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Public Entities, Officers, and Employees

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; confidentiality of address information

Penal Code § 146e (amended); Vehicle Code §§ 1808.4, 1810.2 (amended).
AB 972 (Cannella); 1991 STAT. Ch. 579

Existing law provides that any person who maliciously,¹ and with the intent to obstruct justice or the due administration of the laws, discloses the residence address or telephone number of a peace officer² or the spouse and children of a peace officer without authorization of the employing agency is guilty of a misdemeanor.³ Chapter 579 extends this protection to nonsworn police dispatchers and their spouses and children.⁴

Under existing law, the home addresses of certain public officials, their spouses, and children appearing in any record of the Department of Motor Vehicles (DMV) are confidential.⁵ Chapter 579 provides that the home addresses of nonsworn police

1. See CAL. PENAL CODE § 7(4) (West 1988) (definition of maliciously).

2. See *id.* § 7(8) (West 1988) (definition of peace officer).

3. *Id.* § 146e (amended by Chapter 579).

4. *Id.*

5. CAL. VEH. CODE § 1808.4 (amended by Chapter 579). The home addresses of the Attorney General, State Public Defender, members of the Legislature, judges or court commissioners, district attorneys, public defenders, attorneys employed by the Department of Justice or office of the State or county Public Defender or district attorneys, peace officers, and employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority are confidential. *Id.* The home addresses shall be withheld from public inspection for three years after termination of office or employment. *Id.* See CAL. CIV. CODE §§ 1798-1798.70 (West 1985 & Supp. 1991) (regulating the disclosure of personal information maintained by any public agency); 5 U.S.C.A. § 552a (West Supp. 1991) (requiring public agencies to make agency records available to the public). See also 5 U.S.C.A. § 552(b)(6) (West Supp. 1991) (exempting from the general disclosure requirement personnel files which would constitute an invasion of personal privacy if disclosed); Van Bourg, Allen, Weinberg & Roger v. NLRB, 751 F.2d 982, 985 (9th Cir. 1984) (stating that government records which contain information applying to particular individuals is exempted from the disclosure requirements of 5 U.S.C. section 552(a)).

dispatchers, their spouses, and children appearing in any record of the DMV are confidential.⁶

Existing law authorizes the DMV to establish commercial requester accounts⁷ for the purpose of obtaining information in the DMV's files.⁸ Chapter 579 requires only a filing fee of fifty dollars, instead of two hundred and fifty dollars, if the applicant does not request and is not issued a requester code permitting access to resident address information.⁹

PLB

Public Entities, Officers, and Employees; confidentiality of records

Welfare and Institutions Code § 11478.1 (new); §§ 11478, 11478.5 (amended).
AB 1524 (Cannella); 1991 STAT. Ch. 943

Existing law requires that all state, county, and local agencies cooperate in the enforcement of any child support obligations and

6. CAL. VEH. CODE § 1808.4 (amended by Chapter 579). *See* CAL. CIV. CODE § 1798.62 (West 1985) (declaring that any individual may request of any public agency which maintains a mailing list that the agency remove the individual's name from the mailing list). If a state employee requests the removal of his name and home address from its list of employees, the state agency is prohibited from releasing the employee's name and home address. 63 Ops. Att'y. Gen. Cal. 120 (1980).

7. *See* CAL. VEH. CODE § 1810.2(b) (amended by Chapter 579) (delineating information to be included in the commercial requester account applications).

8. *Id.* § 1810.2(a), (c) (amended by Chapter 579). The DMV must determine that the applicant has a legitimate business need for the information requested, and requiring the applicant to file a bond in the amount of \$50,000 and pay a \$250 filing fee prior to the establishment of a commercial requester account. *Id.* § 1810.2(c) (amended by Chapter 579). *See* CAL. CIV. CODE § 1798.56 (West Supp. 1991) (declaring that any person who willfully requests or obtains records containing personal information under false pretenses from any agency is guilty of a misdemeanor, punishable by a fine of not more than \$5,000 or imprisonment for not more than one year or both).

9. CAL. VEH. CODE § 1810.2(c) (amended by Chapter 579). The general requirement that the applicant file a bond is not applicable if the applicant will not have access to residence information. *Id.*

spousal support orders by supplying the Department of Justice and specified officers¹ with information² regarding the individual who owes support.³ Under existing law, the Department of Justice and county departments and officers must use the information received only for support enforcement purposes.⁴ Chapter 943 provides that certain records⁵ established or maintained by any public entity pursuant to the administration of child and spousal support programs shall be confidential.⁶ Chapter 943 also specifies that such records may be released or disclosed under certain circumstances.⁷

RDN

Public Entities, Officers, and Employees; energy conservation

Government Code §§ 15814.30, 15814.31, 15814.32, 15814.33, 15814.34, 15814.35 (new); Public Resources Code § 25402.1 (amended).
AB 1273 (Speier); 1991 STAT. Ch. 952

1. See CAL. WELF. & INST. CODE § 11478 (amended by Chapter 943) (providing that specified officers include any county probation officer, and the district attorney of any county in California). The California Parent Locator Service may also receive such information. *Id.*

2. See *id.* (defining information to include all information regarding the location, income, or property of any absent parents, spouses, or former spouses, as well as information regarding the location and prosecution of any person who has, by means of false statement, representation, impersonation or other fraudulent device, obtained aid for a child).

3. *Id.*

4. *Id.*

5. See *id.* § 11478.1(b) (enacted by Chapter 943) (providing that records include all files, applications, papers, documents, and records established or maintained by any public entity pursuant to article 7 (sections 11475-11492.1) and Part D (commencing with section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code).

6. *Id.* Cf. COLO. REV. STAT. ANN. § 26-13-107(1)-(3) (1989), GA. CODE ANN. § 19-11-9(a)-(d) (Michie 1991), MO. ANN. STAT. § 454.440(1)-(8) (Vernon Supp. 1991), WASH. REV. CODE ANN. § 26.23.120(1)-(5) (Supp. 1991) (providing for confidentiality of records of child or spousal support programs except in specified instances).

7. CAL. WELF. & INST. CODE § 11478.1(c)(1)-(7) (enacted by Chapter 943). See *id.* (specifying circumstances authorizing disclosure).

Under existing law, the State Board of Public Works (Board)¹ may develop energy conservation measures² and alternative energy equipment³ for public buildings.⁴ Under Chapter 952, all new buildings which are built after January 1, 1993 are required to be energy efficient,⁵ and existing public buildings, when renovated in a manner that would increase the size or value of the building by at least 50 percent, are required to meet specified standards.⁶

Chapter 952 requires the Department of General Services (Department)⁷ to do the following: (1) Develop an energy plan for public buildings;⁸ (2) review state leases for energy savings purposes;⁹ (3) submit to the Legislature a report recommending improvements in energy efficiency for state leased buildings;¹⁰ (4) identify commodities purchased by the Department which consume a significant quantity of energy, and determine life cycle costs¹¹

1. See CAL. GOV'T CODE § 15809 (West 1980) (providing the powers and duties of the Board).

2. See *id.* § 15814.11(e) (West Supp. 1991) (definition of conservation measures).

3. See *id.* § 15814.11(d) (West Supp. 1991) (definition of alternative energy equipment).

4. *Id.* § 15814.10 (West Supp. 1991). See *id.* (providing that state policy is to promote all feasible means of energy conservation). See also *id.* § 15814.11 (West Supp. 1991), § 15802 (West 1980) (definition of public building).

5. See *id.* § 15814.30(a) (enacted by Chapter 952) (providing that all new public buildings must be designed, equipped and constructed with energy efficient materials that are feasible and cost efficient); *id.* § 15814.35 (enacted by Chapter 952) (stating that these energy efficiency regulations apply only to public buildings in which annual energy costs exceed \$10,000).

6. *Id.* § 15814.31 (enacted by Chapter 952). All new public buildings for which construction begins after January 1, 1992 shall include meters or other devices which may be used to measure the energy used at that building. *Id.* at 15814.32(a) (enacted by Chapter 952). No building shall commence until the Department of General Services reviews and certifies the proposed building. CAL. PUB. RES. CODE § 25402.1(g)(5) (amended by Chapter 952).

7. See CAL. GOV'T CODE § 14600 (West 1980) (providing for the powers and duties of the Department).

8. See *id.* § 15814.32(b) (enacted by Chapter 952) (requiring that the plan accurately identify energy use at existing public buildings and requiring that the plan be developed and submitted to the Legislature no later than December 1, 1992).

9. See *id.* § 15814.33(a) (enacted by Chapter 952) (stating that all standard state leases that are designed to maximize energy savings must be reviewed).

10. See *id.* § 15814.33(b) (enacted by Chapter 952) (requiring the report to assess the prevalence of revisions to state building leases which reduce energy savings or increase energy use, and requiring the report to recommend ways in which these revisions can be minimized).

11. See *id.* § 15814.34(b) (enacted by Chapter 952) (providing for the duties of the Department with regard to commodities only).

as specified;¹² and (5) distribute to all state agencies and departments a list of the commodities with the lowest life cycle costs.¹³ Further, Chapter 952 requires all state agencies and departments to buy the commodities that have the lowest life cycle costs.¹⁴

DKA

Public Entities, Officers, and Employees; for-hire vessels

Public Utilities Code §§ 4671, 4672 (new); § 4670
(amended).
SB 153 (Mello); 1991 STAT. Ch. 405

Existing law requires for-hire vessel operators¹ to maintain liability protection against personal injury and property damage, and to deposit evidence of this with the Public Utilities Commission (Commission).² Chapter 405 requires the Commission

12. *See id.* § 15814.34(b)(2) (enacted by Chapter 952) (stating that the Department must determine the life cycle cost of the brand or model of the commodity purchased as compared to the brand or model of the commodity with the lowest life cycle cost).

13. *Id.* § 15814.33(a)-(b), 15814.34(a)-(c) (enacted by Chapter 952). *See id.* § 15814.34(c)(1) (enacted by Chapter 952) (providing that a list of commodities with the lowest life cycle must be distributed).

14. *Id.* § 15814.34(e) (enacted by Chapter 952). *Cf.* ALASKA STAT. § 44.42.065 (1990), CONN. GEN. STAT. ANN. § 16a-37u (West Supp. 1991), TEX. GOV'T CODE ANN. § 447.002 (Vernon 1990) (developing plans for energy conservation in state owned and leased buildings).

1. *See* CAL. PUB. UTIL. CODE § 4661 (West 1975) (definition of for-hire vessel); § 4660 (West 1975) (definition of for-hire vessel operator).

2. *Id.* § 4663 (West 1975). The Public Utilities Commission must require for-hire vessel operators to maintain adequate protection against liability. *Id.* The for-hire vessel operator is required to deposit with the commission a policy of insurance, a bond, or evidence that the operator qualifies as a self-insurer as authorized by the commission. *Id.* § 4665 (West 1975). *See id.* § 4666 (West 1975) (allowing for a copy of the insurance policy to be filed in lieu of the original); *Packard v. Banton*, 264 U.S. 140, 145 (1924) (holding that statutes requiring for-hire vehicle owners to maintain liability insurance are constitutional). *See also id.* § 4670 (amended by Chapter 405) (failure of operator or owner to maintain minimal liability insurance punishable by a fine of not less than fifty nor more than one thousand dollars).

to issue a certificate of filing, and requires the operator or owner³ of the for-hire vessel to post⁴ the certificate.⁵ Further, Chapter 405 authorizes the Commission to penalize an owner or operator for violation of any provision relating to for-hire vessels or any rule established by the Commission.⁶ Finally, Chapter 405 requires the Commission to revoke the certificate of filing and notify the owner or operator upon receiving notification that the liability protection of a for-hire vessel is going to be canceled.⁷

KT
RCO

Public Entities, Officers, and Employees; local sanitation and sewer systems

Government Code §§ 54740.5, 54740.6 (new); §§ 54725, 54739, 54740 (amended).

SB 1024 (Roberti); 1991 STAT. Ch. 1191

Support: Los Angeles Sanitation District, County Sanitation Districts of Orange County, Aliso Water Management Agency, South East Regional Reclamation Agency, West Bay Sanitation District, Central Marin Sanitation Agency, Association of California Water Agencies

Under existing law, local agencies¹ involved in operating, acquiring, constructing, or owning sewers or sanitation systems

3. See CAL. PUB. UTIL. CODE § 4670 (amended by Chapter 405) (definition of owner).

4. See *id.* § 4671 (enacted by Chapter 405) (requiring each operator or owner to post the certificate in a location visible to all passengers).

5. *Id.* § 4671(a) (enacted by Chapter 405). See *id.* § 4671(b) (enacted by Chapter 405) (prohibiting the posting of invalid certificates on vessel). Cf. CAL. VEH. CODE § 16053 (West Supp. 1991) (providing that owners of 25 or more vehicles can apply for certificate of self-insurance).

6. CAL. PUB. UTIL. CODE § 4670 (amended by Chapter 405). See *id.* § 4668 (permitting Commission to establish rules necessary for enforcement of for hire-vessel regulations).

7. *Id.* § 4672 (enacted by Chapter 405).

1. See CAL. GOV'T CODE § 54725 (amended by Chapter 1191) (definition of local agency).

could require pretreatment of any industrial waste which, without treatment, would be detrimental to the treatment plant² or its efficient operation and maintenance.³ Chapter 1191 additionally provides that a local agency can require pretreatment of industrial waste if necessary to meet state or federal standards, to protect the health and safety of the agency's employees, or to protect the environment.⁴

Existing law creates civil penalties for violations of orders made by local agencies involving the pretreatment of, or refusal to process, industrial waste.⁵ Chapter 1191 increases the fine for each day of violation of this section to \$25,000.⁶ Chapter 1191 states that a local agency may issue an administrative complaint to any person who has violated California Government Code section 54739.⁷ Chapter 1191 further provides that a local agency is

2. See CAL. WATER CODE § 13625(b) (West Supp. 1991) (definition of waste water treatment plants).

3. CAL. GOV'T CODE § 54739 (amended by Chapter 1191). Existing law states that the local agency can prevent waste from entering a treatment works or collection system. *Id.* Existing law further provides that if excess costs are incurred for supplementary treatment plants, facilities, or operations as a result of allowing certain wastes into a collection system or treatment works, local agencies can recover these costs. *Id.*

4. *Id.* § 54739(a)(1) (amended by Chapter 1191). *Cf.* FLA. STAT. ANN. § 153.62 (West 1990) (stating county water and sewer districts' powers to require pretreatment and prescribe penalties for failing to do so in more general terms, thereby granting more discretion, and power to regulate, to localities).

5. CAL. GOV'T CODE § 54740 (amended by Chapter 1191). Prior law required that, in order for a civil penalty to be imposed, the violation had to have been either intentional or negligent. 1972 Cal. Stat. ch. 813, sec. 6, at 1458 (enacting CAL. GOV'T CODE § 54740) (amended by Chapter 1191). Chapter 1191 removes all mention of a mental state, instead imposing strict liability upon violators of California Government Code section 54739. CAL. GOV'T CODE § 54740 (amended by Chapter 1191). Chapter 1191 requires that when an agency petitions the superior court to impose, assess, and recover the fines, the court must take into account all relevant circumstances, including the economic benefit derived through noncompliance. *Id.*

6. CAL. GOV'T CODE § 54740 (amended by Chapter 1191). *Cf.* LA. REV. STAT. ANN. § 4069 (West 1991) (prescribing a much lesser fine of not more than \$1000, for each offense, for any violation of pretreatment rules and regulations). Chapter 1191 specifies that all civil penalties imposed by the court for violations of this section shall be distributed to the local agency. CAL. GOV'T CODE § 54740 (amended by Chapter 1191).

7. CAL. GOV'T CODE § 54740.5 (enacted by Chapter 1191). The complaint shall allege the acts or omissions that constituted the violation, and inform the person of the laws regarding civil liability for this violation. *Id.* § 54740.5(a) (enacted by Chapter 1191). The complaint shall be served by personal delivery, or by certified mail, and must inform the person that a hearing will be held on the matter within 60 days. *Id.* The hearing must be conducted before a hearing officer designated by the governing board of the local agency. *Id.* § 54740.5(b) (enacted by Chapter 1191). Decisions of

authorized to assess civil penalties against parties who violate certain reporting or discharge requirements.⁸

JWD

the hearing office may be appealed to the governing board of the local agency within 30 days. *Id.*

8. *Id.* § 54740.5(d) (enacted by Chapter 1191). The hearing board, or board of the agency, in determining the amount of the penalty to be assessed, shall consider all relevant circumstances including: (1) The extent of harm caused by the violation; (2) any economic benefits that were derived from noncompliance; (3) the nature and persistence of the violation; (4) the length of time over which the violation occurred; and (5) corrective actions, if any, attempted or taken by the discharger. *Id.* Chapter 1191 places limits on the extent of the fines that can be imposed for various violations. *Id.* If amounts assessed pursuant to this section remain unpaid for 60 days or more, the fine shall constitute a lien on the property from which the discharge originated that resulted in the imposition of the penalty. *Id.* No penalties may be recovered if liability has already been assessed in the superior court pursuant to California Government Code section 54740. CAL. GOV'T CODE § 54740.5(h) (enacted by Chapter 1191). Chapter 1191 provides that orders by the hearing board or board of a local agency, assessing penalties against a party, may be appealed in superior court by filing a petition for a writ of mandate within 30 days of the issuance of the order. *Id.* § 54740.6(a) (enacted by Chapter 1191). Evidence which can be heard in this proceeding shall include the record before the board, including the hearing officer's record, and any other relevant evidence the court feels should be considered to effectuate the policies forwarded by the provisions of Chapter 1191. *Id.* § 54740.6(c) (enacted by Chapter 1191). After 30 days have passed since the issuance of the order, it may be appealed only by the board of the local agency on its own motion. *Id.* § 54740.6(b) (enacted by Chapter 1191). *Cf.* ILL. STAT. ANN. ch. 42, para. 326 (Smith-Hurd 1990) (stating that the lien created by delinquent fines extends to real estate that receives the benefit for which the fine is being imposed).

Public Entities, Officers, and Employees; mobilehome parks-- gas distribution systems

Public Utilities Code § 4354.5 (new); § 4358 (amended).
AB 1561 (Epple); 1991 STAT. Ch. 663

Existing law requires mobilehome park operators¹ to present an annual report on a park's gas² distribution system³ to the Public Utilities Commission.⁴ Chapter 663 requires mobilehome park operators to keep a map, drawing, or diagram of the distribution system,⁵ copies of previously submitted annual reports,⁶ and records of leak surveys and repairs, corrosion control, and cathodic protection of the system.⁷ Chapter 663 further requires that these records be transferred to any subsequent operator of the mobilehome park.⁸ Existing law allows the Public Utilities Commission to assess a surcharge against park operators based on

1. See CAL. PUB. UTIL. CODE § 4351(c) (West Supp. 1991) (defining operator as a park owner or operator who uses a master-metered natural gas distribution system). See generally B. HODES & G. G. ROBERSON, *THE LAW OF MOBILE HOMES*, chs. 2, 4, 5 (3rd ed. 1974) (discussing the authority to regulate mobilehome parks, state and municipality regulations, and specific areas of regulation); SHEPARD'S *MOBILE HOMES AND MOBILE HOME PARKS* (1975 & Supp. 1991) (discussing the current state of mobilehome park law).

2. See CAL. PUB. UTIL. CODE § 4351(a) (West Supp. 1991) (definition of gas).

3. See *id.* § 4351(g) (West Supp. 1991) (definition of distribution system).

4. *Id.* § 4354 (West Supp. 1991). Each report is checked for compliance with federal and state pipeline laws and regulations. *Id.* § 4354(d) (West Supp. 1991). The Natural Gas Pipeline Safety Act of 1968, with recent amendments, authorizes the federal government to set minimum pipeline safety measures to be followed by the states. 49 U.S.C.A. §§ 1672-82 (West Supp. 1991). See 49 C.F.R. §§ 190, 191, 192 (1990) (giving specific guidelines for the use of gas pipeline facilities). See generally Johnson, *The Basic Structure of Natural Gas Regulation and a Short Historical Overview--A Nutshell Introduction to Federal Natural Gas Law*, 1 NAT. GAS LAW. J. 99 (1986) (discussing the regulation of natural gas by the federal government); J. Grammer, *Environmental Issues in Gas Distribution and Transmission*, 3 THE NAT. GAS LAW. J. 53 (March 1989) (discussing the environmental issues involved in the regulation of gas pipelines).

5. See CAL. PUB. UTIL. CODE § 4354.5(a)(1) (enacted by Chapter 663) (diagram requirements cover the system's main and service lines, the master meter, and key valve identities).

6. *Id.* § 4354.5(a)(2) (enacted by Chapter 663).

7. *Id.* § 4354.5(a)(3) (enacted by Chapter 663).

8. *Id.* § 4354.5 (enacted by Chapter 663).

the amount of energy consumed.⁹ Chapter 663 changes the surcharge's basis to the amount of lots or spaces in the park.¹⁰

AF

**Public Entities, Officers, and Employees; peace officers--
requalification requirements**

Penal Code §§ 830.6, 832 (amended).
SB 474 (Presley); 1991 STAT. Ch. 509

Existing law provides that all candidates for the position of peace officer must complete a course of training.¹ Prior law provided that the course of training had to be completed within ninety days of employment with the employing agency.² Chapter 509 instead mandates that the course of training need only be completed before the person exercises the powers of a peace officer.³ Chapter 509 also requires that persons who are not employed as peace officers within three years after they fulfill the training and examination requirements of this section, and those who do not serve as a peace officer for a three year break or more, must re-qualify under the examination requirements of this section

9. *Id.* § 4358(a) (amended by Chapter 663).

10. *Id.*

1. CAL. PENAL CODE § 832(a) (amended by Chapter 509). The course of training is to be prescribed by the Commission on Peace Officer Standards and Training (Commission), and the applicant must pass an examination developed or approved by the Commission. *Id.*

2. 1987 Cal. Stat. ch. 157, sec. 1, at 61 (amending CAL. PENAL CODE § 832) (amended by Chapter 509).

3. CAL. PENAL CODE § 832(b) (amended by Chapter 509). Chapter 509 provides that those peace officers, as defined in sections 13510 and 830.2(a) of the California Penal Code, can complete the training required by this section by completing the training outlined in section 13510. *Id.* Chapter 509 also states that any peace officer who possesses, or is qualified to possess, the basic certificate as awarded by the Commission is exempt from this section. *Id.* § 832(d) (amended by Chapter 509). *Cf.* IND. CODE ANN. § 5-2-1-9(b) (West 1991) (stating that no law enforcement officer shall be allowed to enforce the laws of Indiana unless the required training is completed within a year of appointment).

before they may again exercise the powers of a peace officer, unless specifically exempted.⁴

JWD

Public Entities, Officers, and Employees; public utilities--contracts

Civil Code § 3262.5 (new).

AB 329 (Moore); 1991 STAT. Ch. 925

Under existing law, the Public Utilities Commission (Commission)¹ may regulate and inspect contracts entered into by public utilities.² Existing law also requires a contractor³ who contracts with a state agency to pay its subcontractors⁴ within a specified time, and provides for a penalty for failure to make such

4. CAL. PENAL CODE § 832(e)(2) (amended by Chapter 509). The following are exempted from this requirement: (1) Anyone returning to a management position at the second level of supervision or higher; (2) anyone who has successfully requalified for a basic course through the Commission; (3) anyone who has achieved proficiency through teaching the introductory training course; and (4) anyone who was, during the break from service in California, serving as a peace officer in another state or at the federal level. *Id.* The Commission may charge a fee for the retesting, but the fee cannot exceed actual costs. *Id.* § 832(f) (amended by Chapter 509). Existing law states that certain persons deputized or appointed by the proper authority are designated as peace officers, provided that their authority extends only for the duration of a specific assignment, and that they meet basic qualifications. *Id.* § 832.6 (West Supp. 1991). Chapter 509 clarifies this provision to include reserve deputy sheriffs, reserve deputies of the Department of Fish and Game, and reserve special agents of the Department of Justice. *Id.* § 830.6 (amended by Chapter 509). *See generally* L.A. Times, Oct. 28, 1988, § 2, at 2, col. 5 (describing requalification requirements of the San Diego Police Department, primarily with regard to use-of-force procedures).

1. *See* CAL. PUB. UTIL. CODE § 701 (West 1975) (providing that the Commission may supervise and regulate every public utility in California and may do what is necessary and convenient in the exercises of that power and jurisdiction). *See also id.* § 216(a) (West Supp. 1991) (definition of public utility).

2. *Id.* § 314(a) (West Supp. 1991). The Commission has the authority to inspect all accounts, books and documents of public utilities. *Id.*

3. *See* CAL. CIV. CODE § 3262.5(a) (enacted by Chapter 925) (providing that a contractor is a person or corporation which has contracted to do business with a public utility).

4. *See id.* § 3104 (West 1974) (definition of subcontractor).

payments.⁵ Chapter 925 requires a contractor who is under a contract with a public utility to pay all subcontractors within a specified time.⁶ Chapter 925 also creates a penalty for the violation of the payment requirement.⁷

*TD III
NW*

Public Entities, Officers, and Employees; televised proceedings of the Assembly

Government Code § 9026.5 (new).
AB 1662 (Statham); 1991 STAT. Ch. 1215

Under existing law, all meetings¹ of the California Legislature or of a legislative committee² must be open to the public, except

5. CAL. PUB. CONT. CODE §§ 10262, 10262.5(a) (West 1985 & Supp. 1991). The contractor must pay subcontractors within 10 days of the receipt of each progress payment, unless otherwise agreed in writing. *Id.* § 10262 (West 1985). The contractor must pay the subcontractor a penalty of two percent of the amount due per month for every month that payment is withheld. *Id.* § 10262.5(a) (West Supp. 1991). *Cf.* ARIZ. REV. STAT. ANN. § 34-221(H) (1990) (providing that public works contractors pay subcontractors within 7 days of receipt of progress payments and providing for a one percent penalty per month for delay); GA. CODE ANN. § 13-10-2(D) (1990) (mandating that contractors pay subcontractors within 10 days of receipt of progress payments); MINN. STAT. ANN. § 16A.1245 (West Supp. 1991) (requiring prompt payment to subcontractors within 10 days or a penalty of 1.5% per month will be added).

6. CAL. CIV. CODE § 3262.5(a) (enacted by Chapter 925). Unless otherwise agreed, the contractor is required to pay the subcontractor for work performed within 15 days of receipt of each progress payment. *Id.*

7. *Id.* § 3262.5(b) (enacted by Chapter 925). Chapter 925 requires the contractor to pay a penalty to the subcontractor of two percent of the amount due per month if the funds are wrongfully withheld. *Id.* Chapter 925 further provides for attorney fees and costs to the prevailing party in any action for the collection of funds wrongfully withheld. *Id.* Chapter 925 specifically expresses that it is not meant to limit contractual, administrative or judicial remedies otherwise available to contractors or subcontractors in any dispute arising out of late or nonpayment. *Id.* § 3262.5(c) (enacted by Chapter 925).

1. See CAL. GOV'T CODE § 9027 (West Supp. 1991) (definition of meetings).
2. See *id.* § 9027 (West Supp. 1991) (definition of committee).

under certain circumstances.³ However, existing law generally does not regulate the televising of the Legislature and the use of such television signals.⁴ Chapter 1215 prohibits the use of television signals from the Assembly for political or commercial purposes.⁵

NW
SDW

Public Entities, Officers and Employees; used oil recycling

Health and Safety Code § 25366.5 (amended); Public Contract Code §§ 10406, 10409 (amended); Public Resources Code §§ 48600, 48601, 48610, 48611, 48612, 48613, 48614, 48615, 48616, 48617, 48618, 48619, 48620, 48621, 48622, 48623, 48624, 48630, 48631, 48632, 48633, 48634, 48640, 48641, 48642, 48643, 48650, 48651, 48652, 48653, 48654, 48655, 48656, 48657, 48660, 48661, 48662, 48670, 48671, 48672, 48673, 48674, 48675, 48676, 48680, 48690, 48691 (new); § 3472 (amended).

AB 2076 (Sher and O'Connell); 1991 STAT. Ch. 817

Support: California Public Interest Research Group (CALPIRG); League of California Cities; Planning and Conservation League; Sierra Club.

3. *Id.* §§ 9027, 9029 (West Supp. 1991). Closed sessions are permitted for: (1) Hearings concerning any public employee; (2) the safety and security of the Legislature; (3) conferring with legal counsel; (4) or meetings of a single political party. *Id.* § 9029 (West Supp. 1991).

4. *Id.* § 9020-9032 (West 1980 & Supp. 1991) (generally regulating the reporting of Legislative meetings; however, no regulations govern the televising of those meetings). *But see* Committee on Televising the Assembly Governance Rules § 1(G) (adopted by the Senate in February 1991) (prohibiting all political and commercial uses of the Assembly feed).

5. CAL GOV'T CODE § 9026.5 (enacted by Chapter 1215) Any violation of Chapter 1215 is a misdemeanor. *Id.* Commercial purpose does not include news organizations or non-profit organizations using the signal for public affairs programming or educational programming. *Id.*

Under existing law, a local agency¹ is required to purchase lubricating² and industrial³ oil from the seller whose product contains the highest proportion of recycled oil⁴ as long such oil meets specified quality requirements.⁵ Existing law requires that procuring agencies⁶ alter their oil procurement policies to allow for the purchase of recycled oil.⁷ Under existing law, the state must maintain a toll-free telephone number from which callers can receive information regarding methods of recycling, places to recycle, and authorized oil pick-up programs.⁸ Chapter 817 allows the toll-free number to be used for purposes other than the dissemination of oil recycling information.⁹

Chapter 817, entitled the California Oil Recycling Enhancement Act, is an effort to lower improper disposal of used oil¹⁰ and increase the use of recycled oil products.¹¹ Chapter 817 requires

1. See CAL. PUB. CONT. CODE § 10409 (amended by Chapter 817) (changing existing law by defining a local agency as it is listed in Government Code section 17518).

2. See CAL. PUB. RES. CODE § 48618 (enacted by Chapter 817) (definition of lubricating oil).

3. See *id.* § 48616 (enacted by Chapter 817) (definition of industrial oil).

4. See *id.* § 48620 (enacted by Chapter 817) (defining recycled oil to conform to the definition listed in California Safety Code section 25250.1(c)).

5. CAL. PUB. CONT. CODE § 10409 (amended by Chapter 817). The recycled oil must be comparable, in terms of availability and quality, to virgin oil. *Id.*

6. See *id.* §10405(d) (West Supp. 1991) (definition of procuring agency). See also *id.* § 10407 (West Supp. 1991) (listing recycling requirements for procuring agencies).

7. *Id.* § 10406 (amended by Chapter 817). Chapter 817 requires that the alteration of policies be completed on or before July 1, 1992. *Id.*

8. CAL. PUB. RES. CODE § 3472 (amended by Chapter 817).

9. *Id.* Chapter 817 does not enumerate other purposes for which the toll-free line may be used. *Id.*

10. See *id.* § 48621 (enacted by Chapter 817) (definition of used oil).

11. *Id.* § 48600 (enacted by Chapter 817) (stating legislative findings and intent). Chapter 817 requires that the state adopt a specific used oil recycling program on or before October 1, 1992. *Id.* § 48630 (enacted by Chapter 817). The state is authorized to solicit expert opinions and issue printed materials which are necessary for the furtherance of Chapter 817. *Id.* §§ 48642-48643 (enacted by Chapter 817). See Petzet, *Starting Environmentalism at Home*, OIL & GAS J., Feb. 19, 1990, at 17 (discussing the prevalence of oil improperly disposed of and outlining potential environmental impacts); Edmond, *Is The Used Oil Recycling Program In Jeopardy?*, 83 NAT'L PETROLEUM NEWS 25, (Feb. 1991) (discussing private and government sponsored used oil recycling and disposal programs); Wiener, *Oil Law Lacks Teeth*, Washington Post, September 13, 1990 § 5, at 1 (discussing problems with the recycling law in the state of Virginia). Several other states have statutorily-imposed oil recycling programs. Cf. FLA. STAT. §403.75 (1990); HAW. REV. STAT. § 342N-7 (1990); ILL. REV. STAT. ch. 96.5, para. 7702.2 (1989); MD. NAT. RES. CODE § 8-1401 (1990); MICH. COMP. LAWS §319.311 (1991); OR. REV. STAT. § 468.850 (1989).

that used oil collection centers¹² meet specified requirements to be eligible for certification by the state.¹³ Under Chapter 817, collection centers, curbside collection programs, and industrial generators,¹⁴ which deliver the used oil to oil recycling facilities,¹⁵ shall receive cash incentives.¹⁶

Under Chapter 817, all oil recycling facilities are subject to annual inspection and certification.¹⁷ Chapter 817 establishes that oil recycling facilities must also submit quarterly reports which record the amount of oil received and recycled.¹⁸

Under Chapter 817, local governments implementing lubricating oil recycling programs, in compliance with specified parameters, are eligible to receive a block grant.¹⁹ In addition, the state may

12. PUB. RES. CODE § 48622 (enacted by Chapter 817) (definition of used oil collection center).

13. *Id.* § 48660 (enacted by Chapter 817). All centers must seek re-certification every two years. *Id.* § 48660(a) (enacted by Chapter 817). To qualify for certification and incentives, a collection center must receive used lubricating oil from the public without charge, pay persons recycling their oil a sum equal to the amount of the recycling incentive, provide information regarding their acceptance of used lubricating oil, as well as advertising and signs which denote the center's accessibility to the general public. *Id.* § 48660(b)(1)-(4) (enacted by Chapter 817).

14. *See id.* § 48614 (enacted by Chapter 817) (definition of industrial generator).

15. *See id.* § 48624 (enacted by Chapter 817) (definition of used oil recycling facility).

16. *Id.* § 48651(a) (enacted by Chapter 817). The minimum cash incentive is four cents per quart, but this amount may be raised if necessary to encourage recycling efforts. *Id.* § 48652 (enacted by Chapter 817). To receive an incentive, the used oil, including used industrial oil, must be transported to a recycling center via a used oil hauler. *Id.* § 48651(a)-(c) (enacted by Chapter 817). Oil haulers are required to submit quarterly reports specifying the amount hauled, the origin of the used oil, and the location to which the oil was delivered. *Id.* § 48672 (enacted by Chapter 817). Oil collection facilities are not eligible for incentives unless they fulfill the requirements of Public Resources code section 48660(b). *Id.* § 48660(a) (enacted by Chapter 817). An electric utility may be eligible for recycling incentives if it meets specified requirements. *Id.* § 48651(b) (enacted by Chapter 817). *See id.* § 48623 (enacted by Chapter 817) (definition of used oil hauler).

17. *Id.* § 48661(a) (enacted by Chapter 817). The inspections shall investigate compliance with Chapter 817 and other specified laws. *Id.* § 48661(b)-(c) (enacted by Chapter 817). Following each inspection, a report shall be issued specifying any violation to the state. *Id.* Upon receipt of report, the state shall certify a recycling facility unless the facility's repeated non-compliance with the law results in profound threat to the public or the environment. *Id.* § 48662 (enacted by Chapter 817). Violators of Chapter 817 are subject to civil penalties which accrue for each day of the violation. *Id.* § 48680 (enacted by Chapter 817).

18. *Id.* § 48673 (enacted by Chapter 817). Chapter 817 requires that collection facilities specify the proportions of lubricating and industrial oil received, when possible. *Id.*

19. *Id.* § 48690 (enacted by Chapter 817). Grants must be given to all applicants who comply with state standards. *Id.* Local programs are required to have either one collection facility for every 100,000 residents or a monthly curbside collection program. *Id.* § 48691(a)(1)-(2) (enacted by Chapter 817). The local program must inform the public of accessible recycling opportunities. *Id.* § 48691(b)

dispense loans or grants to a local government which adopts lubricating oil programs in excess of those required and to non-profit organizations which conduct research on and provide equipment for oil recycling procedures.²⁰

Chapter 817 establishes a quarterly manufacturer's²¹ surcharge on each quart of oil sold, transferred or used within the state.²² Monies from the surcharge, civil penalties²³ and other fines collected under Chapter 817 shall be deposited in the California Used Oil Recycling Fund, which will be used to finance incentive programs, grants, public education, enforcement procedures, and administrative expenses.²⁴ Chapter 817 expands existing law by granting operators of used oil collection centers immunity from cost recovery actions under the Hazardous Substance Account Act.²⁵

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(enacted by Chapter 817). Local programs receiving block grants must submit annual reports to the state. *Id.* § 48674 (enacted by Chapter 817).

20. *Id.* § 48632(b)-(c) (enacted by Chapter 817).

21. *See id.* § 48619 (enacted by Chapter 817) (definition of oil manufacturer).

22. *Id.* § 48650 (enacted by Chapter 817). The charge is four cents per quart, and the fee is payable within twenty days from the end of each quarter. *Id.* Manufacturers must report monthly on the amount of industrial and lubricating oil sold. *Id.* § 48671 (enacted by Chapter 817). Reporting shall commence to be required on May 1, 1992. *Id.*

23. *See id.* § 48680 (enacted by Chapter 817) (specifying fines or imprisonment, or both, which may result from a violation of Chapter 817).

24. *Id.* § 48653 (enacted by Chapter 817). *See also id.* §§ 48555-56 (enacted by Chapter 817) (specifying the percentage amount to be used for grants, education, and promotion purposes).

25. CAL. HEALTH & SAFETY CODE § 25366.5 (amended by Chapter 817). *See id.* §§ 25300-25422 (West 1984 & Supp. 1991) (listing the statutory requirements of the Hazardous Substance Account Act).