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Public Entities Officers and Employees

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; destruction of court records

Government Code §§ 69503, 69503.4 (repealed and new); §§ 69503.5, 71008 (amended); §§ 69504.6, 71007.1 (new)
AB 796 (Frazee); 1989 STAT. Ch. 1131
AB 1025 (Pringle); 1989 STAT. Ch. 1317

Prior law provided for the destruction of court documents upon the dismissal of the underlying action, or upon the passage of a specified term of years.¹ Prior law also allowed the county clerk to transfer court documents to museums, if the underlying action was inactive for fifteen years or related documents were not involved in a pending action.²

Chapter 1131 enacts new provisions regarding the destruction of court documents.³ Under Chapter 1131, all regular civil case⁴ papers may be destroyed one year after the case has closed,⁵ provided certain documents have been microformed.⁶ Chapter 1131 permits the post-

1. 1988 Cal. Stat. ch. 1199, sec. 21, at _____ (amending CAL. GOV'T CODE § 69503) (repealed by 1989 Cal. Stat. ch. 1131 secs. 1, 3). The county clerk could destroy court documents after copying certain documents if one of the following conditions was met: (1) The action was dismissed; (2) three years had elapsed since the filing of a deposition, preliminary hearing transcript, or coroner's inquest; (3) five years had elapsed in any other action; or (4) eight years had elapsed since the delivery of a will. *Id.*

2. 1981 Cal. Stat. ch. 1174, sec. 2, at 4733 (amending CAL. GOV'T CODE § 69503.4) (repealed by 1989 Cal. Stat. ch. 1131, sec. 3, at _____).

3. 1989 Cal. Stat. ch. 1131 secs. 1-4, at _____ (repealing and enacting CAL. GOV'T CODE §§ 69503, 69503.4). *See id.* sec. 2, at _____ (enacting CAL. GOV'T CODE § 69503(b)(2)) (definition of papers).

4. *See id.* sec. 2, at _____ (enacting CAL. GOV'T CODE § 69503(b)(4)) (definition of regular civil case).

5. *See id.* (enacting CAL. GOV'T CODE § 69503(b)(1)) (definition of closed case).

6. *Id.* (enacting CAL. GOV'T CODE § 69503(c)(1)). *See id.* (enacting CAL. GOV'T CODE § 69503(b)(3)) (definition of microform). The following documents, if contained in the court file, must be microformed: (1) Judgments and stipulations for judgment; (2) dismissal orders; (3) satisfaction of judgments; (4) confessions of judgment; and (5) requests for default. *Id.* (enacting CAL. GOV'T CODE § 69503(c)(1)). Domestic relations papers may be destroyed five years after a case is closed, if the following documents have been microformed: (1) The petition; (2) the interlocutory judgments of dissolution; (3) the final judgment; (4) any modification order amending interlocutory or final judgment; (5) any financial declaration; (6) any confession of judgment; (7) any reciprocity support document; and (8) any minute orders.

microforming destruction of documents from any other proceedings five years after the proceeding has been closed.⁷ Chapter 1131 also enacts similar provisions for the destruction of wills,⁸ and allows any party to request the court to preserve important documents.⁹

Under prior law, municipal court transcripts which were inactive for ten years were required to be destroyed without copying.¹⁰ Chapter 1131 shortens the time before these documents may be destroyed to five years.¹¹

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Id. (enacting CAL. GOV'T CODE § 69503(c)(2)). The record of a coroner's inquest may be destroyed three years after its filing date, provided it has been microformed. *Id.* (enacting CAL. GOV'T CODE § 69503(c)(3)). Chapter 1317 allows the clerks of superior, municipal, or justice courts to record copies of court papers and records on electronic imaging equipment. 1989 Cal. Stat. ch. 1317, sec. 1, at ____ (enacting CAL. GOV'T CODE § 69504.6); *id.* sec. 2, at ____ (enacting CAL. GOV'T CODE § 71007.1). The duplicate copy will be treated as an original. *Id.* ch. 1317, sec. 1, at ____ (enacting CAL. GOV'T CODE §§ 69504.6, 71007.1).

7. 1989 Cal. Stat. ch. 1131, sec. 2, at ____ (enacting CAL. GOV'T CODE § 69503(c)(4)).

8. *Id.* (enacting CAL. GOV'T CODE § 69503(c)(5)). Wills delivered under existing law by a custodian may be destroyed if they have been microformed, there is no active case in connection with the will, and at least eight years have elapsed since delivery. *Id.*

9. *Id.* (enacting CAL. GOV'T CODE § 69503(c)(6)) (allowing the requesting party to retain the original documents). The requesting party must bear any microforming costs. *Id.* Under Chapter 1131, the court clerk must notify certain parties by mail prior to destroying court documents. *Id.* sec. 4, at ____ (enacting CAL. GOV'T CODE § 69503.4). The Secretary of State, city or county museums, and all law schools accredited by the State Bar must be notified. *Id.* Parties interested in receiving the documents must file a request for transfer within 60 days of the clerk's notice, or the documents may be destroyed. *Id.* (enacting CAL. GOV'T CODE § 69503.4(c)).

10. 1986 Cal. Stat. ch. 953, sec. 8, at ____ (amending CAL. GOV'T CODE § 69503.5) (amended by 1989 Cal. Stat. ch. 1131, sec. 5, at ____).

11. 1989 Cal. Stat. ch. 1131, sec. 5, at ____ (amending CAL. GOV'T CODE § 69503.5). Chapter 1131 reduces the minimum retention period by one year for all municipal proceedings, except dangerous California Vehicle Code violations, violations involving the sale of marijuana, and violations relating to dog licensing. 1989 Cal. Stat. ch. 1131, sec. 6, at ____ (amending CAL. GOV'T CODE § 71008). The proceedings affected include all infraction cases except: (1) Specific provisions of the California Vehicle Code relating to stopping, standing, or parking; (2) California Vehicle Code provisions relating to driving violations including accidents, reckless driving, and driving under the influence of alcohol or drugs, or both; (3) specific provisions of the California Food and Agricultural Code relating to the licensing of dogs; and (4) specific provisions of the California Health and Safety Code relating to the transportation or sale of marijuana. *Id.* Affected proceedings are subject to a three year minimum retention period. *Id.*

Public Entities, Officers, and Employees; financial disclosure statements

Government Code §§ 87200, 87202, 87302 (amended).
AB 941 (Lempert); 1989 STAT. Ch. 403
AB 1238 (Lempert); 1989 STAT. Ch. 499
Sponsor: Fair Political Practices Commission

Existing law requires elected state officers,¹ judges, court commissioners,² and other specified state and local government officers to file annual financial disclosure statements.³ Chapter 403 extends this requirement to county treasurers,⁴ city treasurers,⁵ and all other public officials⁶ who manage public investments.⁷

Under Chapter 499, all officers who are required to file annual disclosure statements must report any income they received in the twelve months before they took office.⁸ Chapter 499 specifies that the period for reporting investments and real property interests begins on the date the officer filed a declaration of candidacy.⁹

Under existing law, every state agency must adopt a conflict of interest code¹⁰ that includes provisions requiring each designated employee¹¹ to

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1. See CAL. GOV'T CODE § 82021 (West 1987) (defining elected state officer).
 2. See CAL. CIV. PROC. CODE § 259 (West 1989) (describing powers and duties of court commissioners).
 3. CAL. GOV'T CODE §§ 87200-87210 (West 1987) (requiring filing of statements disclosing investments, interests in real property, and income, and specifying contents of disclosure statements). Statements must be filed within 30 days of taking office. *Id.* § 87202 (amended by 1989 Cal. Stat. ch. 499, sec. 1, at ____). Knowing or willful failure to file a financial disclosure statement is a misdemeanor. *Id.* § 91000(a)-(b) (West 1989).
 4. See *id.* §§ 27000-27013 (West 1988) (describing duties of county treasurer).
 5. See CAL. STS. & HIGH. CODE § 18010 (West 1987) (defining city treasurer).
 6. See CAL. GOV'T CODE § 82048 (West 1987) (defining public official).
 7. 1989 Cal. Stat. ch. 403, sec. 1, at ____ (amending CAL. GOV'T. CODE § 87200). See, e.g., CAL. EDUC. CODE § 22131.7 (West 1989) (defining an investment manager as any person, firm, or custodian under contract to engage in investment transactions or to manage or advise in the management of public investments).
 8. 1989 Cal. Stat. ch. 499, sec. 1, at ____ (amending CAL. GOV'T CODE § 87202(a)).
 9. *Id.* (amending CAL. GOV'T CODE § 87202(b)). See CAL. ELEC. CODE §§ 6490-6491 (West 1989) (timing and content of declaration of candidacy).
 10. See CAL. GOV'T CODE §§ 87302-87312 (West 1987) (required provisions of, and adoption procedures for, conflict of interest codes). See also 59 Op. Att'y Gen. 509 (1976) (the legislature is included within the definition of "state agency" and is therefore required to adopt a conflict of interest code); See also 6 FPPC 1 (1981) (declaring that the state compensation insurance fund is an agency within the meaning of the Government Code).
 11. See CAL. GOV'T CODE § 82019(a)-(d) (West 1987). A designated employee is any officer, employee, member, or consultant of any agency who is exempt from the state civil service system, elected to a non-statewide office, designated in a conflict of interest code, or involved in the negotiation or signing of, or in making a decision relative to, any contract awarded through competitive bidding. *Id.*

file a conflict of interest statement.¹² Chapter 499 requires the first conflict of interest statement filed by a new employee¹³ to include disclosures of business positions and income.¹⁴ These disclosures are in addition to the disclosures of investments and real property interests required by existing law.¹⁵

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12. *Id.* § 87302(b) (West 1989) (amended by 1989 Cal. Stat. ch. 499, sec. 2, at ____).

13. Existing law provides that new employees include government appointees who are subject to Senate confirmation. CAL. GOV'T CODE § 87302(b) (amended by 1989 Cal. Stat. ch. 499, sec. 2, at ____). See CAL. GOV'T CODE §§ 1320-1322 (West 1980) (confirmation procedure of Governor's appointees by Senate).

14. 1989 Cal. Stat. ch. 499, sec. 2, at ____ (amending CAL. GOV'T CODE § 87302(b)). "Income" is income received in the twelve months before assuming office. *Id.*

15. *Id.*

Public Entities, Officers, and Employees; public employees' retirement system benefits

Government Code § 21373 (new); §§ 21266, 21338, 21372, 22811.5 (amended).

AB 794 (Mojonnier); 1989 STAT. Ch. 497

Sponsor: California State Employees Association; Public Employees Retirement Association

Support: California Union of Safety Employees; California State Firemen's Association; California Taxpayers' Association; Committee on Status of Women

Effective September 18, 1989

Under the existing Public Employees' Retirement System (PERS),¹ any surviving spouse receiving survivors' allowance² or special death

1. See CAL. GOV'T CODE §§ 20000-21500 (Deering 1973 & Supp. 1989) (Public Employees' Retirement Law). See also *Petrillo v. Bay Area Rapid Transit District*, 197 Cal. App. 3d 798, 805, 243 Cal. Rptr. 74, 77 (1988) (the general purpose of the California Retirement System is to prevent hardship to state employees and the pension is an inducement for service) *reh'g denied* (1988).

2. See CAL. GOV'T CODE § 21380 (Deering Supp. 1989) (definition of survivors' allowance). See also *id.* §§ 21382, 21382.2, 21382.4 (Deering 1989) (providing a monthly allowance to the surviving beneficiaries of members who die before retirement).

benefits³ could elect to receive an actuarially reduced lifetime allowance.⁴ Under Chapter 497, a surviving spouse who remarries on or after September 18, 1989, receives the benefits without reduction.⁵ Further, surviving spouses in PERS who chose to receive the actuarially reduced benefits are restored to full allowances payable for life.⁶ The restoration to full benefits is optional for contracting agencies, schools, and community college districts.⁷

Under existing law, survivor continuance allowances after retirement continue when the surviving spouse remarries.⁸ Chapter 497 prohibits adding the new spouse or stepchildren as family members to the surviving spouse's health plan.⁹

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3. See *id.* § 21364 (special death benefits paid monthly). See also *id.* § 21365.5 (providing preretirement death benefits).

4. CAL. GOV'T CODE § 21372 (amended by 1989 Cal. Stat. ch. 497, sec. 4, at ____). Failure to make an election means discontinuance of these benefits to a surviving spouse who remarries. *Id.*

5. 1989 Cal. Stat. ch. 497, sec. 4, at ____ (enacting CAL. GOV'T CODE § 21373).

6. *Id.*

7. *Id.* See CAL. GOV'T CODE § 20010 (Deering 1973) (definition of contracting agency).

8. CAL. GOV'T CODE § 21266 (Deering Supp. 1989) (amended by 1989 Cal. Stat. ch. 497, sec. 1, at ____).

9. 1989 Cal. Stat. ch. 497, sec. 1, at ____ (amending CAL. GOV'T CODE § 21266). See CAL. GOV'T CODE § 22811.5 (amended by 1989 Cal. Stat. ch. 497, sec. 5, at ____) (prohibiting the addition of new family members in health plan when surviving spouses remarry on or after the effective date of Chapter 497); 1989 Cal. Stat. ch. 497, sec. 4, at ____ (enacting CAL. GOV'T CODE § 21373) (maintains prohibition against enrolling new family members in health plan).

Public Entities, Officers, and Employees; Public Employees' Retirement Fund—home loans

Government Code § 20215.5 (new).

AB 46 (Elder); 1989 STAT. Ch. 355

Existing law authorizes the Board of Administration of the Public Employees' Retirement System (Board) to create a program to finance purchases of residences by members¹ and annuitants of the Public

1. See CAL. GOV'T CODE § 20013 (West Supp. 1989) (definition of member).

Employees' Retirement Fund (Fund) through loans from the Fund.² Chapter 355 requires the Board to establish, as part of any home loan program, a program to provide a secured personal loan to any members who qualify for a home loan.³ The loan must be used for the down payment on a home.⁴ The amount of a personal loan may not exceed five percent of the approved home loan.⁵

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2. *Id.* § 20215. Loans also may be provided for refinancing existing residences. *Id.* § 20215(d). A member or annuitant may have only one outstanding loan. *Id.*

3. 1989 Cal. Stat. ch. 355, sec. 1, at ____ (enacting CAL. GOV'T CODE § 20215.5(a)). Personal loans may be furnished only to members who are currently employed. *See id.* sec. 1, at ____ (enacting CAL. GOV'T CODE § 20215(b)(1)). Any loan provided under Chapter 355 must be secured by the member's aggregate contributions to the Fund. *Id.* (enacting CAL. GOV'T CODE § 20215.5(a)). Each loan will be terminated, and must be repaid, at the time the member leaves service. *Id.* (enacting CAL. GOV'T CODE § 20215(b)(3)).

4. *Id.* sec. 1, at ____ (enacting CAL. GOV. CODE § 20215.1(a)).

5. *Id.* sec. 1, at ____ (enacting CAL. GOV'T CODE § 20215.1(a)).

Public Entities, Officers and Employees; public works wages

Labor Code § 1777.7 (repealed and new); §§ 1720.4, 1771.5, 1771.6, 1771.7, 1777.1 (new); §§ 1773.5, 1775, 1777.5 (amended).
AB 114 (Floyd); 1989 STAT. Ch. 1224

Existing law regulates the awarding of public works¹ contracts and the working conditions of persons employed on public works.² Chapter 1224 provides that the term "public works" does not include work done entirely by volunteer labor on structures to be used on behalf of private nonprofit community organizations.³

1. *See* CAL. LAB. CODE §§ 1720 (public works includes work done under contract paid for in whole or in part by public funds, work done for irrigation, utility, reclamation, and improvement districts, and street or sewer improvement work done under state authority), 1720.2 (public works includes construction work done under private contract meeting specified conditions), 1720.3 (public works includes the hauling of refuse from a public works site) (West Supp. 1989).

2. *See generally id.* §§ 1720-1861 (provisions regulating public works).

3. 1989 Cal. Stat. ch. 1224, sec. 1, at ____ (enacting CAL. LAB. CODE § 1720.4(a), (b)). The work must not adversely affect employment and the Director of Industrial Relations (Director) must approve the work as meeting these requirements. *Id.* (enacting CAL. LAB. CODE § 1720.4(c)(d)). The Director is the executive officer of the Department of Industrial Relations. *See generally* 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency and Employment* § 286

Chapter 1224 provides that any contractor or subcontractor⁴ working on a public works project who is found by the Labor Commissioner to be violating the public works law with the intent to defraud will be barred from bidding on or receiving any public works contracts for not less than one year or more than three years.⁵ A willful violation of the public works law by the contractor or subcontractor will result in their ineligibility to bid on or receive any public works contracts for up to three years for each second and subsequent violation that occurs within three years of a previous willful violation.⁶

Existing law provides that all workers employed on public works be paid the general prevailing rate of per diem wages⁷ for similar work in the locality⁸ where the labor is performed.⁹ This prevailing wage requirement applies to any contracts for public works projects of over \$1000.¹⁰ Chapter 1224 provides that if an awarding body¹¹

(1987) (general discussion of the Department of Industrial Relations). One of the Department's functions is to promote the welfare and improve working conditions of California workers. *Id.*

4. *See* CAL. LAB. CODE § 1722.1 (West Supp. 1989) (definitions of contractor and subcontractor).

5. 1989 Cal. Stat. ch. 1224, sec. 10, at ____ (enacting CAL. LAB. CODE § 1777.1(a)). Violations of California Labor Code section 1777.5 governing apprenticeship requirements are excepted from this. *Id.* Any firm, corporation, partnership, or association in which the contractor or subcontractor had a substantial interest is also ineligible to bid or receive contracts under Chapter 1224. *Id.*

6. *Id.* (enacting CAL. LAB. CODE § 1777.1(b)). The debarment period begins on the date the Labor Commissioner determines a violation has occurred. *Id.* (enacting CAL. LAB. CODE § 1777.1(a)). Violations of California Labor Code section 1777.5, dealing with employment of apprentices, are excluded here. *Id.* (enacting CAL. LAB. CODE § 1777.1(b)). A willful violation occurs when a contractor or subcontractor deliberately does not comply with public works law requirements about which they knew or should have known. *Id.* (enacting CAL. LAB. CODE § 1777.1(d)). The Labor Commissioner will enact regulations to enforce these provisions. *Id.* (enacting CAL. LAB. CODE § 1777.1(e)).

7. *See* § CAL. CODE REGS. § 16000 (1986) (definition of general prevailing rate of per diem wages includes the prevailing straight-time hourly pay, prevailing rate for holiday and overtime pay, and the prevailing rate of employer payments for various employee benefit programs).

8. *See* CAL. LAB. CODE § 1724 (West 1988) (definition of locality). *See also* 8 CAL. CODE REGS. § 16000 (1986) (the locality or the nearest labor market is the area used by the Director to determine the prevailing wage).

9. *See* CAL. LAB. CODE §§ 1720, 1720.2, 1720.3, 1771 (prevailing wage rates apply to all these types of public works contracts). *See also* 8 CAL. CODE REGS. § 16001(a) (1986) (general coverage of state prevailing wage rates). The Director is authorized to determine the general prevailing rate of per diem wages as provided by California Labor Code section 1773. CAL. LAB. CODE § 1770 (West Supp. 1989). The Director must also consider collective bargaining agreements, rates published in the Federal Register, and wage rate factors, including but not limited to the type of work, classifications of workers needed, and geographical area of the project in making a prevailing wage rate determination. 8 CAL. CODE REGS. § 16000 (1986).

10. *See* CAL. LAB. CODE § 1771. The prevailing wage requirement applies only to work under contract and not to work a public agency carries out with its own labor. *Id.*

11. *See id.* § 1722 (definition of awarding body). The Director may establish the respon-

initiates and enforces a labor compliance program¹² for all public works projects under its authority, the awarding body will not require the prevailing wage to be paid for public works construction projects of \$25,000 or less, or for public works projects of \$15,000 or less for alteration, demolition, repair, or maintenance work.¹³

Under existing law, a contractor forfeits \$25 each calendar day for each worker paid less than the prevailing rate.¹⁴ Chapter 1224 provides that this forfeiture be increased to \$50 a day for each worker.¹⁵ Chapter 1224 also provides that the Labor Commissioner determines the forfeiture amount based either on the contractor's: (1) Mistake, inadvertance, or neglect in failing to pay prevailing wages; (2) previous record of meeting prevailing wage obligations; or (3) willful failure to pay correct wages.¹⁶

Existing law governs apprentices¹⁷ eligible to be employed on public works.¹⁸ Existing law requires that the ratio of apprentices to journeymen be one to five.¹⁹ Chapter 1224 provides that this ratio will be not less than one hour of apprentice work for every five hours of journeyman labor.²⁰

sibilities and duties of awarding bodies under Chapter 1224. 1989 Cal. Stat. ch. 1224, sec. 5, at _____ (amending CAL. LAB. CODE § 1773.5).

12. The labor compliance program will require, at a minimum, that all bids and contracts contain language concerning the requirements of Chapter 1224, that a pre-job conference be conducted to discuss federal and state labor law requirements, that payroll records be maintained and furnished upon request, that the awarding body review payroll records to assure compliance with Chapter 1224 and withhold contract payments if the payroll records are inadequate or delinquent, and that the awarding body withhold contract payments in an amount equal to any underpayments found. 1989 Cal. Stat. ch. 1224, sec. 2, at _____ (enacting CAL. LAB. CODE § 1771.5(b)).

13. *Id.*

14. *See* CAL. LAB. CODE § 1775 (amended by 1989 Cal. Stat. ch. 1224, sec. 6, at _____).

15. 1989 Cal. Stat. ch. 1224, sec. 6, at _____ (amending CAL. LAB. CODE § 1775). Failure to pay the correct prevailing wage due to mistake, inadvertance, or neglect is not excusable if the contractor knew of prevailing wage obligations. *Id.*

16. *Id.*

17. *See* CAL. LAB. CODE § 3077 (West Supp. 1989) (definition of apprentice).

18. *See generally id.* §§ 3070-3097 (provisions regarding apprenticeship training standards and written agreements). Only apprentices in training in accordance with these sections are eligible to be employed on public works. *Id.* § 1777.5 (amended by 1989 Cal. Stat. ch. 1224, sec. 11, at _____).

19. *Id.* § 1777.5 (amended by 1989 Cal. Stat. ch. 1224, sec. 11, at _____).

20. 1989 Cal. Stat. ch. 1224, sec. 11, at (amending CAL. LAB. CODE § 1777.5). If the hourly ratio is not feasible for any trade, a minimum ratio of not less than one apprentice for every five journeymen is permitted. *Id.* Under prior law, the provisions governing the ratio of apprentices to journeymen did not apply to contracts of general contractors that involved less than \$30,000 or 20 working days, or to contracts of specialty contractors, not bidding through a general or prime contractor, involving less than \$2000 or five working days. CAL. LAB. CODE § 1777.5 (amended by 1989 Cal. Stat. ch. 1224, sec. 11, at _____). Chapter 1224 specifies that this provision does not apply to contracts of general or specialty contractors involving less than \$30,000 or 20 working days. 1989 Cal. Stat. ch. 1224, sec. 11, at _____ (amending CAL. LAB. CODE § 1777.5).

Prior law provided penalties for noncompliance with Labor Code Section 1777.5 governing apprentice employment.²¹ Chapter 1224 provides that in the event of willful noncompliance, the Director will prohibit the contractor or subcontractor from bidding on or receiving any public works contracts for up to one year for the first violation and up to three years for the second and subsequent violations.²² In addition, Chapter 1224 imposes a civil penalty of \$50 for each calender day that the contractor or subcontractor does not comply.²³

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21. CAL. LAB. CODE § 1777.7 (repealed by 1989 Cal. Stat. ch. 1224, sec. 12, at).

22. 1989 Cal. Stat. ch. 1224, sec. 13, at ____ (enacting CAL. LAB. CODE § 1777.7(a)). The business entity under which a contractor or subcontractor is doing business is also barred. *Id.*

23. *Id.* (enacting CAL. LAB. CODE § 1777.7(b)). The penalty will be withheld by the awarding body from contract progress payments. *Id.* California Labor Code section 1727, regulating the withholding of forfeited amounts, is not affected by Chapter 1224. *Id.* For a first time violation, the Director may order the contractor or subcontractor to provide equivalent employment for apprentices that should have been provided for apprentices during the noncompliance period, instead of barring the contractor or subcontractor from bidding on or receiving public works contracts and in lieu of the civil penalty. *Id.* (enacting CAL. LAB. CODE § 1777.7(c)).

Public Entities, Officers, and Employees; purchase preference to recycled goods

Public Contract Code §§ 10390, 10391, 10392, 10393, 10394, 10395, 10396, 10397, 10398, 10399, 10400, 10401, 10402, 10403, 10403.5, 10404 (repealed); § 10507 (repealed and new); §§ 10233, 10308.5, 10354, 10507.5, 10855, 10860, 12150, 12153, 12155, 12157, 12158, 12160, 12161, 12162, 12162.5, 12163, 12164, 12164.5, 12165, 12166, 12167, 12168, 12169, 12180, 12181, 12182, 12183, 12183.5, 12184, 12185, 12200, 12205, 12210, 12213, 12225, 12226, 12300, 12301, 12305, 12306, 12310, 12320 (new).

AB 4 (Eastin); 1989 STAT. Ch. 1094

Support: California Manufacturers Association; Sierra Club; League of California Cities

Existing law requires the state to give preferences to certain bidders when awarding contracts.¹ Chapter 1094 requires the University of

1. See CAL. GOV'T CODE §§ 14836-14843 (West Supp. 1989) (preferences for small businesses), 4530-4535.3 (preference to companies performing contracts in distressed areas),

California trustees to revise the procedures for paper product purchases to give preference to recycled paper products.² Chapter 1094 also enacts the State Assistance for Recycling (STAR) Markets Act of 1989 to continually expand the policies of procuring recycled products by state agencies and by giving purchase preference to recycled products.³ Chapter 1094 also encourages local public agencies and private companies to maximize the use of recycled products.⁴ Under Chapter 1094, contractors must certify in writing to the Department of General Services the percentage of recycled content in materials, goods, or supplies offered in the performance of the contract.⁵

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7093 (preference to companies using worksites or workers in high density unemployment areas); 1989 Cal. Stat. ch. 1094, sec. 4, at ____ (repealing CAL. PUB. CONT. CODE § 10392) (Small Business Procurement and Contract Act declaring preference to the purchase of paper products containing recycled paper).

2. 1989 Cal. Stat. ch. 1094, sec. 9, at ____ (enacting CAL. PUB. CONT. CODE § 10860). The legislative intent of Chapter 1094 is to encourage the procurement of recycled paper products by the University of California, as well as by other governmental entities. *Id.* sec. 8, at ____ (enacting CAL. PUB. CONT. CODE § 10507.5). *See id.* sec. 9, at ____ (enacting CAL. PUB. CONT. CODE § 10855) (definition of recycled paper product).

3. *Id.* sec. 10 at ____ (enacting CAL. PUB. CONT. CODE §§ 12150, 12153(g), 12162). Chapter 1094 establishes new and expanded percentage goals for recycled materials purchases made by the legislature, the Department of General Services, and procuring agencies. *Id.* sec. 10, at ____ (enacting CAL. PUB. CONT. CODE § 12162(f)); *id.* sec. 11, at ____ (enacting CAL. PUB. CONT. CODE § 12300). *See id.* sec. 10, at ____ (enacting CAL. PUB. CONT. CODE § 12155(c)) (definition of procuring agency).

4. *Id.* sec. 10, at ____ (enacting CAL. PUB. CONT. CODE § 12153(i)). Chapter 1094 furthers this goal by requiring all local public agencies to require bidders to specify the recycled product percentage in the products offered. *Id.* (enacting CAL. PUB. CONT. CODE § 12213). Chapter 1094 also requires local public agencies to delete all contract provisions interfering with the consideration of recycled products. *Id.*

5. *Id.* sec. 1, at ____ (enacting CAL. PUB. CONT. CODE § 10233); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10308.5); *id.* sec. 3, at ____ (enacting CAL. PUB. CONT. CODE § 10354). Chapter 1094 requires these sections to apply to all state contracts and, if feasible, to all federally funded contracts. *Id.* sec. 1, at ____ (enacting CAL. PUB. CONT. CODE § 10233); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10308.5); *id.* sec. 3, at ____ (enacting CAL. PUB. CONT. CODE § 10354).

Public entities, officers, and employees; women and minority business enterprises

Government Code § 16857 (new); Public Contract Code § 10115.10 (new).

AB 457 (Polanco); 1989 STAT. Ch. 473

Existing law sets minority and women business participation goals which state governmental entities must meet when awarding professional bond service¹ and construction contracts.² Chapter 473 makes it a misdemeanor to intentionally and fraudulently certify a minority or women business enterprise for the purpose of meeting these goals.³ Under Chapter 473, it is also a misdemeanor to fraudulently obtain certification as a minority or women business enterprise or to knowingly make a false statement or receive money for the purpose of obtaining acceptance or certification as a minority or women business enterprise.⁴ Obstructing or impeding a state employee from investigating whether a business entity is properly certified as a minority or women business enterprise is also a misdemeanor.⁵

In addition to the criminal penalties, violators of Chapter 473 are subject to civil penalties⁶ and temporary suspension from public

1. CAL. GOV'T CODE § 16581(h) (West Supp. 1989) (definition of professional bond service).

2. CAL. GOV'T CODE § 16850; CAL. PUB. CONT. CODE § 10115 (West Supp. 1989). Construction contracts include all contracts awarded by a state entity for materials, supplies, equipment, alteration, repair, or professional services. CAL. PUB. CONT. CODE § 10115. See CAL. GOV'T CODE § 16851(i), (j) (definition of minority and women business enterprise for professional bond service contracts); CAL. PUB. CONT. CODE § 10115.1(g) (definition of minority and women business enterprise for construction and related service contracts).

3. 1989 Cal. Stat. ch. 473, sec. 1, at ____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10115.10). Chapter 473 appears to have been written to ensure that the participation goals for minority and women business enterprises are safeguarded, since self-certification requires less state intervention and therefore leaves more room for fraud. See Draft Regulations to Implement AB 1933 (June 7, 1989) (implementing self-certification, where contractors must prove only that they made a good faith effort to obtain certification of the participation goals (on file at the *Pacific Law Journal*).

4. 1989 Cal. Stat. ch. 473, sec. 1, at ____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10115.10).

5. *Id.* sec. 1, at ____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10115.10).

6. *Id.* sec. 1, at ____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10115.10). First-time violators are subject to a fine of up to \$5000; repeat violators are subject to a fine of up to \$20,000 per violation. *Id.* sec. 1, at ____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at ____ (enacting CAL. PUB. CONT. CODE § 10115.10).

work.⁷ The department awarding the contract⁸ must report violations to the Office of Small and Minority Business (Office)⁹ which must then report this information to the attorney general.¹⁰ The attorney general will decide whether further actions should be brought.¹¹ The Office must keep a record of all violations of Chapter 473, and must provide a listing of the violating contractors to all state departments.¹²

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7. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10). A party who has committed a misdemeanor under Chapter 473 will be suspended for 30 days to one year. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10). A person who commits additional acts of fraud may be suspended for a period up to three years. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10). If a person does not pay the fine or refuses to recognize the suspension, then the person will be suspended from participating as a contractor, subcontractor, or supplier with the state until the penalties are satisfied. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10).

8. See Cal. Gov't Code § 16851(a) (definition of awarding department for construction and related service contracts); CAL. PUB. CONT. CODE § 10115.1(a) (definition of awarding department for professional bond services).

9. See CAL. GOV'T CODE § 14839 (creating Office of Small and Minority Business).

10. 1989 Cal. Stat. ch. 473, secs. 1, at _____ (enacting CAL. GOV'T CODE § 16857), 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10).

11. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10). The Attorney General may bring a civil suit against any person or firm for violating Chapter 473. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10).

12. *Id.* sec. 1, at _____ (enacting CAL. GOV'T CODE § 16857); *id.* sec. 2, at _____ (enacting CAL. PUB. CONT. CODE § 10115.10).