the government of Turkey for failure to officially acknowledge its responsibility for the Armenian Genocide, the board shall not make additional or new investments or renew existing investments of public employee retirement funds in any investment vehicle in the government of Turkey that meets either of the following criteria:

(1) The investment vehicle is issued by the government of Turkey.

(2) The investment vehicle is owned by the government of Turkey.

(c) The board shall liquidate investments as described in subdivision (b), within 18 months of the passage of a federal law, pursuant to subdivision (b), that imposes sanctions on the government of Turkey for failure to officially acknowledge its responsibility for the Armenian Genocide.

(d) Within one year of the passage of a federal law pursuant to subdivision (b) imposing sanctions on the government of Turkey for failure to officially acknowledge its responsibility for the Armenian Genocide, the board shall file a report with the Legislature, in compliance with Section 9795, and with the Governor, that shall include the following:

(1) A list of investment vehicles in the government of Turkey of which the board has liquidated its investments pursuant to subdivision (c).

(2) A list of investment vehicles in the government of Turkey of which the board has not liquidated its investments as a result of a determination made pursuant to subdivision (e) that a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution and the board's findings adopted in support of that determination.

(e) Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

(f) (1) Before an extension of the operation of this section, the board shall, using methods or processes as determined by the board, reevaluate the merit of continuing the prescribed divestment action, including, but not limited to, the financial effects of the divestment action on the fiduciary responsibilities of the board pursuant to Section 17 of Article XVI of the California Constitution.

(2) On or before January 1, 2024, the board shall submit a report to the Legislature with the information described in paragraph (1) on the merit of continuing the prescribed divestment action.

(3) A report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

(g) This section shall be repealed on the earlier of the following dates:

(1) Upon a determination by the board, the Department of State, the Congress of the United States, or other appropriate federal agency, that the government of Turkey has officially acknowledged its responsibility for the Armenian Genocide.

(2) January 1, 2025.

*Added by Stats 2019 ch 459 § 2 (AB 1320), effective January 1, 2020.*

**§ 7513.75. Prohibition against investment in thermal coal company**

(a) The Legislature finds and declares all of the following:

(1) The combustion of coal resources is the single largest contributor to global climate change in the United States.

(2) Climate change affects all parts of the California economy and environment, and the Legislature has adopted numerous laws to mitigate greenhouse gas emissions and to adapt to a changing climate.

(3) The purpose of this section is to require the Public Employees' Retirement System and the State Teachers' Retirement System, consistent with, and not in violation of, their fiduciary responsibilities, to divest their holding of thermal coal power as one part of the state's broader efforts to decarbonize the California economy and to transition to clean, pollution free energy resources.

(b) As used in this section, the following definitions apply:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profit-making purposes or to otherwise secure economic advantage.

(3) "Investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company.

(4) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code, and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(5) "Thermal coal" means coal used to generate electricity, such as that which is burned to create steam to run turbines. Thermal coal does not mean metallurgical coal or coking coal used to produce steel.

(6) "Thermal coal company" means a publicly traded company that generates 50 percent or more of its revenue from the mining of thermal coal, as determined by the board.

(c) The board shall not make additional or new investments or renew existing investments of public employee retirement funds in a thermal coal company.

(d) The board shall liquidate investments in a thermal coal company on or before July 1, 2017. In making a determination to liquidate investments, the board shall constructively engage with a thermal coal company to establish whether the company is transitioning its business model to adapt to clean energy generation, such as through a decrease in its reliance on thermal coal as a revenue source.

(e) On or before January 1, 2018, the board shall file a report with the Legislature, in compliance with Section 9795, and the Governor, which shall include the following:

(1) A list of thermal coal companies of which the board has liquidated its investments pursuant to subdivision (d).

(2) A list of companies with which the board engaged pursuant to subdivision (d) that the board established were transitioning to clean energy generation, with supporting documentation to substantiate the board's determination.

(3) A list of thermal coal companies of which the board has not liquidated its investments as a result of a determination made pursuant to subdivision (f) that a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution and the board's findings adopted in support of that determination.

(f) Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

*Added by Stats 2015 ch 605 § 1 (SB 185), effective January 1, 2016.*

**§ 7513.8. Definitions for Sections 7513.85, 7513.86, 7513.87, 7513.9, 7513.95**

As used in this section and Sections 7513.85, 7513.86, 7513.87, 7513.9, and 7513.95:

(a) "Board" means the retirement board of a public pension or retirement system, as defined in subdivision (h) of Section 17 of Article XVI of the California Constitution.

(b) "External manager" means either of the following:

(1) A person who is seeking to be, or is, retained by a board or an investment vehicle to manage a portfolio of securities or other assets for compensation.

(2) A person who manages an investment fund and who offers or sells, or has offered or sold, an ownership interest in the investment fund to a board or an investment vehicle.

(c) (1) "Investment fund" means a private equity fund, public equity fund, venture capital fund, hedge fund, fixed income fund, real estate fund, infrastructure fund, or similar pooled investment entity that is, or holds itself out as being, engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, owning, holding, or trading securities or other assets.

(2) Notwithstanding paragraph (1), an investment company that is registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and that makes a public offering of its securities is not an investment fund.

(d) "Investment vehicle" means a corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, managed by an external manager in which a board is the majority investor and that is organized in order to invest with, or retain the investment management services of, other external managers.

(e) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, or association, either domestic or foreign.

(f) (1) "Placement agent" means any person directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager, and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a board or an investment vehicle either of the following:

(A) In the case of an external manager within the meaning of paragraph (1) of subdivision (b), the investment management services of the external manager.

(B) In the case of an external manager within the meaning of paragraph (2) of subdivision (b), an ownership interest in an investment fund managed by the external manager.

(2) Notwithstanding paragraph (1), an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager is not a placement agent.

*Added by Stats 2009 ch 301 § 3 (AB 1584), effective October 11, 2009. Amended by Stats 2010 ch 668 § 1 (AB 1743), effective January 1, 2011; Stats 2011 ch 704 § 1 (SB 398), effective October 9, 2011.*



### Amendments

**2010 Amendment:** (1) Substituted “Sections 7513.85, 7513.86, 7513.87, 7513.9, and 7513.95” for “Sections 7513.85, 7513.9, and 7513.95” in the introductory clause; (2) substituted subd (b) for former subd (b) which read: “(b) ‘External manager’ means an asset management firm that is seeking to be, or has been, retained by a public retirement system in California to manage a portfolio of assets, including securities, for a fee.”; (3) added subd (c); (4) redesignated former subd (c) to be subd (d); and (5) substituted subd (d) for former subd (d) which read: “(d) ‘Placement agent’ means any person or entity hired, engaged, or retained by, or acting on behalf of, an external manager, or on behalf of another placement agent, as a finder, solicitor, marketer, consultant, broker, or other intermediary to raise money or investment from, or to obtain access to, a public retirement system in California, directly or indirectly, including, without limitation, through an investment vehicle.”

**2011 Amendment:** (1) Inserted “this section and” after “As used in” in the first sentence of the section; (2) amended subd (b)(2) by (a) substituting “manages an investment fund” for “is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets”; and (b) substituting “an ownership interest in the investment fund to a board or an investment vehicle” for “securities to a board”; (3) inserted new subds (c) and (d); (4) redesignated former subd (c) to be subd (e); and (5) redesignated former subd (d) to be subd (f) and amended subd (f) by (a) inserting “directly or indirectly” following “means any person”; (b) substituting “or an investment fund managed by an external manager, and” for “, or on behalf of another placement agent,”; (c) deleting “of the securities, assets, or services of an external manager”; (d) substituting “either of the following:” for “, either directly or indirectly.”; (e) inserting new subds (f)(1)(A) and (f)(1)(B); and (f) deleting subd (3) which read: “(3) For purposes of this subdivision, “investment vehicle” means a corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, constituting or managed by an external manager in which a board is the majority investor and that is organized in order to invest with, or retain the investment management services of, other external managers.”

#### § 7513.85. Disclosure of payments to placement agents; Violation

(a) The board shall develop and implement, on or before June 30, 2010, a policy requiring the disclosure of payments to placement agents in connection with system investments in or through external managers. The policy shall include, but not be limited to, the following requirements:

(1) Disclosure of the existence of relationships between external managers and placement agents.

(2) A resume for each officer, partner, or principal of the placement agent detailing the person's education, professional designations, regulatory licenses, and investment and work experience.

(3) A description of any and all compensation of any kind provided, or agreed to be provided, to a placement agent.

(4) A description of the services to be performed by the placement agent.

(5) A statement whether the placement agent, or any of its affiliates, are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Association, or any similar regulatory agent in a country other than the United States, and the details of that registration or explanation as to why no registration is required.

(6) A statement whether the placement agent, or any of its affiliates, is registered as a lobbyist with any state or national government.

(b) Any external manager or placement agent that violates the policy shall not solicit new investments from the system for five years after the violation was committed. However, this prohibition may be reduced by a majority vote of the board at a public session upon a showing of good cause.

(c) The system shall not enter into any agreement with an external manager that does not agree in writing to comply with the policy.

(d) Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.

*Added by Stats 2009 ch 301 § 4 (AB 1584), effective October 11, 2009.*

**§ 7513.86. Placement agent registered as lobbyist**

Except as provided in subdivisions (b) and (c) of Section 82047.3, a person shall not act as a placement agent in connection with any potential system investment made by a state public retirement system unless that person is registered as a lobbyist in accordance with Chapter 6 (commencing with Section 86100) of Title 9 and is in full compliance with the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) as that act applies to lobbyists.

*Added by Stats 2010 ch 668 § 2 (AB 1743), effective January 1, 2011.*

**§ 7513.87. Filing of reports by person acting as placement agent**

(a) A person acting as a placement agent in connection with any potential system investment made by a local public retirement system shall file any applicable reports with a local government agency that requires lobbyists to register and file reports and shall comply with any applicable requirements imposed by a local government agency pursuant to Section 81013.

(b) This section does not apply to either of the following:

(1) An individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager.

(2) An employee, officer, or director of an external manager, or of an affiliate of an external manager, if all of the following apply:

(A) The external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or, if exempt from or not subject to registration with the Securities and Exchange Commission, any appropriate state securities regulator.

(B) The external manager is participating in a competitive bidding process, such as a request for proposals, or has been selected through that process and is providing services pursuant to a contract executed as a result of that competitive bidding process.

(C) The external manager, if selected through a competitive bidding process described in subparagraph (B), has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a public retirement system in California.

*Added by Stats 2010 ch 668 § 3 (AB 1743), effective January 1, 2011. Amended by Stats 2011 ch 704 § 2 (SB 398), effective October 9, 2011.*

**Amendments**

**2011 Amendment:** (1) Amended subd (b) by (a) deleting “either of the following: (1)” after “not apply to”; and (b) adding “and” before “who spends”; and (2) deleted former subd (b)(2) which read: “(2) An employee, officer, or director of an external manager, or of an affiliate of an external manager, if all of the following apply: “(A) The external manager is registered as an investment adviser or a broker dealer with the Securities and Exchange Commission or, if exempt from or not subject to registration with the Securities and Exchange Commission, any appropriate state securities regulator. “(B) The external manager is participating in a competitive bidding process, such as a request for proposals, or has been selected through that process and is providing services pursuant to a contract executed as a result of that competitive bidding process. “(C) The external manager, if selected through a competitive bidding process described in subparagraph (B), has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a public retirement system in California.”

**§ 7513.9. Campaign contributions by placement agent**

(a) Any placement agent, prior to acting as a placement agent in connection with any potential system investment, shall disclose to the board all campaign contributions made by the placement agent to any elected member of the board during the prior 24-month period. Additionally, any subsequent campaign contribution made by the placement agent to an elected member of the board during the time the placement agent is receiving compensation in connection with a system investment shall also be disclosed.

(b) Any placement agent, prior to acting as a placement agent in connection with any potential system investment, shall disclose to the board all gifts, as defined in Section 82028, given by the placement agent to any member of the board during the prior 24-month period. Additionally, any subsequent gift given by the placement agent to any member of the board during the time the placement agent is receiving compensation in connection with a system investment shall also be disclosed.

*Added by Stats 2009 ch 301 § 5 (AB 1584), effective October 11, 2009.*

**§ 7513.95. Provision of investment product prohibited**

A member or employee of the board shall not, directly or indirectly, by himself or herself, or as an agent, partner, or employee of a person or entity other than the board, sell or provide any investment product that would be considered an asset of the fund to any public retirement system in California.

*Added by Stats 2009 ch 301 § 6 (AB 1584), effective October 11, 2009.*

**§ 7513.97. Definitions of terms used in Section 11 of Article VII of the Constitution**

As used in Section 11 of Article VII of the Constitution, the following terms have the following meanings:

(a) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted and the actuarial interest rate fixed by the Board of Administration of the Public Employees' Retirement System.

(b) "Beneficiary" means any person or corporation designated by a member, a retired member, or statute, or the estate of a member or retired member designated by the member or retired member, to receive a benefit under the retirement system, on account of the death of the member or retired member.

(c) "Salary" means the actual wages paid but shall not include any other benefits, such as, but not limited to, health and dental benefits, retirement benefits, vacation pay, and per diem.

(d) "Unmodified pension or retirement allowance" means the maximum pension or retirement allowance receivable, prior to any selection of an optional settlement and includes any cost-of-living adjustment and any other increase granted subsequent to retirement.

*Added by Stats 1984 ch 220 § 1 as Gov C § 7514, operative June 3, 1986. Amended and renumbered by Stats 2011 ch 296 § 117 (AB 1023), effective January 1, 2012.*

**Editor's Notes**—For operative term, see Stats 1984 ch 220 § 2, as amended by Stats 1985 ch 1359 § 1, which provides:

"This act shall become operative only upon the approval by the electors of Senate Constitutional Amendment 5 of the 1985-86 Regular Session of the Legislature, and in such event, on the effective date of the approval."

The Amendment was approved and became operative on June 3, 1986.

**Amendments**

**2011 Amendment:** Renumbered section from Gov C § 7514 and substituted "receivable" for "receiveable" in subd (d).

**§ 7514. Investment in bonds or other evidences of indebtedness unconditionally guaranteed by foreign governments**

(a) Notwithstanding any other provision of law except Chapter 7 (commencing with Section 16649.80) of Part 2 of Division 4 of Title 2, any state or local public retirement system may invest, subject to and consistent with the standard for prudent investment set forth in Section 17 of Article XVI of the California Constitution, its assets in the bonds or other evidences of indebtedness unconditionally guaranteed by any foreign government that has met the payments of similar bonds or other evidences of indebtedness when due.

(b) A portion of the assets invested pursuant to this section may be used to purchase rated or unrated bonds, notes, or other instruments unconditionally guaranteed by Canada, Israel, Mexico, or South Africa.

*Added by Stats 1993 ch 440 § 1 (AB 216). Amended by Stats 1994 ch 30 § 1 (SB 1285), effective March 30, 1994, ch 31 § 1 (AB 2448), effective March 30, 1994, ch 46 § 1 (AB 2237).*

**Former Sections:** Former Gov C § 7514, as added by Stats 1984 ch 220 § 1, operative upon adoption of SCA No. 5 of the 1985-86 Regular Session, was amended and renumbered as Gov C § 7513.97 by Stats 2011 ch 296 § 117.

**Amendments**

**1994 Amendment (ch 31):** Deleted “Chapter 5 (commencing with Section 16640) and” before “Chapter 7” in subd (a). (As amended Stats 1994 ch 31, compared to the section as it read prior to 1994. This section was also amended by an earlier chapter, ch 30. See Gov C § 9605.)

**1994 Amendment (ch 46):** Substituted “Mexico, or South Africa” for “or Mexico” at the end of subd (b).

**§ 7514.1. Investment of state or local retirement system in obligations of international financial institutions**

Notwithstanding any other provision of law except Chapter 7 (commencing with Section 16649.80) of Part 2 of Division 4 of Title 2, any state or local public retirement system may invest, subject to and consistent with the standard for prudent investment set forth in Section 17 of Article XVI of the California Constitution, and the state and any political subdivision of the state may, invest its assets in rated bonds, notes, or other obligations issued, assumed, or unconditionally guaranteed by the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Inter-American Development Bank, the International Finance Corporation, the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, and any other international financial institution that has met the payments of similar bonds, notes, or other obligations when due and in which the United States is a member.

*Added by Stats 1994 ch 1084 § 1 (SB 1459). Amended by Stats 1995 ch 91 § 45 (SB 975).*

**Amendments**

**1995 Amendment:** Added the comma after “the state may”.

**§ 7514.2. Prioritization of investment in in-state infrastructure projects**

(a) As used in this section, the following definitions shall apply:

(1) “Board” means the Board of Administration of the Public Employees’ Retirement System, the Teachers’ Retirement Board, or the board of retirement or board of investments of a retirement system established pursuant to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3).

(2) "Infrastructure" includes, but is not limited to, telecommunications, power, transportation, ports, petrochemical, and utilities.

(b) A board may, subject to and consistent with its fiduciary duties and the standard for prudent investment set forth in Section 20190 of this code, Section 22203 of the Education Code, and Section 17 of Article XVI of the California Constitution, prioritize investment in an in-state infrastructure project over a comparable out-of-state project.

(c) The Legislature encourages each board to prioritize investment in in-state infrastructure projects over alternative out-of-state infrastructure projects if the investments in the in-state projects are consistent with the board's fiduciary duties to minimize the risk of loss and to maximize the rate of return.

(d) Nothing in this section shall require a board to take action that is inconsistent with its plenary authority and fiduciary responsibilities, as described in Section 17 of Article XVI of the California Constitution.

*Added by Stats 2012 ch 760 § 2 (SB 955), effective January 1, 2013. Amended by Stats 2013 ch 766 § 1 (AB 205), effective January 1, 2014.*

### Amendments

**2013 Amendment:** Substituted " , the Teachers' Retirement Board, or the board of retirement or board of investments of a retirement system established pursuant to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3)" for "and the Teachers' Retirement Board" in subd (a)(1).

#### § 7514.3. Establishment of credit enhancement programs by state pension systems

Notwithstanding any other provision of law, state pension systems may, subject to and consistent with their fiduciary duties and the standard for prudent investment set forth in Section 20190 of this code and Section 17 of Article XVI of the California Constitution, establish credit enhancement programs to assist entities of state and local government and other issuers of municipal and public finance debt to secure more favorable financing terms through a variety of types of credit enhancement including, but not limited to, enhancement of the credit of bonds, notes, and other indebtedness. Any credit enhancement program shall comply with the requirements of Section 503 of the Internal Revenue Code.

*Added by Stats 2004 ch 266 § 1 (AB 2364), effective August 23, 2004.*

#### § 7514.5. Membership in another retirement system; Specified period of time

Notwithstanding any other provision of law, whenever the rights of a member of the Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system established under the County Employees Retirement Law of 1937, because of membership in another retirement system, are conditional upon employment within a specified period of time after termination of service in another retirement system, that specified period shall be the period of service in full-time elective office on and after November 6, 1990, if the member was a full-time elective officer on or after that date and becomes a member of any of those retirement systems within 120 days after termination of the full-time elective office.

*Added by Stats 1998 ch 1074 § 1 (SB 1021), effective September 30, 1998.*

#### § 7514.7. Public investment fund; Required disclosures by alternative investment vehicle; Reporting of disclosed information

(a) Every public investment fund shall require each alternative investment vehicle in which it invests to make the following disclosures at least annually:

(1) The fees and expenses that the public investment fund pays directly to the alternative investment vehicle, the fund manager, or related parties.

(2) The public investment fund's pro rata share of fees and expenses not included in paragraph (1) that are paid from the alternative investment vehicle to the fund manager or related parties. The public investment fund may independently calculate this information based on information contractually required to be provided by the alternative investment vehicle to the public investment fund. If the public investment fund independently calculates this information, then the alternative investment vehicle shall not be required to provide the information identified in this paragraph.

(3) The public investment fund's pro rata share of carried interest distributed to the fund manager or related parties.

(4) The public investment fund's pro rata share of aggregate fees and expenses paid by all of the portfolio companies held within the alternative investment vehicle to the fund manager or related parties.

(5) Any additional information described in subdivision (b) of Section 6254.26.

(b) Every public investment fund shall disclose the information provided pursuant to subdivision (a) at least once annually in a report presented at a meeting open to the public. The public investment fund's report required pursuant to this subdivision shall also include the gross and net rate of return of each alternative investment vehicle, since inception, in which the public investment fund participates. The public investment fund may report the gross and net rate of return and information required by subdivision (a) based on its own calculations or based on calculations provided by the alternative investment vehicle.

(c) For purposes of this section:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which a public investment fund invests in an alternative investment.

(3) "Fund manager" means the general partner, managing manager, adviser, or other person or entity with primary investment decisionmaking authority over an alternative investment vehicle and related parties of the fund manager.

(4) "Carried interest" means any share of profits from an alternative investment vehicle that is distributed to a fund manager, general partner, or related parties, including allocations of alternative investment vehicle profits received by a fund manager in consideration of having waived fees that it might otherwise have been entitled to receive.

(5) "Portfolio companies" means individual portfolio investments made by the alternative investment vehicle.

(6) "Gross rate of return" means the internal rate of return for the alternative investment vehicle prior to the reduction of fees and expenses described in subdivision (a).

(7) "Public investment fund" means any fund of any public pension or retirement system, including that of the University of California.

(8) "Operational person" means any operational partner, senior adviser, or other consultant or employee whose primary activity for a relevant entity is to provide operational or back office support to any portfolio company of any alternative investment vehicle, account, or fund managed by a related person.

(9) "Related person" means any current or former employee, manager, or partner of any related entity that is involved in the investment activities or accounting and valuation functions of the relevant entity or any of their respective family members.

(10) "Related party" means:

(A) Any related person.

(B) Any operational person.

(C) Any entity more than 10 percent of the ownership of which is held directly or indirectly, whether through other entities or trusts, by a related person or operational person regardless if the related person

or operational person participates in the carried interest received by the general partner or the special limited partner.

**(D)** Any consulting, legal, or other service provider regularly engaged by portfolio companies of an alternative investment vehicle, account, or fund managed by a related person and that also provides advice or services to any related person or relevant entity.

**(11)** "Relevant entity" means the general partner, any separate carry vehicle, the investor adviser, any of the investment adviser's parent or subsidiary entities, or any similar entity related to any other alternative investment vehicle, account, or fund advised or managed by any current or former related person.

**(d) (1)** This section applies to all new contracts the public investment fund enters into on or after January 1, 2017, and to all existing contracts pursuant to which the public investment fund makes a new capital commitment on or after January 1, 2017.

**(2)** With respect to existing contracts not covered by paragraph (1), the public investment fund shall undertake reasonable efforts to obtain the information described in subdivision (a) and comply with the reporting requirements contained in subdivision (b) with respect to any information obtained after January 1, 2017.

*Added by Stats 2016 ch 361 § 2 (AB 2833), effective January 1, 2017. Amended by Stats 2017 ch 561 § 68 (AB 1516), effective January 1, 2018.*

### **Amendments**

**2017 Amendment:** **(1)** Substituted "adviser" for "advisor" in subd (c)(8); **(2)** substituted "adviser" for "advisor" and "adviser's" for "advisor's" in subd (c)(11); and **(3)** substituted "applies" for "shall apply" in subd (d)(1).

#### **§ 7515. Intent of chapter**

It is the intent of this chapter to authorize and encourage the Public Employees' Retirement System and the State Teachers' Retirement System to regularly cooperate and share information that may assist both systems in developing and implementing appropriate investment strategies, with the advice of investment experts selected by the systems who are willing to share their knowledge and expertise.

*Added by Stats 2000 ch 320 § 3 (SB 2122).*

**Former Sections:** Former § 7515, relating to review of controlling statutes by Teacher's Retirement Board and Board of Administration, was added by Stats 1988 ch 241 § 1 and repealed by Stats 2000 ch 320 § 2.

#### **§ 7516. Confidential information**

Notwithstanding any other provision of law, confidential information or documents relating to investments in the possession of the Public Employees' Retirement System or the State Teachers' Retirement System shall not lose their confidential status due to the fact that the information or documents are shared with the other system or with investment advisors selected by the systems to advise on asset allocation, active versus passive management, or other investment issues of mutual interest and concern. Nothing in this chapter shall be construed to authorize the release or sharing of documents or information in violation of federal law or the terms of a contract.

*Added by Stats 2000 ch 320 § 3 (SB 2122).*

#### **§ 7520. Deposits with savings and loan associations in exchange for residential construction loans**

**(a)** Notwithstanding any other provision of law, any public pension fund or retirement system of this state or local agency of this state may contract with a savings and loan association doing business in this state under terms by which the association shall receive deposits of money from the fund or system for

a term of 12 months or longer upon the association's agreement to offer loans for the construction of new residential structures and related improvements, including apartment buildings or other multiple-unit structures, in an amount equal to the amount of the deposit, at a rate of interest equal to the rate of interest on the deposit plus 200 basis points. The savings and loan association may require additionally an origination fee not exceeding the amount required by the savings and loan association for comparable loans not subject to this section, but in no case exceeding 5 percent of the loan amount. This fee shall not be deemed to include any expenses of the association directly related to approving, processing, or recording loans made pursuant to this section. Reasonable charges to cover those expenses may be imposed in connection with the loans.

**(b)** Nothing in this section shall authorize a pension fund or retirement system to make deposits at less than the otherwise applicable rate of interest nor prohibit the fund or system from depositing funds with other financial institutions or under other conditions.

*Added by Stats 1982 ch 1144 § 1. Amended by Stats 2006 ch 538 § 237 (SB 1852), effective January 1, 2007.*

### **Amendments**

**2006 Amendment:** (1) Added subd designations (a) and (b); (2) substituted "those expenses may be imposed in connection with the" for "such expenses may be imposed in connection with such" after "charges to cover" in subd (a); and (3) substituted "or" for "of" after "prohibit the fund" in subd (b).

#### **§ 7522. Citation of article**

This article shall be known as the California Public Employees' Pension Reform Act of 2013.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

#### **§ 7522.02. Applicability of article; Retirement plan for individuals employed by subsequent employer for first time on or after specified date; Defined benefit pension plan; Defined contribution plan**

**(a) (1)** Notwithstanding any other law, except as provided in this article, on and after January 1, 2013, this article shall apply to all state and local public retirement systems and to their participating employers, including the Public Employees' Retirement System, the State Teachers' Retirement System, the Legislators' Retirement System, the Judges' Retirement System, the Judges' Retirement System II, county and district retirement systems created pursuant to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3), independent public retirement systems, and to individual retirement plans offered by public employers. However, this article shall be subject to the Internal Revenue Code and Section 17 of Article XVI of the California Constitution. The administration of the requirements of this article shall comply with applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code.

**(2)** Notwithstanding paragraph (1), this article shall not apply to the entities described in Section 9 of Article IX of, and Sections 4 and 5 of Article XI of, the California Constitution, except to the extent that these entities continue to be participating employers in any retirement system governed by state statute. Accordingly, any retirement plan approved before January 1, 2013, by the voters of any entity excluded from coverage by this section shall not be affected by this article.

**(3) (A)** Notwithstanding paragraph (1), this article shall not apply to a public employee whose interests are protected under Section 5333(b) of Title 49 of the United States Code until a federal district court rules that the United States Secretary of Labor, or his or her designee, erred in determining that the application of this article precludes certification under that section, or until January 1, 2016, whichever is sooner.



**(B)** If a federal district court upholds the determination of the United States Secretary of Labor, or his or her designee, that application of this article precludes him or her from providing a certification under Section 5333(b) of Title 49 of the United States Code, this article shall not apply to a public employee specified in subparagraph (A).

**(4)** Notwithstanding paragraph (1), this article shall not apply to a multiemployer plan authorized by Section 302(c)(5) of the federal Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public employer began participation in that plan prior to January 1, 2013, and the plan is regulated by the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.).

**(b)** The benefit plan required by this article shall apply to public employees who are new members as defined in Section 7522.04.

**(c) (1)** Individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, shall be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to concurrent membership for which creditable service was performed in the previous six months or reciprocity established under any of the following provisions:

**(A)** Article 5 (commencing with Section 20350) of Chapter 3 of Part 3 of Division 5 of Title 2.

**(B)** Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3.

**(C)** Any agreement between public retirement systems to provide reciprocity to members of the systems.

**(D)** Section 22115.2 of the Education Code.

**(2)** An individual who was employed before January 1, 2013, and who, without a separation from employment, changed employment positions and became subject to a different defined benefit plan in a different public retirement system offered by his or her employer shall be subject to that defined benefit plan as it would have been available to employees who were first employed on or before December 31, 2012.

**(d)** If a public employer, before January 1, 2013, offers a defined benefit pension plan that provides a defined benefit formula with a lower benefit factor at normal retirement age and results in a lower normal cost than the defined benefit formula required by this article, that employer may continue to offer that defined benefit formula instead of the defined benefit formula required by this article, and shall not be subject to the requirements of Section 7522.10 for pensionable compensation subject to that formula. However, if the employer adopts a new defined benefit formula on or after January 1, 2013, that formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and the retirement board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature. New members of the defined benefit plan may only participate in the lower cost defined benefit formula that was in place before January 1, 2013, or a defined benefit formula that conforms to the requirements of this article or is approved by the Legislature as provided in this subdivision.

**(e)** If a public employer, before January 1, 2013, offers a retirement benefit plan that consists solely of a defined contribution plan, that employer may continue to offer that plan instead of the defined benefit pension plan required by this article. However, if the employer adopts a new defined benefit pension plan or defined benefit formula on or after January 1, 2013, that plan or formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and the system's board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature. New members of the employer's plan may only participate in the defined contribution plan that was in place before January 1, 2013, or a defined contribution plan or defined benefit formula that conforms to the requirements of this article. This subdivision shall not be construed to prohibit an employer from offering a defined contribution plan on or after January 1, 2013, either with or without a defined benefit plan, whether or not the employer offered a defined contribution plan prior to that date.

**(f) (1)** If, on or after January 1, 2013, the Cities of Brea and Fullerton form a joint powers authority pursuant to the provisions of the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5), that joint powers authority may provide employees the defined benefit plan or formula that those employees received from their respective employers prior to the exercise of a common power, to which the employee is associated, by the joint powers authority to any employee of the City of Brea, the City of Fullerton, or a city described in paragraph (2) who is not a new member and subsequently is employed by the joint powers authority within 180 days of the city providing for the exercise of a common power, to which the employee was associated, by the joint powers authority.

**(2)** On or before January 1, 2017, a city in Orange County that is contiguous to the City of Brea or the City of Fullerton may join the joint powers authority described in paragraph (1) but not more than three cities shall be permitted to join.

**(3)** The formation of a joint powers authority on or after January 1, 2013, shall not act in a manner as to exempt a new employee or a new member, as defined by Section 7522.04, from the requirements of this article. New members may only participate in a defined benefit plan or formula that conforms to the requirements of this article.

**(g) (1)** If, on or after January 1, 2013, the Belmont Fire Protection District, the Estero Municipal Improvement District, and the City of San Mateo form a joint powers authority pursuant to the provisions of the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5), that joint powers authority may provide employees the defined benefit plan or formula that those employees received from their respective employers prior to the exercise of a common power, to which the employee is associated, by the joint powers authority to any employee of the Belmont Fire Protection District, the Estero Municipal Improvement District, and the City of San Mateo who is not a new member and subsequently is employed by the joint powers authority within 180 days of the agency providing for the exercise of a common power, to which the employee was associated, by the joint powers authority.

**(2)** The formation of a joint powers authority on or after January 1, 2013, shall not act in a manner as to exempt a new employee or a new member, as defined by Section 7522.04, from the requirements of this article. New members may only participate in a defined benefit plan or formula that conforms to the requirements of this article.

**(h)** The Judges' Retirement System and the Judges' Retirement System II shall not be required to adopt the defined benefit formula required by Section 7522.20 or 7522.25 or the compensation limitations defined in Section 7522.10.

**(i)** This article shall not be construed to provide membership in any public retirement system for an individual who would not otherwise be eligible for membership under that system's applicable rules or laws.

**(j)** On and after January 1, 2013, each public retirement system shall modify its plan or plans to comply with the requirements of this article and may adopt regulations or resolutions for this purpose.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 527 § 1 (AB 1222), effective October 4, 2013, ch 528 § 2 (SB 13), effective October 4, 2013; Stats 2014 ch 724 § 1 (AB 1783), effective September 28, 2014, ch 757 § 2 (SB 1251), effective January 1, 2015; Stats 2015 ch 158 § 1 (SB 354), effective January 1, 2016; Stats 2016 ch 531 § 1 (SB 24), effective January 1, 2017.*

### Amendments

**2013 Amendment (ch 527):** **(1)** Substituted "the Judges' Retirement System" for "the Judges' Retirement System I" after "the Legislators' Retirement System," in the first sentence of subd (a)(1); **(2)** added subd (a)(3); and **(3)** substituted "Judges' Retirement System" for "Judges' Retirement System I" in subd (f).

**2013 Amendment (ch 528):** **(1)** Substituted "Section 5333(b)" for "subsection (b) of Section 5333" in subs (a)(3)(A) and (a)(3)(B); **(2)** added subs (a)(4), (c)(1)(D), (c)(2), and (h); **(3)** added subdivision designation (c)(1); **(4)** added "concurrent membership for which creditable service was performed in the previous six months or" in the introductory clause of subd (c)(1); **(5)** redesignated former subs (c)(1)–(c)(3) to be subs (c)(1)(A)–(c)(1)(C);

(6) added the last sentence of subd (e); and (7) amended subd (f) by substituting "Section 7522.20 or 7522.25" for "Section 7522.25 or 7522.30".

**2014 Amendment (ch 724):** (1) Added "(Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3)" in the first sentence of subd (a)(1); (2) substituted "January 1, 2016" for "January 1, 2015" in subd (a)(3)(A); and (3) amended subd (a)(4) by adding (a) "federal" both times it appears; and (b) (29 U.S.C. Sec. 1001 et seq.)".

**2014 Amendment (ch 757):** (1) Added subd (f); and (2) redesignated former subds (f)–(h) to be subds (g)–(i).

**2015 Amendment:** Amended subd (f)(1) by substituting (1) "prior to the exercise of a common power, to which the employee is associated, by the joint powers authority" for "on December 31, 2012,;" and (2) "within 180 days of the city providing for the exercise of a common power, to which the employee was associated, by the joint powers authority" for "without a break in service of more than 180 days".

**2016 Amendment:** (1) Added subd (g); and (2) redesignated former subds (g)-(i) to be subds (h)-(j).

## § 7522.04. Definitions

For the purposes of this article:

(a) "Defined benefit formula" means a formula used by the retirement system to determine a retirement benefit based on age, years of service, and pensionable compensation earned by an employee up to the limit defined in Section 7522.10.

(b) "Employee contributions" means the contributions to a public retirement system required to be paid by a member of the system, as fixed by law, regulation, administrative action, contract, contract amendment, or other written agreement recognized by the retirement system as establishing an employee contribution.

(c) "Federal system" means the old age, survivors, disability, and health insurance provisions of the federal Social Security Act (42 U.S.C. Sec. 301 et seq.).

(d) "Member" means a public employee who is a member of any type of a public retirement system or plan.

(e) "New employee" means either of the following:

(1) An employee, including one who is elected or appointed, of a public employer who is employed for the first time by any public employer on or after January 1, 2013, and who was not employed by any other public employer prior to that date.

(2) An employee, including one who is elected or appointed, of a public employer who is employed for the first time by any public employer on or after January 1, 2013, and who was employed by another public employer prior to that date, but who was not subject to reciprocity under subdivision (c) of Section 7522.02.

(f) "New member" means any of the following:

(1) An individual who becomes a member of any public retirement system for the first time on or after January 1, 2013, and who was not a member of any other public retirement system prior to that date.

(2) An individual who becomes a member of a public retirement system for the first time on or after January 1, 2013, and who was a member of another public retirement system prior to that date, but who was not subject to reciprocity under subdivision (c) of Section 7522.02.

(3) An individual who was an active member in a retirement system and who, after a break in service of more than six months, returned to active membership in that system with a new employer. For purposes of this subdivision, a change in employment between state entities or from one school employer to another shall not be considered as service with a new employer.

(g) "Normal cost" means the portion of the present value of projected benefits under the defined benefit that is attributable to the current year of service, as determined by the public retirement system's actuary according to the most recently completed valuation. For the purpose of determining normal cost, the system's actuary may use a single rate of contribution or an age-based rate of contribution as is applicable to that retirement system.

(h) “Public employee” means an officer, including one who is elected or appointed, or an employee of a public employer.

(i) “Public employer” means:

(1) The state and every state entity, including, but not limited to, the Legislature, the judicial branch, including judicial officers, and the California State University.

(2) Any political subdivision of the state, or agency or instrumentality of the state or subdivision of the state, including, but not limited to, a city, county, city and county, a charter city, a charter county, school district, community college district, joint powers authority, joint powers agency, and any public agency, authority, board, commission, or district.

(3) Any charter school that elects or is required to participate in a public retirement system.

(j) “Public retirement system” means any pension or retirement system of a public employer, including, but not limited to, an independent retirement plan offered by a public employer that the public employer participates in or offers to its employees for the purpose of providing retirement benefits, or a system of benefits for public employees that is governed by Section 401(a) of Title 26 of the United States Code.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 3 (SB 13), effective October 4, 2013.*

### **Amendments**

**2013 Amendment:** Added the second sentence of subd (g).

#### **§ 7522.05. Exemption from PEPRA requirements**

(a) A joint powers authority formed on or after January 1, 2013, and formed pursuant to the provisions of the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5), where at least one member agency provided benefits on or before December 31, 2012, as described in subdivision (c) of Section 7522.02, may provide employees of that joint powers authority the defined benefit plan or formula that those employees received from their respective employers prior to the exercise of a common power where that employee was not a new member with that employer and subsequently is employed by the joint powers authority within 180 days of the member agency providing for the exercise of a common power.

(b) The formation of a joint powers authority on or after January 1, 2013, shall not act in a manner as to exempt a new employee or a new member, as defined by Section 7522.04, hired by that joint powers authority from the requirements of the Public Employees’ Pension Reform Act of 2013. New members may only participate in a defined benefit plan or formula that conforms to the requirements of the Public Employees’ Pension Reform Act of 2013.

*Added by Stats 2016 ch 729 § 1 (SB 1203), effective January 1, 2017.*

#### **§ 7522.10. Modification of plans required; Pensionable compensation; Limitations on defined or combination of defined benefits; Employer contributions**

(a) On and after January 1, 2013, each public retirement system shall modify its plan or plans to comply with the requirements of this section for each public employer that participates in the system.

(b) Whenever pensionable compensation, as defined in Section 7522.34, is used in the calculation of a benefit, the pensionable compensation shall be subject to the limitations set forth in subdivision (c).

(c) The pensionable compensation used to calculate the defined benefit paid to a new member who retires from the system shall not exceed the following applicable percentage of the contribution and benefit base specified in Section 430(b) of Title 42 of the United States Code on January 1, 2013:

(1) One hundred percent for a member whose service is included in the federal system.

(2) One hundred twenty percent for a member whose service is not included in the federal system.

**(d) (1)** The retirement system shall adjust the pensionable compensation described in subdivision (c) based on the annual changes to the Consumer Price Index for All Urban Consumers: U.S. City Average, calculated by dividing the Consumer Price Index for All Urban Consumers: U.S. City Average, for the month of September in the calendar year preceding the adjustment by the Consumer Price Index for All Urban Consumers: U.S. City Average, for the month of September of the previous year rounded to the nearest thousandth. The adjustment shall be effective annually on January 1, beginning in 2014.

**(2)** The Legislature reserves the right to modify the requirements of this subdivision with regard to all public employees subject to this section, except that the Legislature may not modify these provisions in a manner that would result in a decrease in benefits accrued prior to the effective date of the modification.

**(e)** A public employer shall not offer a defined benefit or any combination of defined benefits, including a defined benefit offered by a private provider, on compensation in excess of the limitation in subdivision (c).

**(f) (1)** Subject to the limitation in subdivision (c) of Section 7522.42, a public employer may provide a contribution to a defined contribution plan for compensation in excess of the limitation in subdivision (c) provided the plan and the contribution meet the requirements and limits of federal law.

**(2)** A public employee who receives an employer contribution to a defined contribution plan shall not have a vested right to continue receiving the employer contribution.

**(g)** Any employer contributions to any employee defined contribution plan above the pensionable compensation limits in subdivision (c) shall not exceed the employer's contribution rate, as a percentage of pay, required to fund the defined benefit plan for income subject to limitation in subdivision (c) of Section 7522.42.

**(h)** The retirement system shall limit the pensionable compensation used to calculate the contributions required of an employer or a new member to the amount of compensation that would be used for calculating a defined benefit as set forth in subdivision (c) or (d).

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 4 (SB 13), effective October 4, 2013.*

### Amendments

**2013 Amendment:** **(1)** Amended the first sentence of subd (d)(1) by **(a)** substituting “based on the annual” for “following each actuarial valuation based on”; and **(b)** adding “: U.S. City Average, calculated by dividing the Consumer Price Index for All Urban Consumers: U.S. City Average, for the month of September in the calendar year preceding the adjustment by the Consumer Price Index for All Urban Consumers: U.S. City Average, for the month of September of the previous year rounded to the nearest thousandth”; **(2)** substituted “, beginning in 2014” for “following the annual valuation” in the second sentence of subd (d)(1); **(3)** added “Subject to the limitation in subdivision (c) of Section 7522.42,” in subd (f)(1); **(4)** amended subd (g) by **(a)** deleting “, when combined with the employer’s contribution to the employee’s retirement benefits below the compensation limit,” after “shall not”; **(b)** substituting “employer’s contribution rate” for “employer’s contribution level”; and **(c)** substituting “defined benefit plan for income subject to limitation in subdivision (c) of Section 7522.42” for “retirement benefits of employees with income below the compensation limits”; and **(5)** added subd (h).

### § 7522.15. Offer of defined benefit formulas

Except as provided in subdivisions (d) and (e) of Section 7522.02, each public employer and each public retirement system that offers a defined benefit plan shall offer only the defined benefit formulas established pursuant to Sections 7522.20 and 7522.25 to new members.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

**§ 7522.18. Offer of supplemental defined benefit plan**

(a) A public employer that does not offer a supplemental defined benefit plan before January 1, 2013, shall not offer a supplemental defined benefit plan for any employee on or after January 1, 2013.

(b) A public employer that provides a supplemental defined benefit plan, including a defined benefit plan offered by a private provider, before January 1, 2013, shall not offer a supplemental defined benefit plan to any additional employee group to which the plan was not provided before January 1, 2013.

(c) Except as provided in Chapter 38 (commencing with Section 25000) of Article 1 of Part 13 of Title 1 of the Education Code, a public employer shall not offer or provide a supplemental defined benefit plan, including a defined benefit plan offered by a private provider, to any employee hired on or after January 1, 2013.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

**§ 7522.20. Formula for retirement systems offering a defined benefit plan for nonsafety members; Pensionable compensation; New members of State Teachers' Retirement System**

(a) Each retirement system that offers a defined benefit plan for nonsafety members of the system shall use the formula prescribed by this section. The defined benefit plan shall provide a pension at retirement for service equal to the percentage of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding quarter year, in the following table, multiplied by the number of years of service in the system as a nonsafety member. A member may retire for service under this section after five years of service and upon reaching 52 years of age.

Age of Retirement	Fraction
52 .....	1.000
52¼ .....	1.025
52½ .....	1.050
52¾ .....	1.075
53 .....	1.100
53¼ .....	1.125
53½ .....	1.150
53¾ .....	1.175
54 .....	1.200
54¼ .....	1.225
54½ .....	1.250
54¾ .....	1.275
55 .....	1.300
55¼ .....	1.325
55½ .....	1.350
55¾ .....	1.375
56 .....	1.400
56¼ .....	1.425
56½ .....	1.450
56¾ .....	1.475
57 .....	1.500
57¼ .....	1.525
57½ .....	1.550
57¾ .....	1.575
58 .....	1.600
58¼ .....	1.625
58½ .....	1.650

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

Age of Retirement	Fraction
58¾	1.675
59	1.700
59¼	1.725
59½	1.750
59¾	1.775
60	1.800
60¼	1.825
60½	1.850
60¾	1.875
61	1.900
61¼	1.925
61½	1.950
61¾	1.975
62	2.000
62¼	2.025
62½	2.050
62¾	2.075
63	2.100
63¼	2.125
63½	2.150
63¾	2.175
64	2.200
64¼	2.225
64½	2.250
64¾	2.275
65	2.300
65¼	2.325
65½	2.350
65¾	2.375
66	2.400
66¼	2.425
66½	2.450
66¾	2.475
67	2.500

(b) Pensionable compensation used to calculate the defined benefit shall be limited as described in Section 7522.10.

(c) A new member of the State Teachers' Retirement System shall be subject to the formula established pursuant to Section 24202.6 of the Education Code.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 76 § 74 (AB 383), effective January 1, 2014.*

**Amendments**

**2013 Amendment:** Substituted "52 ..... 1.000" for "52 ..... 1.00" in subd (a).

**§ 7522.25. Formula for retirement systems offering a defined benefit plan for safety members; Basic Safety Plan; Safety Option Plan One; Safety Option Plan Two; Duties of employer; Pensionable compensation**

(a) Each retirement system that offers a defined benefit plan for safety members of the system shall use one or more of the defined benefit formulas prescribed by this section. A member may retire for service under any of the formulas in this section after five years of service and upon reaching 50 years of age.

(b) The Basic Safety Plan shall provide a pension at retirement for service equal to the percentage of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding quarter year, in the following table, multiplied by the number of years of service in the system as a safety member.

Age at Retirement	Fraction
50 .....	1.426
50¼ .....	1.447
50½ .....	1.467
50¾ .....	1.488
51 .....	1.508
51¼ .....	1.529
51½ .....	1.549
51¾ .....	1.570
52 .....	1.590
52¼ .....	1.611
52½ .....	1.631
52¾ .....	1.652
53 .....	1.672
53¼ .....	1.693
53½ .....	1.713
53¾ .....	1.734
54 .....	1.754
54¼ .....	1.775
54½ .....	1.795
54¾ .....	1.816
55 .....	1.836
55¼ .....	1.857
55½ .....	1.877
55¾ .....	1.898
56 .....	1.918
56¼ .....	1.939
56½ .....	1.959
56¾ .....	1.980
57 and over .....	2.000

(c) The Safety Option Plan One shall provide a pension at retirement for service equal to the percentage of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding quarter year, in the following table, multiplied by the number of years of service in the system as a safety member.

Age at Retirement	Fraction
50 .....	2.000
50¼ .....	2.018
50½ .....	2.036



CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

Age at Retirement	Fraction
50¾ .....	2.054
51 .....	2.071
51¼ .....	2.089
51½ .....	2.107
51¾ .....	2.125
52 .....	2.143
52¼ .....	2.161
52½ .....	2.179
52¾ .....	2.196
53 .....	2.214
53¼ .....	2.232
53½ .....	2.250
53¾ .....	2.268
54 .....	2.286
54¼ .....	2.304
54½ .....	2.321
54¾ .....	2.339
55 .....	2.357
55¼ .....	2.375
55½ .....	2.393
55¾ .....	2.411
56 .....	2.429
56¼ .....	2.446
56½ .....	2.464
56¾ .....	2.482
57 and over .....	2.500

(d) The Safety Option Plan Two shall provide a pension at retirement for service equal to the percentage of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding quarter year, in the following table, multiplied by the number of years of service in the system as a safety member.

Age at Retirement	Fraction
50 .....	2.000
50¼ .....	2.025
50½ .....	2.050
50¾ .....	2.075
51 .....	2.100
51¼ .....	2.125
51½ .....	2.150
51¾ .....	2.175
52 .....	2.200
52¼ .....	2.225
52½ .....	2.250
52¾ .....	2.275
53 .....	2.300
53¼ .....	2.325
53½ .....	2.350
53¾ .....	2.375
54 .....	2.400
54¼ .....	2.425

Age at Retirement	Fraction
54½ .....	2.450
54¾ .....	2.475
55 .....	2.500
55¼ .....	2.525
55½ .....	2.550
55¾ .....	2.575
56 .....	2.600
56¼ .....	2.625
56½ .....	2.650
56¾ .....	2.675
57 and over .....	2.700

(e) On and after January 1, 2013, an employer shall offer one or more of the safety formulas prescribed by this section to new members who are safety employees. The formula offered shall be the formula that is closest to, and provides a lower benefit at 55 years of age than, the formula provided to members in the same retirement classification offered by the employer on December 31, 2012.

(f) On and after January 1, 2013, an employer and its employees subject to Safety Option Plan One or Safety Option Plan Two may agree in a memorandum of understanding to be subject to Safety Option Plan One or the Basic Safety Plan, subject to the following:

(1) The lower plan shall apply to members first employed on or after the effective date of the lower plan, and shall be agreed to in a memorandum of understanding that has been collectively bargained in accordance with applicable laws.

(2) A retirement plan contract amendment with a public retirement system to alter a retirement formula pursuant to this subdivision shall not be implemented by the employer in the absence of a memorandum of understanding that has been collectively bargained in accordance with applicable laws.

(3) An employer shall not use impasse procedures to impose the lower plan.

(4) An employer shall not provide a different defined benefit for nonrepresented, managerial, or supervisory employees than the employer provides for other public employees, including represented employees, of the same employer who are in the same membership classifications.

(g) Pensionable compensation used to calculate the defined benefit shall be limited as described in Section 7522.10.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 5 (SB 13), effective October 4, 2013.*

**Amendments**

**2013 Amendment:** Amended the first sentence of subd (e) by (1) substituting “members” for “employees”; and (2) deleting “eligible for membership in the system” at the end.

**§ 7522.30. Equal sharing of normal costs between public employers and public employees; Standard; Contribution rate; Prior contract**

(a) This section shall apply to all public employers and to all new members. Equal sharing of normal costs between public employers and public employees shall be the standard. The standard shall be that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee contribution.

(b) The “normal cost rate” shall mean the annual actuarially determined normal cost for the plan of retirement benefits provided to the new member and shall be established based on the actuarial assumptions used to determine the liabilities and costs as part of the annual actuarial valuation. The plan of retirement benefits shall include any elements that would impact the actuarial determination of the normal cost, including, but not limited to, the retirement formula, eligibility and vesting criteria, ancillary

benefit provisions, and any automatic cost-of-living adjustments as determined by the public retirement system.

(c) New members employed by those public employers defined in paragraphs (2) and (3) of subdivision (i) of Section 7522.04, the Legislature, the California State University, and the judicial branch who participate in a defined benefit plan shall have an initial contribution rate of at least 50 percent of the normal cost rate for that defined benefit plan, rounded to the nearest quarter of 1 percent, unless a greater contribution rate has been agreed to pursuant to the requirements in subdivision (e). This contribution shall not be paid by the employer on the employee's behalf.

(d) Notwithstanding subdivision (c), once established, the employee contribution rate described in subdivision (c) shall not be adjusted on account of a change to the normal cost rate unless the normal cost rate increases or decreases by more than 1 percent of payroll above or below the normal cost rate in effect at the time the employee contribution rate is first established or, if later, the normal cost rate in effect at the time of the last adjustment to the employee contribution rate under this section.

(e) Notwithstanding subdivision (c), employee contributions may be more than one-half of the normal cost rate if the increase has been agreed to through the collective bargaining process, subject to the following conditions:

(1) The employer shall not contribute at a greater rate to the plan for nonrepresented, managerial, or supervisory employees than the employer contributes for other public employees, including represented employees, of the same employer who are in related retirement membership classifications.

(2) The employer shall not increase an employee contribution rate in the absence of a memorandum of understanding that has been collectively bargained in accordance with applicable laws.

(3) The employer shall not use impasse procedures to increase an employee contribution rate above the rate required by this section.

(f) If the terms of a contract, including a memorandum of understanding, between a public employer and its public employees, that is in effect on January 1, 2013, would be impaired by any provision of this section, that provision shall not apply to the public employer and public employees subject to that contract until the expiration of that contract. A renewal, amendment, or any other extension of that contract shall be subject to the requirements of this section.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 6 (SB 13), effective October 4, 2013.*

### Amendments

**2013 Amendment:** (1) Amended subd (b) by (a) substituting “plan of retirement benefits provided to the new member and shall be established based on the actuarial assumptions used to determine the liabilities and costs as part of the annual actuarial valuation.” for “defined benefit plan of an employer expressed a percentage of payroll” in the first sentence; and (b) adding the second sentence; and (2) amended the first sentence of subd (c) by (a) substituting “members employed” for “employees employed on and after January 1, 2013,”; (b) adding “the Legislature,”; and (c) substituting “unless a greater contribution rate has been agreed to pursuant to the requirements in subdivision (e)” for “or the current contribution rate of similarly situated employees, whichever is greater”.

### Notes of Decisions

In a case involving the application of the defined benefit formulas and employee contribution provisions of the California Public Employees' Pension Reform Act of 2013 to a county's safety employees who were hired after the Act's effective date, but who were covered by preexisting collective bargaining agreements containing conflicting terms, the conflicting provisions of Gov C § 7522.30 did not apply to new members governed by the agreements until the agreements expired. *Deputy Sheriffs' Assn. of San Diego County v. County of San Diego* (2015, 4th Dist) 182 Cal Rptr 3d 759, 233 Cal App 4th 573, 2015 Cal App LEXIS 55.

**§ 7522.32. Determination of retirement benefit for new member of public retirement system; Final compensation**

For the purposes of determining a retirement benefit to be paid to a new member of a public retirement system, the following shall apply:

(a) Final compensation shall mean the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months, or at least three consecutive school years if applicable, immediately preceding his or her retirement or last separation from service if earlier, or during any other period of at least 36 consecutive months, or at least three consecutive school years if applicable, during the member's applicable service that the member designates on the application for retirement.

(b) On or after January 1, 2013, an employer shall not modify a benefit plan to permit a calculation of final compensation on a basis of less than the average annual compensation earned by the member during a consecutive 36-month period, or three school years if applicable, for members who have been subject to at least a 36-month or three-school-year calculation prior to that date.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 7 (SB 13), effective October 4, 2013.*

**Amendments**

**2013 Amendment:** Amended subd (a) by adding (1) "consecutive" after "at least three"; and (2) ", or at least three consecutive school years if applicable,".

**§ 7522.34. "Pensionable compensation" of new member of public retirement system**

(a) "Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules, subject to the limitations of subdivision (c).

(b) Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid.

(c) Notwithstanding any other law, "pensionable compensation" of a new member does not include the following:

(1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.

(2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.

(3) Any one-time or ad hoc payments made to a member.

(4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

(5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) Employer contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the compensation described in subdivision (a).

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

(13) (A) Any form of compensation identified that has been agreed to be nonpensionable pursuant to a memorandum of understanding for state employees bound by the memorandum of understanding. The state employer subject to the memorandum of understanding shall inform the retirement system of the excluded compensation and provide a copy of the memorandum of understanding.

(B) The state employer may determine if excluded compensation identified in subparagraph (A) shall apply to nonrepresented state employees who are aligned with state employees subject to the memorandum of understanding described in subparagraph (A). The state employer shall inform the retirement system of the exclusion of this compensation and provide a copy of the public pay schedule detailing the exclusion.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 8 (SB 13), effective October 4, 2013.*

#### Amendments

**2013 Amendment:** (1) Added “, subject to the limitations of subdivision (c)” in subd (a); (2) amended the introductory clause of subd (c) by adding (a) “Notwithstanding any other law,”; and (b) “of a new member”; and (3) added subd (c)(13).

#### **§ 7522.40. Limitations on health benefit vesting schedule or other specified retirement benefits for manager or employee or officer excluded from collective bargaining**

(a) A public employer shall not provide to a public employee who is elected or appointed, a trustee, excluded from collective bargaining, exempt from civil service, or a manager any vesting schedule for the employer contribution payable for postretirement health benefits that is more advantageous than that provided generally to other public employees, including represented employees, of the same public employer who are in related retirement membership classifications.

(b) This section shall not require an employer to change the vesting schedule for the employer contribution payable for postretirement health benefits of any public employee who was subject to a specific vesting schedule pursuant to statute, collective bargaining agreement, or resolution for these employer contributions prior to January 1, 2013, or who had a contractual agreement with an employer prior to January 1, 2013, for a specific vesting schedule for these employer contributions.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 9 (SB 13), effective October 4, 2013.*

#### Amendments

**2013 Amendment:** (1) Added subdivision designation (a); (2) substituted “vesting schedule for the employer contribution payable for postretirement health benefits” for “health benefit vesting schedule” in subd (a); and (3) added subd (b).

#### **§ 7522.42. Determination of retirement benefit for new member of public retirement; Maximum salary, compensation, or payrate taken into account under plan**

(a) In addition to any other benefit limitation prescribed by law, for the purposes of determining a public retirement benefit paid to a new member of a public retirement system, the maximum salary, compensation, or payrate taken into account under the plan for any year shall not exceed the amount permitted to be taken into account under Section 401(a)(17) of Title 26 of the United States Code or its successor.

(b) A public employer shall not seek an exception to the prohibition in subdivision (a) on or after January 1, 2013.

(c) For employees first hired on or after January 1, 2013, a public employer shall not make employer contributions to any qualified retirement plan or plans on behalf of an employee based on that portion of the amount of total pensionable compensation that exceeds the amount specified in Section 401(a)(17) of Title 26 of the United States Code, or its successor.

(d) This section shall not apply to salary, compensation, or payrate paid to individuals who, due to their dates of hire, are not subject to the limits specified in subdivision (a).

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

#### **§ 7522.43. Plan of replacement benefits for members, survivors or beneficiaries**

(a) A public employer shall not offer a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits are limited by Section 415 of Title 26 of the United States Code. This section shall apply to new members.

(b) A public retirement system may continue to administer a plan of replacement benefits for employees first hired prior to January 1, 2013.

(c) A public employer that does not offer a plan of replacement benefits prior to January 1, 2013, shall not offer such a plan for any employee on or after January 1, 2013.

(d) A public employer that offers a plan of replacement benefits prior to January 1, 2013, shall not offer such a plan to any additional employee group to which the plan was not provided prior to January 1, 2013.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 10 (SB 13), effective October 4, 2013.*

#### **Amendments**

**2013 Amendment:** Substituted “members” for “employees” in the second sentence of subd (a).

#### **§ 7522.44. Enhancement to public employee’s retirement formula or retirement benefit**

This section shall apply to all public employers and to all public employees:

(a) Any enhancement to a public employee’s retirement formula or retirement benefit adopted on or after January 1, 2013, shall apply only to service performed on or after the operative date of the enhancement and shall not be applied to any service performed prior to the operative date of the enhancement.

(b) If a change to a member’s retirement membership classification or a change in employment results in an enhancement in the retirement formula or retirement benefit applicable to that member, that enhancement shall apply only to service performed on or after the operative date of the change and shall not be applied to any service performed prior to the operative date of the change.

(c) For purposes of this section, “operative date” in a collective bargaining agreement means one of the following:

(1) The date that the agreement is signed by the parties.

(2) A date agreed to by the parties that will occur after the date that the agreement is signed by the parties.

(3) A date designated by the parties that occurred prior to the date the agreement was signed if the most recent collective bargaining contract was expired at the time of the agreement and the date designated is not earlier than 12 months prior to the date of the agreement or the day after the last day of the expired bargaining contract, whichever occurred later.

(d) For purposes of this section, an increase to a retiree’s annual cost-of-living adjustment within existing statutory limits shall not be considered to be an enhancement to a retirement benefit.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

**§ 7522.46. Purchase of nonqualified service credit**

(a) A public retirement system shall not allow the purchase of nonqualified service credit, as defined by Section 415(n)(3)(C) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(n)(3)(C)).

(b) Subdivision (a) shall not apply to an official application to purchase nonqualified service credit that is received by the public retirement system prior to January 1, 2013, that is subsequently approved by the system.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

**§ 7522.48. Final compensation of pension or benefit for elective or appointed officer on city council or county board of supervisors**

(a) Final compensation of a member for the purpose of determining any pension or benefit resulting from service as an elective or appointed officer on a city council or a county board of supervisors accrued while in membership of a public retirement system shall be based on the highest average annual pensionable compensation earned by the member during the period of service in each elective or appointed office. Where that elective or appointed service is a consideration in the computation of any pension or benefit, the member may have more than one final compensation.

(b) Any final compensation calculation shall otherwise be subject to this article except that if any individual period of elective service is less than 36 months or three years, then the entire period of that individual's elected service shall be used to determine the final compensation for that period of service.

(c) This section shall apply to a member first elected or appointed to a city council or a county board of supervisors on or after January 1, 2013.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

**§ 7522.52. Employer's contribution to defined benefit plan in combination with employee contributions; Suspension of contributions**

(a) In any fiscal year, a public employer's contribution to a defined benefit plan, in combination with employee contributions to that defined benefit plan, shall not be less than the normal cost rate, as defined in Section 7522.30, for that defined benefit plan for that fiscal year.

(b) The board of a public retirement system may suspend contributions when all of the following apply:

(1) The plan is funded by more than 120 percent, based on a computation by the retirement system actuary in accordance with the Governmental Accounting Standards Board requirements that is included in the annual valuation.

(2) The retirement system actuary, based on the annual valuation, determines that continuing to accrue excess earnings could result in disqualification of the plan's tax-exempt status under the provisions of the federal Internal Revenue Code.

(3) The board determines that the receipt of any additional contributions required under this section would conflict with its fiduciary responsibility set forth in Section 17 of Article XVI of the California Constitution.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013.*

**§ 7522.56. Provisions applicable to person receiving pension benefit from public retirement system; Section supersedes conflicting provisions**

(a) This section shall apply to any person who is receiving a pension benefit from a public retirement system and shall supersede any other provision in conflict with this section.

(b) A retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as permitted by this section.

(c) A person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment by the appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration.

(d) Appointments of the person authorized under this section shall not exceed a total for all employers in that public retirement system of 960 hours or other equivalent limit, in a calendar or fiscal year, depending on the administrator of the system. The rate of pay for the employment shall not be less than the minimum, nor exceed the maximum, paid by the employer to other employees performing comparable duties, divided by 173.333 to equal an hourly rate. A retired person whose employment without reinstatement is authorized by this section shall acquire no service credit or retirement rights under this section with respect to the employment unless he or she reinstates from retirement.

(e) (1) Notwithstanding subdivision (c), any retired person shall not be eligible to serve or be employed by a public employer if, during the 12-month period prior to an appointment described in this section, the retired person received any unemployment insurance compensation arising out of prior employment subject to this section with a public employer. A retiree shall certify in writing to the employer upon accepting an offer of employment that he or she is in compliance with this requirement.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment.

(f) A retired person shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement unless he or she meets one of the following conditions:

(1) The employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.

(2) (A) Except as otherwise provided in this paragraph, for state employees, the state employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed state employment position before 180 days have passed and the appointment has been approved by the Department of Human Resources. The department may establish a process to delegate appointing authority to individual state agencies, but shall audit the process to determine if abuses of the system occur. If necessary, the department may assume an agency's appointing authority for retired workers and may charge the department an appropriate amount for administering that authority.

(B) For legislative employees, the Senate Committee on Rules or the Assembly Rules Committee certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and approves the appointment in a public meeting. The appointment may not be placed on a consent calendar.

(C) For employees of the California State University, the Trustees of the California State University certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and approves the appointment in a public meeting. The appointment may not be placed on a consent calendar.



(3) The retiree is eligible to participate in the Faculty Early Retirement Program pursuant to a collective bargaining agreement with the California State University that existed prior to January 1, 2013, or has been included in subsequent agreements.

(4) The retiree is a public safety officer or firefighter hired to perform a function or functions regularly performed by a public safety officer or firefighter.

(g) A retired person who accepted a retirement incentive upon retirement shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement and subdivision (f) shall not apply.

(h) This section shall not apply to a person who is retired from the State Teachers' Retirement System, and who is subject to Section 24214, 24214.5, or 26812 of the Education Code.

(i) This section shall not apply to (1) a subordinate judicial officer whose position, upon retirement, is converted to a judgeship pursuant to Section 69615, and he or she returns to work in the converted position, and the employer is a trial court, or (2) a retiree of the Judges' Retirement System or the Judges' Retirement System II who is assigned to serve in a court pursuant to Section 68543.5.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 11 (SB 13), effective October 4, 2013 (ch 528 prevails); ch 76 § 75 (AB 383), effective January 1, 2013; Stats 2014 ch 238 § 1 (AB 2476), effective January 1, 2015.*

### Amendments

**2013 Amendment:** Substituted (1) "have passed" for "has passed" in the first sentence of subs (f)(1) and (f)(2); (2) "or firefighter hired to perform a function or functions regularly performed by a public safety officer or firefighter" for "of firefighter" in subd (f)(4); and (3) "Judges' Retirement System" for "Judges' Retirement System I" in subd (i).

**2014 Amendment:** (1) Added subdivision designation (f)(2)(A); (2) added "Except as otherwise provided in this paragraph, for state employees," in the first sentence of subd (f)(2)(A); (3) added subs (f)(2)(B) and (f)(2)(C); and (4) amended subd (i) by (a) deleting "who takes office as a judge of a court of record pursuant to Article VI of the California Constitution or a retiree" after "a retiree"; and (b) substituting "assigned to serve in a court pursuant to Section 68543.5" for "appointed to serve as a retired judge".

### § 7522.57. Employment without reinstatement for retired person receiving pension benefit appointed to salaried position on state board or commission after specified date

(a) This section shall apply to any retired person who is receiving a pension benefit from a public retirement system and is first appointed on or after January 1, 2013, to a salaried position on a state board or commission. This section shall supersede any other provision in conflict with this section.

(b) A person who is retired from a public retirement system may serve without reinstatement from retirement or loss or interruption of benefits provided that appointment is to a part-time state board or commission. A retired person whose employment without reinstatement is authorized by this subdivision shall acquire no benefits, service credit, or retirement rights with respect to the employment. Unless otherwise defined in statute, for the purpose of this section, a part-time appointment shall mean an appointment with a salary of no more than \$60,000 annually, which shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

(c) A person who is retired from the Public Employees' Retirement System shall not serve on a full-time basis on a state board or commission without reinstatement unless that person serves as a nonsalaried member of the board or commission and receives only per diem authorized to all members of the board or commission. A person who serves as a nonsalaried member of a board or commission shall not earn any service credit or benefits in the Public Employees' Retirement System or make contributions with respect to the service performed.

(d) A person retired from a public retirement system other than the Public Employees' Retirement System who is appointed on a full-time basis to a state board or commission shall choose one of the following options:

(1) The person may serve as a nonsalaried member of the board or commission and continue to receive his or her retirement allowance, in addition to any per diem authorized to all members of the board or commission. The person shall not earn service credit or benefits in the Public Employees' Retirement System and shall not make contributions with respect to the service performed.

(2) (A) The person may suspend his or her retirement allowance or allowances and instate as a new member of the Public Employees' Retirement System for the service performed on the board or commission. The pensionable compensation earned pursuant to this paragraph shall not be eligible for reciprocity with any other retirement system or plan.

(B) Upon retiring for service after serving on the board or commission, the appointee shall be entitled to reinstatement of any suspended benefits, including employer provided retiree health benefits, that he or she was entitled to at the time of being appointed to the board or commission.

(e) Notwithstanding subdivisions (c) and (d), a person who retires from a public employer may serve without reinstatement from retirement or loss or interruption of benefits provided by the retirement system upon appointment to a full-time state board pursuant to Section 5075 of the Penal Code or Section 1718 of the Welfare and Institutions Code.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 76 § 76 (AB 383), effective January 1, 2014; Stats 2016 ch 33 § 4 (SB 843), effective June 27, 2016.*

#### **Amendments**

**2013 Amendment:** Redesignated former subds (d)(2)(i) and (d)(2)(ii) to be subds (d)(2)(A) and (d)(2)(B).

**2016 Amendment:** Added "or Section 1718 of the Welfare and Institutions Code" in subd (e).

#### **§ 7522.66. [Section repealed 2013.]**

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Repealed by Stats 2013 ch 528 § 12 (SB 13), effective October 4, 2013. The repealed section related to the provisions applicable to safety member who retired for industrial disability.*

#### **§ 7522.70. Effects of conviction for crimes arising out of official duties as public official**

(a) This section shall apply to any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006.

(b) If an elected public officer is convicted during or after holding office of any felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes arising directly out of his or her official duties as an elected public officer, he or she shall forfeit all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction.

(c) (1) The elected public officer described in subdivision (b) shall forfeit only that portion of his or her rights and benefits that accrued on or after January 1, 2006, on account of his or her service in the elected public office held when the felony occurred.

(2) Paragraph (1) shall apply to the extent permissible by law.

(d) Any contributions made by the elected public officer described in subdivision (b) to the public retirement system that arose directly from or accrued solely as a result of his or her forfeited service as an elected public officer shall be returned, without interest, to the public officer.

(e) The public agency that employs an elected public officer described in subdivision (b) shall notify the public retirement system in which the officer is a member of the officer's conviction.

(f) An elected public officer shall not forfeit his or her rights and benefits pursuant to subdivision (b) if the governing body of the elected public officer's employer, including, but not limited to, the governing body of a city, county, or city and county, authorizes the public officer to receive those rights and benefits.

(g) For purposes of this section, "public officer" means an officer of the state, or an officer of a county, city, city and county, district, or authority, or any department, division, bureau, board, commission, agency, or instrumentality of any of these entities.

(h) This section applies to any person appointed to service for the period of an elected public officer's unexpired term of office.

(i) On and after January 1, 2013, this section shall not apply in any instance in which Section 7522.72 or 7522.74 applies.

*Added by Stats 2005 ch 322 § 1 (AB 1044), effective January 1, 2006 as Gov C § 1243. Amended and renumbered by Stats 2012 ch 296 § 9 (AB 340), effective January 1, 2013. Amended by Stats 2014 ch 238 § 2 (AB 2476), effective January 1, 2015.*

### Amendments

**2012 Amendment:** Added subd (i).

**2014 Amendment:** Added (1) subdivision designation (c)(1); and (2) subd (c)(2).

### § 7522.72. Provisions applicable to employee first employed by public employer or first elected or appointed to office before January 1, 2013; Applicability of certain laws

(a) This section shall apply to a public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013, and, on and after that date, Section 7522.70 shall not apply.

(b) (1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(2) If a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(c) (1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

(2) Paragraph (1) shall apply to the extent permissible by law.

(3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

(d) (1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.

(2) Any funds returned to the public employee pursuant to subdivision (d) shall be disbursed by electronic funds transfer to an account of the public employee, in a manner conforming with the requirements of the Internal Revenue Code, and the public retirement system shall notify the court and the district attorney at least three business days before that disbursement of funds.

(3) For the purposes of this subdivision, a “distribution event” means any of the following:

(A) Separation from employment.

(B) Death of the member.

(C) Retirement of the member.

(e) (1) Upon conviction, a public employee as described in subdivision (b) and the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction of all of the following information:

(A) The date of conviction.

(B) The date of the first known commission of the felony.

(2) The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) The public employer that employs or employed a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of that public employee’s conviction within 90 days of the conviction. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(g) A public retirement system may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.

(h) If a public employee’s conviction is reversed and that decision is final, the employee shall be entitled to do either of the following:

(1) Recover the forfeited rights and benefits as adjusted for the contributions received pursuant to subdivision (d).

(2) Redeposit those contributions and interest that would have accrued during the forfeiture period, as determined by the system actuary, and then recover the full amount of the forfeited rights and benefits.

(i) The forfeiture of rights and benefits provided in this section, with respect to judges, are in addition to and supplement the forfeitures and other requirements provided in Section 75033.2, 75062, 75526, or 75563. If there is a conflict between this section and Section 75033.2, 75062, 75526, or 75563, the provisions that result in the greatest forfeiture or provide the most stringent procedural requirements to the claim of a judge shall apply.

(j) A public employee first employed by a public employer or first elected or appointed to an office on or after January 1, 2013, shall be subject to Section 7522.74.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 13 (SB 13), effective October 4, 2013 (ch 528 prevails); ch 76 § 77 (AB 383), effective January 1, 2013; Stats 2014 ch 238 § 3 (AB 2476), effective January 1, 2015.*

### Amendments

**2013 Amendment:** (1) Added “his or” after the first occurrence of “as part of” in subd (b)(2); (2) substituted “rights and” for “retirement” in the first and second sentences of subds (c)(1) and in subd (h)(1); (3) substituted “Rights and” for “Retirement” in the last sentence of subd (c)(1); (4) amended (h)(2) by adding (a) “that would have accrued during the forfeiture period”; and (b) “rights and”; (5) added subd (i); and (6) redesignated former subd (i) to be subd (j).

**2014 Amendment:** (1) Amended subd (c)(1) by substituting (a) “member” for “public employee” in the first and last sentences; and (b) “member’s” for “public employee’s” in the second sentence; (2) added subd (c)(2); and (3) redesignated former subd (c)(2) to be subd (c)(3).

**§ 7522.74. Provisions applicable to employee first employed by public employer or first elected or appointed to office on or after January 1, 2013; Applicability of certain laws**

(a) This section shall apply to a public employee first employed by a public employer or first elected or appointed to an office on or after January 1, 2013, and on and after that date, Section 7522.70 shall not apply.

(b) (1) If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(2) If a public employee who has contact with children as part of his or her official duties is convicted of a felony that was committed within the scope of his or her official duties against or involving a child who he or she has contact with as part of his or her official duties, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

(c) (1) A member shall forfeit all the rights and benefits earned or accrued from the earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive. The rights and benefits shall remain forfeited notwithstanding any reduction in sentence or expungement of the conviction following the date of the member's conviction. Rights and benefits attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section.

(2) Paragraph (1) shall apply to the extent permissible by law.

(3) For purposes of this subdivision, "forfeiture date" means the date of the conviction.

(d) (1) Any contributions to the public retirement system made by the public employee described in subdivision (b) on or after the earliest date of the commission of any felony described in subdivision (b) shall be returned, without interest, to the public employee upon the occurrence of a distribution event unless otherwise ordered by a court or determined by the pension administrator.

(2) Any funds returned to the public employee pursuant to subdivision (d) shall be disbursed by electronic funds transfer to an account of the public employee, in a manner conforming with the requirements of the Internal Revenue Code, and the public retirement system shall notify the court and the district attorney at least three business days before that disbursement of funds.

(3) For the purposes of this subdivision, a "distribution event" means any of the following:

(A) Separation from employment.

(B) Death of the member.

(C) Retirement of the member.

(e) (1) Upon conviction, a public employee as described in subdivision (b) and the prosecuting agency shall notify the public employer who employed the public employee at the time of the commission of the felony within 60 days of the felony conviction of all of the following information:

(A) The date of conviction.

(B) The date of the first known commission of the felony.

(2) The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(f) The public employer that employs or employed a public employee described in subdivision (b) and that public employee shall each notify the public retirement system in which the public employee is a member of that public employee's conviction within 90 days of the conviction. The operation of this section is not dependent upon the performance of the notification obligations specified in this subdivision.

(g) A public retirement system may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.

(h) If a public employee's conviction is reversed and that decision is final, the employee shall be entitled to do either of the following:

(1) Recover the forfeited rights and benefits as adjusted for the contributions received pursuant to subdivision (d).

(2) Redeposit those contributions and interest that would have accrued during the forfeiture period, as determined by the system actuary, and then recover the full amount of the forfeited rights and benefits.

(i) The forfeiture of rights and benefits provided in this section, with respect to judges, are in addition to and supplement the forfeitures and other requirements provided in Section 75033.2, 75062, 75526, or 75563. If there is a conflict between this section and Section 75033.2, 75062, 75526, or 75563, the provisions that result in the greatest forfeiture or provide the most stringent procedural requirements to the claim of a judge shall apply.

(j) A public employee first employed by a public employer or first elected or appointed to an office before January 1, 2013, shall be subject to Section 7522.72.

*Added by Stats 2012 ch 296 § 15 (AB 340), effective January 1, 2013. Amended by Stats 2013 ch 528 § 14 (SB 13), effective October 4, 2013; Stats 2014 ch 238 § 4 (AB 2476), effective January 1, 2015.*

#### **Amendments**

**2013 Amendment:** (1) Substituted "rights and" for "retirement" in the first and second sentences of subds (c)(1) and in subd (h)(1); (2) substituted "Rights and" for "Retirement" in the last sentence of subd (c)(1); (3) amended (h)(2) by adding (a) "that would have accrued during the forfeiture period"; and (b) "rights and"; (4) added subd (i); and (5) redesignated former subd (i) to be subd (j).

**2014 Amendment:** (1) Amended subd (c)(1) by substituting (a) "member" for "public employee" in the first and last sentences; and (b) "member's" for "public employee's" in the second sentence; (2) added subd (c)(2); and (3) redesignated former subd (c)(2) to be subd (c)(3).

#### **§ 10600. Legislative findings and declaration**

The Legislature finds that the retirement of officers and employees of the state, school districts, and many cities, counties, and public jurisdictions in the state, is provided under several independently administered and highly complex and technical statutes, and that development and change in such systems are interrelated and have important long-range implications both with respect to cost and to the rights of public employees. The Legislature recognizes the need of coordination of such change and development and for continuing study and analysis of such systems and legislation affecting them. The Legislature also recognizes the need to recommend legislation to change employers' and employees' contributions through increased portfolio yield.

Therefore, it is the desire of the Legislature to provide for such continuing study and analysis by a joint legislative committee.

*Added by Stats 1963 ch 1417 § 1. Amended by Stats 1982 ch 1155 § 1.*

#### **Amendments**

**1982 Amendment:** Added the third sentence in the first paragraph.

#### **§ 10601. Committee's creation; Duties, existence, and meetings**

The Joint Legislative Retirement Committee is hereby created. The committee shall study and review the benefits, programs, actuarial condition, practices, investments and procedures of, and all legislation relating to the retirement systems for public officers and employees in this state and the trends and

developments in the field of retirement. The committee has a continuing existence and may meet, act, and conduct its business at any place within this state during the sessions of the Legislature or any recess thereof, and in the interim period between sessions. A copy of each bill which affects any public employee retirement system shall be transmitted to the committee.

*Added by Stats 1963 ch 1417 § 1. Amended by Stats 1982 ch 1155 § 2; Stats 2001 ch 745 § 77 (SB 1191), effective October 12, 2001.*

**Amendments**

**1982 Amendment:** Added the fourth sentence.

**2001 Amendment:** (1) Deleted “, and make reports and recommendations thereon to the Legislature and to the houses thereof” at the end of the second sentence; and (2) deleted “and the committee shall transmit an analysis, including an actuarial opinion if appropriate, to the policy committee” at the end of the fourth sentence.

**§ 10602. Members; Chairman; Filling vacancies**

The committee shall consist of a member from each of the following Senate committees: Banking and Commerce, Industrial Relations, Local Government, Public Employment and Retirement, and Revenue and Taxation and a member from each of the following Assembly committees: Finance, Insurance and Commerce, Labor and Employment, Local Government, Public Employees and Retirement, and Revenue and Taxation. The members shall be selected in the manner provided for in the Joint Rules of the Senate and Assembly. The committee shall elect its own chairman. Vacancies occurring in the membership of the committee between general sessions of the Legislature shall be filled in the manner provided for in the Joint Rules of the Senate and Assembly. A vacancy shall be deemed to exist as to any member of the committee whose term is expiring whenever such member is not reelected at the General Election.

*Added by Stats 1963 ch 1417 § 1. Amended by Stats 1982 ch 1155 § 3.*

**Amendments**

**1982 Amendment:** Substituted the first and second sentences for the former first sentence which read: “The committee shall consist of three Members of the Senate and three Members of the Assembly who shall be selected in the manner provided for in the Joint Rules of the Senate and Assembly.”

**§ 10603. Powers, duties and responsibilities**

The committee is authorized to make rules governing its own proceedings and to create subcommittees from its membership and assign to such subcommittees any study, inquiry, investigation, or hearing which the committee itself has authority to undertake or hold. The provisions of Rule 36 of the Joint Rules of the Senate and Assembly relating to investigating committees shall apply to the committee, and it shall have such powers, duties and responsibilities as the Joint Rules of the Senate and Assembly shall from time to time prescribe, and all the powers conferred upon committees by Section 11, Article IV, of the Constitution.

*Added by Stats 1963 ch 1417 § 1. Amended by Stats 1968 ch 312 § 22.*

**Amendments**

**1968 Amendment:** Substituted “11” for “37” after “Section” in the second sentence.

**§ 10604. Appointment and compensation of employees; Funds for committee**

The committee shall have authority to appoint and fix the salary of such professional and other employees as may be necessary. Funds for the support of the committee shall be provided from the Contingent Funds of the Assembly and Senate in the same manner that such funds are made available to other joint committees of the Legislature.

*Added by Stats 1963 ch 1417 § 1. Amended by Stats 1971 ch 438 § 97.*

**Amendments**

**1971 Amendment:** Deleted “the” before “Senate”.

**§ 10605. Board of experts**

The committee shall establish a board of experts. The board of experts shall include: the Controller, the chairpersons of the investment committees of the Board of Administration of the Public Employees’ Retirement System and the Teachers’ Retirement Board, the presidents of those boards, the executive officers of those systems, the chiefs of investment of those systems, the chief actuaries of those systems, the pension managers and treasurers of two corporations, a manager of a city pension fund, and a manager of a county pension fund.

The committee shall retain as a consultant to the board of experts an independent actuary.

The board of experts shall be reimbursed for its actual and necessary expenses.

*Added by Stats 1982 ch 1155 § 4.*

**§ 10606. Joint meeting to review performance of systems**

There shall be held during the last week of March of each year a joint meeting of the committee, the board of experts, the Board of Administration of the Public Employees’ Retirement System, the Teachers’ Retirement Board, the executive officers of those systems, and the State Treasurer, to review the performance of the systems. The annual reports of those systems and the financial reports and reports of operations shall be presented at the meeting.

At the meeting, the State Treasurer shall present a review of the investment practices of the Public Employees’ Retirement System and the State Teachers’ Retirement System and shall transmit a copy of the report to the committee.

*Added by Stats 1982 ch 1155 § 5.*

**§ 11126. Closed session on issues relating to public employee; Employee’s right to public hearing; Closed sessions not prohibited by article; Abrogation of lawyer-client privilege**

(a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of their right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.



(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board or the Cannabis Control Appeals Panel from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from

considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

**(11)** Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

**(12)** Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

**(13)** Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

**(14)** Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

**(15)** Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

**(16)** Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

**(17)** Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

**(18) (A)** Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

**(B)** Notwithstanding any other law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

**(C)** After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

**(D)** After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

**(19)** Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

**(d) (1)** Notwithstanding any other law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

**(2)** Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

**(e) (1)** Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

**(2)** For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

**(A)** An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

**(B) (i)** A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

**(ii)** Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

**(C) (i)** Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

**(ii)** The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

**(iii)** For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

**(iv)** Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

**(f)** In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

**(1)** Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

**(2)** Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

**(3)** Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to

consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

**(4)** Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

**(5)** Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

**(6)** Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

**(7)** Prevent the State Board of Equalization from holding closed sessions for either of the following:

**(A)** When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

**(B)** For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

**(8)** Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

**(9)** Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

**(g)** This article does not prevent either of the following:

**(1)** The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

**(2)** The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

**(h)** This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

**(i)** This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

*Added by Stats 1967 ch 1656 § 122. Amended by Stats 1968 ch 1272 § 1; Stats 1970 ch 346 § 5; Stats 1972 ch 431 § 43, ch 1010 § 63, effective August 17, 1972, operative July 1, 1972; Stats 1974 ch 1254 § 1, ch 1539 § 1; Stats 1975 ch 197 § 1, ch 959 § 5; Stats 1977 ch 730 § 5, effective September 12, 1977; Stats 1980 ch 1197 § 1, ch 1284 § 11; Stats 1981 ch 180 § 1, ch 968 § 12; Stats 1982 ch 454 § 40; Stats 1983 ch 143 § 187; Stats 1984 ch 678 § 1, ch 1284 § 4; Stats 1985 ch 186 § 1; ch 1091 § 1; Stats 1986 ch 575 § 1; Stats 1987 ch 1320 § 2; Stats 1988 ch 1448 § 29; Stats 1989 ch 177 § 2, ch 882 § 2, ch 1360 § 52 (ch 1427 prevails), ch 1427 § 1, effective October 2, 1989, operative January 1, 1990; Stats 1991 ch 788 § 4 (AB 1440); Stats 1992 ch 1050 § 17 (AB 2987); Stats 1994 ch 26 § 230 (AB 1807), effective March 30, 1994, ch 422 § 15.5 (AB 2589), effective September 6, 1994, ch 845 § 1 (SB 1316); Stats 1995 ch 975 § 3 (AB 265); Stats 1996 ch 1041 § 2 (AB 3358); Stats 1997 ch 949 § 8 (SB 95); Stats 1998 ch 210 § 1 (SB 2008), ch 972 § 1 (SB 989); Stats 1999 ch 735 § 9 (SB 366), effective October 10, 1999; Stats 2000 ch 1002 § 1 (SB 1998), ch 1055 § 30 (AB 2889), effective September 30, 2000; Stats 2001 ch 21 § 1 (SB 54), effective June 25, 2001, ch 243 § 10 (AB 192); Stats 2002 ch 664 § 93.7 (AB 3034), ch 2002 ch 1113 § 1 (AB 2072); Stats 2005 ch 288 § 1 (AB 277), effective January 1, 2006; Stats 2007 ch 577 § 4 (AB 1750), effective October 13, 2007; Stats 2008 ch 179 § 91 (SB 1498), effective January 1, 2008, ch 344 § 3 (SB 1145) (ch 344 prevails), effective September 26, 2008; Stats 2010 ch 32 § 2 (AB 1887), effective June 29, 2010, ch 328 § 81 (SB 1330), effective January 1, 2011, ch 618 § 124 (AB 2791) (ch 618 prevails), effective January 1, 2011; Stats 2011 ch 357 § 1 (AB 813), effective January 1, 2012; Stats 2013 ch 352 § 234 (AB 1317), effective September 26, 2013, operative July 1, 2013; Stats 2017 ch 641 § 22 (AB 830), effective January 1, 2018; Stats 2019 ch 40 § 15 (AB 97), effective July 1, 2019.*

**Editor's Notes**—There was another section of this number, similar to the present section, which was added by Stats 2002 ch 1113 § 2, to become operative January 1, 2006, and repealed by Stats 2005 ch 288 § 2.

The reference in this section to Part 6.3 (commencing with Section 12695) of the Insurance Code, appears as enacted by the Legislature; however, the publisher believes the intended reference should be Part 6.3 (commencing with Section 12694).

### Amendments

**1968 Amendment:** Added the last paragraph.

**1970 Amendment:** Substituted “State Air Resources” for “Motor Vehicle Pollution Control” in the eleventh paragraph.

**1972 Amendment:** Added the thirteenth paragraph. (As amended by Stats 1972 ch 1010, compared to the section as it read prior to 1972. This section was also amended by an earlier chapter, ch 431. See Gov C § 9605.)

**1974 Amendment:** Added the last paragraph. (As amended by Stats 1974 ch 1539, compared to the section as it read prior to 1974. This section was also amended by an earlier chapter, ch 1254. See Gov C § 9605.)

**1975 Amendment:** (1) Amended the first paragraph by deleting (a) “officer or” after “a public”, “against such”, and “unless such”; (b) “public officer” after “by another”; and (c) “officer or” after “dismissal such” and “against any” wherever it appears; (2) added the second paragraph to read: “For the purposes of this section, the term ‘employee’ shall not include any person who is elected to, or appointed to a public office by, any state agency; provided, however, that officers of the California State University and Colleges who receive compensation for their services other than per diem and ordinary and necessary expenses shall, when engaged in such capacity, be considered employees.”; (3) substituted “Employees” “ for “Employees” in the thirteenth paragraph; (4) added the sixteenth paragraph to read: “Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission’s jurisdiction are changed shall be open and public.”; and (5) amended the seventeenth paragraph by deleting (a) “(1)” after “deliberate on”; (b) “enforcement” after “institution of”; and (c) “or litigation or (2) decisions to be reached in matters for which public hearings have been held pursuant to the applicable provisions of the Public Utilities Code” at the end. (As amended by Stats 1975 ch 959, compared to the section as it read prior to 1975. This section was also amended by an earlier chapter, ch 197. See Gov C § 9605.)

**1977 Amendment:** Added the tenth paragraph.

**1980 Amendment:** (1) Substituted “a closed” for “an executive” and “closed” for “executive” wherever it appears; (2) amended the second sentence of the first paragraph by (a) adding “or her” after “notice of his”; and (b) substituting “the employee” for “him” after “delivered to”; (3) added the fourth paragraph.; (4) added “, or from considering matters pertaining to the appointment or removal of the executive officers of the Franchise Tax Board” at the end of the eleventh paragraph; (5) amended the sixteenth paragraph by (a) substituting “state” for “public” after “body of a”; and (b) adding the second and third sentences; and (6) added the last two paragraphs. (As amended by Stats 1980 ch 1284, compared to the section as it read prior to 1980. This section was also amended by an earlier chapter, ch 1197. See Gov C § 9605.)

**1981 Amendment:** In addition to adding subdivision designations, (1) substituted “body” for “agency” wherever it appears in subd (a); (2) substituted “closed session” for “private meeting” in subd (a); (3) substituted “bodies” for “agencies” in subd (b); (4) substituted “state body” for “state agency” wherever it appears in subds (c)–(m); (5) added “University and” and “university and” in subd (i); (6) deleted the former fourteenth paragraph which read: “Nothing in this article shall be construed to prevent the Board of Administration of the Public Employees’ Retirement System from holding closed sessions when considering investment decisions.”; (7) deleted the former fifteenth paragraph which read: “Nothing in this article shall be construed to prevent the Teachers’ Retirement Board of the State Teachers’ Retirement System from holding closed sessions when considering investment decisions.”; (8) added subd (n); (9) amended the first sentence of subd (o) by (a) substituting “a state body” for “the governing body of a state agency”; (b) substituting “state body” for “governing body”; and (c) deleting “at any time” after “representatives”; (10) amended the second sentence of subd (o) by (a) substituting “body” for “agency”; and (b) deleting “, providing a quorum of the state agency is present” at the end; (11) deleted the former last sentence of subd (o) which read: “For purposes of this paragraph, a state agency may not otherwise meet without using a designated representative, but it may appoint from its membership a member or members to act as its designated representative, with whom it may meet in closed session.”; (12) amended the second paragraph of subd (p) by (a) adding “or” before “disciplinary”; and (b) deleting “, or litigation” at the end; (13) added subds (q) and (r); and (14) added subds (u)–(x). (As amended by Stats 1981 ch 968, compared to the section as it read prior to 1981. This section was also amended by an earlier chapter, ch 180. See Gov C § 9605.)

**1982 Amendment:** Routine code maintenance.

**1983 Amendment:** Redesignated California State University and Colleges to be California State University and made technical changes.

**1984 Amendment:** Added subd (y). (As amended by Stats 1984 ch 1284, compared to the section as it read prior to 1984. This section was also amended by an earlier chapter, ch 678. See Gov C § 9605.)

**1985 Amendment:** Amended subd (x) by adding (1) “for either of the following: (1)”; and (2) subd (x)(2). (As amended by Stats 1985 ch 1091, compared to the section as it read prior to 1985. This section was also amended by an earlier chapter, ch 186. See Gov C § 9605.)

**1986 Amendment:** (1) Deleted “contained” after “Nothing” in the first sentence of subd (a); (2) substituted “provisions” for “provision” near the end of subd (d); (3) deleted “the provisions of” before “Section 6027” in subd (1); and (4) added subd (z).

**1987 Amendment:** (1) Amended subd (i) by (a) substituting all that part following “to prevent” for “the Trustees of the California State University from holding closed sessions dealing with site selection for the state university” in the first paragraph; and (b) adding the second through fifth paragraphs; (2) added the third sentence of

subd (n); **(3)** amended the first paragraph of subd (q) by **(a)** adding “, based on the advice of its legal counsel,”; **(b)** adding “, or receive advice from, its”; and **(c)** substituting “prejudice the position of the state body in the litigation” for “adversely affect or be detrimental to the public interest” at the end; **(4)** added the second through fifth paragraphs of subd (q); **(5)** deleted former subd (r) which read: “(r) Nothing in this article shall be construed to prevent a state body which invests in retirement, pension, or endowment funds from holding closed sessions to confer with legal counsel regarding pending litigation, when discussion in open session concerning these matters would adversely affect, or be detrimental to, those funds. For purposes of subdivision (q) and this subdivision, litigation shall be considered pending when a complaint, claim or petition for writ of mandate has been filed, or the threat of litigation is imminent in the sound opinion of the state body”; and **(6)** redesignated former subs (s)–(z) to be subs (r)–(y).

**1988 Amendment:** Substituted “Section 5020 or 5020.3” for “Section 5020” in subd (s).

**1989 Amendment:** **(1)** Amended subd (o) by **(a)** deleting “such” after “state body, or”; and **(b)** substituting “that” for “as” after “other representatives”; **(2)** added subd (r); **(3)** redesignated former subs (r)–(x) to be subs (s)–(y); and **(4)** substituted subd (z) for the former subdivision which read: “This article shall not prevent the Teachers’ Retirement Board from holding closed sessions when considering matters pertaining to the appointment or removal of the chief executive officer of the State Teachers’ Retirement System.” (As amended by Stats 1989 ch 1427, compared to the section as it read prior to 1989. This section was also amended by two earlier chapters, chs 177 and 882. See Gov C § 9605.)

**1991 Amendment:** **(1)** Redesignated former subd (j) to be subd (j)(1); and **(2)** added subd (j)(2).

**1992 Amendment:** In addition to technical changes, added subd (aa).

**1994 Amendment (ch 26):** Deleted “based upon evidence introduced” after “to be reached” in subd (d).

**1994 Amendment (ch 422):** Added subd (j)(3).

**1994 Amendment (ch 845):** **(1)** Added the last sentence in the first paragraph of subd (a); and **(2)** deleted former subd (j)(3) which read: “(3) Nothing in this article shall be construed to prevent the Student Aid Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the Student Aid Commission.”

**1995 Amendment:** Added subd (bb).

**1996 Amendment:** In addition to making technical and subdivision designation changes, **(1)** added subd (b); **(2)** added subd (c)(1); **(3)** deleted “Nothing in this article shall be construed” at the beginning of subd (c)(2)–(c)(14), (c)(16), (c)(17), and (f)(1)–(f)(8); **(4)** added subs (c)(8)(B)–(c)(8)(E); **(5)** added subd (c)(15); **(6)** added subd (d)(2); **(7)** added subs (e)(5)(B)–(e)(5)(D), and (f); **(8)** added subd (g); and **(9)** deleted “This article shall not prevent” at the beginning of subs (g)(1) and (g)(2).

**1997 Amendment:** In addition to making technical and subdivision designation changes, **(1)** added “evaluation of performance,” after “appointment, employment,” in subd (a)(1); **(2)** deleted former subd (c)(4) which read: “(4) Prevent any state body from holding a closed session to consider matters affecting the national security.”; **(3)** added subd (c)(11); and **(4)** added subd (f)(8).

**1998 Amendment:** Substituted **(1)** “any person or entity under the jurisdiction of the commission” for “regulated utilities” in subd (d)(2); and **(2)** “State Board of Forestry and Fire Protection” for “State Board of Forestry” in subd (f)(2). (As amended by Stats 1998 ch 972, compared to the section as it read prior to 1998. This section was also amended by an earlier chapter, ch 210. See Gov C § 9605.)

**1999 Amendment:** Amended subd (c)(14) by **(1)** substituting “or the Superintendent of Public Instruction, or any committee advising the board or the superintendent” for “or any committee advising the State Board of Education”; and **(2)** adding “, or pursuant to Chapter 8 (commencing with Section 60850) of,”.

**2000 Amendment:** **(1)** Amended subd (f)(3) by **(a)** substituting “California” for “State” the first time it appears; **(b)** substituting “Section 5020” for “Section 5020 or 5020.3”; and **(c)** adding “California” the second time it appears; **(2)** substituted “Section 11121 or 11121.2” for “Section 11121, 11121.2, or 11121.5” in subd (f)(5); and **(3)** deleted “pursuant to Section 8590” after “or the Governor” in subd (f)(9). (As amended by Stats 2000 ch 1055, compared to the section as it read prior to 2000. This section was also amended by an earlier chapter, ch 1002. See Gov C § 9605.)

**2001 Amendment (ch 21):** **(1)** Added “, Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525, or Chapter 10.7 (commencing of Section 3540)” in subd (c)(17); and **(2)** substituted “Section 11121 or 11121.2” for “Section 11121, 11121.2, or 11121.5” in subd (f)(5).

**2001 Amendment (ch 243):** **(1)** Substituted “does” for “shall” before “not include any” in the first sentence of subd (b) and after “article” in the introductory clause of subd (g); **(2)** substituted “includes” for “shall include” after “term employee” in the second sentence of subd (b); **(3)** deleted “of Part 1 of Division 3 of title 2” after

“Section 11500)” in subd (c)(3); **(4)** added the closing parenthesis after “Section 3525” in subd (c)(17); and **(5)** amended subd (f) by substituting **(a)** “subdivision (b) of Section 11121” for “Section 11121.2” in subd (f)(4); **(b)** “subdivision (d) of Section 11121” for “Section 11121.7” in subd (f)(5); **(c)** “subdivision (a) or (b) of Section 11121” for “Section 11121 or 11121.2” in subd (f)(5); and **(d)** “subdivision (c) of Section 11121” for “Section 11121.8” in subd (f)(6).

**2002 Amendment: (1)** Added subds (c)(18)(A)–(c)(18)(D); and **(2)** added subd (h). (As amended by Stats 2002 ch 1113, compared to the section as it read prior to 2002. This section was also amended by an earlier chapter, ch 664. See Gov C § 9605.)

**2005 Amendment:** Substituted subd (h) for former subd (h) which read: “(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date.”

**2007 Amendment: (1)** Amended subd (c) by **(a)** adding “Division 2 of” in subd (c)(11); and **(b)** substituting “Chapter 9 (commencing with Section 60850) of, Part 33 of Division 4 of Title 2” for “Chapter 8 (commencing with Section 60850) of, Part 33” in subd (c)(14); and **(2)** added subd (i).

**2008 Amendment: (1)** Substituted “Corrections Standards Authority” for “Board of Corrections” in subd (c)(12); **(2)** substituted “Superintendent” for “superintendent” after “board or the” in subd (c)(14); **(3)** substituted “with” for “of” after “Chapter 10.7 (commencing” in subd (c)(17); and **(4)** added subds (j) and (k).

**2010 Amendment (ch 32):** Amended subd (i) by **(1)** adding “, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement,” after “contract with the board”; **(2)** deleting “or” after “Section 12699.50,”; and **(3)** adding “, Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70)” after “Section 12700”.

**2010 Amendment (ch 618): (1)** Amended subd (f)(3) by substituting (a) “the enforcement advisory” for “an administrative” in the first sentence; and (b) “the qualifications” for “an” in the second sentence; **(2)** substituted “Secretary of Emergency Management” for “Director of the Office of Emergency Services” in subd (f)(9); and **(3)** deleted “or” after “Section 12699.50,” in subd (i).

**2011 Amendment:** Added subd (c)(19).

**2013 Amendment:** Substituted **(1)** “Department of Resources Recycling and Recovery” for “California Integrated Waste Management Board” in subd (c)(15); and **(2)** “Director of Emergency Services” for “Secretary of Emergency Management” in subd (f)(9).

**2017 Amendment: (1)** Deleted “, or pursuant to Chapter 9 (commencing with Section 60850) of,” preceding “Part 33” in subd (c)(14); and **(2)** deleted “provision of” following “Notwithstanding any other” in subd (c)(18) and subd (d)(1).

**2019 Amendment: (1)** Substituted “their” for “his or her” in the first sentence of subd (a)(2); and **(2)** added “or the Cannabis Control Appeals Panel” in subd (c)(6).

## Notes of Decisions

### 1. Generally

Gov C § 11126(e) merely allows a state agency to meet in closed session to confer with, or receive advice from, its legal counsel regarding pending litigation - not to take action, and certainly not to issue regulatory orders. *S. Cal. Edison Co. v. Lynch* (9th Cir. Cal. Sept. 23, 2002), 307 F.3d 794, 2002 U.S. App. LEXIS 19796.

### 2. Construction

The Legislature, in enacting the pending litigation exception to the Bagley Keene Open Meeting Act (Gov C § 11126, subd. (q)) (See now subd (e)(2)(C)(ii)), did not exempt every discussion involving litigation from public scrutiny. Rather, a state body is allowed to conduct a closed session when discussion in an open session would prejudice the position of the state body in litigation. The state body has the burden of proving a compelling necessity for a closed session. Accordingly, its counsel must prepare a memorandum giving the specific reasons and legal authority for a closed session, and that memorandum must be submitted to the state body, at the latest, within a week after the closed session. The memorandum must describe the existing facts and circumstances that would prejudice the state body’s position if the discussion were to occur in an open session, so as to justify deviation from the presumption that all discussions of public business should be held in public. The presence of the lawyer or the existence of a lawsuit cannot be used as a ruse or pretext for an otherwise unlawful closed session. Funeral



Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers (Cal. App. 3d Dist. Mar. 25, 1993), 14 Cal. App. 4th 715, 18 Cal. Rptr. 2d 39, 1993 Cal. App. LEXIS 311.

### 3. Construction with Other Law

Under Gov C § 18653, providing for meetings of the State Personnel Board, the Board is required to hold public hearings, but when the hearing has reached the decisional stage, it may hold an executive session for the sole purpose of deliberating on the decision to be reached, and at the conclusion of the executive session, the Board must reconvene the public hearing and make public announcement of its decision. The provision in Gov C § 18653, authorizing the Board to hold executive sessions “as provided in” Gov C § 11126, containing exceptions to the declared policy of public hearings, was intended to identify the exceptions in Gov C § 18653, with those in Gov C § 11126, and as so construed, the words “as provided in” are synonymous with “in accordance with” rather than being interpreted as “only as provided in.” *California State Employees’ Assn. v. State Personnel Board* (Cal. App. 3d Dist. May 1, 1973), 31 Cal. App. 3d 1009, 108 Cal. Rptr. 57, 1973 Cal. App. LEXIS 1127.

### 4. Applicability

In a disciplinary hearing before the Psychology Examining Committee on allegations that a licensed psychologist had illegally prescribed and furnished dangerous drugs and engaged in sexual and other physical intimacies with three female patients, committee members and the hearing office did not violate the requirements of Gov C §§ 11120–11131, of open and public action and deliberation by state agencies, by convening in executive sessions on six occasions during the hearing, where it appeared that the objective in conducting each of the sessions was to reach “a decision...based upon evidence introduced” at the hearing, as permitted by Gov C § 11126. Moreover, the subject matter of each session and the decision discussed at it were fully placed on the record before each session, or afterward, or on both occasions in some instances, and the accused had the opportunity to examine and challenge each of the decisions made in executive session and in fact did so. *Cooper v. Board of Medical Examiners* (Cal. App. 1st Dist. June 18, 1975), 49 Cal. App. 3d 931, 123 Cal. Rptr. 563, 1975 Cal. App. LEXIS 1266.

The State Board of Funeral Directors and Embalmers did not violate the Bagley Keene Open Meeting Act by meeting in closed sessions to listen to facts presented by its counsel and counsel’s advice as to whether to file a civil action against a seller of preneed funeral contracts to enjoin alleged violations of the preneed arrangements law, and to deliberate and make decisions on the basis of the advice received. The litigation exception of the act, which provides that a state body may hold a closed session to confer with, or receive advice from, its legal counsel (Gov C § 11126, subd. (q)) (See now subd (e)(2)(C)(ii)), encompasses the presentation of facts by counsel, together with the necessary deliberation and decision making by the state body. The board, assisted by counsel, had been inquiring into the funeral contractor’s possible legal violations, and the facts were inextricably intertwined with the legal advice offered by counsel. At that stage, the funeral contractor was not entitled to notice that it was a target of inquiry. Such a right to notice does not accrue until the filing of an action. *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (Cal. App. 3d Dist. Mar. 25, 1993), 14 Cal. App. 4th 715, 18 Cal. Rptr. 2d 39, 1993 Cal. App. LEXIS 311.

Gov C § 11126, subd. (d), which permits a state body to hold a closed session to deliberate on a decision to be reached on the basis of evidence introduced in a proceeding conducted under the Administrative Procedure Act, applies to administrative hearings held under the Funeral Directors and Embalmers Law (B & P C §§ 7600 et seq.). *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors & Embalmers* (Cal. App. 3d Dist. Mar. 25, 1993), 14 Cal. App. 4th 715, 18 Cal. Rptr. 2d 39, 1993 Cal. App. LEXIS 311.

When a party accused by the State Board of Funeral Directors and Embalmers of violations of the Funeral Directors and Embalmers Law (B & P C §§ 7600 et seq.) waives the right to an administrative hearing and attempts to settle the dispute with the board, the pending litigation exception of the Bagley Keene Open Meeting Act (Gov C § 11126, subd. (q)) (See now subd (e)(2)(C)(ii)) applies. This permits the board to seek legal advice and confer with counsel in a closed session about the propriety of a proposed stipulated settlement, if the board demonstrates that the board would be prejudiced by an open discussion. The board, however, has a formidable task to demonstrate such prejudice. The public has a great interest in overseeing the board’s execution of its regulatory powers. The accusation is made publicly, and when there is no administrative hearing, the process is resolved in secrecy. Thus, legal counsel must justify such a closed session by preparing a memorandum, as required by Gov C § 11126, subd. (q) (See now subd (e)(2)(C)(ii)), that specifically describes the facts and circumstances that would prejudice the board if an open hearing were held on the disposition. *Funeral Sec. Plans, Inc. v. State Bd. of Funeral Directors*

& Embalmers (Cal. App. 3d Dist. Mar. 25, 1993), 14 Cal. App. 4th 715, 18 Cal. Rptr. 2d 39, 1993 Cal. App. LEXIS 311.

Gov C § 11126.3 was strictly followed when the California Public Utilities Commission (PUC) entered into a stipulation with the power company; PUC was authorized not only to discuss, but also to conclude the settlement in closed session. *Southern California Edison Co. v. Peevey* (Cal. Aug. 21, 2003), 31 Cal. 4th 781, 3 Cal. Rptr. 3d 703, 74 P.3d 795, 2003 Cal. LEXIS 6095.

State university trustees did not violate the Bagley-Keene Open Meeting Act, Gov C § 11120 et seq., when they met in closed session to discuss a former chancellor's controversial decision to return from a lengthy leave of absence and assume a teaching post; the personnel exception in Gov C § 11126(a)(1) was applicable. *Travis v. Board of Trustees of California State University* (Cal. App. 2d Dist. Mar. 26, 2008), 161 Cal. App. 4th 335, 73 Cal. Rptr. 3d 854, 2008 Cal. App. LEXIS 411.

When the personnel exception in Gov C § 11126(a)(1) authorizes closed sessions to consider the employment of a public employee, it includes discussions about an employee's return from a leave of absence. *Travis v. Board of Trustees of California State University* (Cal. App. 2d Dist. Mar. 26, 2008), 161 Cal. App. 4th 335, 73 Cal. Rptr. 3d 854, 2008 Cal. App. LEXIS 411.

**§ 16642. Indemnification for decisions pursuant to Government Code §§ 7513.6, 7513.7, 7513.74, and 7513.75**

(a) Present, future, and former board members of the Public Employees' Retirement System or the State Teachers' Retirement System, jointly and individually, state officers and employees, research firms described in subdivision (d) of Section 7513.6, and investment managers under contract with the Public Employees' Retirement System or the State Teachers' Retirement System shall be indemnified from the General Fund and held harmless by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, including court costs and attorney's fees, and against all liability, losses, and damages of any nature whatsoever that these present, future, or former board members, officers, employees, research firms as described in subdivision (d) of Section 7513.6, or contract investment managers shall or may at any time sustain by reason of any decision to restrict, reduce, or eliminate investments pursuant to Sections 7513.6, 7513.7, 7513.74, and 7513.75.

(b) This section shall remain in effect only until Section 7513.74 is repealed, and as of that date is repealed.

*Added by Stats 2006 ch 442 § 3 (AB 2941), effective January 1, 2007. Amended by Stats 2007 ch 671 § 3 (AB 221), effective January 1, 2008; Stats 2015 ch 605 § 2 (SB 185), effective January 1, 2016; Stats 2019 ch 459 § 3 (AB 1320), effective January 1, 2020.*

**Former Sections:** Former § 16642, relating to loans to South Africa, was added by Stats 1986 ch 1254 § 2 and repealed by Stats 1994 ch 30 § 4.

**Amendments**

**2007 Amendment:** (1) Added "as described in subdivision (d) of Section 7513.6" after "research firms"; and (2) substituted "Sections 7513.6 and 7513.7" for "Section 7513.6" at the end.

**2015 Amendment:** Substituted "Sections 7513.6, 7513.7, and 7513.75" for "Sections 7513.6 and 7513.7".

**2019 Amendment:** (1) Added designation (a); (2) in subd (a), (a) added the comma following "charges"; and (b) added "7513.74,"; and (3) added subd (b).

**§ 20098. Compensation for specified investment officers and portfolio managers; Principles; Civil service appointments; Limits on taking specified actions for two years after leaving such positions in certain circumstances**

(a) The board shall appoint and, notwithstanding Sections 19825, 19826, 19829, and 19832, shall fix the compensation of an executive officer, a general counsel, a chief actuary, a chief investment officer, a

chief financial officer, a chief operating officer, a chief health director, and other investment officers and portfolio managers whose positions are designated managerial pursuant to Section 18801.1.

(b) The executive officer, deputy executive officers, and the assistant executive officers may administer oaths.

(c) When fixing the compensation for the positions specified in subdivision (a), the board shall be guided by the principles contained in Sections 19826 and 19829, consistent with its fiduciary responsibility to its members to recruit and retain highly qualified and effective employees for these positions.

(d) The annual percentage increase in salary that may be paid pursuant to this section to a person who served as chief health director or as chief operating officer on January 1, 2018, and who does not separate from service in the position prior to the date on which the increase is applied, shall not exceed either of the following:

(1) Ten percent for the 2018-19 fiscal year.

(2) Five percent for any fiscal year subsequent to the 2018-19 fiscal year.

(e) When a position specified in subdivision (a) is filled through a general civil service appointment, it shall be filled from an eligible list based on an examination that was held on an open basis, and tenure in the position shall be subject to Article 2 (commencing with Section 19590) of Chapter 7 of Part 2. In addition to the causes for action specified in that article, the board may take action under the article for causes related to its fiduciary responsibility to its members, including the employee's failure to meet specified performance objectives.

(f) An individual who held a position designated in subdivision (a), or was a member of the board, a deputy executive officer, or an assistant executive officer, shall not, for a period of two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any other person, except the state, by making any formal or informal appearance before, or any oral or written communication to, the Public Employees' Retirement System, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

*Added by Stats 1995 ch 379 § 2 (SB 541). Amended by Stats 2003 ch 856 § 3 (SB 269); Stats 2005 ch 328 § 1 (AB 1166), effective January 1, 2006; Stats 2007 ch 333 § 2 (AB 1317), effective January 1, 2008; Stats 2009 ch 301 § 7 (AB 1584), effective October 11, 2009; Stats 2011 ch 688 § 1 (AB 1042), effective January 1, 2012; Stats 2018 ch 916 § 1 (AB 2415), effective January 1, 2019.*

**Historical Derivation:** (a) Former Gov C § 20105, as added by Stats 1945 ch 123 § 1, amended by Stats 1947 ch 206 § 1, Stats 1951 ch 612 § 3, Stats 1973 ch 389 § 2.

(b) Stats 1931 ch 700 § 43, as amended by Stats 1937 ch 806 § 5, Stats 1939 ch 922 § 5.

### Amendments

**2003 Amendment:** Substituted the section for the former section which read: "The board shall appoint and fix the compensation of an executive officer, assistant executive officers, and other necessary employees. The executive officer and the assistant executive officers may administer oaths."

**2005 Amendment:** Substituted "Sections 19816, 19825, 19826, 19829, and 19832" for "Sections 19816, 19825, and 19826" in subd (a).

**2007 Amendment:** Added "general counsel, a" after "executive officer, a" in subd (a).

**2009 Amendment:** Amended subd (e) by (1) substituting ", or was a member of the board, a deputy executive officer, or an assistant executive officer, shall not" for "for less than five years may not"; and (2) adding the commas after "appearance before" and after "communication to".

**2011 Amendment:** Added "a chief financial officer," in subd (a).

**2018 Amendment:** (1) In subd (a), (a) substituted "Sections 19825, 19826, 19829, and 19832," for "Sections 19816, 19825, 19826, 19829, and 19832"; and (b) added "a chief operating officer, a chief health director,,"; (2) added subd (d); (3) redesignated former subd (d) and subd (e) as subd (e) and subd (f); and (4) in the first

sentence of subd (e), (a) deleted “the provisions of” following “shall be subject to”; and (b) deleted “of Division 5 of Title 2.” following “Chapter 7 of Part 2”.

### § 20309. Election as to retirement system

(a) A member of the system described in subdivision (b) who subsequently is employed to perform service subject to coverage by the Defined Benefit Program of the State Teachers’ Retirement Plan, may elect to retain coverage by this system for that subsequent service. An election to retain coverage under this system shall be submitted in writing by the member to the system on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers’ Retirement System, within 60 days after the member’s date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers’ Retirement Plan. A member who elects to retain coverage under this system pursuant to this section shall be deemed to be a school member while employed by a school employer.

(b) This section shall apply to a member of the system who either (1) was employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education within 120 days before the member’s date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers’ Retirement Plan or (2) has at least five years of credited service under this system.

(c) Any election made pursuant to this section shall become effective as of the first day of employment in the position that qualified the member to make an election.

*Added by Stats 1997 ch 838 § 5 (SB 227). Amended by Stats 2000 ch 880 § 2 (SB 1694); Stats 2001 ch 77 § 2 (SB 165); Stats 2017 ch 108 § 1 (AB 590), effective January 1, 2018.*

### Amendments

**2000 Amendment:** Substituted the section for the former section read: “A member of the Public Employees’ Retirement System who is employed by the Board of Governors of the California Community Colleges and who subsequently is employed by a community college district to perform service subject to coverage by the ‘State Teachers’ Retirement System, may elect to retain coverage by the Public Employees’ Retirement System for that service. An election to retain coverage under the Public Employees’ Retirement System shall be submitted in writing by the member of the Public Employees’ Retirement System on a form prescribed by the system, and a copy of the election shall be submitted to the State Teachers’ Retirement System, within 60 days of the date the member’s change in employment is effective.”

**2001 Amendment:** (1) Substituted “described in subdivision (b)” for “who is employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education and” in the first sentence of subd (a); (2) added subd (b); and (3) redesignated former subd (b) to be subd (c).

**2017 Amendment:** In subd (a), (1) substituted “was employed” for “is employed”; and (2) added “within 120 days before the member’s date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers’ Retirement Plan.”

### § 20309.5. Subsequent employment of members

(a) Any person who is a member of the Defined Benefit Program of the State Teachers’ Retirement Plan and who subsequently became employed, on or after July 1, 1991, and who continues to be employed by the state to perform service that requires membership in the Public Employees’ Retirement System under Section 21071 and who meets the requirements of subdivision (b) of Section 22508.6 of the Education Code may elect to have his or her state service subject to coverage by the Defined Benefit Program of the State Teachers’ Retirement Plan and excluded from coverage by the Public Employees’ Retirement System.

(b) Upon an election being made pursuant to subdivision (a), the Public Employees’ Retirement System shall transfer to the Teachers’ Retirement Fund an amount equal to the actuarial accrued liability of the system for the service rendered by the person making the election on or after July 1, 1991, to the

date of the election, inclusive. The actuarial accrued liability shall be calculated based on the actuarial assumptions of the system for the most recently completed actuarial valuation as of the date of the election.

*Added by Stats 2000 ch 402 § 11 (AB 649), effective September 11, 2000.*

**§ 20343. Forfeiture of position**

Notwithstanding Section 21259, a person ceases to be a member for any portion of his or her service as an elected public officer that is forfeited pursuant to Section 1243.

*Added by Stats 2005 ch 322 § 2 (AB 1044), effective January 1, 2006.*

**§ 21267. Authorization for direct deposit of benefits; Refunds of deposits after date of death**

(a) Notwithstanding any other provision of law, any person entitled to the receipt of benefits from any state retirement system may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established pursuant to Section 21268. The direct deposit shall discharge the state agency's obligation with respect to that payment.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to the receipt of the benefits from a state retirement system shall be refunded to the retirement system.

*Added by Stats 1995 ch 379 § 2 (SB 541). Amended by Stats 2004 ch 506 § 2 (AB 3094).*

**Historical Derivation:** Former Gov C § 20212, as added by Stats 1985 ch 993 § 1.

**Amendments**

**2004 Amendment:** (1) Designated the former section to be subd (a); (2) substituted "with" for "in" after "state agency's obligation" in the last sentence of subd (a); and (3) added subd (b).

**§ 22009.03. Public agency**

"Public agency" also includes a school district, a county superintendent of schools, and a regional occupational center or program established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, with respect to employees eligible for membership in the State Teachers' Retirement Plan.

*Added by Stats 2005 ch 328 § 21 (AB 1166), effective January 1, 2006.*

**Former Sections:** Former § 22009.03, relating to educational entities as public agencies, was added by Stats 1989 ch 1006 § 2, operative July 1, 1990, operative until July 1, 1993, amended by Stats 1991 ch 150 § 1, effective July 22, 1991, operative until July 1, 1993, Stats 1992 ch 673 § 3, operative until July 1, 1995, Stats 1996 ch 318 § 1, effective July 29, 1996, Stats 1998 ch 965 § 324, Stats 2003 ch 62 § 139, inoperative July 1, 2004, ch 519 § 28 (ch 519 prevails), inoperative July 1, 2004, and repealed, operative January 1, 2005, by its own terms.

**§ 22009.1. What is included in "retirement system"**

"Retirement system" includes:

(a) A pension, annuity, retirement or similar fund or system established by a public agency and covering only positions of that agency.

(b) The Public Employees' Retirement System with respect only to employees of the state and employees of the University of California in positions covered by that system.

(c) The Public Employees' Retirement System with respect to employees of all school districts in positions covered under each contract entered into by a county superintendent of schools and the system.

(d) The State Teachers' Retirement System with respect to all employees in positions subject to coverage under the Defined Benefit Program of the State Teachers' Retirement Plan except employees of a public agency having any employees in positions covered by that system who are also in positions covered by a local retirement system for the retirement of teachers, or for membership in which public school teachers are eligible, operated by a city, city and county, county or other public agency or combination of public agencies of the state.

(e) The Legislators' Retirement System with respect to all employees in positions covered by that system.

(f) The Judges' Retirement System with respect to all employees in positions covered by that system.

(g) The University of California Retirement Plan only with respect to all employees in positions covered by that system.

(h) The San Francisco Employees' Retirement System with respect to all employees in positions covered by that system.

(i) Any other retirement system with respect only to employees of any two or more of the public agencies having employees in positions covered by that system, as designated by the board and with regard to which the board authorizes conduct of a referendum.

(j) Any retirement system with respect only to employees of a hospital that is an integral part of a city incorporated between January 15, 1898, and July 15, 1898, in positions covered by the system, as designated by the board on request of the city.

(k) Except as otherwise provided in subdivisions (b) to (j), inclusive, any retirement system with respect to employees of each of the public agencies having employees in positions covered by the system.

(l) The State Teachers' Retirement System with respect to all employees of each public agency, as defined by Section 22009.03, in positions covered by the State Teachers' Retirement Plan.

(m) Each division or part of a retirement system, as defined in subdivisions (a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of this section, that is divided pursuant to this chapter into two parts:

(1) The part composed of the positions of members of the system who desire coverage under the federal system.

(2) The part composed of the positions of members of the system who do not desire coverage under the federal system.

*Added by Stats 1957 ch 1993 § 2, effective July 10, 1957, operative August 30, 1957. Amended by Stats 1959 ch 2066 § 14, effective July 20, 1959; Stats 1961 ch 808 § 1, effective June 12, 1961; Stats 1967 ch 84 § 18; Stats 1971 ch 1300 § 1, effective October 29, 1971; Stats 1992 ch 673 § 4 (AB 3823); Stats 1996 ch 318 § 2 (AB 166), effective July 29, 1996; Stats 1998 ch 965 § 325 (AB 2765); Stats 2003 ch 62 § 140 (SB 600), ch 519 § 29 (AB 1584) (ch 519 prevails); Stats 2005 ch 328 § 22 (AB 1166), effective January 1, 2006; Stats 2006 ch 655 § 85 (SB 1466), effective January 1, 2007.*

### Amendments

**1959 Amendment:** (1) Deleted "only" after "respect" in subd (c); and (2) added "(b)," in subd (k).

**1961 Amendment:** (1) Added subd (j); (2) redesignated former subds (j) and (k) to be subds (k) and (l); (3) substituted "(j)" for "(i)" in subd (k); (4) deleted "and" before "(j)" in subd (l); and (5) added ", and (k)" in subd (l).

**1967 Amendment:** Substituted "Public" for "State" in subds (b) and (c).

**1971 Amendment:** (1) Deleted "Pension and Retiring Annuities System of the" before "University" in subd (g); (2) added "Retirement System" in subd (g); and (3) added "(e)," in subd (l).

**1992 Amendment:** (1) Substituted "(k, and (m))" for "and (k)" in subd (l); and (2) added subd (m).

**1996 Amendment:** Substituted "become inoperative on July 1, 1999" for "be deemed to have become operative on July 1, 1990, and shall become inoperative on July 1, 1995" in subd (m).

**1998 Amendment:** Substituted "July 1, 2004" for "July 1, 1999" in subd (m).

**2003 Amendment:** (1) Substituted "Defined Benefit Program of the State Teachers' Retirement Plan" for "Defined Benefit Program System" in subd (d); (2) substituted "that" for "such" after "covered by" in subds (d) and (i); (3) added "a" after "operated by" in subd (d); (4) substituted "that" for "which" after "of a hospital" in subd (j); (5) substituted "subdivision (b) to (j), inclusive" for "subdivisions (b) through (j) above" in subd (k); (6) substituted "the" for "such" after "of members of" in subds (j)(1) and (j)(2); and (7) substituted "the State Teachers' Retirement Plan" for "that system" at the end of subd (m).

**2005 Amendment:** (1) Substituted "Plan" for "System" in subd (g); (2) redesignated former subds (m) and (n) to be subds (l) and (m); (3) deleted the former last sentence of subd (l) which read: "This subdivision shall become inoperative on July 1, 2004."; and (4) substituted "that" for "which" in subd (m).

**2006 Amendment:** (1) Deleted "City and County" after "The San Francisco" in subd (h); and (2) added the commas after "January 15, 1898" and "July 15, 1989" in subd (j).

## § 22150. Divisions of retirement system

Unless otherwise provided in this article, the board shall authorize a division of a retirement system upon the request of any public agency having employees in positions covered by the system or upon authorization of the Legislature. An election among members of the system shall not be required. A retirement system as defined in subdivisions (d) and (f) of Section 22009.1 shall be divided pursuant to this article only if the division is otherwise authorized by the Legislature. The board shall designate the person to conduct the division, as defined in subdivision (m) of Section 22009.1, of a retirement system.

For purposes of this section and all coverage procedures under this part subsequent to division of the retirement system defined in subdivision (g) of Section 22009.1 the University of California shall be deemed to be a public agency.

*Added by Stats 1957 ch 1993 § 4, effective July 10, 1957, operative August 30, 1957. Amended by Stats 1959 ch 777 § 2, effective June 3, 1959; Stats 1963 ch 663 § 1, effective May 30, 1963; Stats 1979 ch 1110 § 39, effective September 28, 1979, operative January 1, 1980. Amended by Stats 2005 ch 328 § 23 (AB 1166), effective January 1, 2006.*

**Former Sections:** Former § 22150 was added by Stats 1955 ch 1441 § 2, effective June 29, 1955, and amended and renumbered § 22125 by Stats 1957 ch 1993 § 3, effective July 10, 1957, operative August 30, 1957.

### Amendments

**1959 Amendment:** Substituted the section for the former section which read: "A retirement system as defined in subdivisions (a), (h), and (j) of Section 22009.1 may be divided by the legislative or governing body of the public agency. A retirement system as defined in subdivisions (c), (g), and (i) of Section 22009.1 may be divided by the person or body authorized under this part to conduct a referendum among eligible employees in positions covered by such system. Any such division of a retirement system shall be in accordance with applicable federal law and regulations and may be made only upon the affirmative vote of a majority of the persons voting in an election held among the members of the retirement system to be divided."

**1963 Amendment:** Amended the first paragraph by (1) deleting " , but only if a majority of the persons voting in an election held among members of the system to be divided, after due notice of the modification of the retirement plan proposed in the event positions covered by the system are included in the agreement, voted in favor of such division" at the end of the first sentence; (2) inserting the second sentence; (3) deleting "(b), (c)," after "subdivisions" in the third sentence; and (4) adding the fourth sentence.

**1979 Amendment:** Substituted "subdivisions (d) and (f)" for "subdivisions (d), (e), and (f)" in the third sentence.

**2005 Amendment:** (1) Substituted "the" for "such" after "article only if"; and (2) substituted "subdivision (m)" for "subdivision (l)" before "of Section 22009.1".

## § 22155. Modification to agreement for transfer to division of retirement system

Whenever, on the request of the governing body of a public agency, a retirement system has been divided pursuant to this article, the board, on the request of the governing body, shall execute in

conformity with Section 218 of the Social Security Act and applicable federal regulations a modification to the agreement providing for transfer to the system as defined in paragraph (1) of subdivision (m) of Section 22009.1 created by the division, the position of any member included in the system, as defined in paragraph (2) of subdivision (m) of Section 22009.1, who requests a transfer pursuant to Section 218(d)(6)(F) of the Social Security Act and board rules.

*Added by Stats 1959 ch 752 § 1. Amended by Stats 1961 ch 808 § 2, effective June 12, 1961; Stats 2005 ch 328 § 24 (AB 1166), effective January 1, 2006.*

### Amendments

**1961 Amendment:** Substituted “22009.1 (1)(1)” for “22009.1(k)(1)”; and “22009.1 (1)(2)” for “22009.1(k)(2)”.

**2005 Amendment:** (1) Added the commas after “Whenever”, after “public agency”, and after “in the system”; (2) substituted “paragraph (1) of subdivision (m) of Section 22009.1” for “Section 22009.1(1)(1)”; (3) substituted “paragraph (2) of subdivision (m) of Section 22009.1” for “Section 22009.1(1)(2)”; and (4) substituted “a” for “such” before “transfer pursuant”.

### § 22156. Medicare coverage through the State Teachers’ Retirement Plan

(a) A division of the State Teachers’ Retirement Plan is hereby authorized by the Legislature to provide Medicare coverage for employees of a public agency, as defined in Section 22009.03, upon the request of the public agency.

(b) The division authorized by subdivision (a) shall be conducted pursuant to this article.

(c) A member of the State Teachers’ Retirement Plan on whose behalf a request is made pursuant to subdivision (a) may elect to be covered by Medicare, pursuant to Section 218 of the federal Social Security Act (42 U.S.C. Sec. 418), and applicable federal regulations if all of the following apply:

(1) The member was employed in a position covered by the plan on March 31, 1986.

(2) The member has not since been mandated into Medicare coverage due to the enactment of Public Law 99-272.

(3) The member is in a position covered or the member is eligible to elect to be covered by the retirement system on the date of the division.

(d) The public agency shall immediately make an application pursuant to Chapter 2 (commencing with Section 22200) of this part for Medicare coverage for those members who have elected to receive Medicare coverage.

(e) The effective date of the coverage may be retroactive, but not earlier than the last day of the sixth calendar year preceding the year in which the agreement or modifications, as the case may be, is submitted to the Commissioner of Social Security.

*Added by Stats 2005 ch 328 § 25 (AB 1166), effective January 1, 2006.*

**Former Sections:** Former § 22156, relating to provision of Medicaid coverage, was added by Stats 1989 ch 1006 § 3, operative July 1, 1990, amended by Stats 1992 ch 673 § 5, Stats 1996 ch 318 § 3, effective July 29, 1996, Stats 1998 ch 965 § 326, Stats 2003 ch 62 § 142, inoperative July 1, 2004, repealed January 1, 2005, ch 519 § 33 (ch 519 prevails), inoperative July 1, 2004, and repealed, January 1, 2005, by its own terms.

Former § 22156, relating to Legislator’s Retirement System, was added by Stats 1971 ch 1300 § 6 and repealed by Stats 1974 ch 665 § 2, effective September 5, 1974.

### § 22201. Application; Execution of agreement with federal agency for coverage of employees of applicant public agency under federal insurance system

The board shall, upon application by any public agency except the state, in accordance with the provisions of this part execute on behalf of the state an agreement with the federal agency for the coverage of employees of such public agency under the federal system in conformity with the provisions of Section 218 of the Social Security Act and applicable federal regulations.



*Added by Stats 1955 ch 1441 § 2, effective June 29, 1955. Amended by Stats 1967 ch 1353 § 7.*

**Historical Derivation:** (a) Former § 23026, as added by Stats 1955 ch 10 § 2.

(b) Former § 13776, as added by Stats 3d Ex Sess 1950 ch 46 § 1, amended by Stats 1951 ch 1569 § 1.

#### **Amendments**

**1967 Amendment:** Deleted “insurance” before “system in conformity”.

#### **§ 22202. When application deemed made by public agency**

With respect to employees in the coverage group defined in subdivision (a) of Section 22100, the application shall be deemed to be made by a public agency if made by the Adjutant General. With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the application shall be deemed to be made by a public agency if made by the Teachers' Retirement Board. With respect to employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1, the application shall be deemed to be made by a public agency if made by the Regents of the University of California. With respect to employees in the coverage group defined in subdivision (l) of Section 22009.1, the application shall be deemed to be made by a public agency if made by the governing body of the public agency, as defined in Section 22009.03.

*Added by Stats 1955 ch 1441 § 2, effective June 29, 1955. Amended by Stats 1957 ch 1993 § 5, effective July 10, 1957, operative August 30, 1957; Stats 1989 ch 1006 § 4; Stats 1992 ch 673 § 6 (AB 3823). Amended by Stats 2005 ch 328 § 26 (AB 1166), effective January 1, 2006.*

#### **Amendments**

**1957 Amendment:** Substituted (1) “(d) of Section 22009.1” for “(b) of Section 22150” in the second sentence; and (2) “employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1” for “retirement system coverage group set forth in subdivision (f) of Section 22150” in the third sentence.

**1989 Amendment:** Substituted (1) “the” for “such” before “application shall” in the first and last sentences; and (2) the second sentence for the former second sentence, which read “With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, such application shall be deemed to be made by a public agency if made by the State Teachers' Retirement Board.”

**1992 Amendment:** Deleted “prior to July 1, 1993, by the legislative or governing body of a public agency as defined in Section 22009.03, or if made on or after July 1, 1993, the application shall be deemed to be made by a public agency if made by” after “agency if made” in the second sentence.

**2005 Amendment:** Added the last sentence.

#### **§ 22203. Agreement between public agency and board**

Notwithstanding Section 22201, before the board shall execute on behalf of the state an agreement with the federal agency as provided in this chapter, the public agency and the board shall enter into a written agreement, that shall include provisions not inconsistent with this part that the board deems necessary in the administration of the federal system as it affects the state and the public agency and its employees.

For the purposes of this section, the state shall not be deemed to be a public agency, but nevertheless an agreement entered into pursuant to this part by the board and the Teachers' Retirement Board or the Adjutant General or the Regents of the University of California or the governing body of a public agency, as defined in Section 22009.03, shall be deemed to be entered into by the board and a public agency.

*Added by Stats 1955 ch 1441 § 2, effective June 29, 1955. Amended by Stats 1967 ch 1353 § 8; Stats 1989 ch 1006 § 5; Stats 1992 ch 673 § 7 (AB 3823). Amended by Stats 2005 ch 328 § 27 (AB 1166), effective January 1, 2006.*

### Amendments

**1967 Amendment:** Substituted “federal” for “said insurance” before “system as it affects” in the first sentence.

**1989 Amendment:** Substituted the section for the former section, which read: “Notwithstanding the provisions of Section 22201, however, before the board shall execute on behalf of the state an agreement with the federal agency as herein provided, the public agency and the board shall enter into a written agreement, which agreement shall include such provisions not inconsistent with this part which the board deems necessary in the administration of the federal system as it affects the state and the public agency and its employees.” For the purposes of this section, the state shall not be deemed to be a public agency, but nevertheless an agreement entered into pursuant to this part by the board and the State Teachers Retirement Board or the Adjutant General of the Board of Regents of the University of California shall be deemed to be entered into by the board and a public agency.”

**1992 Amendment:** Amended the second paragraph by (1) deleting “, (a) if prior to July 1, 1993, by the legislative or governing body of a public agency as defined in Section 22009.03; (b) if on or after July 1, 1993, by” after “the board and”; and (2) substituting “or” for “; or (c)” after “Teachers’ Retirement Board”.

**2005 Amendment:** (1) Substituted “that” for “which” both times it appears in the first paragraph; and (2) added “or the governing body of a public agency, as defined in Section 22009.03,” in the second paragraph.

### § 22208. Formal application to board for inclusion of employees in groups included in agreement

With respect to each retirement system coverage group, the legislative or governing body of every public agency having employees in positions covered by a retirement system, may, upon the affirmative vote of a majority of eligible retirement system employees of the retirement system coverage group at a referendum conducted in accordance with Article 2 (commencing with Section 22300) of this chapter and the rules and regulations promulgated by the board pursuant to this part, make formal application to the board for the inclusion of the employees in each retirement system coverage group in the agreement.

*Added by Stats 1955 ch 1441 § 2, effective June 29, 1955. Amended by Stats 1957 ch 1993 § 6, effective July 10, 1957, operative August 30, 1957; Stats 1989 ch 1006 § 7; Stats 1996 ch 318 § 4 (AB 166), effective July 29, 1996; Stats 1998 ch 965 § 327 (AB 2765); Stats 2005 ch 328 § 28 (AB 1166), effective January 1, 2006.*

### Amendments

**1957 Amendment:** Substituted (1) “positions covered by the retirement system” for “the retirement system coverage group” wherever it appears; (2) “subdivision (d) of Section 22009.1” for “subdivision (b) of Section 22150”; and (3) “subdivision (g) of Section 22009.1” for “subdivision (f) of Section 22150.”

**1989 Amendment:** Substituted the section for the former section which read: “With respect to each retirement system coverage group, the legislative or governing body of every public agency having employees in positions covered by a retirement system, the State Teachers Retirement Board with respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1 upon authorization by the Legislature, and the Board of Regents of the University of California with respect to employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1, may, upon the affirmative vote of a majority of eligible retirement system employees of the retirement system coverage group at a referendum conducted in accordance with the provisions of Article 2 of this chapter and the rules and regulations promulgated by the board pursuant to this part, make formal application to the board for the inclusion of the employees in each such retirement system coverage group in the agreement.”

**1996 Amendment:** Substituted “July 1, 1999” for “July 1, 1993” both times it appears in the last sentence.

**1998 Amendment:** Substituted “July 1, 2004” for “July 1, 1999” both times it appears in the second sentence.

**2005 Amendment:** Deleted the former last sentence which read: “With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the formal application shall be

deemed to be made, if made prior to July 1, 2004, by the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 2004, by the Teachers' Retirement Board."

**§ 22302. Referendum for specified employees**

In the case of employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the Teachers' Retirement Board shall conduct the referendum; if the referendum is authorized by the Legislature.

In the case of employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1 the board shall authorize the referendum upon the request of the Regents of the University of California and the regents shall conduct the referendum.

In the case of employees in positions covered by the retirement system set forth in subdivision (l) of Section 22009.1, the board shall authorize the referendum upon the request of the governing body of a public agency, as defined by Section 22009.03.

*Added by Stats 1955 ch 1441 § 2, effective June 29, 1955. Amended by Stats 1957 ch 1993 § 8, effective July 10, 1957, operative August 30, 1957; Stats 1989 ch 1006 § 8; Stats 1996 ch 318 § 5 (AB 166), effective July 29, 1996; Stats 1998 ch 965 § 328 (AB 2765); Stats 2005 ch 328 § 29 (AB 1166), effective January 1, 2006.*

**Amendments**

**1957 Amendment:** Substituted (1) "positions covered by the retirement system" for "the retirement system coverage group" wherever it appears; (2) "subdivision (d) of Section 22009.1" for "subdivision (b) of Section 22150" in the first paragraph; and (3) "subdivision (g) of Section 22009.1" for "subdivision (f) of Section 22150" in the second paragraph.

**1989 Amendment:** Substituted (1) the first paragraph for the former first paragraph, which read "In the case of employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the State Teachers' Retirement Board shall conduct such referendum; provided, such referendum is authorized by the Legislature."; and (2) made technical changes in the second paragraph.

**1996 Amendment:** Substituted "July 1, 1999" for "July 1, 1993" both times it appears in the first paragraph.

**1998 Amendment:** Substituted "July 1, 2004" for "July 1, 1999" both times it appears in the first paragraph.

**2005 Amendment:** (1) Deleted "if prior to July 1, 2004, the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 2004," before "the Teachers' " in the first sentence; (2) substituted "Regents" for "regents" in the second sentence; and (3) added the last paragraph.

**§ 22308. Inapplicability of article to divided system**

This article does not apply to a retirement system composed of the positions of members of a divided system who desire coverage under the federal system as defined in subdivision (m) of Section 22009.1 and wherever in this part the conduct of a referendum is made a condition, the condition shall be fully satisfied by compliance with Article 2.5 (commencing with Section 22150) of Chapter 1 as to that retirement system.

*Added by Stats 1959 ch 777 § 5, effective June 3, 1959. Amended by Stats 1961 ch 808 § 3, effective June 12, 1961; Stats 1984 ch 193 § 48; Stats 2005 ch 328 § 30 (AB 1166), effective January 1, 2006.*

**Amendments**

**1961 Amendment:** Substituted "subdivision (l) "for "subdivision (k)".

**1984 Amendment:** Routine code maintenance.

**2005 Amendment:** Substituted "subdivision (m)" for "subdivision (l)".

**§ 22560. Reimbursements of costs to state**

(a) The board may charge or assess each public agency as defined in Section 22009.03 and each public agency shall pay and reimburse the state at the times and in the amounts as the board may determine, the approximate cost to the state, of any work, services, equipment, and other administrative costs relating to a division under Article 2.5 (commencing with Section 22150) of Chapter 1 or the referendum provided by Article 2 (commencing with Section 22300) of Chapter 2 and requested by the agency. The charges may differ from public agency to public agency.

(b) A penalty of 50 percent of the amount charged or assessed shall be added to each charge or assessment that is delinquent 90 days after a notice of the charge or assessment was mailed by the board. The total amount of the charge, assessment, and penalty that remains unpaid after 120 days shall accrue interest at the rate of 7 percent per annum. The charges, assessments, penalties, and interest collected shall be paid into the Treasury and credited as revenue to the Old Age and Survivors' Insurance Revolving Fund for use by the board upon appropriation by the Legislature pursuant to subdivision (b) of Section 22600.

*Added by Stats 1989 ch 1006 § 9. Amended by Stats 1992 ch 673 § 9 (AB 3823); Stats 1996 ch 318 § 6 (AB 166), effective July 29, 1996; Stats 2005 ch 328 § 31 (AB 1166), effective January 1, 2006; Stats 2019 ch 24 § 21 (SB 83), effective June 27, 2019.*

**Amendments**

**1992 Amendment:** (1) Amended subd (a) by (a) substituting “assistant (typing)” for “assistant II (typing)” wherever it appears; and (b) adding “and 1.0 limited-term retirement program specialist II position and 1.0 limited-term office assistant (typing) position for the 1993–94 fiscal year” at the end; and (2) substituted “eighty thousand two hundred twenty dollars (\$80,220)” for “thirty-six thousand fifty-one dollars (\$36,051)” in subd (b)(3).

**1996 Amendment:** (1) Deleted former subs (a) and (b) which read:

“(a) Due to the required administrative services necessary for implementation of the act enacting this section, the Public Employees’ Retirement System is authorized 3.0 limited-term retirement program specialist II positions and 2.0 limited-term office assistant (typing) positions for the 1990–91 fiscal year, 2.0 limited-term retirement program specialist II positions and 1.0 limited-term office assistant (typing) positions for the 1991–92 fiscal year, and 1.0 limited-term retirement program specialist II positions and 1.0 limited-term office assistant (typing) positions for the 1992–93 fiscal year and 1.0 limited-term retirement program specialist II position and 1.0 limited-term office assistant (typing) position for the 1993–94 fiscal year.

“(b) There is hereby appropriated, for salary and benefits, equipment, and work stations, and other administrative costs which result from the act enacting this section, from the Public Employees’ Retirement Fund to the Board of Administration of the Public Employees’ Retirement System as follows:”(1) For the 1990–91 fiscal year, the sum of three hundred two thousand three hundred four dollars (\$302,304).”(2) For the 1991–92 fiscal year, the sum of one hundred thirty-eight thousand four hundred eighty-eight dollars (\$138,488).”(3) For the 1992–93 fiscal year, the sum of eighty thousand two hundred twenty dollars (\$80,220).”;

(2) deleted subdivision designation (c); and (3) substituted “the” for “such” after “the state at” and after “times and in” in the first sentence.

**2005 Amendment:** Substituted “may” for “shall” before “charge or assess”.

**2019 Amendment:** (1) Added designation (a); (2) in the first sentence of subd (a) (a) deleted “and all” preceding “work, services”; (b) deleted “of this part” following “Chapter 1”; and (c) deleted “of this part” following “Chapter 2”; and (3) added subd (b).

**§ 22849. [Section repealed 2015.]**

*Added by Stats 2005 ch 708 § 3 (AB 256), effective January 1, 2006. Repealed by Stats 2014 ch 237 § 8 (AB 2472), effective January 1, 2015. The repealed section related to a public school employees health care pool feasibility study.*

**§ 31563. Forfeiture of position**

Notwithstanding any other provision of law, a person ceases to be a member for any portion of his or her service as an elected public officer or as a public employee that is forfeited pursuant to Sections 7522.70, 7522.72, and 7522.74.

*Added by Stats 2005 ch 322 § 3 (AB 1044), effective January 1, 2006. Amended by Stats 2014 ch 741 § 3 (AB 2474), effective January 1, 2015.*

**Amendments**

**2014 Amendment:** Substituted “Sections 7522.70, 7522.72, and 7522.74” for “Section 1243”.

**§ 31565. Election to transfer membership to State Teachers’ Retirement System; Withdrawal of accumulated contributions**

Any member of a system established under this chapter who is employed in a status requisite for membership in the State Teachers’ Retirement System, may elect to transfer his membership to that system. Any member who elects to transfer his membership pursuant to this section may also elect in writing to withdraw his accumulated contributions, and in such event he shall be paid all of his accumulated contributions in the county retirement system.

*Added by Stats 1957 ch 1452 § 1.*

**§ 82002. “Administrative action”; “Ratemaking proceeding”; “Quasi-legislative proceeding”**

(a) “Administrative action” means either of the following:

(1) The proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding, including any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(2) With regard only to placement agents, the decision by any state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.

(b) “Ratemaking proceeding” means, for the purposes of a proceeding before the Public Utilities Commission, any proceeding in which it is reasonably foreseeable that a rate will be established, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(c) “Quasi-legislative proceeding” means, for purposes of a proceeding before the Public Utilities Commission, any proceeding that involves consideration of the establishment of a policy that will apply generally to a group or class of persons, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry.

*Added by initiative measure adopted June 4, 1974, operative January 7, 1975. Amended by Stats 1991 ch 491 § 3 (SB 28); Stats 2001 ch 921 § 1 (AB 1325); Stats 2010 ch 668 § 4 (AB 1743), effective January 1, 2011; Stats 2017 ch 561 § 97 (AB 1516), effective January 1, 2018.*

**Note**—Stats 2001 ch 921 provides:

SEC. 5. The Legislature finds and declares that the provisions of this act further the purposes of both the Political Reform Act of 1974 and Proposition 208 of the 1996 statewide general election within the meaning of subdivision (a) of Section 81012 of the Government Code and Section 45 of that measure.

### Amendments

**1991 Amendment:** Substituted “Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2” for “Chapter 4.5 of Division 3 of Title 2 of the Government Code (beginning with Section 11371)”.

**2001 Amendment:** (1) Added the subdivision (a) designation; (2) amended subd (a) by (a) adding the comma after “enactment” and “regulation”; and (b) substituting “ratemaking” for “rate making”; and (3) added subds (b) and (c).

**2010 Amendment:** Added (1) “either of the following:” in the introductory clause of subd (a); (2) subdivision designation (a)(1); (3) subd (a)(2); and (4) the comma after “class of persons” in subd (c).

**2017 Amendment:** Substituted “including” for “which shall include” in subd (a)(1).

### FPPC Decisions

The process of trademark registration is “quasi-judicial” rather than “quasi-legislative.” Thus, an attorney’s activities in registering clients’ trademarks do not constitute attempting to influence administrative action and the attorney need not register as a lobbyist. *Carson, John M., Attorney* 1 FPPC 46 (No. 75-031, July 2, 1975).

(1) Reporting hazardous traffic locations by an automobile club to state agencies and recommending corrective action does not constitute an attempt to influence administrative action; (2) the furnishing of data or factual materials will be reportable under certain circumstances; (3) commenting on proposed regulations constitutes an attempt to influence administrative action regardless of whether the comment is in response to a request from the agency; (4) discussion of enforcement policies with Highway Patrol personnel may constitute an attempt to influence administrative action. *Nida, Robert H., Automobile Club of Southern California* 2 FPPC 1 (No. 75-075-A, Jan. 7, 1976).

Persons engaged in representing Bay Area Rapid Transit in quasi-legislative proceedings before the Public Utilities Commission are attempting to influence administrative action. The safety director of BART is not a lobbyist as a result of communicating with the PUC staff in compliance with a PUC order. *Leonard, Carl A., Bay Area Rapid Transit* 2 FPPC 54 (No. 75-042, April 22, 1976).

Proceedings before the PUC involving Southern Pacific and Airporttransit passenger service are not administrative action. However, under the circumstances presented here, the PUC proceedings pursuant to an Order Instituting Investigation and examining Southern Pacific commuter services are administrative actions. Because the Southern Pacific discontinuance proceedings are combined with proceedings pursuant to the Order Instituting Investigation, the discontinuance proceeding must be considered administrative action. *Evans, J. L., United Transportation Union* 4 FPPC 84 (No. 78-008-B, Nov. 8, 1978).

### § 82022.5. “Election-related activities”

“Election-related activities” include, but are not limited to, the following with respect to candidate-based elections:

(a) Communications that contain express advocacy of the nomination or election of a candidate or the defeat of his or her opponent.

(b) Communications that contain reference to a candidate’s candidacy for elective office, the candidate’s election campaign, or the candidate’s or his or her opponent’s qualifications for elective office.

(c) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(d) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in subdivisions (a) to (c), inclusive.

(e) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(f) Preparing campaign budgets.

(g) Preparing campaign finance disclosure statements.

(h) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

*Added by Stats 2017 ch 749 § 4 (AB 867), effective January 1, 2018.*

**§ 82013. “Committee”**

“Committee” means any person or combination of persons who directly or indirectly does any of the following:

- (a) Receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year.
- (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- (c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214.

*Added by Stats 1980 ch 289 § 1.3. Amended by Stats 1984 ch 670 § 1; Stats 1987 ch 632 § 1; Stats 2015 ch 364 § 1 (AB 594), effective January 1, 2016.*

**Former Sections:** Former § 82013, similar to the present section, was added by initiative measure adopted June 4, 1974, operative January 7, 1975, amended by Stats 1977 ch 1213 § 1, and repealed by Stats 1980 ch 289 § 1.2.

**Amendments**

**1984 Amendment:** (1) Added “does any of the following” in the introductory clause; (2) substituted the period for the semicolon at the end of subd (a); and (3) substituted “ten thousand dollars (\$10,000)” for “five thousand dollars (\$5,000)” in subd (c).

**1987 Amendment:** Substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” wherever it appears.

**2015 Amendment:** Substituted “two thousand dollars (\$2,000)” for “one thousand dollars (\$1,000)” in subd (a).

**Notes of Decisions**

Gov C § 91004 states that the liability for negligently violating reporting requirements is not more than the value not reported. Gov C § 91005, by contrast, allows a liability for up to three times the amount of the unlawful contribution in certain more egregious cases, such as unlawful contributions by lobbyists. It would be patently absurd to read §§ 82013 and 84200 together to impose duties on advocacy groups for a single negligent violation so as to allow a private “bounty hunter” to get rich off of that violation. In statutory terms, such a reading of “committee” as defined in § 82013 would contravene the plain implications of the framework laid out in §§ 91004 and 91005. For purposes of the reporting requirement of § 84200, “committees” cannot include issue advocacy groups who are retroactively assigned that status by virtue of court decision. *McCauley v. Howard Jarvis Taxpayers Assn.* (1998, Cal App 4th Dist) 68 Cal App 4th 1255, 80 Cal Rptr 2d 900, 1998 Cal App LEXIS 1086, review denied (1999, Cal) 1999 Cal LEXIS 2158.

**FPPC Decisions**

A committee is required to have a treasurer. However, there is no requirement that the person designated “committee treasurer” of a corporation that qualifies as a committee be the same person who for corporate purposes holds the title “treasurer.” Any responsible person may be named for verifying and signing campaign reports. *Augustine, John H., Union Oil Co.* 1 FPPC 69 (No. 75-064, July 2, 1975).

The governing board of a district which pays or offers the pay for the cost of candidate qualification statements would not become a committee. The district would not become a committee by virtue of purchasing space in a voters’ pamphlet for the purpose of presenting arguments on both sides of a ballot measure. *Masini, H. L., County Clerk, Fresno* 2 FPPC 38 (No. 75-171-B, Feb. 4, 1976).

When an individual and a closely held corporation in which the individual is the majority shareholder make contributions of the type described in Section 82013(c), it is assumed that they are a “combination of persons” which is attempting to influence the voters for or against the nomination or election of a candidate or the passage or defeat of a measure. Accordingly, the individual and the corporation ordinarily must file campaign statements as a major donor committee if their combined contributions total \$5,000 or more. A corporation and an individual

who is both the corporation president and a trustee in a foundation which owns the stock of the corporation need not cumulate contributions for the purpose of determining whether the corporation and the individual are a major donor committee unless there is an agreement or mutual understanding, expressed or implied, that corporate and personal funds will be contributed toward the accomplishment of a common goal. *Lumsdon, Thomas G., Attorney* 2 FPPC 140 (No. 75-205, Sept. 7, 1976).

When contributions are made by a parent corporation and its wholly owned subsidiaries, it is assumed that they are a “combination of persons.” Accordingly, a parent corporation and its subsidiaries ordinarily must file campaign statements as a major donor committee if their combined contributions total \$5,000 or more in a calendar year. A contrary conclusion can be reached only when it is clear from the surrounding circumstances that the parent corporation and its subsidiaries acted completely independently of each other. If the parent corporation made no contributions, the conclusion would be the same. *Kahn, Harry H., American Building Maintenance Industries* 2 FPPC 151 (No. 75-185, Nov. 3, 1976).

**§ 82023. “Elective office”**

“Elective office” means any state, regional, county, municipal, district or judicial office that is filled at an election. “Elective office” also includes membership on a county central committee of a qualified political party, and membership through election on the Board of Administration of the Public Employees’ Retirement System or the Teachers’ Retirement Board.

*Added by initiative measure adopted June 4, 1974, operative January 7, 1975. Amended by Stats 1998 ch 923 § 8 (SB 1753); Stats 2010 ch 633 § 1 (SB 1007), effective January 1, 2011.*

**Amendments**

**1998 Amendment:** Added “, and members elected to the Board of Administration of the Public Employees’ Retirement System”.

**2010 Amendment: (1)** Substituted “that” for “which” after “judicial office” in the first sentence; and **(2)** amended the second sentence by **(a)** substituting “membership through election on” for “members elected to”; and **(b)** adding “or the Teachers’ Retirement Board”.

**Note**—Stats 2010 ch 633 provides:

SEC. 13. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

**§ 82024. “Elective state office”**

“Elective state office” means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees’ Retirement System, member elected to the Teachers’ Retirement Board, and member of the State Board of Equalization.

*Added by initiative measure adopted June 4, 1974, operative January 7, 1975. Amended by Stats 1991 ch 674 § 2 (SB 595); Stats 1998 ch 923 § 9 (SB 1753); Stats 2010 ch 633 § 2 (SB 1007), effective January 1, 2011.*

**Amendments**

**1991 Amendment:** Added “Insurance Commissioner,” after “Attorney General”.

**1998 Amendment:** Added “member elected to the Board of Administration of the Public Employees’ Retirement System,”.

**2010 Amendment:** Added “member elected to the Teachers’ Retirement Board,”.

**Note**—Stats 2010 ch 633 provides:

SEC. 13. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.



**§ 82025.3. “External manager”**

(a) “External manager” means either of the following:

(1) A person who is seeking to be, or is, retained by a state public retirement system in California or an investment vehicle to manage a portfolio of securities or other assets for compensation.

(2) A person who manages an investment fund and who offers or sells, or has offered or sold, an ownership interest in the investment fund to a state public retirement system in California or an investment vehicle.

(b) For purposes of this section, “investment fund” has the same meaning as set forth in Section 7513.8.

(c) For purposes of this section, “investment vehicle” has the same meaning as set forth in Section 82047.3.

*Added by Stats 2010 ch 668 § 5 (AB 1743), effective January 1, 2011. Amended by Stats 2011 ch 704 § 3 (SB 398), effective October 9, 2011.*

**Amendments**

**2011 Amendment:** (1) Added subdivision designation (a); (2) added ‘or an investment vehicle’ in subd (a)(1); (3) amended subd (a)(2) by (a) substituting “manages an investment fund” for “is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets”; (b) substituting “an ownership interest in the investment fund” for “securities”; and (c) adding “or an investment vehicle” at the end; and (4) added subds (b) and (c).

**§ 82036. “Late contribution”**

“Late contribution” means any of the following:

(a) A contribution, including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure during the 90-day period preceding the date of the election, or on the date of the election, at which the candidate or measure is to be voted on. For purposes of the Board of Administration of the Public Employees’ Retirement System and the Teachers’ Retirement Board, “the date of the election” is the deadline to return ballots.

(b) A contribution, including a loan, that totals in the aggregate one thousand dollars (\$1,000) or more and is made to or received by a political party committee, as defined in Section 85205, within 90 days before the date of a state election or on the date of the election.

*Added by Stats 1980 ch 289 § 5. Amended by Stats 2004 ch 623 § 2 (AB 890), effective September 21, 2004; Stats 2005 ch 22 § 111 (SB 1108), effective January 1, 2006; Stats 2010 ch 633 § 3 (SB 1007), effective January 1, 2011; Stats 2012 ch 496 § 1 (AB 481), effective January 1, 2013; Stats 2015 ch 364 § 2 (AB 594), effective January 1, 2016.*

**Former Sections:** Former § 82036, similar to the present section, was added by initiative measure adopted June 4, 1974, operative January 7, 1975, amended by Stats 1977 ch 344 § 2, effective August 20, 1977, and repealed by Stats 1980 ch 289 § 4.

**Amendments**

**2004 Amendment:** (1) Added “any of the following:” in the introductory clause; (2) added the subdivision designation (a); (3) substituted “loan that” for “loan which” in subd (a); and (4) added subd (b).

**2005 Amendment:** Added the comma after “Any contribution” in subd (b).

**2010 Amendment:** (1) Substituted “and” for “that” after “(\$1,000) or more” in the first sentence of subd (a) and in subd (b); (2) added the second sentence of subd (a); and (3) deleted the comma after “state election” in subd (b).

**2012 Amendment:** (1) Amended the first sentence of subd (a) and subd (b) by (a) substituting “A” for “Any” at the beginning; (b) adding “within 90 days”; and (c) deleting “but after the closing date of the last campaign statement required to be filed before the election” at the end; and (2) substituted “a state” for “any state” in subd (b).

**2015 Amendment:** (1) Amended the first sentence of subd (a) by (a) substituting “during the 90-day period preceding” for “within 90 days before”; and (b) adding “, or on the date of the election,”; and (2) added “or on the date of the election” in subd (b).

### **§ 82036.5. “Late independent expenditure”**

“Late independent expenditure” means an independent expenditure that totals in the aggregate one thousand dollars (\$1,000) or more and is made for or against a specific candidate or measure involved in an election during the 90-day period preceding the date of the election or on the date of the election. For purposes of the Board of Administration of the Public Employees’ Retirement System and the Teachers’ Retirement Board, “the date of the election” is the deadline to return ballots.

*Added by Stats 1980 ch 289 § 5.1. Amended by Stats 2010 ch 633 § 4 (SB 1007), effective January 1, 2011; Stats 2012 ch 496 § 2 (AB 481), effective January 1, 2013; Stats 2015 ch 364 § 3 (AB 594), effective January 1, 2016.*

### **Amendments**

**2010 Amendment:** (1) Amended the first sentence by substituting (a) “that totals” for “which totals”; and (b) “the election” for “such election” at the end; and (2) added the second sentence.

**2012 Amendment:** Amended the first sentence by (1) substituting “an independent” for “any independent”; (2) substituting “a specific” for “any specific”; (3) adding “within 90 days”; and (4) deleting “but after the closing date of the last campaign statement required to be filed prior to the election by a candidate or committee participating in the election” at the end.

**2015 Amendment:** Amended the first sentence by (1) substituting “during the 90-day period preceding” for “within 90 days before”; and (2) adding “or on the date of the election”.

### **§ 82039. “Lobbyist”; When proceeding before commission constitutes “administrative action”**

(a) “Lobbyist” means either of the following:

(1) Any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.

(2) A placement agent, as defined in Section 82047.3.

(b) An individual is not a lobbyist by reason of activities described in Section 86300.

(c) For the purposes of subdivision (a), a proceeding before the Public Utilities Commission constitutes “administrative action” if it meets any of the definitions set forth in subdivision (b) or (c) of Section 82002. However, a communication made for the purpose of influencing this type of Public Utilities Commission proceeding is not within subdivision (a) if the communication is made at a public hearing, public workshop, or other public forum that is part of the proceeding, or if the communication is included in the official record of the proceeding.

*Added by initiative measure adopted June 4, 1974, operative January 7, 1975. Amended by Stats 1975 ch 915 § 2, effective September 20, 1975, operative January 7, 1975; Stats 1984 ch 161 § 1; amendment adopted by voters, Prop 208 § 38, effective November 6, 1996, operative January 1, 1997; Stats 2001 ch 921 § 2 (AB 1325); Stats 2010 ch 668 § 6 (AB 1743), effective January 1, 2011.*

### Amendments

**1975 Amendment:** Substituted “legislative” for “legislation” after “influencing” wherever it appears.

**1984 Amendment:** (1) Substituted “individual” for “person” wherever it appears; and (2) added “or her” after “through his” and “or she” after “for which he” in the first sentence.

**1996 Amendment:** Substituted the first sentence for the former first sentence which read: ““Lobbyist” means any individual who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he or she receives consideration is for the purpose of influencing legislative or administrative action.”

**2001 Amendment:** (1) Added the subdivision (a) designation; (2) substituted “An individual not a” for “No individual a” in the last sentence of subd (a); and (3) added subd (b).

**2010 Amendment:** (1) Added “either of the following:” in the introductory clause of subd (a); (2) added subdivision designations (a)(1) and (b); (3) added subd (a)(2); (4) redesignated former subd (b) to be subd (c); and (5) added the comma after “public workshop” in the second sentence of subd (c).

**Editor’s Notes**—For construction, legislative amendments, applicability of other laws, severability, effect of conflicting ballot measures, and operative date, see the 1996 Note following Article 1, commencing with Gov C § 85100.

**Note**—Stats 2001 ch 921 provides:

SEC. 5. The Legislature finds and declares that the provisions of this act further the purposes of both the Political Reform Act of 1974 and Proposition 208 of the 1996 statewide general election within the meaning of subdivision (a) of Section 81012 of the Government Code and Section 45 of that measure.

### FPPC Decisions

The selection of a contractor for the mailing of legislative newsletters does not constitute legislative action. Therefore, employees of the mailing firm are not required to register as lobbyists. *Cohen, Les H., Advocation Inc.* 1 FPPC 10 (No. 75-006, May 1, 1975).

Organizations like the California Labor Federation are not lobbyists and, as employers of lobbyists, are not prohibited from making political campaign contributions. Officers of the Federation who are lobbyists may not participate in the making of Federation endorsements of candidates because the endorsement process is so closely related to the ultimate contributions as to constitute arranging contributions. A lobbyist may not serve as the chairman or director of an organization whose chief activities include the making of political contributions. *California Labor Federation, AFL-CIO* 1 FPPC 28 (No. 75-004, June 18, 1975).

The process of trademark registration is “quasi-judicial” rather than “quasi-legislative.” Thus, an attorney’s activities in registering clients’ trademarks do not constitute attempting to influence administrative action and the attorney need not register as a lobbyist. *Carson, John, Attorney* 1 FPPC 46 (No. 75-031, July 2, 1975).

The State Building and Construction Trades Council is a state body of affiliated local building and construction trade councils, craft councils and local unions which employs a lobbyist and participates in political activities and makes contributions. The council may continue its political activities. No restrictions are imposed on the elected officers of the council so long as they are not lobbyists. An employee who spends 40 hours lobbying in a two-month period is required to register as a lobbyist regardless of the amount of his compensation. The \$1,000 test is an additional one applied to a person not spending 40 hours in lobbying activities. *McCarthy, P. H., State Building and Construction Trades Council* 1 FPPC 50 (No. 75-035, July 2, 1975).

An association of five large school districts which is composed of members of their boards of education and their superintendents is not a lobbyist but is engaged in lobbyist but is engaged in lobbying activity and must report under Section 86108(b). *Stern, Ralph, The Big Five Association of Public School Districts* 1 FPPC 59 (No. 75-040, July 2, 1975).

A person who receives no economic consideration, other than reimbursement for reasonable travel expenses, does not come under the definition of a lobbyist. *Hardie, George G., Golden State Greyhound Assn.* 1 FPPC 140 (No. 75-003, Oct. 23, 1975).

(1) In determining whether an employee of an entity had become a lobbyist pursuant to then 2 Cal. Adm. Code Section 18239, or determining whether an employee had spent 10 percent of his compensated time in lobbying activity pursuant to then 2 Cal. Adm. Code Section 18620, all the time spent attending an administrative hearing was to be counted. (2) Pursuant to then 2 Cal. Adm. Code Section 18239(e)(3)(B), a person became a lobbyist by

spending a total of 40 hours in administrative testimony before one or more agencies and a total of one hour indirect contact with the officials of the agency or agencies to which the administrative testimony was directed. *Evans, James L., United Transportation Union 4 FPPC 54* (No. 78-008-A, Oct. 3, 1978).

In determining whether an employee of an entity has become a lobbyist, the time spent by an agent or other employee of that entity should be attributed to the employee only if the agent or other employee acts under the direct supervision or direct orders of the employee in order to aid or promote the employee's lobbying activity. *Evans, James L., United Transportation Union 4 FPPC 54* (No. 78-008-A, Oct. 3, 1978).

An agent of a lobbyist may not make or arrange a contribution or gift which the lobbyist would be prohibited from making or arranging unless it is clear that the contribution or gift is not intended to further the goals of the lobbyist and thus is outside the scope of the agency relationship. *Zenz, Robert L., California State Employees Assn. 1 FPPC 195* (No. 75-156, Dec. 3, 1975).

Persons engaged in representing the Bay Area Rapid Transit in quasi-legislative proceedings before the Public Utilities Commission are attempting to influence administrative action. The safety director of BART is not a lobbyist as a result of communicating with the PUC staff in compliance with a PUC order. *Leonard, Carl A., Bay Area Rapid Transit 2 FPPC 54* (No. 75-042, April 22, 1976).

A member of the Bay Conservation and Development Commission's Citizens' Advisory Committee is not a lobbyist. *Morrissey, John C., Pacific Gas & Electric Co. 2 FPPC 84* (No. 75-099, June 6, 1976).

### **§ 82047.3. "Placement agent"**

(a) "Placement agent" means an individual directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager, and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a state public retirement system in California or an investment vehicle either of the following:

(1) In the case of an external manager within the meaning of paragraph (1) of subdivision (a) of Section 82025.3, the investment management services of the external manager.

(2) In the case of an external manager within the meaning of paragraph (2) of subdivision (a) of Section 82025.3, an ownership interest in an investment fund managed by the external manager.

(b) Notwithstanding subdivision (a), an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager is not a placement agent.

(c) Notwithstanding subdivision (a), an employee, officer, or director of an external manager, or of an affiliate of an external manager, is not a placement agent with respect to an offer or sale of investment management services described in subdivision (a) if all of the following apply:

(1) The external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or, if exempt from or not subject to registration with the Securities and Exchange Commission, any appropriate state securities regulator.

(2) The external manager is participating in a competitive bidding process, such as a request for proposals, subject to subdivision (a) of Section 22364 of the Education Code or subdivision (a) of Section 20153 of this code, as applicable, or has been selected through that process, and is providing services pursuant to a contract executed as a result of that competitive bidding process.

(3) The external manager, if selected through a competitive bidding process described in paragraph (2), has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a state public retirement system in California.

(d) For purposes of this section, "investment fund" has the same meaning as set forth in Section 7513.8.

(e) For purposes of this section, "investment vehicle" means a corporation, partnership, limited partnership, limited liability company, association, or other entity, either domestic or foreign, managed by an external manager in which a state public retirement system in California is the majority investor and

that is organized in order to invest with, or retain the investment management services of, other external managers.

*Added by Stats 2010 ch 668 § 7 (AB 1743), effective January 1, 2011. Amended by Stats 2011 ch 704 § 4 (SB 398), effective October 9, 2011.*

### **Amendments**

**2011 Amendment:** (1) Amended subd (a) by (a) adding “directly or indirectly” near the beginning; (b) substituting “or an investment fund managed by an external manager, and” for “, or on behalf of another placement agent,”; (c) deleting “of the securities, assets, or services of an external manager” after “offer or sale”; and (d) substituting “either of the following:” for “, either directly or indirectly.”; (2) added subds (a)(1), (a)(2), and (d) and redesignated former subd (d) as subd (e); (3) added “with respect to an offer or sale of investment management services described in subdivision (a)” in subd (c); (4) amended subd (c)(2) by (a) substituting “is participating in” for “has been selected through”; (b) adding “, such as a request for proposals,”; and (c) adding “or has been selected through that process,”; (5) added “, if selected through a competitive bidding process described in paragraph (2),” in subd (c)(3); and (6) deleted “constituting or” after “either domestic or foreign,” in subd (e).

### **§ 84101. Filing organizational statement; Independent expenditure committee; Payments**

(a) A committee that is a committee by virtue of subdivision (a) of Section 82013 shall file a statement of organization. The committee shall file the original of the statement of organization online or electronically with the Secretary of State and shall also file a copy of the statement of organization with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215. The original and copy of the statement of organization shall be filed within 10 days after the committee has qualified as a committee. The Secretary of State shall assign a number to each committee that files a statement of organization and shall notify the committee of the number. The Secretary of State shall email or send a copy of statements filed pursuant to this section to the county elections official of each county that he or she deems appropriate. A county elections official who receives a copy of a statement of organization from the Secretary of State pursuant to this section shall email or send a copy of the statement to the clerk of each city in the county that he or she deems appropriate.

(b) In addition to filing the statement of organization as required by subdivision (a), if a committee qualifies as a committee under subdivision (a) of Section 82013 within 16 days before the date of an election in connection with which the committee is required to file preelection statements, the committee shall file, within 24 hours of qualifying as a committee, the original of its statement of organization online or electronically with the Secretary of State, and a copy with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215 by email, fax, online transmission, guaranteed overnight delivery, or personal delivery.

(c) If an independent expenditure committee qualifies as a committee pursuant to subdivision (a) of Section 82013 during the time period described in Section 82036.5 and makes independent expenditures of one thousand dollars (\$1,000) or more to support or oppose a candidate or candidates for office, the committee shall file, within 24 hours of qualifying as a committee, the original of its statement of organization online or electronically with the Secretary of State. The committee shall also file a copy of its statement with the filing officer with whom the committee is required to file the original of its campaign reports pursuant to Section 84215, and at all locations required for the candidate or candidates supported or opposed by the independent expenditures, by email, facsimile transmission, guaranteed overnight delivery, or personal delivery. The filings required by this section are in addition to filings that may be required by Section 84204.

(d) For purposes of this section, in calculating whether two thousand dollars (\$2,000) in contributions has been received, payments for a filing fee or for a statement of qualifications to appear in a sample ballot shall not be included if these payments have been made from the candidate's personal funds.

*Added by initiative measure adopted June 4, 1974, operative January 7, 1975. Amended by Stats 1978 ch 551 § 1; Stats 1979 ch 531 § 5; Stats 1986 ch 544 § 1; Stats 1992 ch 405 § 2 (SB 1802); Stats 2001 ch 901 § 1 (AB 2); Stats 2002 ch 221 § 45 (SB 1019); Stats 2004 ch 478 § 2 (SB 604), effective September 10, 2004; Stats 2010 ch 633 § 5 (SB 1007), effective January 1, 2011; Stats 2015 ch 364 § 4 (AB 594), effective January 1, 2016; Stats 2018 ch 662 § 8 (SB 1239), effective January 1, 2019, operative date contingent.*

**Note**—Stats 2018 ch 662 provides:

SEC. 44. This act shall not become operative until the Secretary of State certifies an online filing and disclosure system pursuant to paragraph (7) of subdivision (b) of Section 84602 of the Government Code.

### Amendments

**1978 Amendment:** Deleted the former second sentence which read: “Each such committee in existence at the date of enactment of this chapter shall file a statement with the Secretary of State within thirty days after the effective date of this chapter.”

**1979 Amendment:** (1) Substituted “has qualified” for “is formed” near the end of the first sentence; (2) added “or she” in the third sentence; and (3) added the last sentence.

**1986 Amendment:** (1) Designated the former section to be subd (a); (2) added the second and third sentences of subd (a); and (3) added subd (b).

**1992 Amendment:** Added subd (c).

**2001 Amendment:** (1) Amended the first sentence of subd (a) by (a) substituting “A” for “Every”; and (b) substituting “that is a” for “which is a”; (2) substituted “that files a” for “which files a” in the fourth sentence of subd (a); (3) amended the last sentence of subd (a) by (a) substituting “the statement” for “such statement”; and (b) substituting “that he or she” for “which he or she”; (4) added subd (c); and (5) redesignated former subd (c) to be subd (c).

**2002 Amendment:** Amended subd (a) by (1) substituting “county elections official” for “clerk” in the fifth sentence; and (2) substituting “elections official” for “clerk” in the last sentence.

**2004 Amendment:** Substituted “facsimile transmission, guaranteed overnight delivery” for “telegram” in subd (b) and subd (c).

**2010 Amendment:** (1) Amended the first sentence of subd (a) by deleting (a) “with the Secretary of State” after “shall file”; and (b) “within 10 days after it has qualified as a committee” at the end; (2) substituted “that” for “which” after “each county” in the fifth sentence of subd (a); (3) substituted “Section 84200.7, 84200.8, or 84200.9” for “Section 84200.7 or 84200.8” in the first sentence of subd (b); and (4) amended subd (c) by (a) adding the comma after “shall file” in the first sentence; and (b) substituting “shall be filed at” for “to file at” in the second sentence.

**2015 Amendment:** (1) Amended the first sentence of subd (b) by (a) substituting “Section 84200.8 or 84200.9” for “Section 84200.7, 84200.8, or 84200.9”; and (b) adding “online transmission,”; (2) substituted “Section 84204” for “Sections 84203.5 and 84204” in the second sentence; and (3) substituted “one thousand dollars (\$1,000)” for “two thousand dollars (\$2,000)” in subd (d).

**2018 Amendment:** (1) In subd (a), added (a) “online or electronically” in the second sentence; and (b) “email or” in the fifth and last sentences; (2) rewrote former subd (b) which read: “In addition to filing the statement of organization as required by subdivision (a), if a committee qualifies as a committee under subdivision (a) of Section 82013 before the date of an election in connection with which the committee is required to file preelection statements, but after the closing date of the last campaign statement required to be filed before the election pursuant to Section 84200.8 or 84200.9, the committee shall file, by facsimile transmission, online transmission, guaranteed overnight delivery, or personal delivery within 24 hours of qualifying as a committee, the information required to be reported in the statement of organization. The information required by this subdivision shall be filed with the filing officer with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.”; and (3) in subd (c), (a) substituted “within 24 hours of qualifying as a committee, the original of its statement of organization online or electronically with the Secretary of State” for “by facsimile transmission, online transmission, guaranteed overnight delivery, or personal delivery within 24 hours of qualifying as a committee, the information required to be reported in the statement of organization” in the first sentence; (b) in the second sentence, substituted “The committee shall also file a copy of its statement” for “The information required

by this section shall be filed"; (c) deleted "shall be filed" following "Section 84215, and"; and (d) added ", by email, facsimile transmission, guaranteed overnight delivery, or personal delivery."

**§ 84101.5. Filing fees**

(a) Notwithstanding Section 81006, the Secretary of State shall charge each committee that is required to file a statement of organization pursuant to subdivision (a) of Section 84101, and each committee that is required to file a statement of organization pursuant to subdivision (a) of Section 84101 shall pay, a fee of fifty dollars (\$50) per year until the committee is terminated pursuant to Section 84214.

(b) A committee shall pay the fee prescribed in subdivision (a) no later than 15 days after filing its statement of organization.

(c) (1) A committee annually shall pay the fee prescribed in subdivision (a) no later than April 30 of each year.

(2) A committee that is created and pays the initial fee pursuant to subdivision (b) in October, November, or December of a calendar year is not subject to the annual fee pursuant to paragraph (1) for the following calendar year.

(d) (1) A committee that fails to timely pay a fee required by this section is subject to a penalty equal to three times the amount of the fee.

(2) The Commission shall enforce the requirements of this section.

*Added by Stats 2012 ch 506 § 1 (SB 1001), effective January 1, 2013. Amended Stats 2018 ch 662 § 9 (SB 1239), effective January 1, 2019, operative date contingent.*

**Note**—Stats 2018 ch 662 provides:

SEC. 44. This act shall not become operative until the Secretary of State certifies an online filing and disclosure system pursuant to paragraph (7) of subdivision (b) of Section 84602 of the Government Code.

**Amendments**

**2018 Amendment:** (1) Substituted "April 30" for "January 15" in subd (c)(1); (2) substituted "October, November, or December" for "the final three months" in subd (c)(2); and (3) deleted former (c)(3), which read: "A committee that existed prior to January 1, 2013, shall pay the fee prescribed in subdivision (a) no later than February 15, 2013, and in accordance with paragraph (1) in each year thereafter. A committee that terminates pursuant to Section 84214 prior to January 31, 2013, is not required to pay a fee pursuant to this paragraph."

**§ 84200.5. Preelection statements**

(a) In addition to the semiannual campaign statements required by Section 84200, the following elected officers, candidates, and committees shall file preelection statements under Section 84200.8:

(1) All candidates appearing on the ballot at the next election, their controlled committees, and committees primarily formed to support or oppose an elected officer, candidate, or measure appearing on the ballot for the next election.

(2) All elected state officers and candidates for elective state office who are not appearing on the ballot at the next state primary or general election, and who, during the preelection reporting periods covered by Section 84200.8, make contributions or independent expenditures totaling five hundred dollars (\$500) or more to a state or county general purpose committee, or to support or oppose a candidate or measure appearing on the ballot at the next state primary or general election.

(3) A state or county general purpose committee formed pursuant to subdivision (a) of Section 82013, other than a political party committee as defined in Section 85205, that, during the preelection reporting periods covered by Section 84200.8, makes contributions or independent expenditures totaling five hundred dollars (\$500) or more to a state or county general purpose committee, or to support or oppose a candidate or measure appearing on the ballot at the next state primary or general election. However, a state or county general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the preelection statements specified in Section 84200.8.

(4) A political party committee as defined in Section 85205, that, during the preelection reporting periods covered by Section 84200.8, receives contributions totaling one thousand dollars (\$1,000) or more, or makes contributions or independent expenditures totaling five hundred dollars (\$500) or more, to a state or county general purpose committee, or to support or oppose a candidate or measure appearing on the ballot at a state election.

(5) A city general purpose committee formed pursuant to subdivision (a) of Section 82013 that, during the preelection reporting periods covered by Section 84200.8, makes contributions or independent expenditures totaling five hundred dollars (\$500) or more to a city general purpose committee formed within the same jurisdiction, or to support or oppose a candidate or measure appearing on the ballot at the next city election. However, a city general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the preelection statements specified in Section 84200.8.

(b) During an election period for the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board, the following candidates and committees shall file the preelection statements specified in Section 84200.9:

(1) All candidates for these boards, their controlled committees, and committees primarily formed to support or oppose the candidates.

(2) A state or county general purpose committee formed pursuant to subdivision (a) of Section 82013 that, during the preelection reporting periods covered by Section 84200.9, makes contributions or independent expenditures totaling five hundred dollars (\$500) or more to support or oppose a candidate for the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board. However, a general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the statements specified in Section 84200.9.

*Added by Stats 2015 ch 364 § 7 (AB 594), effective January 1, 2016. Amended by Stats 2019 ch 102 § 2 (AB 903), effective January 1, 2020.*

**Former Sections:** Former Gov C § 84200.5, similar to the present section, was added by Stats 1985 ch 1456 § 7, amended by Stats 1986 ch 542 § 2, Stats 1988 ch 704 § 2, ch 1281 § 1, effective September 24, 1988, ch 1281 § 1.5, effective September 24, 1988, operative January 1, 1989, Stats 1991 ch 505 § 1, ch 1077 § 2, Stats 1993 ch 769 § 3, Stats 1999 ch 158 § 3, effective July 23, 1999, ch 855 § 2, Stats 2004 ch 623 § 3, effective September 21, 2004, Stats 2010 ch 633 § 6, effective January 1, 2011, and repealed by Stats 2015 ch 364 § 6, effective January 1, 2016.

### Amendments

**2019 Amendment:** Rewrote the former section which read:

"In addition to the campaign statements required by Section 84200, elected officers, candidates, and committees shall file preelection statements as follows:

"(a) All candidates appearing on the ballot to be voted on at the next election, their controlled committees, and committees primarily formed to support or oppose an elected officer, candidate, or a measure appearing on the ballot to be voted on at the next election shall file the applicable preelection statements specified in Section 84200.8.

"(b) All elected state officers and candidates for elective state office who are not appearing on the ballot at the next statewide primary or general election, and who, during the preelection reporting periods covered by Section 84200.8, contribute to any committee required to report receipts, expenditures, or contributions pursuant to this title, or make an independent expenditure of five hundred dollars (\$500) or more in connection with the statewide primary or general election, shall file the applicable preelection statements specified in Section 84200.8.

"(c) A state or county general purpose committee formed pursuant to subdivision (a) of Section 82013, other than a political party committee as defined in Section 85205, shall file the applicable preelection statements specified in Section 84200.8 if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more in connection with the statewide primary or general election during the period covered by the preelection statements. However, a state or county general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the preelection statements specified in Section 84200.8.



“(d) A political party committee as defined in Section 85205 shall file the applicable preelection statements specified in Section 84200.8 in connection with a state election if the committee receives contributions totaling one thousand dollars (\$1,000) or more, or if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more, in connection with the election during the period covered by the preelection statement.

“(e) A city general purpose committee formed pursuant to subdivision (a) of Section 82013 shall file the applicable preelection statements specified in Section 84200.8 if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more in connection with a city election in the committee’s jurisdiction during the period covered by the preelection statements. However, a city general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the preelection statements specified in Section 84200.8.

“(f) During an election period for the Board of Administration of the Public Employees’ Retirement System or the Teachers’ Retirement Board:

“(1) All candidates for these boards, their controlled committees, and committees primarily formed to support or oppose the candidates shall file the preelection statements specified in Section 84200.9.

“(2) A state or county general purpose committee formed pursuant to subdivision (a) of Section 82013 shall file the preelection statements specified in Section 84200.9 if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more during the period covered by the preelection statement to support or oppose a candidate, or a committee primarily formed to support or oppose a candidate on the ballot for the Board of Administration of the Public Employees’ Retirement System or the Teachers’ Retirement Board.

“(3) However, a general purpose committee formed pursuant to subdivision (b) or (c) of Section 82013 is not required to file the statements specified in Section 84200.9.”

**§ 84200.9. Filing of preelection statements for Board of Administration of Public Employees’ Retirement System or Teachers’ Retirement**

Preelection statements for an election period for the Board of Administration of the Public Employees’ Retirement System or the Teachers’ Retirement Board shall be filed as follows:

(a) For the period ending five days before the beginning of the ballot period, as determined by the relevant board, a statement shall be filed no later than two days before the beginning of the ballot period.

(b) For the period ending five days before the deadline to return ballots, as determined by the relevant board, a statement shall be filed no later than two days before the deadline to return ballots.

(c) In the case of a runoff election, for the period ending five days before the deadline to return runoff ballots, as determined by the relevant board, a statement shall be filed no later than two days before the deadline to return runoff ballots.

(d) All candidates being voted upon, their controlled committees, and committees primarily formed to support or oppose a candidate being voted upon in that election shall file the statements specified in subdivisions (b) and (c) by guaranteed overnight delivery service or by personal delivery.

*Added by Stats 2010 ch 633 § 6 (SB 1007), effective January 1, 2011.*

**Note**—Stats 2010 ch 633 provides:

SEC. 13. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

**§ 84215. Filing; Copies**

Campaign statements shall be filed at the following places:

(a) Statewide elected officers, including members of the State Board of Equalization; Members of the Legislature; Supreme Court justices, court of appeal justices, and superior court judges; candidates for those offices and their controlled committees; committees formed or existing primarily to support or oppose these candidates, elected officers, justices and judges, or statewide measures, or the qualification of state ballot measures; and all state general purpose committees and filers not specified in subdivisions (b) to (e), inclusive, shall file a campaign statement with the Secretary of State by online or electronic means, as specified in Section 84605.

(b) Elected officers in jurisdictions other than legislative districts, State Board of Equalization districts, or appellate court districts that contain parts of two or more counties, candidates for these offices, their controlled committees, and committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one of these jurisdictions shall file the original and, if the filing is in paper format, one copy with the elections official of the county with the largest number of registered voters in the jurisdiction. Elected officers, candidates for these offices, and their controlled committees shall also file a copy of their campaign statements with the elections official of the county in which the elected officer or candidate is domiciled, as defined in subdivision (b) of Section 349 of the Elections Code.

(c) County elected officers, candidates for these offices, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in any number of jurisdictions within one county, other than those specified in subdivision (d), and county general purpose committees shall file the original and, if the filing is in paper format, one copy with the elections official of the county.

(d) City elected officers, candidates for city office, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one city, and city general purpose committees shall file the original and, if the filing is in paper format, one copy with the clerk of the city.

(e) Elected members of the Board of Administration of the Public Employees' Retirement System, elected members of the Teachers' Retirement Board, candidates for these offices, their controlled committees, and committees formed or existing primarily to support or oppose these candidates or elected members shall file the original with the Secretary of State, and a copy shall be filed at the relevant board's office in Sacramento.

(f) Notwithstanding any other provision of this section, a committee, candidate, or elected officer is not required to file more than the original and one copy, or one copy, of a campaign statement with any one county elections official or city clerk or with the Secretary of State.

(g) If a committee is required to file campaign statements required by Section 84200 or 84200.5 in places designated in subdivisions (a) to (d), inclusive, it shall continue to file these statements in those places, in addition to any other places required by this title, until the end of the calendar year.

*Added by Stats 1980 ch 289 § 35.5. Amended by Stats 1982 ch 1069 § 2; Stats 1985 ch 1456 § 27; Stats 1986 ch 490 § 1; Stats 1990 ch 581 § 4 (SB 284); Stats 2001 ch 241 § 2 (SB 34), effective September 4, 2001; Stats 2002 ch 784 § 509 (SB 1316); Stats 2007 ch 54 § 1 (AB 473), effective January 1, 2008; Stats 2010 ch 18 § 3 (AB 1181), ch 633 § 8 (SB 1007), effective January 1, 2011; Stats 2017 ch 111 § 1 (AB 895), effective January 1, 2018, operative date contingent; Stats 2018 ch 662 § 19 (SB 1239), effective January 1, 2019, operative date contingent.*

**Note**—Stats 2018 ch 662 provides:

SEC. 44. This act shall not become operative until the Secretary of State certifies an online filing and disclosure system pursuant to paragraph (7) of subdivision (b) of Section 84602 of the Government Code.

**Former Sections:** Former § 84215, similar to present § 84205, was added by Stats 1978 ch 1408 § 2, effective October 1, 1978, and repealed by Stats 1980 ch 289 § 35.4.

**Editor's Notes**—For legislative findings and declarations, see the 1990 note following Gov C § 84200.

**Law Revision Commission Comments:**

**2002**—Subdivision (d) of Section 84215 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

### Amendments

**1982 Amendment:** Amended subd (a) by adding (1) "or existing"; (2) "or oppose"; and (3) "or statewide measures".

**1985 Amendment:** In addition to making technical changes, (1) amended subd (a) by adding (a) "Supreme Court Justices," both times it appears; and (b) "general purpose" after "state"; (2) substituting "these jurisdictions"

for “such jurisdiction” in subd (c); **(3)** substituted “county general purpose committees” for “committees formed or existing primarily to support or oppose candidates or measures in any number of jurisdictions within one county, other than those specified in subdivision (e),” in subd (d); **(4)** substituted “city general purpose committees” for “committees formed or existing primarily to support or oppose candidates or measures in one city” in subd (e); and **(5)** added “or 84200.5” in subd (g).

**1986 Amendment:** **(1)** Substituted “local measures to be voted upon” for “measures” after “candidates or” in subd (c); **(2)** added “, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in any number of jurisdictions within one county, other than those specified in subdivision (e),” in subd (d); and **(3)** added “, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one city,” in subd (e).

**1990 Amendment:** In addition to making technical changes, **(1)** added “or the qualifications of state ballot measures,” after “measures” in the first sentence of the first paragraph and in the introductory clause of subd (a); and **(2)** substituted “(b) to (e), inclusive” for “(b) through (e) below” in the introductory clause of subd (a).

**2001 Amendment:** **(1)** Substituted “qualification” for “qualifications” in the first sentence of the introductory clause; **(2)** amended subd (a) by **(a)** substituting “officers and” for “officers,”; **(b)** adding “other than the Board of Equalization”; and **(c)** substituting “qualification” for “qualifications”; **(3)** amended subd (c) by **(a)** adding the comma after “districts”; and **(b)** substituting “that contain” for “which contain”; **(4)** substituted “these offices” for “such offices” in subd (d); and **(5)** amended subd (f) by **(a)** substituting “a committee” for “no committee”; and **(b)** substituting “is not required” for “shall be required”.

**2002 Amendment:** Deleted “municipal court judges,” after “elected officers,” in subd (d).

**2007 Amendment:** **(1)** Amended the first paragraph by **(a)** substituting “elected officers and their controlled committees” for “, elected officers, committees, and proponents of state ballot measures or the qualification of state ballot measures,” in the first sentence; **(b)** substituting “one copy” for “two copies” after “shall file”; and **(c)** substituting “elections official of the county in which the candidate or elected official is domiciled, as defined in subdivision (b) of Section 349 of the Elections Code” for “clerk of the county in which they are domiciled. A committee is domiciled at the address listed on its campaign statement unless it is domiciled outside California in which case its domicile shall be deemed to be Los Angeles County for the purpose of this section”; **(2)** substituted “One copy” for “Two copies” in subs (a)(2) and (a)(3); **(3)** amended subd (b)(2) by substituting **(a)** “One copy” for “Two copies”; and **(b)** “elections official” for “clerk”; **(4)** substituted “elections official” for “clerk” after “copy with the” in subs (c),(d) and after “need ot file with the” in subd (e); and **(5)** amended subd (f) by **(a)** substituting “one copy,” for “two copies,” after “one copy, or”; and **(b)** adding “elections official” after “any one county”.

**2010 Amendment:** **(1)** Substituted “subdivisions (d) and (e)” for “subdivision (d)” in the first sentence of the introductory paragraph; **(2)** added subd (e); **(3)** redesignated former subs (e) and (f) to be subs (f) and (g); and **(4)** substituted “any other provision of this section” for “the above” in subd (f). (As amended by Stats 2010 ch 633, compared to the section as it read prior to 2010. This section was also amended by an earlier chapter, ch 18. See Gov C § 9605.)

**2017 Amendment:** Deleted “, and shall file the original and one copy of the campaign statement in paper format with the Secretary of State” in subd (a).

**2018 Amendment:** **(1)** In the introductory language, **(a)** deleted the former first sentence, which read: “All candidates and elected officers and their controlled committees, except as provided in subdivisions (d) and (e), shall file one copy of the campaign statements required by Section 84200 with the elections official of the county in which the candidate or elected official is domiciled, as defined in subdivision (b) of Section 349 of the Elections Code.”; and **(b)** substituted “Campaign statements” for “In addition, campaign statements”; **(2)** added “with the Secretary of State” in subd (a); **(3)** in subd (b), **(a)** added “, if the filing is in paper format,”; and **(b)** added the last sentence; **(4)** added “, if the filing is in paper format,” in subd (c); **(5)** in subd (d), **(a)** added “, if the filing is in paper format,”; and **(b)** deleted “and are not required to file with the local elections official of the county in which they are domiciled” following “clerk of the city”; and **(6)** in subd (e) deleted **(a)** “and one copy” following “file the original”; and **(b)** the former second sentence which read: “These elected officers, candidates, and committees need not file with the elections official of the county in which they are domiciled.”

#### § 84224. Reporting of behested payments

**(a)** A behested payment described in subdivision (b) shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the

behesting officer or member of the Public Utilities Commission with the officer's or member's agency and is a public record subject to inspection and copying pursuant to Section 81008. The report shall contain all of the following information: name of payor; address of payor; amount of the payment or payments; date or dates the payment or payments were made; the name and address of the payee; a brief description of the goods or services provided or purchased, if any; and a description of the specific purpose or event for which the payment or payments were made. Once the five-thousand-dollar (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source shall be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies, including the Public Utilities Commission, shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(b) The reporting requirement imposed by this section applies to a behested payment that satisfies each of the following:

(1) The payment is made at the behest of an elected officer or member of the Public Utilities Commission.

(2) The behesting elected officer or member of the Public Utilities Commission does not provide full and adequate consideration in exchange for the payment.

(3) The payment is made principally for a legislative, governmental, or charitable purpose.

(4) If made principally for a legislative or governmental purpose, the payment is made by a person other than a state, local, or federal governmental agency.

*Added by Stats 2017 ch 749 § 6 (AB 867), effective January 1, 2018.*

#### **§ 84225. Applicability of title; Adoption of regulations**

The provisions of this title apply to candidates for election to the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board, and to committees formed or existing primarily to support or oppose those candidates. The Commission may adopt regulations to tailor the reporting and disclosure requirements for these candidates and committees consistent with the purposes and provisions of this title.

*Added by Stats 2010 ch 633 § 10 (SB 1007), effective January 1, 2011.*

**Former Sections:** Former § 84225, relating to the filing of campaign statements by candidates for board seats, was added by Stats 1998 ch 923 § 10, amended by Stats 2010 ch 18 § 5 (AB 1181), and repealed by Stats 2010 ch 633 § 9.

#### **§ 85204. "Election cycle"**

"Election cycle," for purposes of Sections 85309 and 85500, means the period of time commencing 90 days prior to an election and ending on the date of the election. For purposes of the Board of Administration of the Public Employees' Retirement System and the Teachers' Retirement Board, "the date of the election" is the deadline to return ballots.

*Added by Stats 2000 ch 102 § 20 (SB 1223), effective July 7, 2000, approved by voters at the November 7, 2000, general election (Prop 34), effective November 8, 2000, operative January 1, 2001. Amended by Stats 2010 ch 633 § 11 (SB 1007), effective January 1, 2011.*

**Former Sections:** Former § 85204, defining "two-year period", was adopted by voters, Prop 208 § 3, effective November 6, 1996, operative January 1, 1997, and repealed by Stats 2000 ch 102 § 19, effective July 7, 2000, approved by voters at the November 7, 2000, general election (Prop 34), effective November 8, 2000, operative January 1, 2001.

Former § 85204 was adopted by voters, Prop 68 § 1, effective June 8, 1988, operative January 1, 1987, and held inoperative November 1, 1990, by decision of the California Supreme Court.

**Editor's Notes**—Proposition 68 was held inoperative in its entirety by the California Supreme Court in *Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission* (1990) 51 Cal.3d 744.

For findings and declarations, operative date and applicability of act, severability, and election, see the 2000 Note following Gov C § 82016.

### Amendments

**2010 Amendment:** Added (1) the comma after “Election cycle” in the first sentence; and (2) the second sentence.

**Note**—Stats 2010 ch 633 provides:

SEC. 13. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

### § 86206. Payment of fees for contractual services provided by placement agent

Nothing in this article prohibits the payment of fees for contractual services provided to an investment manager by a placement agent, as defined in Section 82047.3, who is registered with the Securities and Exchange Commission and regulated by the Financial Industry Regulatory Authority, except as provided in subdivision (f) of Section 86205.

*Added by Stats 2010 ch 668 § 8 (AB 1743), effective January 1, 2011.*

### § 87314. Appendix of public officials who manage public investments

(a) A board, commission, or agency of a public pension or retirement system shall attach to its Conflict of Interest Code an appendix entitled “Agency Positions that Manage Public Investments for Purposes of Section 87200 of the Government Code.” The appendix shall list each position with the board, commission, or agency for which an individual occupying the position is required to file a Statement of Economic Interests as a public official who manages public investments within the meaning of Section 87200. The board, commission, or agency shall post the appendix on its Internet Web site in a manner that makes it easily identifiable and accessible by persons who view that Web site.

(b) (1) For purposes of this section, “public official who manages public investments” includes a salaried or unsalaried member of a committee, board, commission, or other entity that exists as, or within, a governmental agency and that possesses decisionmaking authority.

(2) A committee, board, commission, or other entity possesses decisionmaking authority for purposes of this section if any of the following apply:

(A) The entity may make a final governmental decision.

(B) The entity may compel a governmental decision or prevent a governmental decision, either by virtue of possessing exclusive power to initiate the decision or by having veto authority that may not be overridden.

(C) The entity makes substantive recommendations that are, and over an extended period of time have been, regularly approved, without significant amendment or modification, by another public official or governmental agency.

(3) A committee, board, commission, or other entity does not possess decisionmaking authority for purposes of this section if it is formed for the sole purpose of researching a subject and preparing a report or recommendation for submission to another governmental entity that has final decisionmaking authority.

*Added by Stats 2010 ch 702 § 1 (SB 1271), effective January 1, 2011.*

**Note**—Stats 2010 ch 702 provides:

SEC. 3. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

**§ 87408. Representation, appearance or communication with influential purpose**

(a) A member of the Board of Administration of the Public Employees' Retirement System, an individual in a position designated in subdivision (a) or (e) of Section 20098, or an information technology or health benefits manager with a career executive assignment designation with the Public Employees' Retirement System, for a period of four years after leaving that office or position, shall not, for compensation, act as an agent or attorney for, or otherwise represent, any other person, except the state, by making a formal or informal appearance before, or an oral or written communication to, the Public Employees' Retirement System, or an officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing an action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

(b) A member of the Teachers' Retirement Board, an individual in a position designated in subdivision (a) or (d) of Section 22212.5 of the Education Code, or an information technology manager with a career executive assignment designation with the State Teachers' Retirement System, for a period of four years after leaving that office or position, shall not, for compensation, act as an agent or attorney for, or otherwise represent, any other person, except the state, by making a formal or informal appearance before, or an oral or written communication to, the State Teachers' Retirement System, or an officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing an action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

*Added by Stats 2011 ch 551 § 1 (AB 873), effective January 1, 2012.*

**§ 87409. Aiding, advising, consulting, or assisting a business entity in obtaining award or negotiating a contract**

(a) A member of the Board of Administration of the Public Employees' Retirement System, an individual in a position designated in subdivision (a) or (e) of Section 20098, or an information technology or health benefits manager with a career executive assignment designation with the Public Employees' Retirement System, for a period of two years after leaving that office or position, shall not, for compensation, aid, advise, consult with, or assist a business entity in obtaining the award of, or in negotiating, a contract or contract amendment with the Public Employees' Retirement System.

(b) A member of the Teachers' Retirement Board, an individual in a position designated in subdivision (a) or (d) of Section 22212.5 of the Education Code, or an information technology manager with a career executive assignment designation with the State Teachers' Retirement System, for a period of two years after leaving that office or position, shall not, for compensation, aid, advise, consult with, or assist a business entity in obtaining the award of, or in negotiating, a contract or contract amendment with the State Teachers' Retirement System.

(c) For purposes of this section, "business entity" has the same meaning as set forth in Section 82005, and includes a parent or subsidiary of a business entity.

*Added by Stats 2011 ch 551 § 2 (AB 873), effective January 1, 2012.*

**§ 87410. Acceptance of compensation for providing services as a placement agent in connection with investments or other business**

(a) A member of the Board of Administration of the Public Employees' Retirement System or an individual in a position designated in subdivision (a) or (e) of Section 20098, for a period of 10 years

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after leaving that office or position, shall not accept compensation for providing services as a placement agent in connection with investments or other business of the Public Employees' Retirement System or the State Teachers' Retirement System.

**(b)** A member of the Teachers' Retirement Board or an individual in a position designated in subdivision (a) or (d) of Section 22212.5 of the Education Code, for a period of 10 years after leaving that office or position, shall not accept compensation for providing services as a placement agent in connection with investments or other business of the State Teachers' Retirement System or the Public Employees' Retirement System.

*Added by Stats 2011 ch 551 § 3 (AB 873), effective January 1, 2012.*

## EXTRACTS FROM THE PENAL CODE

### § 2054. Establishing and maintaining classes for inmates by Department of Corrections and Rehabilitation

(a) The Secretary of the Department of Corrections and Rehabilitation may establish and maintain classes for inmates by utilizing personnel of the Department of Corrections and Rehabilitation, or by entering into an agreement with the governing board of a school district or private school or the governing boards of school districts under which the district shall maintain classes for such inmates. The governing board of a school district or private school may enter into such an agreement regardless of whether the institution or facility at which the classes are to be established and maintained is within or without the boundaries of the school district.

(b) Any agreement entered into between the Secretary of the Department of Corrections and Rehabilitation and a school district or private school pursuant to this section may require the Department of Corrections and Rehabilitation to reimburse the school district or private school for the cost to the district or private school of maintaining such classes. “Cost” as used in this section includes contributions required of any school district to the State Teachers’ Retirement System, but such cost shall not include an amount in excess of the amount expended by the district for salaries of the teachers for such classes, increased by one-fifth. Salaries of such teachers for the purposes of this section shall not exceed the salaries as set by the governing board for teachers in other classes for adults maintained by the district, or private schools.

(c) Attendance or average daily attendance in classes established pursuant to this section or in classes in trade and industrial education or vocational training for adult inmates of institutions or facilities under the jurisdiction of the Department of Corrections and Rehabilitation shall not be reported to the State Department of Education for apportionment and no apportionment from the State School Fund shall be made on account of average daily attendance in such classes.

(d) No school district or private school shall provide for the academic education of adult inmates of state institutions or facilities under the jurisdiction of the Department of Corrections and Rehabilitation except in accordance with this section.

*Added by Stats 1955 ch 1944 § 4. Amended by Stats 1957 ch 2245 § 1, effective July 15, 1957; Stats 1974 ch 1436 § 2, operative July 1, 1975; Stats 1976 ch 303 § 1, effective June 30, 1976, operative July 1, 1976; Stats 2015 ch 798 § 2 (SB 343), effective January 1, 2016.*

**Former Sections:** Former Pen C § 2054, relating to prison finances and accounting, was added by Stats 1941 ch 106 § 15 p 1087 and repealed by Stats 3d Ex Sess 1944 ch 2 § 45 p 29.

### Amendments

**1957 Amendment:** (1) Deleted the former first paragraph which read: “In enacting this section, it is the intent of the Legislature to continue to provide for the academic education of adult inmates of state institutions and facilities under the jurisdiction of the Department of Corrections.”; (2) deleted “such” after “classes for” in the first sentence of the first paragraph; (3) substituted “may” for “shall” after “section” in the first sentence of the second paragraph; (4) substituted the second sentence of the second paragraph for “but such cost shall not exceed the amount expended by the district for salaries of the teachers for such classes, increased by one-tenth”; (5) amended the fifth paragraph by (a) substituting “1957–58” for “1955–56”; (b) substituting “forty dollars (\$40)” for “thirty-three dollars (\$33)”; and (c) adding “except as provided in Section 2054.1”; and (6) deleted the former last paragraph which read: “This section applies only to the program of academic education for inmates.”

**1974 Amendment:** (1) Added “and Section 2079.5” in the fourth paragraph; and (2) deleted “, commencing with the 1957–58 Fiscal Year,” after “each fiscal year” in the fifth paragraph.

**1976 Amendment:** Deleted “and Section 2079.5” at the end of the fourth paragraph.



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**2015 Amendment:** (1) Added subdivision designations; (2) amended the first sentence of subd (a) by (a) substituting "Secretary of the Department of Corrections and Rehabilitation" for "Director of Corrections"; and (b) adding "and Rehabilitation" before " , or by entering"; (3) amended the first sentence of subd (b) by (a) substituting "Secretary of the Department of Corrections and Rehabilitation and" for "Director of Corrections and "; and (b) adding "and Rehabilitation" before "to reimburse"; (4) substituted "in this section" for "herein" in the second sentence of subd (b); (5) added "and Rehabilitation" in subds (c) and (d); and (6) deleted the former second paragraph which read: "The Legislature hereby declares that for each fiscal year funds for the support of the academic education program for inmates of the institutions or facilities under the jurisdiction of the Department of Corrections shall be provided, upon appropriation by the Legislature, to the Department of Corrections at the rate of forty dollars (\$40) multiplied by the total number of inmates which the Department of Corrections estimates will be in such institutions or facilities on December 31st of the fiscal year, except as provided in Section 2054.1."

## EXTRACTS FROM THE PROBATE CODE

### § 13100. Collection or transfer of personal property without probate (Payment of death benefit to beneficiary)

Excluding the property described in Section 13050, if the gross value of the decedent's real and personal property in this state does not exceed one hundred sixty-six thousand two hundred fifty dollars (\$166,250), as adjusted periodically in accordance with Section 890, and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

- (a) Collect any particular item of property that is money due the decedent.
- (b) Receive any particular item of property that is tangible personal property of the decedent.
- (c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

*Enacted by Stats 1990 ch 79 § 14 (AB 759), operative July 1, 1991. Amended by Stats 1996 ch 86 § 4 (AB 2146), ch 862 § 34 (AB 2751); Stats 2011 ch 117 § 4 (AB 1305), effective January 1, 2012; Stats 2019 ch 122 § 5 (AB 473), effective January 1, 2020.*

**Former Sections:** Former § 13100, similar to the present section, was added by Stats 1986 ch 783 § 24, operative July 1, 1987, and repealed by Stats 1990 ch 79 § 13, operative July 1, 1991.

**Historical Derivation:** (a) Former Prob C § 630, as amended by Stats 1931 ch 1089 § 1, Stats 1933 ch 939 § 1, Stats 1935 ch 809 § 1, Stats 1937 ch 181 § 1, Stats 1939 ch 820 § 1, Stats 1945 ch 203 § 1, Stats 1959 ch 195 § 1, Stats 1961 ch 1972 § 1, Stats 1967 ch 602 § 1, ch 719 § 2, Stats 1970 ch 97 § 1, Stats 1972 ch 555 § 1, Stats 1974 ch 602 § 1, Stats 1976 ch 128 § 1, Stats 1979 ch 730 § 101, ch 731 § 13, ch 731 § 13.1, Stats 1980 ch 955 § 13.11, ch 1149 § 42, Stats 1982 ch 520 § 5, Stats 1984 ch 451 § 9, Stats 1985 ch 982 § 15.

- (b) Former Prob C § 630.5.
- (c) Former Prob C § 13100, as added by Stats 1986 ch 783 § 24.
- (d) Former CCP § 1454, as added by Stats 1907 ch 264 § 1, amended by Stats 1915 ch 363 § 1, Stats 1923 ch 270 § 1.
- (e) Former CCP § 1454a, as added by Stats 1929 ch 569 § 1.
- (f) Former CCP § 1454a, as added by Stats 1927 ch 134 § 1.
- (g) Stats 1873–74 ch 112, as amended by Stats 1895 ch 27.

### Amendments

**1996 Amendment:** Substituted “one hundred thousand dollars (\$100,000)” for “sixty thousand dollars (\$60,000)” in the introductory clause. (As amended by Stats 1996 ch 862, compared to the section as it read prior to 1996. This section was also amended by an earlier chapter, ch 86. See Gov C § 9605.)

**2011 Amendment:** Substituted “one hundred fifty thousand dollars (\$150,000)” for “one hundred thousand dollars (\$100,000)” in the introductory clause.

**2019 Amendment:** Substituted “one hundred sixty-six thousand two hundred fifty dollars (\$166,250), as adjusted periodically in accordance with Section 890,” for “one hundred fifty thousand dollars (\$150,000)” in the introductory language.

### Notes to Decisions

Probate court lacked subject-matter jurisdiction to make an equitable determination regarding ownership of the proceeds of a life insurance policy, the beneficiary of which was the decedent's former spouse, when the personal property of the estate did not exceed the amount transferable by affidavit and there were no other assets listed in the probate petition. Accordingly, an order purporting to award the insurance proceeds to the decedent's sons was

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void and had to be reversed. Estate of Post (Cal. App. 1st Dist. June 22, 2018), 234 Cal. Rptr. 3d 661, 24 Cal. App. 5th 984, 2018 Cal. App. LEXIS 580, op. withdrawn, (Cal. Sept. 12, 2018), 2018 Cal. LEXIS 6815.

## EXTRACTS FROM THE PUBLIC CONTRACT CODE

### DIVISION 2. GENERAL PROVISIONS

#### PART 1. ADMINISTRATIVE PROVISIONS

#### CHAPTER 2.7. IRAN CONTRACTING ACT OF 2010

**§ 2200. Citation of chapter (Operative term contingent)**

This chapter shall be known and may be cited as the Iran Contracting Act of 2010.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Note**—Stats 2010 ch 573 provides:

SEC. 2. Section 1 of this act shall become inoperative upon the date that federal law ceases to authorize the states to adopt and enforce the contracting prohibitions of the type provided for in that section.

**§ 2201. Legislative findings and declarations (Operative term contingent)**

The Legislature hereby finds and declares all of the following:

(a) In imposing United States sanctions on Iran, Congress and the President have determined that the illicit nuclear activities of the Government of Iran, combined with its development of unconventional weapons and ballistic missiles, and its support of international terrorism, represent a serious threat to the security of the United States, Israel, and other United States allies in Europe, the Middle East, and around the world.

(b) On September 9, 2009, it was reported that American intelligence agencies have concluded that Iran has already created enough nuclear fuel to develop a nuclear weapon, and United States Ambassador to the International Atomic Energy Agency Glyn Davies declared that Iran had achieved “possible breakout capacity.”

(c) On September 21, 2009, Iran sent a letter to the International Atomic Energy Agency acknowledging that it is considering a previously undeclared “new pilot fuel enrichment plan.”

(d) On Sept. 25, 2009, President Barack H. Obama, joined by Prime Minister Gordon Brown of Britain and President Nicolas Sarkozy of France, stated that the secret plant “represents a direct challenge to the basic foundation of the nonproliferation regime” and “deepens a growing concern that Iran is refusing to live up to those international responsibilities, including specifically revealing all nuclear-related activities. As the international community knows, this is not the first time that Iran has concealed information about its nuclear program.”

(e) The International Atomic Energy Agency has repeatedly called attention to Iran’s unlawful nuclear activities, and, as a result, the United Nations Security Council has adopted a range of sanctions designed to encourage the Government of Iran to cease those activities and comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (commonly known as the “Nuclear Non-Proliferation Treaty”).

(f) On July 1, 2010, President Barack Obama signed into law H.R. 2194, the “Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010” (Public Law 111-195), which expressly authorizes states and local governments to prevent investment in, including prohibiting entry into or renewing contracts with, companies operating in Iran’s energy sector with investments that have the result

of directly or indirectly supporting the efforts of the Government of Iran to achieve nuclear weapons capability.

(g) On October 7, 2008, then-Senator Obama stated, “Iran right now imports gasoline, even though it’s an oil producer, because its oil infrastructure has broken down. If we can prevent them from importing the gasoline that they need and the refined petroleum products, that starts changing their cost-benefit analysis. That starts putting the squeeze on them.”

(h) The serious and urgent nature of the threat from Iran demands that states, local governments, educational institutions, and private institutions work together with the federal government and American allies to do everything possible diplomatically, politically, and economically to prevent Iran from acquiring a nuclear weapons capability.

(i) There are moral and reputational reasons for this state and local governments to not engage in business with foreign companies that have business activities benefiting foreign states, such as Iran, that commit egregious violations of human rights, proliferate nuclear weapons capabilities, and support terrorism.

(j) It is the responsibility of the state to decide how, where, and by whom its financial resources should be invested. It also is the prerogative of the state to not invest in, or do business with, companies whose investments with Iran place those companies at risk from the impact of economic sanctions imposed upon the Government of Iran for sponsoring terrorism, committing egregious violations of human rights, and engaging in illicit nuclear weapons development.

(k) The human rights situation in Iran has steadily deteriorated in 2009, as punctuated by transparently fraudulent elections and the brutal repression and murder, arbitrary arrests, and show trials of peaceful dissidents.

(l) During the postelection protests in June 2009, the Iranian government imposed widespread and unjustifiable restrictions on telecommunications services, denying the citizens of Iran their rights and liberties to free speech.

(m) On October 14, 2007, Governor Arnold Schwarzenegger stated his intention to support “efforts to further prevent terrorism” when signing Assembly Bill 221, which prohibits the state’s pension funds from investing in companies with active business in Iran.

(n) This state currently honors contracts with foreign companies that may be at financial risk due to business ties with foreign states, such as Iran, that are involved in the proliferation of weapons of mass destruction, commit human rights violations, and support terrorism.

(o) The concerns of the State of California regarding Iran are strictly the result of the actions of the Government of Iran.

(p) The people of the State of California declare all of the following:

(1) We have feelings of friendship for the people of Iran.

(2) We regret that developments in recent decades have created impediments to that friendship.

(3) We hold the people of Iran, their culture, and their ancient and rich history in the highest esteem.

(q) In order to effectively address the need for the governments of this state to respond to the policies of Iran in a uniform fashion, prohibiting contracts with persons engaged in investment activities in the energy sector of Iran must be accomplished on a statewide basis, and, therefore, the subject is a matter of statewide concern rather than a municipal affair.

(r) It is the intent of the Legislature to implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195).

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor’s Notes**—For inoperative date, see Note under Pub Con C § 2200.

**§ 2202. Definitions (Operative term contingent)**

As used in this chapter, the following definitions apply:

(a) “Awarding body” means a department, board, agency, authority, or officer, agent, or other authorized representative of the public entity awarding a contract for goods or services.

(b) “Energy sector” of Iran means activities to develop petroleum or natural gas resources or nuclear power in Iran.

(c) “Financial institution” means the term as used in Section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172; 50 U.S.C. 1701 note).

(d) “Iran” includes the Government of Iran and any agency or instrumentality of Iran.

(e) “Person” means any of the following:

(1) A natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)).

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) or (2).

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor’s Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

#### **§ 2202.5. Engagement in investment activities in Iran (Operative term contingent)**

For purposes of this chapter, a person engages in investment activities in Iran if any of the following is true:

(a) The person provides goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran.

(b) The person is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran as described in subdivision (a).

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor’s Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

#### **§ 2203. Ineligibility to bid due to engaging in investment activities with Iran; List of ineligible persons; Exceptions (Operative term contingent)**

(a) (1) A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on a list created pursuant to subdivision (b) as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, is ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a public entity for goods or services of one million dollars (\$1,000,000) or more.

(2) A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, engages in investment activities in Iran as described in subdivision (b) of Section 2202.5, is ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a public entity for goods or services of one million dollars (\$1,000,000) or more.

(b) (1) By June 1, 2011, the Department of General Services shall, using credible information available to the public, develop, or contract to develop, a list of persons it determines engage in investment activities in Iran as described in subdivision (a) of Section 2202.5.

(2) The Department of General Services shall update the list every 180 days.

(3) Before finalizing an initial list pursuant to paragraph (1) or an updated list pursuant to paragraph (2), the Department of General Services shall do all of the following before a person is included on the list:

(A) Provide 90 days' written notice of its intent to include the person on the list. The notice shall inform the person that inclusion on the list would make the person ineligible to bid on, submit a proposal for, or enter into or renew, a contract for goods or services of one million dollars (\$1,000,000) or more with a public entity. The notice shall specify that the person, if it ceases its engagement in investment activities in Iran as described in subdivision (a) of Section 2202.5, may become eligible for a future contract, or contract renewal, for goods or services of one million dollars (\$1,000,000) or more with a public entity upon removal from the list.

(B) The Department of General Services shall provide a person with an opportunity to comment in writing to the Department of General Services that it is not engaged in investment activities in Iran. If the person demonstrates to the Department of General Services that the person is not engaged in investment activities in Iran as described in subdivision (a) of Section 2202.5, the person shall not be included on the list, and shall be eligible to enter into or renew a contract for goods or services of one million dollars (\$1,000,000) or more with a public entity, unless the person is otherwise ineligible to bid on a contract as described in paragraph (3) of subdivision (a) of Section 2205.

(4) The Department of General Services shall make every effort to avoid erroneously including a person on the list.

(5) The Department of General Services may assess a fee upon persons that use this list to comply with the provisions of this act, in order to pay for the necessary, actual costs of creating and maintaining this list. The Department of General Services shall provide the list free of charge to any public entity and to the Legislature, upon request.

(6) A person that has a contract with CalPERS or CalSTRS, or both, shall not be deemed a person that engages in investment activities in Iran on the basis of those investments with CalPERS or CalSTRS.

(c) Notwithstanding subdivision (a), a public entity may permit a person engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into or renew, a contract for goods or services of one million dollars (\$1,000,000) or more with a public entity if either of the following are true:

(1) All of the following occur:

(A) The investment activities in Iran were made before July 1, 2010.

(B) The investment activities in Iran have not been expanded or renewed after July 1, 2010.

(C) The awarding body determines that it is in the best interest of the state or local public entity to contract with the person. For purposes of state contracts for goods or services of one million dollars (\$1,000,000) or more, "awarding body" means the Department of General Services. For purposes of local contracts for goods or services of one million dollars (\$1,000,000) or more, "awarding body" means the representative of the local public entity awarding the contract, as described in subdivision (a) of Section 2202.

(D) The person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran.

(2) One of the following occurs:

(A) For a contract for goods or services of one million dollars (\$1,000,000) or more with a local public entity, the local public entity makes a public finding that, absent such an exemption, the local public entity would be unable to obtain the goods or services for which the contract is offered.

(B) For a contract for goods or services of one million dollars (\$1,000,000) or more with a state agency, other than the office of a state constitutional officer, the Governor makes a public finding that absent such an exemption, the state agency would be unable to obtain the goods or services for which the contract is offered.

(C) For a contract for goods or services of one million dollars (\$1,000,000) or more with an office of a state constitutional officer, if the state constitutional officer makes a public finding that, absent such

an exemption, his or her office would be unable to obtain the goods or services for which the contract is offered.

(d) Notwithstanding subdivision (a), a public entity shall permit a financial institution described in subdivision (b) of Section 2202.5 to be eligible for, or to bid on, submit a proposal for, or enter into or renew, a contract for goods or services of one million dollars (\$1,000,000) or more with a public entity if the person using the credit to provide goods or services in the energy sector of Iran is a person permitted to submit a bid or proposal to the public entity pursuant to subdivision (c).

(e) The prohibition described in paragraph (1) of subdivision (a) applies on and after June 1, 2011. The prohibition described in paragraph (2) of subdivision (a) applies on and after July 1, 2011.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011. Amended by Stats 2011 ch 296 § 246 (AB 1023), effective January 1, 2012.*

**Editor's Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

### Amendments

**2011 Amendment:** Substituted “an” for “on” after “paragraph (1) or” in the introductory clause of subd (b)(3).

#### § 2204. Certification requirement; Applicability (Operative term contingent)

(a) A public entity shall require a person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

(b) A public entity shall not require a person that submits a bid or proposal to, or otherwise proposes to enter into a contract with, the public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable, if the person has been permitted to submit a bid or proposal to the public entity pursuant to subdivision (c) or (d) of Section 2203.

(c) (1) Subject to paragraph (2), the certification requirement described in subdivision (a) applies on and after June 1, 2011.

(2) A person that is a financial institution shall not be required to certify as provided in subdivision (a) until July 1, 2011. For any subsequent list created pursuant to subdivision (b) of Section 2203, a person that is a financial institution shall not be required to certify with respect to that subsequent list until 30 days after that list becomes available, but shall certify with respect to the immediately prior list for those 30 days.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor's Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

#### § 2205. Violations; Report to Attorney General (Operative term contingent)

(a) If the local public entity, or the Department of General Services in the case of state contracts, determines, using credible information available to the public and after providing 90 days written notice and an opportunity to comment in writing for the person to demonstrate that it is not engaged in investment activities in Iran, that the person has submitted a false certification under Section 2204, and the



person fails to demonstrate to the local public entity or the Department of General Services that the person has ceased its engagement in the investment activities in Iran within 90 days after the determination of a false certification, the following shall apply:

(1) Pursuant to an action under subdivision (b), a civil penalty in an amount that is equal to the greater of two hundred fifty thousand dollars (\$250,000) or twice the amount of the contract for which the false certification was made. Only one civil penalty may be imposed with respect to one or more certifications made to any public entity that are false as a result of a particular investment.

(2) Termination of an existing contract with the awarding body at the option of the awarding body or the Department of General Services.

(3) Ineligibility to bid on a contract for a period of three years from the date of the determination that the person submitted the false certification.

(b) The local public entity, or the Department of General Services in the case of state contracts, shall report to the Attorney General the name of the person that the local public entity, or the Department of General Services in the case of state contracts, determines has submitted a false certification under Section 2204, together with its information as to the false certification, and the Attorney General shall determine whether to bring a civil action against the person to collect the penalty described in paragraph (1) of subdivision (a). The awarding body of a local public entity may also report to the city attorney, county counsel, or district attorney the name of the person that the awarding body determines has submitted a false certification under Section 2204, together with its information as to the false certification, and the city attorney, county counsel, or district attorney may determine whether to bring a civil action against the person to collect the penalty described in paragraph (1) of subdivision (a). If it is determined in that action that the person submitted a false certification, the person shall pay all reasonable costs and fees incurred in a civil action, including costs incurred by the awarding body for investigations that led to the finding of the false certification and all reasonable costs and fees incurred by the Attorney General, city attorney, county counsel, or district attorney. Only one civil action against the person to collect the penalty described in paragraph (1) of subdivision (a) may be brought for a false certification on a contract.

(c) A civil action to collect the penalties described in paragraph (1) of subdivision (a) must commence within three years from the date the certification is made.

(d) An unsuccessful bidder, or any other person other than the awarding body, shall have no right to protest the award of a contract or contract renewal on the basis of a false certification.

(e) This act does not create, nor authorize, a private right of action or enforcement of the penalties provided for in this act.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor's Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

## **§ 2206. Preemption (Operative term contingent)**

This act shall occupy the field with regard to all public contracts for goods or services with a person engaged in investment activities in Iran and shall preempt any law, ordinance, rule, or regulation of any local public entity involving public contracts for goods or services with a person engaged in investment activities in Iran.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor's Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

**§ 2207. Written notice of description of chapter to U.S. Attorney General (Operative term contingent)**

The Legislature shall submit to the Attorney General of the United States a written notice describing this chapter within 30 days after the effective date of this act.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor's Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

**§ 2208. Severability (Operative term contingent)**

(a) If any one or more provisions, sections, subdivisions, sentences, clauses, phrases, or words of this act or the application thereof to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality.

(b) The Legislature hereby declares that it would have passed this act, and each provision, section, subdivision, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subdivisions, sentences, clauses, phrases, or words are declared invalid, illegal, unenforceable, or unconstitutional.

*Added by Stats 2010 ch 573 § 1 (AB 1650), effective January 1, 2011.*

**Editor's Notes**—For inoperative date, see the 2010 Note under Pub Con C § 2200.

**EXTRACTS FROM THE PUBLIC RESOURCES CODE****§ 6217.5. Deposit of funds in State Treasury; Crediting Teachers' Retirement Fund**

Except for the revenues distributed pursuant to Section 3826, all net revenues, moneys, and remittances from the use of school lands and lieu lands shall be deposited in the State Treasury to the credit of the Teachers' Retirement Fund and shall be expended pursuant to Section 24412 of the Education Code.

*Added by Stats 1968 ch 981 § 4.1. Amended by Stats 1983 ch 1213 § 2; Stats 1984 ch 1070 § 2, effective September 12, 1984, ch 879 § 1; Stats 2012 ch 864 § 20 (AB 2663), effective January 1, 2013.*

**Amendments**

**1983 Amendment:** (1) Added "Commencing on July 1, 1984,;" and (2) substituted "Teachers' Retirement Fund and shall be expended pursuant to Section 24702 of the Education Code" for "General Fund".

**1984 Amendment:** (1) Substituted "Except for the revenues distributed pursuant to Section 3826" for "Commencing on July 1, 1984" at the beginning of the section; and (2) deleted "sale or" after "from the". (As amended by Stats 1984, ch 879, compared to the section as it read prior to 1984. This section was also amended by another chapter, ch 1070 §§ 2, 3. See Gov C § 9605.)

**2012 Amendment:** Substituted "Section 24412" for "Section 24702".

**§ 6475. Citation of chapter**

This chapter shall be known and may be cited as the "State Teachers' Retirement Lands Act."

*Added by Stats 1983 ch 1213 § 3.*

**Former Sections:** Former § 6475, relating to small craft harbors, was added by Stats 1955 ch 1850 § 1 and repealed by Stats 1957 ch 2362 § 4.

**§ 6477. Reports required by commission**

(a) The State Lands Commission shall report quarterly to the Teachers' Retirement Board and annually to the Legislature and the Governor on both of the following:

(1) The management of school and lieu lands.

(2) Waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to Section 6916, together with the reasons therefor.

(b) The commission shall file a report with the Legislature annually on all waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to this section, together with the reasons therefor.

(c) The reports required pursuant to this section shall be prepared in compliance with Section 9795 of the Government Code.

*Added by Stats 1983 ch 1213 § 3. Amended by Stats 2001 ch 745 § 179 (SB 1191), effective October 12, 2001; Stats 2018 ch 742 § 11 (SB 1493), effective January 1, 2019.*

**Former Sections:** Former § 6477, relating to small craft harbors, was added by Stats 1955 ch 1850 § 1 and repealed by Stats 1957 ch 2362 § 4.

**Amendments**

**2001 Amendment:** Substituted the section for the former section which read: "The State Lands Commission shall report quarterly to the Teachers' Retirement Board and annually to the Legislature and the Governor on the management of school and lieu lands."

**2018 Amendment:** (1) Added designation (a) to former introductory paragraph; (2) added “both of” to new subd (a); (3) redesignated former subd (a) and subd (b) as subd (a)(1) and subd (a)(2); (4) redesignated former subd (c) as subd (b); and (5) added subd (c).

**§ 7301. Sale of school lands**

The commission may, in the best interest of the state, sell school lands. The commission may pay from the School Land Bank Fund, created pursuant to Section 8711, the typical costs and expenses attributable to a sale of school lands, such as escrow or other third-party costs, when it is in the best interest of the state to do so.

*Added by Stats 2020 ch 311 § 4 (SB 1472), effective January 1, 2021.*

**Former Sections:** Former Pub Res C 7301, related to lands authorized to be sold; payment, was added by Stats 1943 ch 609 § 1, amended Stats 1943 ch 759 § 1, amended by Stats 1947 ch 887 § 4; Stats 1986 ch 622 § 4, and repealed by Stats 2020 § 3 (SB 1472), effective January 1, 2021.

**§ 7303. Exchange of public lands; Sale of lands acquired**

The commission may, in the best interest of the state, exchange any public lands for lands of the United States of equal area or equal value, and the lands acquired in the exchange may then be sold in the manner and for cash as provided by this article.

*Added by Stats 1943 ch 609 § 1. Amended by Stats 1943 ch 759 § 2; Stats 1986 ch 622 § 6.*

**Historical Derivation:** Stats 1915 ch 389 § 2 p 606, as amended by Stats 1919 ch 207 § 1 p 306, Stats 1929 ch 595 § 1 p 1003, Stats 1931 ch 672 § 2 p 1410.

**Amendments**

**1986 Amendment:** Substituted the section for the former section which read: “Whenever the commission deems it to the advantage of the State so to do, it may pursuant to law exchange any public lands in place reserved from sale for lands of the United States of equal area or equal value, and the lands so acquired in exchange may be thereafter sold in the manner and for cash as provided by this article.”

**Notes of Decisions**

The taking of appropriate steps by the state in the various federal land offices to exchange school land for other equivalent public land, pursuant to former Pol C §§ 3398–3409, did not constitute a dedication of such lands to a “public use” so that such land could not be condemned under the power of eminent domain. *Deseret Water, Oil & Irrigation Co. v. State* (1914) 167 Cal 147, 138 P 981, 1914 Cal LEXIS 435.

**§ 7303.5. Exchange for other purposes**

Whenever the commission finds that it is in the best interests of the state for the acquisition of open space or for the purposes of consolidating, assembling, or managing parcels of land for the purposes authorized by this division, the commission may exchange school lands under its jurisdiction for lands owned by any state agency, political subdivision, or person, partnership, company, or corporation, or by the United States or any federal agency; provided, that the lands acquired pursuant to such exchange have equal or greater value than the lands conveyed.

Such acquired lands shall have the same status as to administration, control, and disposition as the lands conveyed.

The state may release the mineral rights in the lands conveyed, as provided in Section 6401, if it receives the mineral rights in the lands acquired.

*Added by Stats 1981 ch 908 § 4.*

**§ 7304. Use of lands as bases for indemnity scrip [Repealed]**

*Added by Stats 1943 ch 609 § 1. Amended by Stats 1943 ch 759 § 3. Repealed by Stats 2020 ch 311 § 5 (SB 1472), effective January 1, 2021.*

**Historical Derivation:** Stats 1915 ch 389 § 2 p 606, as amended by Stats 1919 ch 207 § 1 p 306, Stats 1929 ch 595 § 1 p 1003, Stats 1931 ch 672 § 2 p 1410.

**§ 7305. Right to patent**

When payment has been made for land sold under this article, the purchaser shall be entitled to a patent.

*Added by Stats 1943 ch 609 § 1.*

**Historical Derivation:** Stats 1915 ch 389 § 3 p 606, as amended by Stats 1919 ch 207 § 1 p 306, Stats 1929 ch 595 § 1 p 1003, Stats 1931 ch 672 § 3 p 1410.

**Notes of Decisions**

If patent is void on its face, it may be assailed at any time and in all cases, for it is itself record evidence of matter which renders it a nullity. *Doll v. Meador* (1860) 16 Cal 295, 1860 Cal LEXIS 223, overruled in part on other grounds, *Edwards v. Rolley* (1892) 96 Cal 408, 31 P 267, 1892 Cal LEXIS 967.

Patent is record of state that land was subject to location under grant of United States, and has been located, through her officers in pursuance of terms of donation, and as against parties who have no higher right than that which arises from mere occupation, it imports absolute verity. *Doll v. Meador* (1860) 16 Cal 295, 1860 Cal LEXIS 223, overruled in part on other grounds, *Edwards v. Rolley* (1892) 96 Cal 408, 31 P 267, 1892 Cal LEXIS 967.

**§ 7306. Sale of timber separately from land**

The commission may sell timber separately from the land. Timber sold separately shall be removed in accordance with the Z'Berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

*Added by Stats 1986 ch 622 § 7.*

**Former Sections:** Former § 7306 was added by Stats 1943 ch 609 § 1 and amended and renumbered § 6210.3 by Stats 1943 ch 759 § 4.

**§ 7401. Ascertaining number of acres of land to which the state is entitled as indemnity**

The commission shall ascertain from time to time the number of acres of land to which the state is entitled as indemnity and shall keep on file a statement showing of what those bases consist.

*Added by Stats 2020 ch 311 § 7 (SB 1472), effective January 1, 2021.*

**Former Sections:** Former Cal Pub Resources Code § 7401, relating to reservation of public lands, was added by Stats 1943 ch 609 § 1, repealed by Stats 2020 ch 311 § 6.

**§ 8700. Citation of division**

This division shall be known and may be cited as the School Land Bank Act.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8700, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8700, similar to present Pub Res C § 5090.01, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

Former § 8700, relating to public recreation, was added by Stats 1957 ch 2318, amended by Stats 1959 ch 1808, and repealed by Stats 1967 ch 1179.

### § 8701. Legislative findings and declarations

The Legislature finds and declares as follows:

(a) Past policies of the state have resulted in significant depletion of the inventory of lands granted by the federal government to provide fiscal support for the public school system.

(b) It is essential that all remaining school lands and attendant interests be managed and enhanced to provide an economic base for support of the public school system.

(c) The commission shall plan and implement all transactions, including exchanges, sales, and acquisitions which would facilitate the management of school land interests for revenue generating purposes.

(d) The state, through the commission, shall take all action necessary to fully develop school lands, indemnity interests, and attendant mineral interests into a permanent and productive resource base.

(e) It is in the best interest of the state that school lands be managed as a revenue source and it is the intent of the Legislature that fair market value be a primary criterion in determining if proposed uses or dispositions of land should be approved.

(f) The consolidation of school land parcels into contiguous holdings is essential to sound and effective management and the power to acquire lands by exchange or purchase is elemental to the consolidation process.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8701, relating to definitions, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8701, similar to present Pub Res C § 5090.30, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

Former § 8701, relating to public recreation, was added by Stats 1957 ch 2318, amended by Stats 1959 ch 1808, and repealed by Stats 1967 ch 1179.

### § 8702. Definitions

Unless the context otherwise requires, the definitions in this section govern the construction of this division.

(a) “Commission” means the State Lands Commission.

(b) “Fund” means the School Land Bank Fund.

(c) “School land” means land or interests in land granted to the state by an Act of Congress March 3, 1853 (Ch. 145, 10 Stat. 244), for the specific purpose of providing support for the public schools.

(d) “Trustee” means the State Lands Commission acting in its role as trustee for the School Land Bank Fund.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8702, relating to legislative findings and declarations, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8702, similar to present Pub Res C § 5090.02, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

**§ 8703. Acquisitions; Eminent domain**

Acquisitions may be made by negotiated agreement with, or purchase from, the owners of the outstanding interests. Nothing in this division confers any authority to exercise the power of eminent domain for the purposes of this division, although that power is statutorily vested in the commission.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8703, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8703, defining “office”, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

Former § 8703, relating to public recreation, was added by Stats 1957 ch 2318 and repealed by Stats 1967 ch 1179.

**§ 8704. Acquisition of mineral and other subsurface rights**

The trustee shall make all reasonable attempts to acquire the mineral and other subsurface rights in any acquisition pursuant to this division. If the trustee is unable to acquire the mineral and other subsurface rights, the trustee may purchase real property upon the trustee expressly finding that the benefits to be derived from the acquisition are substantial and that acquisition of the property without the subsurface rights is in the best interests of the state for the purposes set forth in this division.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8704, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8704, similar to present Pub Res C § 5090.06, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

Former § 8704, relating to public recreation, was added by Stats 1959 ch 1808 and repealed by Stats 1967 ch 1179.

**§ 8705. Jurisdiction and authority to administer fund and interest in real property**

The trustee has the exclusive jurisdiction and authority to administer the fund and the interest in real property acquired pursuant to this division, including the selection, acquisition, and conveyance of real property by the trustee as provided in this division.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8705, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8705, similar to present Pub Res C § 5090.07, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

**§ 8706. Holding of land by state in sovereign capacity**

The state, in its sovereign capacity, shall accept any conveyance, and the land shall thereafter be held by the state as land of the legal character of school lands subject to the school land trust under the jurisdiction of the commission pursuant to Division 6 (commencing with Section 6001).

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8706, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8706, similar to present Pub Res C §§ 5090.60, 5090.61, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

**§ 8707. Commission's acceptance of conveyances**

The commission shall accept the conveyances on the part of the state and shall authorize their acknowledgment and recordation.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8707, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

Former § 8707, similar to present Pub Res C § 5090.51, was added by Stats 1980 ch 846 § 1 and repealed by Stats 1982 ch 994 § 12.

**§ 8708. Deposit of money in Pooled Money Investment Fund**

Until expended for acquisitions in accordance with this division, moneys in the fund shall be deposited in the Pooled Money Investment Fund and the interest deposited in the fund.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8708, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8709. Acquisition costs; Maximum amount**

In addition to the purchase price to be paid, the costs and expenses attributable to the acquisition may be payable from the fund, provided that those costs shall not exceed 5 percent of the expended funds.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8709, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8709.5. Payment for management and remediation efforts**

Expenses attributable to management and remediation efforts on state school lands are payable from the fund.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8709.5, similar to the present section, was added by Stats 2006 ch 77 § 52, effective July 18, 2006, and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8710. Exemption of actions from specified statutes**

An action under this chapter is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000)), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), or the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*



**Former Sections:** Former Pub Res C § 8710, similar to the present section, was added by Stats 1984 ch 879 § 4, amended by Stats 2006 ch 538 § 574, effective January 1, 2007, and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8711. School Land Bank Fund; School Land Bank Trustee**

There is in the State Treasury the School Land Bank Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are appropriated to the commission for expenditure, without regard to fiscal years, for the purposes of this division. When performing the powers and duties set forth in this division, the commission shall be known as the School Land Bank Trustee.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8711, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8712. Trustee's authority to acquire real property or interest therein**

The trustee may acquire real property or any interest in real property with the objective of facilitating management of school lands for the purpose of generating revenue.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8712, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8713. Open meetings**

The trustee shall act only at an open, scheduled public meeting, subject to all provisions of Division 6 (commencing with Section 6001) relating to meetings of the commission. The trustee may combine its meeting with the meetings of the commission.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8713, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8715. Nonexclusivity of provisions**

The provisions of this division are not intended as exclusive, and shall not restrict the commission in otherwise meeting any other responsibilities and jurisdiction the commission presently has by law.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8715, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8716. Authority of trustee to accept gifts of real property or money**

The trustee may accept gifts of real property or money for the purposes of this division.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**Former Sections:** Former Pub Res C § 8716, similar to the present section, was added by Stats 1984 ch 879 § 4 and repealed by Stats 2011 ch 485 § 1, effective January 1, 2012.

**§ 8720. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) The high cost of energy is taking a financial toll on California's residents and economy, as well as making the state more dependent on foreign oil.

(b) California is home to abundant renewable energy resources, such as solar, wind, geothermal, and biomass.

(c) The State Lands Commission manages on behalf of the State Teachers' Retirement Fund (STRS) hundreds of thousands of acres of school lands, a great deal of which have significant potential for siting large-scale renewable energy projects.

(d) The State Lands Commission has a duty pursuant to the School Land Bank Act (Chapter 1 (commencing with Section 8700)) to take all action necessary to fully develop school lands into a permanent and productive resource base for the benefit of STRS.

(e) A significant amount of school lands are not producing revenue from large-scale renewable energy projects because they are isolated, landlocked parcels, the majority of which are remote desert lands. The consolidation of school land parcels into contiguous holdings would facilitate the sound and effective management of these lands for large-scale renewable energy projects.

(f) On October 16, 2008, the State Lands Commission adopted a resolution supporting the environmentally responsible development of school lands for renewable energy-related projects.

(g) If school lands are leased for large-scale renewable energy projects, the state will benefit in the form of reduced carbon emissions, a cleaner and healthier environment, affordable energy, stronger national security, new jobs, and more funding for STRS.

(h) It is the policy of the state to promote the advancement, development, assessment, and installation of large-scale renewable energy projects on school lands. Any consolidation and development of school lands for renewable energy should be done with assurances that the state's unique and sensitive environment will be protected.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**§ 8721. "California desert"**

For the purposes of this chapter, "California desert" means the California Desert Conservation Area as described in Section 1781 of Title 43 of the United States Code.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**§ 8722. Memorandum of agreement; School land consolidation efforts; Report**

(a) The commission shall enter into a memorandum of agreement by April 1, 2012, with the United States Secretary of the Interior to facilitate land exchanges that consolidate school land parcels into contiguous holdings that are suitable for large-scale renewable energy-related projects. The memorandum of agreement shall be tailored, to the extent feasible, to prioritize land exchanges that are best suited for large-scale renewable energy project development, including for the purposes of mitigation of the impacts of that development.

(b) After the memorandum of agreement is entered into, the commission shall make best efforts to consolidate all school land parcels in the California desert into contiguous holdings for large-scale renewable energy-related projects.

(c) The commission shall report to the Legislature by January 1 of each year on the status of the memorandum of agreement and school land consolidation efforts in the California desert.

(d) The requirements of this section are contingent on the cooperation of the United States Secretary of the Interior.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

**§ 8723. Submission of land exchange proposal; Priority; Considerations; Report; Costs and expenses; Final approval**

(a) Within 240 days of the execution of a memorandum of agreement pursuant to Section 8722, the commission shall prepare and submit to the United States Secretary of the Interior a proposal for land exchanges that consolidate school land parcels in the California desert into contiguous holdings that are suitable for large-scale renewable energy-related projects. In developing the proposal, the commission shall give priority to land exchanges that will facilitate the development of large-scale renewable energy projects.

(b) The commission's proposal shall be based on an acre-for-acre exchange with the United States. If the United States is not authorized to enter into such an agreement, the commission may propose an exchange based on equivalent appraised values.

(c) Notwithstanding subdivision (b), the commission may withhold a school land parcel from an exchange proposal or request additional consideration from the United States Secretary of the Interior if the commission reasonably believes, based on existing and reliable information, that an acre-for-acre exchange would not provide the state with compensation that is equal to or greater than the fair market value of the school land parcel. For the purposes of this subdivision, the commission shall consider the potential renewable energy value of a parcel the commission would receive in the exchange.

(d) In preparing the land exchange proposal, the commission shall consult with the Department of Fish and Game to identify areas in the California desert that would be consistent with the proposed or adopted provisions of the Desert Renewable Energy Conservation Plan and are either of the following:

(1) Suitable for renewable energy projects because the identified areas do not support habitat or habitat corridor values for species listed as threatened, endangered, or candidate species pursuant to the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) or the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), that, in the judgment of the Department of Fish and Game, are sufficient to warrant consideration of their designation as a mitigation or conservation area for these species.

(2) Suitable as potential mitigation areas to mitigate the impacts that renewable energy-related projects may have on the environment.

(e) The commission's costs and expenses attributable to the land exchange process may be payable from the fund. Notwithstanding Section 6217.5, a portion of the revenues generated from renewable energy leases pursuant to this chapter shall be made available to the commission, upon appropriation by the Legislature, to cover the commission's costs attributable to the land exchange process.

(f) The commission may consider counter land exchange proposals from the United States Secretary of the Interior and make additional proposals to the extent that the additional proposals achieve the goals set forth in this chapter.

(g) Final approval of a land exchange proposed pursuant to this chapter shall be made by the commission at a properly noticed commission meeting.

*Added by Stats 2011 ch 485 § 2 (AB 982), effective January 1, 2012.*

# INDEX

Section number references in the index are preceded by an abbreviation for the code to which the section numbers refer, as follows:

**5 CCR:** Title 5 of the California Code of Regulations (Volume 1); **Ed:** Parts 13, 13.5 and 14 of Title 1 of the Education Code (Volume 1); **Ex CCP:** Extracts – Code of Civil Procedure (Volume 2); **Ex Ed:** Extracts – Education Code (Volume 2); **Ex Gov:** Extracts – Government Code (Volume 2); **Ex Pen:** Extracts – Penal Code (Volume 2); **Ex Pro:** Extracts – Probate Code (Volume 2); **Ex PubCon:** Extracts – Public Contract Code (Volume 2); **Ex PubRes:** Extracts – Public Resources Code (Volume 2).

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**C.O.L.A..**

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